JUDGMENT SHEET
PESHAWAR HIGH COURT, D.I.KHAN BENCH
(*Judicial Department*)

Cr.A. No.89-D/2019.

Ahmad Sultan
Vs.
State, etc.

JUDGMENT

For Appellant: **Muhammad Yousaf Khan, Advocate.**

For Respondent: **Nemo (being in motion).**

Date of hearing: **17.02.2020.**

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SAHIBZADA ASADULLAH, J.- Having faced trial in MCTC Sessions Case No.71/II of 2017-19, the respondent/accused Marwat Khan was acquitted by learned Additional Sessions Judge/Judge Model Criminal Trial Court, D.I.Khan vide judgment dated 03.8.2019, in case FIR No.140 dated 16.7.2017, registered under Sections 302/392 PPC, at police station Chaudhwan, District D.I.Khan.

2. The prosecution story as disclosed in the FIR Ex. PA, registered on the basis of *murasila*, in brief, is that on 16.7.2017 at 2215 hours, complainant Ahmad Sultan (PW-11) made report on the spot to Muhammad Din ASI (PW-7) to the effect that he was present in house when he was informed on cell phone by Sajawal, resident of Gara Matt that his brother Sher Zaman was injured by someone at Gara Matta Morr, by firing at

him. On this information, the complainant alongwith other co-villagers reached to the spot and found his brother dead. On query, he was told that his brother Sher Zaman was on his way from Gara Abdullah to his house on a motorbike, when he was fired by unknown assailant at Isha Vela at Gara Matt Morr with firearm, who took away motorcycle of the deceased bearing registration No.FH 6245 and cash amount from his brother. Subsequently, the complainant in his supplementary statement charged the accused for the commission of offence.

3. After completion of the investigation, complete challan was submitted before the trial Court. Accused was charged for the offence to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined as many as twelve witnesses, whereafter, the accused was examined under Section 342, Cr.P.C, wherein, he denied the allegations and professed innocence, however, he neither opted to be examined on oath, nor produced evidence in his defence. The learned trial Court, after hearing arguments from both the sides, acquitted the accused/respondent vide impugned judgment dated 03.8.2019, hence the instant appeal.

4. Arguments heard and record perused.

5. It appears from the FIR that the occurrence in the present case took place on 16.7.2017 at Isha Vela, whereas the report was lodged on the same date at about 2215 hours. On the face of it, there is inordinate delay in lodging the report by the complainant. The report was lodged against unknown accused by the complainant who was not an eyewitness of the occurrence, therefore, the delay in lodging the report has assumed great significance, as it could be attributed to consultations, taking instructions and calculatedly preparing the report keeping in view the names of the assailants opened for involving such persons who ultimately the prosecution might wished to nominate. In this respect, reliance can be placed on case laws reported as ***(AIR 1983 S.C.-810) titled 'Ranji Suriya and another Vs. The State of Maharashtra', 'Allahyar Vs. The State' (1990 SCMR-1134), 'Mahmood Ahmad and 3 others Vs. The State and another' (1995 SCMR-127), 'Imran Hussain Vs. Amir Arshad and 2 others' (1997 SCMR-438) and 'Muhammad Rafique Vs. The State' (2014 SCMR-1698)***. Recently, in case titled ***Mst. Asia Bibi Vs. The State and others (PLD 2019 S.C. 64)***, the Honourable Supreme Court of Pakistan held that:-

> *"In absence of any plausible explanation, the Supreme Court had always considered the delay in lodging of FIR to be fatal and it casted a suspicion on the prosecution story, extending the benefit of doubt to the*

accused---If there was any delay in lodging of FIR and commencement of investigation, it gave rise to a doubt, which, could not be extended to anyone else except to the accused".

6. According to prosecution case, one Sajawal of Garra Matt had informed the complainant regarding the occurrence, but neither said Sajawal had signed the report, nor was produced before the Court to support the above version. In such circumstances, the chain of events is broken from the very beginning, which goes to the very roots of the case. The complainant while appearing as PW-11 in the witness box was unable to disclose the source through which they reached the spot. He further admitted that neither the afore-named Sajawal was eyewitness of the occurrence nor he heard the firing. While going through the statement of complainant, there appear numerous discrepancies which have comprehensively been highlighted by the learned trial Court. Even testimony of complainant is not corroborated by any independent evidence.

