IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
Cr.P.L. A. No. 04/2010

Before :- Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.
Mr. Justice Syed Jaffar Shah, Judge.
Mr. Justice Muhammad Yaqoob, Judge.

The State ---------- Petitioner

Versus

Sadaqat Jan s/o Ghulam Muhammad r/o Bargo Pain Gilgit. Respondent

CHARGE UNDER SECTION 302/34 PPC READ WITH 6/7 ATA AND 13 ARMS ORDINANCE OF 1965.

PETITION FOR LEAVE TO APPEAL AGAINST THE ORDER/JUDGMENT OF CHIEF COURT GILGIT-BALTISTAN DATED 18-05-2010, WHEREBY THE RESPONDENT IS ACQUITTED FROM THE CHARGES, HENCE THIS APPEAL.

Present: - Advocate General, Gilgit-Baltistan for the State.
Mr. Amjad Advocate, for the complainant.
Malik Haq Nawaz, Sr. Advocate for the respondent.

Date of Hearing :- 12-10-2010.

JUDGMENT:-

Mr. Justice Muhammad Yaqoob, J….This leave to petition has been directed against the judgment dated 18-5-2010, passed by the learned Division Bench of Chief Court Gilgit-Baltistan, whereby the learned Division Bench set aside the judgment/order dated 08-7-2008, passed by the judge Anti- Terrorism Court No. II Gilgit acquit the respondent by giving benefit of doubt to the accused, hence this petition.

This apex Court admitted Cr.P.L.A. No. 4/2010 for regular hearing on the sole ground of re-appraisal of evidence. We therefore re-produce the contents of order dated 05-7-2010 for clarification.

"After hearing the learned Advocate General Gilgit-Baltistan and perused the record with his assistance, we

find it is a fit case for re-appraisal of the evidence. Notice is accordingly issued to respondent for a date in office after summer vacation."

Briefly stated facts of the case as enumerated in the impugned judgment are that the complainant namely Mussa Khan real brother of deceased (Naib Khan) submitted an application vide Ex.PW-4 on 11-8-2006, stating that on 11-8-2006 at about 7.30 a.m. his brother had gone to irrigate his fields, during this time accused Sadaqat Jan son of Ghulam Muhammad, Farooq Ahmed son of Abdul Wadood r/o Sharoote, and Zakria s/o Sher r/o Shikiot, opened fire shot on his brother and caused him serious injuries, who succumbed to his injuries at DHQ Hospital Gilgit.

That on the basis of application, the case was registered under section 302/34 P.P.C. read with section 6/7 of ATA vide FIR No.01/97/2006 dated 11-8-2006, at the police station City Gilgit, the prosecution to prove its case against the respondent/accused produced (seventeen witnesses).

That during investigation the police have released/discharged all the accused nominated in the FIR under section 169 Cr.P.C. except the respondent Sadaqat Jan and submitted challan against him as an accused in the present case. 30 bore pistol as weapon of offence has been recovered from the possession of the accused/respondent Sadaqat Jan, therefore, a separate case under section 13 A.O. vide FIR No.203/2006 was also registered against the accused after failing to produce licence of the said pistol.

After completion of usual investigation the petitioner was sent up for trial. On conclusion whereof he was convicted under section 302-B P.P.C. read with section 6/7 ATA and sentenced to undergo Rigorous imprisonment for life with a fine of Rs. 3,00,000/- to be paid to the legal heirs of the deceased under section 544-A Cr.P.C. as compensation. Accused/respondent was also convicted under section 13.A.O. with a fine of Rs.10000/- in case of default to suffer Simple imprisonment for six months with benefit of section 382-B Cr.P.C.

Being dissatisfied and aggrieved from the judgment of Anti-terrorism Court Gilgit, accused/respondent preferred criminal appeal No.13/2009 before the Chief Court Gilgit-Baltistan. The learned Bench of Chief Court Gilgit-Baltistan set aside the conviction and sentence awarded to the respondent/accused by the trial court and acquitted the respondent from the charge, hence this leave to appeal.

