

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
AT GILGIT**

Cr. Misc. No. 06/2014 in Cr.P.L.A. No. 04/2012

**Before:- Mr. Justice Raja Jalal-ud-Din, Judge.
Mr. Justice Muzaffar Ali, Judge.**

Arif-ud-Din son of Abd-ur-Rauf resident of Baseen Gilgit.

Petitioner/Appellant.

VERSUS

The State

Respondent.

**OFFENCES UNDER SECTION 302/324/337-A, P.P.C AND
21(L) READ WITH SECTION 6/7 OF THE ANTI TERRORISM
ACT 1997 VIDE F.I.R. NO. 88/2010 OF POLICE STATION
CITY GILGIT AND 13 ARMS ORDINANCE 1965, F.I.R. NO.
89/2010 OF POLICE STATION CITY GILGIT.**

**PETITION FOR LEAVE TO APPEAL AGAINST THE
ORDER/JUDGMENT DATED 08-05-2012, PASSED BY THE
HON'BLE CHIEF COURT VIDE WHICH THE DEATH
SENTENCE AND THE OTHER PUNISHMENTS UNDER
VARIUOS HEADS, PASSED BY ATC GILGIT VIDE
JUDGMENT DATED 28-04-2011 HAS BEEN MAINTAINED,
WHILE CO-ACCUSED NAMELY MEHFOOZ WALI, HAS BEEN
ACQUITTED FROM ALL THE CHARGES.**

Present:-

Malik Haq Nawaz, Advocate on behalf of the petitioner.
Advocate General on behalf of the respondent.

Date of Hearing:- 27-10-2014.

JUDGMENT

RAJA JALAL-UD-DIN, J..... The petitioner/appellant namely Arif-ud-Din has preferred an appeal against his conviction in this Court, and in the meanwhile an application for acquittal on the basis of compromise between the parties had been preferred on 15th August 2014. In the light of the same this Court vide its order dated 21-08-2014 directed the Special Judge No.1 of Anti Terrorism Court Gilgit to look into the matter and give its report regarding the genuineness of patch-up/compromise between the parties.

The trial Court was also directed to verify if any minor legal heirs' interests were guarded or not. In the light of the said order Anti Terrorism Court Judge No.1 submitted his report on 30th September 2014.

The legal heirs of deceased Muhammad Akbar as well as the statements of the injured persons namely Samad Khan and Haibat Ali were recorded. The statement of Mst. Ayeena widow of Muhammad Akbar deceased alongwith with her sons namely Zahid Hussain, Khalid Hussain, Wahid Hussain and Arif Hussain. The power of attorney on behalf of her three daughters namely Mst. Musrat Shaheen, Mst. Samina Batool and Mst. Zohra Akbar was also obtained and placed on file. They have pardon Arif-ud-Din, Mehfooz Wali and Qari Ikram Ullah.

The joint statement of Zahid Hussain, Khalid Hussain, Wahid Hussain and Arif Hussain the sons of deceased Muhammad Akbar placed on file. They have also pardon the convict/appellant Arif-ud-din, Mehfooz Wali and Qari Ikram Ullah in the name of Allah All mighty. The statements of the jirga members also recorded, who have made efforts to effect the compromise between the parties is also placed on file.

The petitioner namely Arif-ud-Din, who had been convicted by the trial Court and awarded death sentence had absconded during pendency of this appeal. The same was upheld by the Chief Court Gilgit-Baltistan. The convict/appellant absconded and yet an absconder.

The learned counsel for the petitioner Malik Haq Nawaz was confronted with the issue regarding the acceptance of a compromise by a convict/appellant and disposal of the case may be irregular and not warranted in law. The learned counsel for the petitioner has turned up with 1998 MLD, Lahore, pg# 1, the decision of the Divisional Bench comprising Justice Muhammad Asif Jan and

Justice Raja Muhammad Khursheed of Lahore jurisdiction who vide their decision dated 7th October 1996 have found as under in case of similar nature which is reproduced as under,

