

JUDGMENT SHEET

**PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)**

Cr.A No. 4-M/2021

Abdullah son of Farid (Appellant)
Versus

(1) *The State through A.A.G.*
(2) *Mst. Maryam daughter of Abdul Wadood*
(Respondents)

Present: *Mr. Shaibar Khan, Advocate.*

Mr. Sohail Sultan, Aast: A.G.

Mr. Gauhar Ali Khan, ASC.

Cr.A No. 84-M/2021

The State through A.A.G (Appellant)
Versus

Abdullah son of Farid
(Respondent)

Present: *Mr. Sohail Sultan, Aast: A.G.*

Mr. Shaibar Khan, Advocate.

Cr.R. No. 31-M/2021(for enhancement)

Mst. Maryam daughter of Abdul Wadood
(Petitioner)
Versus

(1) *Abdullah son of Farid*
(2) *State through A.A.G.*
(Respondents)

Present: *Mr. Gauhar Ali Khan, ASC*

Mr. Sohail Sultan, Aast: A.G.

Mr. Shaibar Khan, Advocate.

Date of hearing: **12.04.2022**

JUDGMENT

MUHAMMAD IJAZ KHAN, J.- Appellant namely Abdullah has called in question judgment of his conviction and sentence dated 10.12.2020 passed by the learned Additional Sessions Judge/ Judge Juvenile Welfare Court Swat, vide which he was convicted and sentenced as follows;

- *U/S 302 PPC to life imprisonment along with compensation of Rs. 100,000/- (one hundred thousand) under section 544-A Cr.P.C payable to legal heirs of the deceased by the guardian of juvenile delinquent accused.*
- *The compensation was ordered to be recoverable as arrears of land revenue from the guardian of juvenile accused.*
- *The Appellant was also extended the benefit of section 382-B Cr.P.C.*

2. The appellant faced trial in the criminal case registered vide FIR No. 29 dated 14.01.2018 under section 302 PPC read with section 15 of The Khyber Pakhtunkhwa Arms Act, 2013 at Police Station Khursheed Khan Shaheed (Khwaza Khela) District Swat, on the basis of 'Murasila' (Ex. PA/1) sent by Aman Khan, SHO (PW-4) to the police station concerned on 14.01.2018. The complainant namely Mst. Maryam (PW-6) reported the matter to local police that the fateful day i.e. 14.01.2018 was the day of her marriage which was going to be solemnized with one Aftab Ali. Many guests were present in their



house for the purpose of celebration of marriage ceremony. At night time at 02:00 hours she heard the sound of fire shot when she reached to the room of her mother namely Mst. Jan Saba (deceased) she saw the accused/appellant namely Abdullah (while being duly armed with pistol) fleeing from the spot. In addition to the complainant the occurrence was witnessed by many people present in the house. Motive behind the occurrence was disclosed to be that two years prior to the happening of present occurrence, the complainant was earlier engaged with one Anwar Ullah, who later on met natural death and died. The accused-party were suspecting that death of said Anwar Ullah was caused due to the superstitious activities (گندا تعویز) allegedly done by the deceased mother of the complainant namely Mst. Jan Saba.

3. On completion of investigation, complete *challan* was submitted against the appellant before learned trial court. After compliance of proceedings under section 265-C Cr.P.C the case was fixed from framing of charge against the accused. On 23.06.2020 the case was transferred to the Juvenile Court Swat pursuant to order of the learned District & Sessions Judge Swat dated 22.06.2020. In light of this Court

order dated 07.02.2019 amended charge was framed against the juvenile accused on 15.07.2020, to which he pleaded "not guilty" and claimed trial. The prosecution was invited to produce their evidence, who accordingly examined thirteen (13) witnesses, whose statements were recorded and placed on file. On conclusion of proceedings in the case, the accused recorded his statement under section 342 Cr.P.C. The learned Juvenile Court convicted and sentenced the appellant vide the impugned judgment dated 10.12.2020, as stated earlier.

4. Feeling aggrieved of the aforesaid judgment of learned Judge Juvenile Court, the accused/appellant has filed the instant appeal before this Court while the State and the petitioner/complainant have also filed the connected Criminal Appeal No. 84-M of 2021 and Criminal Revision No. 31-M of 2021 respectively for enhancement of the sentence awarded to the Juvenile accused/respondent Abdullah.