We have heard the learned Advocate General Gilgit-Baltistan for the state assisted by private counsel for complainant at length, who mainly contended, that prosecution has proved the case against the respondent beyond any shadow of doubt, based on following pieces of evidence: (i) medical Evidence (ii) ocular evidence (iii) recovery evidence and (iv) motive. He further submits that the respondent is directly charged in the FIR and the occurrence took place at broad day light. The independent eye witnesses namely Mst. Hassina and Ali Hussain are fully supporting the prosecution story and have personally seen the accused/respondent, while opening fire on the deceased. The presence of the eye witnesses at the place of occurrence is quite natural and remained unshattered. There is no contradiction between

the statements of eye witnesses, which also corroborates with medical report. The impugned judgment suffers from factual and legal discrepancies, hence not warranted by law and liable to be set aside. He further vehemently argued with the submission that a weapon of offence, 30 bore pistol bearing No.4575/3828, recovered immediately after the occurrence from the possession of the accused. The report of arms expert is also in positive, which supports the prosecution case. He further contended that the accused has committed a heinous offence which has created a sense of fear in the whole society. That in the presence of motive, ocular evidence, recovery of weapon of offence and availability of other corroborating evidence on record has proved the prosecution case beyond any reasonable doubt, as such the accused/respondent is reliable to be awarded capital punishment by accepting this leave to appeal, to meet the ends of justice.

Malik Haq Nawaz, learned Advocate Supreme Appellate Court appeared on behalf of accused/respondent (Sadaqat Jan) has vehemently opposed the view point as canvassed by the learned Advocate General Gilgit-Baltistan, by arguing, that the police arrested three persons for opening fire shots on the deceased, but two of them were released under section 169 Cr.P.C, whereas respondent /accused was went for trial. Only this single point is sufficient to create doubts in favour of accused. He further strongly pressed that the complainant inclusion with one Ali Hussain, who is a deadly enemy of respondent’s family managed and fabricated evidence of Mst. Hassina, himself. While it is on the record that the said Ali Hussain PW-2 was arrested in the murder case of real brother of respondent/

accused, which took place on preceding night of the instant occurrence. He further added that the said witness (Ali Hussain) has denied the visual of the present occurrence in his statement recorded in FIR No.197/2006. He pointed out that there are material contradictions in the statements of PW's, therefore the learned Division Bench of Chief Court Gilgit-Baltistan has rightly set aside the conviction order/judgment passed by the learned Anti-terrorist Court No. II Gilgit. He further emphasized that the recovery of weapon of offence was allegedly affected on 11-8-2006, but the FIR was lodged on 15-8-2008 and a vague explanation has been offered by the investigation office which cannot be legally accepted. Moreover, the crime empty and pistol were not sealed at the spot and a photo state copy of expert report was tendered by the prosecution, which is in -admissible in evidence. The learned Advocate for respondent further submits that there are glaring contradictions in the site plan and the statements of PW's. The statement of PW,s were recorded after a long delay without plausible explanation. Therefore judgment/order passed by Anti-terrorism Judge, has not only against the law but in consonant with the evidence on the record, as such the learned Division Bench of Chief Court Gilgit-Baltistan, has extended the benefit of doubts in favour of respondent/accused. The impugned judgment is well reasoned and in accordance with the available record as such liable to be up held.

We have carefully examined the respective contentions as agitated on behalf of the parties in the light of relevant provisions of law and record of the case. We have also minutely perused the impugned judgment dated 15-8-2010, as well as the judgment passed by the Judge Anti-Terrorism Court No. II Gilgit, with care and caution. The entire record has been scanned with the eminent assistance of both the

learned counsel for the parties, after having careful scrutiny of the entire record, we are of the considered opinion that the prosecution has established accusation, beyond shadow of doubt by producing cogent and concrete evidence which has rightly been considered by the learned trial Court.