“Muhammad Nawaz Shah petitioner/appellant was convicted under section 302, P.P.C read with section 54, P.P.C and sentenced to imprisonment for life alongwith a fine of Rs. 50,000 and in case of default to further R.I. for 2 years. He was also ordered to pay Rs 50,000 as compensation to the legal heirs of the deceased under section 544-A, Cr.P.C on two counts, for having caused death of Syed Nau Bahar Shah and waryam alongwith his brother Riaz Hussain shah(absconder)Both Muhammad Nawaz Shah petitioner/Appellant and absconding accused Riaz Hussain Shah were also convicted under section 34, P.P.C read with section 34, P.P.C and sentenced to 7 years R.I. alongwith a one of Rs. 10,000 each and in case of default in payment of fine were ordered to undergo further R.I. for one year for having caused injuries to Falak Sher and Alamdar Hussain Shah vide judgment/order of Mr. Muhammad Asif Khan, Judge suppression of Terrorist Activities Court. Multan Division, Multan, dated 23-4-1996.

2. Syed Noubahar Shah left behind the following legal heirs:-

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|--------------|-----------------------------------|------------------|
| (i) | Mst. Ghulam Jannat, | Mother, |
| (ii) | Mst. Nadira Bukhari, | Wife, |
| (iii) | Syed Amjad Hussain Shah, | Son, |
| (iv) | Syed Alamdar Hussain Shah, | Son, |
| (v) | Hina Bukhari, | Daughter, |
| (vi) | Mina Bukhari, | Daughter, |

Deceased Waryam was survived by the following legal heirs

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|--------------|-----------------------|------------------|
| (i) | Sheran Bibi, | Wife, |
| (ii) | Zafar Abbas, | son, |
| (iii) | Mst. Sulekhan, | Daughter, |
| (iv) | Sughran Bibi, | Daughter, |
| (v) | Shameem Bibi, | Daughter, |

3. The above mentioned legal heirs of both the deceased have forgiven Muhammad Nawaz Shah petitioner/appellant and absconding accused Riaz Hussain Shah in the name of Allah, and have sworn affidavits to that effect which have been placed on record alongwith identity card.

4. The above mentioned legal heirs of both the deceased are also present in court and have reiterated the correctness and genuineness of their affidavits which are also verified by their learned counsel.

5. The above mentioned legal heirs of both the deceased pray that Muhammad Nawaz Shah and his brother co-accused Riaz Hussain Shah (absconding accused) be acquitted.

6. Falak Sher and Alamdar Hussain Shah, the two injured witnesses are also present in Court. They have also sworn affidavits, which have been placed on record.

Resultantly, this petition is accepted and Muhammad Nawaz Shah petitioner/appellant and Riaz Hussain Shah (absconding accused) are set at liberty unless required in any other case.”

Compromise allowed.

The petition was accepted and the absconding accused was set at liberty.

It is also informed that the present case is also a part of a series of murders between the parties which has been compromised between two families and cases pending against them have been disposed off on the same pattern and analogy.

Another co-accused namely Mehfooz Wali s/o Mehboob Wali who had been awarded sentence to life imprisonment by the trial Court was acquitted in appeal by the Chief Court vide judgment dated 08-05-2012. The third absconding co-accused namely Qari Ikram Ullah was sentenced to death in-absentia by Anti Terrorism Court Gilgit no appeal was preferred by him.

The convict/appellant has also been sentenced to 7 years rigorous imprisonment. The case against the petitioner under section 13 Arms Ordinance is perused and we find that the recovery of weapon of offence for which the convicted has been sentenced was initially recovered from another accused namely Saeed son of Maqsood charge in F.I.R No. 89/2010 Police Station City Gilgit.

The learned Advocate General Gilgit-Baltistan who is present in court rendered his able assistance in the matter to appraise the Court and had also been heard.

After going through the material placed on record and the perusal of statements of jirga members, the legal heirs of the deceased, injured individuals and perusal of the judgment of Hon'ble Judges of Lahore High Court. We feel that a case of compromise was made out the petitioner Arif-ud-Din is acquitted as

charged under section 302/34, 324/337-A P.P.C 6/7 of Anti Terrorism Act 1997 vide F.I.R No. 88/2010 Police Station City Gilgit and 13 Arms Ordinance 1965 vide F.I.R No. 89/2010 Police Station City Gilgit. The charge against the convict/appellant of abscontion from jail and legal custody shall remain outstanding against him. Both the accused namely Arif-ud-Din and Qari Ikram Ullah are acquitted from the charges if not required in any other case.

The case is disposed off accordingly.

Announced.

27-10-2014.

JUDGE

JUDGE