

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Cr. Appeal No. 03/2016

in

Cr. PLA No. 01/2015.

1. The State

Petitioner.

Versus

1. Sulieman son of Niamat Khan r/o Sari Thore District Diamer.

Respondent.

PRESENT:-

1. The Advocate General Gilgit-Baltistan for the State. Mr. Amjad Hussain Advocate and Mr. Ali Nazar Khan Advocate-on-Record for the complainant.
2. Mr. Rai Muhammad Nawaz Kharal Advocate alongwith Mr. Johar Ali Khan Advocate-on-Record on behalf of the respondent.

DATE OF SHORT ORDER: - 21.10.2016.

DATE OF DETAIL JUDGMENT:- 05.01.2017

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This petition has arisen out of the impugned judgment dated 26.11.2014 in Criminal Appeal No. 35/2012 passed by the learned Gilgit-Baltistan Chief Court whereby the Criminal Appeal No. 35/2012 filed by the respondent was allowed by setting aside the judgment/order dated 13.09.2012 passed by the learned Additional Sessions Judge Diamer. Consequently, the murder reference was answered in negative. The State/petitioner being aggrieved filed this petition for leave to appeal. This court vide order dated 05.04.2016 granted leave to appeal and the case was heard on 21.10.2016. We after hearing both the parties at length allowed this appeal vide our short

order dated 21.10.2016. Consequent thereto the impugned judgment dated 13.11.2014 in Criminal Appeal No. 35/2012 passed by the learned Gilgit-Baltistan Chief Court was set aside whereas the judgment dated 13.09.2012 in Sessions Case No. 76/2013 passed by the learned Additional Sessions Judge District Diamer was upheld, convictions & sentences so awarded to the respondent by the learned Trial Court were also maintained. The death sentences, however, awarded to the respondent namely Sulieman son of Niamat Khan R/o Sari Thore District Diamer was withheld and converted into a life imprisonment. He will be entitled to the benefits of Section 382-B Cr.P.C as extended by the learned Trial Court. The respondent/convict namely Sulieman son of Niamat Khan was directed to surrender himself before the learned Additional Sessions Judge District Diamer at Chilas to serve out his sentences accordingly. The surety bonds if furnished by the respondent in this court were discharged. The copy of the said short order was also sent to the learned Trial Court i.e. the learned Additional Sessions Judge District Diamer at Chilas for compliance.

2. Briefly facts of the case as spelled out in the FIR are that on 09.10.2009 at about 800 AM the complainant (PW-1) namely Mustaqeem alongwith one Fazal Karim son of Abdul Wahab was on the way to their home by carrying corn load from Shatoon Nallah. When they reached near the Masjid they saw Najeebullah who was present at the down side of the Masjid while grazing his cattle. The said PW alongwith one Fazal Karim have also witnessed the

respondent accused. The accused Shamsul Haq reportedly equipped with arm coming from village Sari who went directly towards Najeebullah and by reaching there accused Shamsul Haq caught hold Najeebullah and directed the respondent to open fire at him. Consequently, the respondent opened fire at Najeebullah and due to landing fire Najeebullah fell down to the ground whereas a shot fired by the respondent also hit to Shamsul Haq. Najeebullah Succumbed to the injuries on the spot. The motives as disclosed in the FIR was that a daughter of the respondent was given in Nikah of deceased Najeebullah but later on the respondent was not ready for Rukhsati which led to create tension between the parties and resulted into a murder.

3. After completion of the investigation, the report under Section 173 Cr.PC was submitted to the learned Sessions Judge who entrusted the same to the learned Additional Sessions Judge, for its disposal in accordance with law. The accused were formally charged on 25.05.2012 under Section 302/34 PPC which is reproduced as under:-

**Charge under Section 302/324/34 PPC
Vide FIR No. 25/2009 P.S. Thore.**

1. I, Yar Muhammad Sessions Judge Diامر do hereby Charge you accused Sulieman s/o Niamat Khan r/o Sari Thore Tehsil Chilas District Diامر as follow:-

Firstly:- That you accused on 9.10.2009 at about 8:10 am nearby Mosque at Karo Thore, with the abetment of co-accused Shamsul Haq committed the murder of one Najeebullah s/o Younus r/o KaroThore by opening fire shots and thereby you have committed an offence punishable under Section 302/34 PPC within the cognizance of this Court.

