

**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. 28/2017
in
Cr. PLA No. 32/2016.**

The State through Police Station Nomal Gilgit
Versus

Petitioner.

Ali Ahmed Jan s/o Asghar r/o Qazalbash Muhallah Gilgit

Respondent.

PRESENT:-

1. The Advocate General alongwith Mr. Saeed Iqbal, Deputy Advocate General for the State/petitioner.
2. Nemo for the respondent.

DATE OF HEARING: - 18.10.2017

DATE OF ANNOUNCEMENT OF JUDGMENT: - 12.04.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition has been directed against the impugned judgment dated 19.05.2016 in Cr. Appeal No. 26/2014 passed by the learned Chief Court whereby the said Cr. Appeal filed by the respondent was accepted by setting aside the conviction/sentence to the extent of the offences punishable under Section 302/34 PPC read with Section 7 of the Anti-Terrorism Act, 1997 vide FIR No. 15/2012 recorded with Police Station Nomal Gilgit. The petitioner being aggrieved by and dissatisfied with the impugned judgment filed this petition for leave to appeal. This court vide order dated 30.03.2017

issued notice to the respondent and the case was heard on 18.10.2017.

2. Briefly, the facts of the case are that the complainant Muhammad Zer Shah initially registered an FIR No. 15/2012 under Sections 324 PPC at about 17:20 PM on 13.06.2012 at Police Station Nomal Gilgit contending therein that he had gone to Goroo Juglote driving Dotson No. DR- 7189 as driver which was loaded with vegetables. The deceased namely Ehsanullah was accompanied with him for selling the said vegetables at Goroo. After selling the vegetables when the complainant was ready to return back to Gilgit, a young man met him and sought lift to go with them to Gilgit. The complainant promised to give him lift whereafter the young man went some ahead to fetch his bag. The driver and deceased Ehsanullah while driving the Dotson went behind the young man. In the meantime, a shot was fired from their left side which hit at the neck of deceased Ehsanullah. The complainant drive the Dotson speedily alongwith injured Ehsanullah and reached at DHQ Hospital Gilgit. Consequently, Ehsanullah succumbed to injuries, therefore, the offence punishable under Section 324 PCC was converted into 302 PPC.

3. After completion of the investigation, challan of the case against respondent Ali Ahmed Jan was submitted in the learned Trial Court. The charge against the respondent was filed under Section 302/34 PPC. The respondent accused pleaded not guilty and claimed for trial. The prosecution to prove its case against the

accused examined as many as 13 PWs. After the closing of the prosecution evidence, the respondent was examined under Section 342 Cr.PC. He neither opted to appear on oath nor produced any witness to defend as provided under Section 340(2) Cr.PC.

4. The learned Trial Court after appraising the prosecution evidence and other material on record, hearing both the learned counsels for the respective parties and on proven guilty against the respondent/accused, convicted them under Section 302 (b) PPC vide judgment dated 30.08.2014. The relevant portion of the said judgment in Para No. 81 & 82 is hereby reproduced as under:-

“Quote”

Para-81. In the light of the above discussions, I, hold that the prosecution has proved guilt of accused Ali Ahmed Jan for the murder of deceased Ehsanullah, hence, I, convict accused Ali Ahmed Jan under section 302(b) PPC read with section 7(a) of the Anti-Terrorism Act, 1997 and sentence him to death. He be hanged by his neck till he be dead. The accused to pay fine of Rs. 300,000/- (Rupees three hundred thousand only). The amount of fine shall be paid to LRs of deceased Ehsanullah under Section 544-A Cr. PC. In default thereof the convict-accused shall undergo imprisonment for 2 years.

Para -82. Accused Ali Ahmed Jan is also hereby convicted under section 13(d) Arms Ordinance, 1965 and sentenced him to imprisonment for 5 years. The weapon of offence pistol 30 bore is hereby confiscated in favour of the State.

“Unquote”

5. The respondent/accused being aggrieved by and dissatisfied with the judgment of the learned Trial Court filed Criminal appeal No. 26/2014 in the learned Chief Court. The learned Chief Court upon hearing accepted the said Criminal

Appeal by setting aside the judgment of the learned Trial Court vide impugned judgment dated 19.05.2016. The operative part of the impugned judgment passed by the learned Chief Court for convenience is also hereby reproduced as under:-

“Quote”

12. for the reasons what have been discussed above, we by accepting this appeal set aside the conviction/sentence awarded to the appellant/convict under section 302-B PPC read with Section-7(a) of ATA while the conviction/sentence awarded to the appellant under Section 13 A.O. is reduced to undergone period. Murder reference No. 03/2014 is disposed of accordingly and these are the reasons of our short order which is reproduced as under:-

for the reasons to be recorded latter, we accept this appeal, set aside the conviction/sentence to the extent of the offences punishable under section 302-B PPC read with Section-7(a) of Anti-Terrorism Act, 1997 vide FIR No. 15/2012 recorded with Police Station at Nomal Gilgit. The sentence awarded to the appellant/convict under Section 13 A.O. vide FIR No. 21/2012 lodged in same police Station is reduced to undergone period. Resultantly, we direct to release the appellant/convict from jail of the charges mentioned above provided that he is not required to be detained in any other case.