The learned Advocate Supreme Appellate Court could not furnished any lawful justification on the basis where of eye account tendered by Mst. Hasina duly corroborated by Ali Hassan PW-2 and Amjad Ali PW-3 could be brushed aside. We have perused the statement of PW-1 Mst. Hasina, who has deposed the details of unfortunate incident culminating death of Naib Khan. She has narrated in a categoric manner that on the fateful day "I along with my husband namely Shafat Hussain and my brother Ali Hussain and other family members were present. Deceased Naib Khan requested to lend a spade (Belcha). He went outside of the house after taking a spade, we heard a fire shot after ten minutes. On hearing of fire shot I went out side the house, in the meanwhile the accused Sadaqat Jan present in court opened another fire shot on the deceased and went into the maiz crops and ran away. I went to the spot where the injured Naib Khan lying on the ground. She also stated that (Sadaqat Jan) opened fire on him. My brother Ali Hussain and other family members came to the scene of occurrence. We brought the inured in our home from where police taken him to Gilgit City. The deceased have received

two fire shots injuries on his right side arm and right side in the body. From perusal of above statement it reveals that PW-1, has highlighted the details of episode in a straight forward and simple manners which is free from any dishonest exaggeration. She was subject to an exhaustive cross-examination but nothing beneficial could be elicited in-spite of putting a

lot of questions. Mst. Hassaina PW-1 , Ali Hussain PW-2 and Amjad PW-3 have stated in an ambiguous manner, that deceased was done to death by means of firing made by Sadaqat Jan and received fire arms injuries, which resulted into death of deceased Naib Khan, and their version has been supported by the medical evidence.

It is an admitted fact that the learned defence counsel could not succeeded to shatter the veracity of the statement of PW-1 Mst. Hasina. She deposed in a categoric manner that on hearing of fire shot **"I went to out side the house.When I came out side of the house the accused Sadaqat Jan present in court opened another fire shot on the deceased (Naib Khan) and went into the maiz crops and ran away."**

So far as his presence in the place of occurrence, we refer the statement of PW-6 Muhammad Sharif . He states that my younger brother has gone for watering the fields adjacent to the field of accused. I went out side to call my brother. When I came out to my home I saw accused was standing in his field. We back to our home,

meanwhile I heard fire shots, and afterward we came to know that accused has murdered Naib Khan. The above narrated facts directly connected the accused with the commission of offence.

We have also examined the esteemed view of learned counsel that the site plan prepared by the investigation officer do not

corroborate with the statement and ocular evidence. In this regard we have also perused the relevant record, statements of PW's and cross-examination conducted by the learned defence counsel carefully,

which makes it abandoned clear, that the relevant witness, was never confronted with site plan EX.PW-16/A, therefore the said contention deserves no consideration. Even otherwise the site plan is not a

substantives piece of evidence and can be ignored when the witness was not confronted with it.

As regard to the second material point agitated by the learned counsel for the defence, that the weapon of offence 30 bore pistol was allegedly effected on 11-8-2006 but the FIR was lodged on 15-8-2006, and a vague explanation has been offered by the investigation Officer which cannot be accepted. But on the other hand, it is crystal clear from the record available on file that the weapon of offence 30 bore pistol recovered immediately after the arrest of the respondent/accused from his personal possession. In presence of recovery Memo dated 11-08-2006, lodging of delay of FIR under section 13 A.O. has no effect at all on the merits of the main case, as such submission of Learned Counsel is without force. Moreover, crime empty shell and live cartridges were sent to ballistic expert on 21-12-2008. It was sent in sealed parcel, it was examined by the expert in forensic Science Laboratory Peshawar and was found to have been fired from the pistol recovered at the instance of accused. The expert report of forensic Science Laboratory Peshawar, tendered
by the prosecution, during trial, which has been duly exhibited by the trial court as Exh. PA/11. The question of any padding or fabrication does not arise. The 30 bore pistol which was recovered from the petitioner has been used for the murder of deceased Naib Khan.