Secondly:- That on the above date and time due to your firing co-accused namely Shamsul Haq received bullet injury and thereby you

have committed an offence punishable u/s 324 PPC within the cognizance of this court

I direct that you be tried by this Court on the said charge.

Chilas.

Dated 07-06-2011.

The charges are read over and explained to the accused in his mother language and questioned as follows:-

Q. No. 1 Do you plead guilty?

Ans. Pleaded not guilty demanded for trial.

Q. No. 2. Do you want to make your defence and produce defence witnesses?

Ans. Yes, as and when so necessary.

Sulieman

Chilas.

Dated 07-06-2011.

-Sd-

Sessions Judge Diامر.

4. The respondent pleaded not guilty and claimed trial. The prosecution in support of its case against the accused produced as many as 08 witnesses and also produced 02 empty shells recovered from the place of occurrence, inquest report, and crime weapons. After closing of prosecution evidence the accused were examined under Section 342 Cr.PC, who did not examine himself under Section 340(2) Cr.PC and produced witnesses in his defence

5. The learned Trial Court after appraising the evidence, hearing both the learned counsels for the respective parties and on proven guilty against the accused convicted the accused as under:-

“Quote”

”Keeping in view of the above discussion I have arrived at the conclusion that the prosecution has proved its case against accused Sulieman beyond any shadow of doubt. So the accused Sulieman son of Niamt Khan is convicted u/s 302 (b) PPC as Tazzir and he is sentenced to death. Subject to confirmation by the Hon’ble Chief Court Gilgit-Baltistan. He shall be hanged to neck till he is dead. The accused is also directed to pay an

amount of 4, 00,000/- to the legal heirs of the deceased as compensation under the provision of section 544-A Cr. PC. Failing to pay the same he will undergo further imprisonment for six months R.I. Crime weapon confiscated in favour of State after lapse of period of appeal/revision if any.”

“Unquote”

6. The learned Advocate General, appearing on behalf of the petitioner /State alongwith Mr. Amjad Hussain Advocate for the complainant, submits that it is a day light occurrence and the FIR of the case has been registered promptly. They also submit that the accused has been nominated in the FIR as the motive of the case is an admitted fact which has been corroborated and proved through the statements of PWs and other witnesses. They further submit that the presence of the accused was admitted at the place of occurrence and his active role in the commission of the offence has also been proved by tangible evidence which is inspiring confidence. They reiterate that the PWs especially PW- 01 who lodged FIR being a natural witness charged the respondent attributing him a specific role of committing the murder of Najeebullah. The version of the complainant and prosecution corroborated by the statements of PWs as well as from the inquest report. They submit that the eye witnesses have furnished unimpeachable ocular account of the occurrence and the presence of the accused at the spot of occurrence is not disputed. Admittedly the opening of firing at the deceased by the respondent has also been proved through credible evidence. They also submit that mere on the basis of close relation

between the deceased and PWs is not a ground for discarding the evidence of eye witnesses. They submit that while recording statement of respondent under Section 342 Cr.P.C, he has not supported his version regarding possibility of his false implication. No material contradiction has been pointed out in the statements of the prosecution witnesses. They also submit that the co-accused who was accompanied with the respondent has entered into a compromise with the complainant party who paid compensation to the deceased by confessing his guilty which also corroborate the prosecution case. As per the learned counsels for the State/complainant the judgment of the learned Trial Court was tenable being well reasoned based on proved facts and material on record. They finally submit that the learned Gilgit-Baltistan Chief Court failed to appreciate the material on record and the impugned judgment dated 26.11.2014 in Cr. Appeal No. 35/2012 was the result of misreading and non-reading of prosecution evidence, which is not sustainable. They prayed that the judgment dated 13.09.2012 in Sessions Case. No76/2012 passed by the learned Trial Court District Diamer may graciously be upheld to meet the ends of justice by setting aside the impugned judgment dated 26.11.2014 in Cr. Appeal No. 35/2012. In support of their contentions the learned counsels relied upon the case laws of the Hon'ble Apex Court of Pakistan i.e. NLR 1996 Criminal 370, NLR 2000 Criminal 196, 2003 SCMR 522, PLD 2002 SC 786, PLD 2002 SC 792, 2002 SCMR 1855 and 2002 SCMR 1858.

