

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR

JUDICIAL DEPARTMENT

Cr.R No. 74-P of 2018.

JUDGMENT

Date of hearing..... 19.10.2018.....

Appellant: (Rashid etc): By Mr. Muhammad Riaz, Advocate.

Respondent/State: By Mr. Wilayat Khan, AAG, assisted by Mr. Aziz-ur-Rehman, Advocate (Mardan).



QALANDAR ALI KHAN, J:- Rashid and two other petitioners are accused in the case lodged under Sections 302/324/34 PPC vide FIR No.372 dated 26.07.2015 on the report of complainant/respondent No.1, Ali Zaman. Through the instant criminal revision petition under Section 439 Cr.P.C, they assailed order of the learned trial Court/ASJ-II, Mardan, dated 24.05.2018, whereby the learned trial Court discarded statement of the complainant/respondent No.1; which, according to the petitioners, was recorded in

the Court as PW.6 in the presence of counsel for complainant and learned Public Prosecutor. They prayed for making statement of the complainant recorded as PW.6 as part of record of the case.

2. Arguments of learned counsel for the parties heard; and record perused.

3. It is an admitted fact, not even denied by the petitioners, rather admitted by them even in the instant revision petition, that the so-called statement of the complainant was not recorded by the learned trial Court/ASJ-II, Mardan, as the learned ASJ was not present in the Court at that time and had rushed to the casualty of DHQ Hospital, Mardan, in a precarious condition, his BP ranging in 200/140. Therefore, the statement recorded in the absence of the learned presiding officer of the trial Court, even in the presence of counsel for the complainant and Public Prosecutor, would not be worth consideration under the law. The defence, by no stretch of imagination, can shift the burden of risk it took

by opening its cross examination to the opposite side in the absence of learned Presiding Officer of the trial Court. The plea of the defence for making statement of the complainant so recorded as part of the record is not only unprecedented, but finds no support from any legal provision or precedent of the Courts. As such, the learned trial Court/ASJ-II, Mardan, was perfectly justified in declining request of the petitioners/accused to make statement of the complainant, recorded in the absence of the learned Presiding Officer, as part of the record.

4. Consequently, the order dated 24.05.2018 of the learned trial Court is not open to exception, hence maintained; and the revision petition against the impugned order is dismissed for being without substance and merit.

Announced.
19.10.2018.

J U D G E

Ayub

(S.B) Hon'ble Mr. Justice Qalandar Ali Khan.