ANNOUNCED
19.05.2016.

-Sd-
JUDGE
-Sd-
JUDGE

“Unquote”.

6. The State/petitioner feeling aggrieved with the impugned judgment of the learned Chief Court filed Criminal petition in this court for setting aside the said impugned judgment.

7. The learned Advocate General submits that the accused was convicted under Section 6/7 Anti-Terrorism Act, 1997 by the learned Trial Court, Gilgit on proven guilty for the murder of one Ehsanullah (deceased). He also submits that the respondent/accused was sentenced to death and he was also

ordered to pay Rs. 300,000/- (rupees three lac only) as fine. The amount of fine was ordered to be paid to the legal heirs of the deceased. Per learned Advocate General, the respondent/accused was also convicted under Section 13(d) Arms Ordinance, 1965 and sentenced him to imprisonment for five (05) years. He further submits that the respondent/accused has been examined under Section 21-H of Anti-Terrorism Act, 1997 whereby he has confessed the guilt. He submits that on the pointation of the accused the Investigating Officer (I.O) has visited the site of occurrence in presence of impartial witnesses which is a strong corroborative piece of evidence. The said piece of evidence is coupled with the confessional statement of the accused recorded under Section 21-H, the guilt against the accused is proved beyond any shadow of doubt. He submits that a 30-bore pistol was also recovered by the police from the accused as weapon of offence which has been tested in laboratory and a positive report has been received which is another piece of supportive evidence against the accused. He adds that on appeal filed by the respondent/accused and murder reference sent by the learned Trial, the learned Chief Court was partially accepted the said appeal. The sentences awarded to the accused under Section 302(b) PPC read with Section 7(a) of the Anti-Terrorism Act, 1997 were set aside whereas sentence awarded under Section 13(d) Arms Ordinance, 1965 was reduced to already undergone. The murder reference No. 03/2014 was decided in negative. The learned Advocate General reiterates that the judgment

dated 30.08.2014 passed by the learned Trial Court was based on material evidence on record whereas the impugned judgment dated 19.05.2016 passed by the learned Chief Court is the result of non-reading and misreading of the prosecution evidence. He submits that the accused has committed an offence of murder of one Ehsanullah (deceased). He prays that the judgment passed by the learned Trial Court may graciously be maintained as the impugned judgment passed by the learned Chief Court is not sustainable.

8. The learned counsel for the respondent was not present inspite of notice issued and served upon him properly, hence, this case was heard in its own merits in accordance with law. The respondent in his pleadings contended that according to the prosecution the complainant was the eye witness of the occurrence and he was examined as PW-01. The PW-01 failed to substantiate the case because his statement did not involve the respondent. He further contended that before arresting the respondent, the Investigating Officer (I.O) was required to conduct identification parade of the respondent but failed to do so rather arrested the respondent as main accused on the basis of his own information. Per the contentions of the respondent, the judgment of the learned Trial Court is not sustainable being passed contrary to the facts and law which according to them has rightly been reversed by the learned Chief Court vide its impugned judgment which is sustainable.

9. We have heard the learned Advocate General at length, perused the material on record and gone through the impugned judgment dated 19.05.2016 passed by the learned Chief Court as well as the judgment dated 30.08.2014 passed by the learned Anti-Terrorism Court at Gilgit. The perusal of the record reveals that the respondent has committed the murder of the deceased namely Ehsanullah beyond any shadow of doubts which has been proved by the prosecution through ocular evidence, circumstantial evidence, confessional statement of the accused, extra-judicial confession of accused, recovery of weapon of offence, fire arms, expert reports, chemical examiner's report and death certificate etc. The said evidence has rightly been appreciated by the learned Trial Court through its judgment dated 30.08.2014 whereas the learned Chief Court fell in error by setting aside the judgment of the learned Trial Court through its impugned judgment. In our considered view, the said impugned judgment is the result of misreading/non-reading of the evidence and misinterpretation of the law, hence, the same is not tenable in law.

10. In view of the above discussions, we convert this petition into an appeal and the same is allowed. Consequently, the impugned judgment dated 19.05.2016 in Cr. Appeal No. 26/2014 passed by the learned Chief Court is set aside whereas the judgment dated 30.08.2014 in TC- No. 27-28/2012 passed by the learned Anti-Terrorism Court at Gilgit is affirmed. The murder reference was answered in negative by the learned Chief Court is

also set aside and the same is answered in affirmative. The learned Trial Court is directed to execute its judgment/order dated 30.08.2014 in accordance with law.

11. The appeal is allowed in above terms.

Chief Judge.

Judge.