7. On the other hand, Mr. Rai Muhammad Nawaz Kharal Advocate appearing on behalf of the respondent accused supports the impugned judgment being well reasoned. He contends that the prosecution has miserably failed to prove its case beyond shadow of doubt. As per learned counsel the eye witnesses are interested and inimical towards respondent. The prosecution has produced PW Mustaqeem who is the alleged eye-witness of the occurrence and abandoned the other eye-witnesses. He also contends that the other eye-witnesses had not produced by the prosecution merely that they are not ready to support the prosecution case. He further contends that the occurrence has taken place in the manner disclosed by the so-called eye-witnesses whereas it was happened in the manner as stated by the respondent namely Sulieman in his statement recorded under Section 342 Cr. PC. He also contends that the eye-witnesses are closely related to the complainant and therefore no reliance can be placed on their testimony. He contends that no independent witness has produced by the prosecution to support the prosecution case. The site plan prepared by the prosecution do not support their case. The inquest report prepared by the Investigation Officer (I.O) in absence of witnesses losses its sanctity. In fact the complainant party tried to abduct Mst. Nadia, the daughter of the respondent who was rescued from Najeebullah deceased. During the scuffle one Fidaullah, the brother of the deceased opened fired which hit at Najeebullah (deceased) and at co-accused Shamsul Haq. The recovery witness has also not

supported the prosecution whereas the other prosecution witnesses made improvements during recording their statements. The inquest report is fake one. He contends that the learned Trial Court fell in error while passing the judgment, based on misreading and non-reading of evidence on record. As per the learned counsel the prosecution has miserably failed to prove its case beyond reasonable doubts. Consequently, in appeal the learned Gilgit-Baltistan Chief Court, has rightly acquitted the respondent while passing the impugned judgment dated 26.11.2014 and reversed the judgment of the learned Trial Court. He prays that the impugned judgment dated 26.11.2014 in Cr. Appeal No. 35/2012 passed by the learned Gilgit-Baltistan Chief Court may graciously be maintained. While saying so he relied upon the case laws reported as 2012 YLR 841, 2012 YLR 374, 2008 SCMR 1549, 2012 YLR 580, 2012 MLD 152, 2005 PCR.LJ 1378, 2012 YLR 986, 2011 MLD 1355, 2009 PCr. LJ, 2012 YLR 724, 2012 SCMR 82 and 2010 SCMR 97.

8. We have heard the learned counsel for the respective parties at length, perused the case file and material on record, gone through the impugned judgment dated 26.11.2014 in Cr. Appeal No. 35/2012 passed by the learned Gilgit-Baltistan Chief Court as well as the judgment dated 13.09.2012 in Sessions Case. No 76/2012 passed by the learned Trial Court District Diamer. We have also gone through the case laws relied by the learned counsels for the respective parties. According to the prosecution the murder

was committed in the manner as emanating from the FIR. Whereas the defence taken by the defence was that on the day of occurrence accused Shamsul Haq was going to Shatton Nallah from his village Sai, Thore alongwith some ladies of the respondent and when they reached at village Karoo, the deceased alongwith his brother Fida ullah attacked at them with intension to abduct Mst. Azima a daughter of the respondent upon whom deceased Najeebullah was claiming to be his wife. The said Shamsul Haq and his companions tried to rescue the daughter of the respondent from being abducted, resultantly, the complainant party opened fires upon them which mistakenly hit at Najeebullah who died on the spot. In order to ascertain which version is plausible the learned trial court has seen and kept all the attending circumstances in mind while passing judgment.