5. At the very outset, learned counsel for the appellant drew our attention towards the charge framed by the learned trial Court, where a charge was framed under two distinct heads; firstly under section 302 PPC

2.03

and secondly under section 15 AA, which is reproduced below;

“Secondly; at on 17.01.2018 during the course of investigation, Investigating Officer recovered the 30 Bore pistol local made along with four live rounds on your pointation from the house of one Bakht Jehan at Sheikha Faqira to which you accused failed to produce any valid license or permit, thus, you accused thereby committed an offence under section 15AA with cognizance of this Court.”

However, while passing the impugned judgment of conviction, the learned trial Court has convicted and sentenced the appellant to imprisonment for life with compensatory fine of Rs. 100,000/- (one hundred thousand) under section 544 Cr. P.C under section 302 PPC, however, no findings of acquittal or conviction for the offence under section 15 AA were recorded. Para 47 of the impugned judgment is reproduced as below;

“In the circumstances, juvenile accused facing trial namely Abdullah s/o Farid resident of Banda Sheikha Faqira, Tehsil Khwaza Khela, District Swat is held delinquent of Qatl-e-Amad of deceased Mst. Jan Saba w/o Abdul Wadood. As far quantum of sentence is concerned it is established on record that age of juvenile delinquent at the time of commission of offence (14.01.2018) was 17 years and 05 months as reflected in his school leaving certificate his date of birth is 15.08.2000. The trial of delinquent was conducted as Juvenile Court. Under section 16 of JJSA, 2018, no juvenile shall be awarded punishment of death and shall also be not deployed in hard labour while in detention. In present case, normal penalty under C 1 (b) of S. 302 PPC, being death sentence is not awarded, but accused is awarded sentence for imprisonment for life

being juvenile along with compensatory fine of Rs. 100,000/- U/S 544- A Cr.P.C, which shall be payable to the legal heirs of deceased by the guardian of juvenile delinquent and failing it, the same shall be recovered as arrears of land revenue against guardian.”

6. It would be relevant to mention here that the learned trial Court has specifically recorded its findings that the prosecution has been able to prove the charges levelled against the appellant under section 302 PPC, however, no findings with regard to Section 15 AA were recorded which rendered its order short of mandatory provision of Section 367 Cr. PC, which is reproduced below:-

367. Language of judgment: Contents of judgment.

(1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court or from the dictation of such presiding officer in the language of the Court, or in English; and shall contain the points for determination, the decision thereon and the reasons for the decision; shall be dated and signed by the presiding officer in open Court at the time of pronouncing it and with his own hand, every page of such judgment shall be signed by him.

(2) It shall specify the offence (if any) of which, and the section of the Pakistan Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced.

(3) Judgment in alternative. When the conviction is-under the Pakistan Penal Code and it is doubtful under which of two sections, or under which or two parts of the same section of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(4).....

5).....

(6)

Sub-sections (2) & (3) of Section 367

Cr. PC require the learned trial Court that when it finds

an accused guilty of one or more offences, then separate sentence must explicitly be recorded at the time of conviction. An accused person cannot be presumed or implied to be convicted under any offence rather the sentence should be distinct for each and every offence in which the accused is found guilty. In such circumstances, in the present case the appellant could neither be presumed to be convicted nor acquitted for charge levelled against him under section 15 AA, which finding would have a direct bearing one way or the other upon the result of substantive offence of murder against the present appellant.

7. Without going into the merits of the case, we deem it appropriate to remand this case to the learned trial Court for re-writing of a judgment. Therefore, this appeal is allowed, the impugned judgment dated 10.12.2020 of the learned trial Court is set aside and the case is remanded back to the learned trial Court with the direction to re-write the judgment in view of the aforementioned observations of this Court within a period of one month after receipt of this order/case file.

8. Since we have set aside the impugned judgment dated 10.12.2020 of the learned Juvenile Court, therefore the connected criminal appeal No. 84-M of 2021 as well as criminal revision No. 31-M of 2021

filed by the State and the petitioner/complainant respectively for enhancement of the sentence awarded to the accused/respondent have become infructuous and thus the same are dismissed.

Announced
Dt.12.04.2022


JUDGE


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