

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

**BEFORE:-**

1. Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
2. Mr. Justice Muzaffar Ali, Judge.

Cr. Appeal No. .... in  
Cr. PLA NO.03/2011.

Muhammad Afzal S/o Wali Joo R/o Shigar Skardu Gilgit-Baltistan.  
**Petitioner/Appellants)**

**VERSUS**

The State.....**Respondent).**

**PETITION FOR LEAVE TO APPEAL AGAINST THE ORDER/JUDGMENT OF CHIEF COURT DATED 26.10.2010 , WHEREBY DEATH SENTENCE OF PETITIONER /APPELLANT HAS BEEN CONVERTED INTO LIFE IMPRISONMENT AND CO-ACCUSED (FATHER OF THE APPELLANT) HAS BEEN ACQUITTED FROM THE CHARGES.**

**FOR SETTING ASIDE THE SAME AND ACQUITTAL OF THE PETITIONER/APPELLANT FROM THE CHARGES TO MEET THE ENDS OF JUSTICE.**

**RESENT:-**

1. Malik Haq Nawaz Senior advocate for the petitioner.
2. `Mr. Muhammad Issa Senior Advocate Senior Advocate for the complainant.
3. The Advocate General Gilgit-Baltistan on behalf of the respondents.

**DATE OF HEARING: - 20-10-2015.**

**JUDGMENT.**

**Dr. Rana Muhammad Shamim, Chief Judge.....** This

petition for leave to appeal has been filed by the petitioners calling in question the impugned Judgment dated 26.10.2010, passed by the learned Chief Court Gilgit-Baltistan in Criminal Appeal No. 07/2009, whereby the death sence of the petitioner/appellant was converted into life imprisonment and the co-occused namely Wali Ju father of the accused was acquitted from the charges. The FIR NO. 04/2006 Police Station Shigar Skardu Baltistan lodged by Haji Fida

Hussain (PW-05) real brother of the accused under Section 302/109/34 and 13 Arm Ordinance against the present petitioner alongwith ten (10) others co-occused. Initially the said FIR was registered for commission of murder Wazir Muhammad Ali deceased.

The brief history of the case in hand is that on 11.05.2006 at about 1300 at a distance of about half of a kilometer from the Police Station, Haji Muhammad Ali (deceased) was proceeding towards his home after offering Zohar prayers. He was been attacked by Muhammad Afzal (present petitioner) Sikandar Wali, Munir, Mushtaq S/o Wali Joo , Wali Joo S/o Taqi Joo , Ejaz Hussain, Ashraf Hussain, Shafqat, Muhammad Kazim S/o Muhammad Hussain and Ghullam Mehdi s/o Ali with firearms, stones, ax and dandas resultantly, the deceased got injured and the accused dragged the deceased into the compound of their house and again attacked him and killed the deceased brutally. The death body was recovered from the compound of the convicted accused/petitioner. The motive behind this murder was rift/difference between the deceased and the accused.

The learned counsel for the petitioner contended that in the FIR complainant charged 11 persons for commision of the said murder of the deceased Wazir Muhammad Ali, without assigning any specifit role to any of the accused including the petitioner/appellant. That complainant is not an eye-witness and as per his deposition he derived information of incident from PW-6 Mst. Amina, whose name

is also not mentioned in the FIR and she was examined 11 days after the occurrence and that too without any explanation and even in her statement she did not assign any role to any of the accused and improved her statement in the court. That during investigation 4 accused namely Haji Muhammad Hussain, Kazim, ashraf and Munir were released u/s 169 and placed in column No. 2 of the final report, however they were summoned by the trial Court and faced trial. That prosecution examined 21 PWs and tendered in evidence the reports of various experts through learned District Attorney.

That on conclusion of trial the learned trial Court acquitted 9 co-accused from all the charges and convicted appellant and his 72 years old father and awarded following punishment vide Judgment dated 06.06.2009 (copy attached).

Muhammad Afzal (appellant)	Death and Rs. 100000/- fine u/s 544-A Cr.P.C to be paid the legal heirs of deceased.
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Wali Joo (acquitted Co-accused)	Life imprisonment and Rs. 100000/- fine to be paid to Legal heirs of deceased and In default thereof to undergo Six months RI.
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That the appellant assailed the above judgment before Chief Court and Chief Court acquitted accused Wali Joo and converted death sentence of appellant to life imprisonment vide Judgment dated 26.10.2010 (copy attached)

That the Judgment of the Chief Court is not sustainable in the eyes of law and the Judges extended all reasonable benefit of doubts in favour of prosecution instead of accused. That the Judges of Chief Court failed to appreciate that when prosecution evidence is not believed and the conviction has to be based on the statement of accused u/s 342 Cr.P.C., then the said statement is to be accepted in to. That the appellant was well within his right to exercise the right of self defence, when deceased made a crude attempt on his life and intruded into his house like a wild bull. That from the own record of the prosecution and the attending circumstances a crystal clear case of self defence was made out and same also finds mentioned in the judgment of trial Court, which aspect has not been properly adverted to by the learned first appellate Court. That all the eye-witnesses are not only closely related to the deceased but have also been completely shattered during the course of cross-examination and failed to establish their presence at the place of occurrence. That there was only 1 independent PW Ghulam Mehdi, who has been abandoned by the prosecution for sinister motive and I.O. (PW-19) admitted that said PW has not stated that any fir shot was opened on the road (place of occurrence). That very strangely no crime empty of 30 Bore pistol was ever found at the road and the one crime empty was sound in holaster of the accused, which only is sufficient to discard whole the prosecution case. That the recovery witnesses are police official and no independent witness has been associated and mandatory provisions of section 103 Cr.P.C. have

been violated. That the two eye-witnesses namely Waxir Fida Hussain (PW-) and PW-8 (Shakir Hussain) were also witnesses on incriminating articles of the day of occurrence but I.O. PW -21 (SHO) admitted that they did not disclose before him that they are eye-witnesses of the occurrence. That there is gross misreading of evidence on the part of trial Court as well as appellate Court and the appellant has been unjustly denied acquittal and right of self defence has been denied to the appellant, which is divine gifted. That under Islamic Law of Justice and in the light of Quran and Sunnah the right self defence is more wider as compared to the right of available under the existing provisions of Pakistan panel Code, which aspect has not been taken note of by both the Courts.

We have heard the learned counsel for both the learned counsel contesting parties, perused the record of the case file and gone through the impugned Judgment dated 30.05.2012 as well as the Judgment dated 03.05.2000 passed by the learned District Judge and the Judgment pa

The appeal is dismissed.

**Chief Judge.**

**Judge.**

**Whether the case is fit to be reported or Not?**