9. The prosecutions has mainly relied upon the ocular account evidence particularly the testimony furnished by Mustaqeem (PW-1) who has appeared in the witness box as eye-witness. The FIR No. 25/2009 was registered by him who says that on the day of occurrence he and PW Fazal Karim while taking corn load were coming from Shatton Nallah to their village Sari. When they reached near a Masjid situated at village Karoo, they saw accused Shamsul Haq and Sulieman duly armed coming from Sari side while deceased Najeebullah was present at Nallah Karoo grazing his cattle. Accused Shamsul Haq caught hold Najeebullah and told to Sulieman for opening fire upon him. Sulieman fired a

shot at Najeebullah which hit him who fell down to the ground and subsequently succumbed to said fire arm. Another fire was hit accused Shamsul Haq and after firing both the accused absconded from the scene of occurrence. This witness was put under a lengthy Cross Examination but the defence had failed to shatter his evidence. The defence has not denied the presence of respondent at the place of occurrence. Admittedly the crime weapon was recovered from the respondent on his pointation. The inquest report also supports the version of the complainant. The motive part of evidence was not denied by the defence. The ocular account furnished by the complainant fully supports the prosecution version as mentioned in FIR. The place of occurrence, presence of respondent and complainant eye witnesses was not disputed by the defence. An application u/s 22-A Cr.P.C for registration of FIR against the complainant & others filed by co-accused Shamsul Haq and defence taken by the respondent before learned trial court in his statement recorded u/s 342 Cr.P.C. is contrary in nature. The fact which he disclosed before learned trial court u/s 342 Cr.P.C. has not mentioned in application filed u/s 22-A Cr.P.C. Admittedly said co-accused Shamsul Haq after dismissal of his application u/s 22-A Cr.P.C. due to non prosecution, had neither moved application for its restoration nor filed any private complaint against the complainant party for the occurrence as narrated by respondent in his said statement recorded in the learned Trail Court u/s 342 Cr.P.C., hence his all efforts seems to be after thought which was

disbelieved by the learned Trial Court accordingly. The prosecution has successfully proved its case beyond any shadow of doubt in bringing home the guilt for committing intentional murder of Najeebullah by the respondent Suleman & his co-accused Shamsul Haq through a credible and corroborative evidence on record. According to the site plan, the respondent deceased and eye witness shown at their respective places from where the eye witnesses saw the occurrence. Failure in conducting post mortem of the deceased at the request of his legal heirs as per their custom would not cause any adverse effect to the prosecution case as held in Bashir Ahmed Case reported in 1998 SCMR 1778.

11. In view of the above discussions, and in our considered view the judgment dated 13.09.2012 in Session Case. No 76/2012 passed by the learned Trial Court District Diamer was well reasoned and well founded being passed in line with the facts of the case while appreciating the evidence on record. Consequently, this Criminal Appeal was allowed vide our short order dated 21.10.2016, consequent thereto the impugned judgment dated 13.11.2014 in Criminal Appeal No. 35/2012 passed by the learned Gilgit-Baltistan Chief Court was set aside whereas the judgment dated 13.09.2012 in Session Case No. 76/2013 passed by the learned Additional Session Judge District Diamer was upheld, convictions & sentences so awarded to the respondent by the learned Trial Court were also maintained. The death sentences, however, awarded to the respondent namely Sulieman son of Niamat Khan R/o Sari Thore

District Diamer was withheld and converted into a life imprisonment. The respondent/convict, however, will be entitled to the benefits of Section 382-B extended by the learned Trial Court. The respondent/convict namely Sulieman son of Niamat Khan was directed to surrender himself before the learned Additional Session Judge District Diamer at Chilas to serve out his sentences accordingly. The surety bonds if, furnished by the respondent in this court were discharged. These were the reasons for our said short order dated 21.10.2016.

12. The copy of this judgment be also sent to the learned Trial Court i.e. the learned Additional Sessions Judge District Diamer at Chilas for compliance.

13. The appeal is accepted in above terms.

Chief Judge.

Judge.

Whether the case is fit to be reported or not?