It is urged with vehemence by the defence counsel for the respondent that the number of weapon of offence was also different and the same has not been recovered from accused. We are afraid that
how it can be possible to change the weapon of offence, for this we have once again scrutinized the letter of dispatch, recovery Memo. alongwith forensic Science laboratory reports available on record, we find the number

and type of weapon is the same, which was shown in the recovery Memo Exh.PW-11/A as such there is no fabrication or alteration the same, therefore the question agitated by the learned counsel for the defence is out of consideration.

The evidence of PW-1 Mst. Hasina, Ali Hussain PW-2 and Amjad PW-3 have also been examined on the touchstone of criteria as mentioned herein above .We are of the opinion that their version was consistent, confident, inspiring and worthy of credence, which has rightly been taken into consideration and by no stretch of imagination, they can be labeled as **"interested witnesses."**

It is well settled by now, that the maxim**" falsus in Uno falsus in ominibus"** has no universal application and it is bounden duty of the court to sift the grain from the chaff. In this regard reference can be made to (Khairo v/s State) S.C.M.R 1981 page 1136. A through scrutiny of the entire evidence would reveal that the statements of the prosecution witnesses are consistent, confident inspiring and in consonance with the probability in the case and fitted in with other evidence and circumstances of the case, as such its worthy of credence could not be brushed aside.

For the elaboration of the above maxim we would safely say that ordinarily integrity of a person is considered as indivisible. He is to be believed or disbelieved as a whole, the genesis of this view is the Maxim "**Falsus in Uno Falsus in Omni-bus**. The superior Courts of the Sub Continent have frequently declined to follow the principle as in their vast experience, it was found that many a time, innocent persons were roped into settle the account of old enmities, it was therefore, deemed, expedient and just to undertake an exercise of sifting the grain of truth from the chaff of falsehood. We find ourselves in complete agreement with

aforesaid consensus. This is so as if we adhere to the rule" **Falsus in Uno falsus in Ominibus**" . It shall result in full holiday to the culprits.

False implication has almost become a phenomena generally it is found, that while reporting the crime an informant when happens to be a relative of deceased or otherwise an interested person, he includes among the real culprits, the name of head of that family or family members, enjoying respect and influence, to eliminate the aid and assistance likely to be given to accused. Friends of accused or enemy of complainant are also roped in. Such a practice is most detestable yet it is difficult to get rid of this evil.

In the present case the circumstances listed above lead to the conclusion that the prosecution, in our considered opinion has substantiated the allegations beyond any shadow of doubt. As such it is a fit case for life imprisonment, therefore we set aside the impugned judgment of Chief Court, Gilgit-Baltistan and restore the judgment of trial Court to meet the ends of justice.

Our short order dated 12-10-2010 is re-produced herein below is treated as part of this judgment.

> "For the reasons to be recorded later, this petition is converted into an appeal. The judgment of the Chief Court Gilgit-Baltistan is set aside and the judgment of the
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> trial court is restored with the direction that two separate sentences awarded to Sadaqat Jan respondent under section 302(b) PPC and 13 A.O. 1965 will run concurrently with benefit of section 382-B Cr.P.C. and the amount of fine of Rs.3,00,000/- is converted into compensation under section 544-A Cr.P.C. to be paid to the legal heirs of the deceased,

which will be recoverable as arrears of land revenue. In case of default in the payment of compensation, the respondent (convict) will further under go simple imprisonment for a period of six months. The fine awarded to the respondent (convict) under section 13 A.O. 1965 is maintained. The convict be taken into custody to serve the remaining sentence. This

appeal is accordingly allowed."

Leave to appeal is converted into appeal and allowed.

Chief Judge

Judge

Judge