7. So far as recoveries are concerned, complainant during cross examination stated that the accused took everything with him from the pocket of his deceased brother and they received Rs.12,000/- cash amount as well as motorcycle from the Court, but during course of recording his statement at first instance, said

case property was not produced before the Court for exhibition, however, complainant was re-examined and only produced mobile Nokia phone 1200 having SIM No.03459835301, motorcycle FH-6245/DIK Super Star Model 2016. The aforesaid currency was not produced before the Court nor was exhibited. Complainant admitted that no biometric verification of SIM was produced. In such circumstances, the alleged case property seems to be planted one, which could not be used as evidence against respondent/accused.

8. Basharat Khan SHO while appearing in the witness box as PW-6, during cross examination stated that the occurrence was reported against unknown assailant and there was no eyewitness. No daily diary in respect of departure and arrival is annexed with the judicial file. Similarly, no identification parade was conducted. Similarly, he admitted that accused had not confessed his guilt before any competent Court of law. Another important prosecution witness was Muhammad Din ASI (PW-7), who drafted murasila, prepared the injury sheet and inquest report of the deceased. He was also witness of recovery of Kalashnikov. During cross examination, he admitted that the time and source of receiving information about the occurrence had not been explained by him. He further admitted that no one was charged in the initial report. Even, he was unable to

disclose regarding PW Sajawal. He was also unable to disclose the fact that by which means the dead body was shifted to the hospital. PW-6 has not explained the place where the Chigha party encircled the accused. He was even unable to disclose the fact that where-from the stolen articles were recovered on the pointation of accused. No daily diary in respect of departure and arrival of said PW from the police station is available on the file.

9. Next comes the witness of Chigha party Muhammad Yousaf, who while appearing as PW-8 before the Court, during cross examination, was unable to disclose the fact of timing of constitution of Chigha party and reaching to the spot. He was also unable to disclose the name of person who furnished information of murder of Sher Zaman. He did not provide source through which he joined the Chigha party. He admitted that recovery of cash amount and motorcycle was not effected in his presence. Another member of the Chigha party appeared as PW-9 and during cross examination, he was unable to disclose the name of the person who informed them about murder of Sher Zaman. He was also unable to disclose the name of person who informed them about presence of the accused on the spot.

In case titled ***Muhammad Khan and another Vs. The State (1999 SCMR 1220)***, it was observed that:-

> *"It is axiomatic and universally recognized principle of law that conviction must be founded on unimpeachable evidence and certainty of guilt and hence any doubt that arises in the prosecution case must be resolved in favour of the accused. It is, therefore, imperative for the Court to examine and consider all the relevant events preceding and leading to the occurrence so as to arrive at a correct conclusion. Where the evidence examined by the prosecution is found inherently unreliable, improbable and against natural course of human conduct, then the conclusion must be that the prosecution failed to prove guilt beyond reasonable doubt. It would be unsafe to rely on the ocular evidence which has been moulded, changed and improved step by step so as to fit in with the other evidence on record. It is obvious truth and falsity of the prosecution case can only be judged when the entire evidence and circumstances are scrutinized and examined in its correct perspective".*

In the case reported as ***Irfan Ali Vs. The State (2015 SCMR 840)***, it was observed that:

> *"----S.302(b)---Qatl-i-amd---Death sentence, award of---Evidence---Interested or inimical witnesses---To award a capital punishment in a murder crime, it was imperative for the prosecution to lead unimpeachable evidence of a first degree, which ordinarily must get strong corroboration from other independent evidence if the witnesses were interested or inimical towards the accused".*

11. So far as recovery of seven empties of 7.62 bore from the spot and the Kalashnikov allegedly recovered from the accused are concerned, suffice it to

say that as per recovery memo, the empties were recovered on 17.7.2017 and the same alongwith the Kalashnikov were sent to the FSL where these were received on 02.8.2017. Though the FSL report Ex. PK is in positive, but the same could not be taken into consideration being not procured in accordance with law, as it is now well settled that the prosecution must ensure safe dispatch of the crime empties and weapon to the FSL which has not been done in the present case.

In a case titled ***Ghulam Akbar and another Vs. The State (2008 SCMR-1064)***, it was observed by their Lordships that law requires that empties recovered from the spot should be sent to the laboratory without any delay, failing which such evidence was not free from doubt and could not be used against the accused. Even otherwise, this piece of evidence is a corroborative one and in cases where direct evidence fails, corroborative piece of evidence is of no avail as in the instant case where direct evidence of PWs have already been disbelieved. In this respect, case reported as ***Muhammad Ashraf alias Acchu Vs The State (2019 SCMR 652)***, can also be referred.

12. The medical evidence furnished by the doctor (PW-2) is of no avail to the prosecution, as it is well settled that the medical evidence does not

identify the assailants, rather it is a corroborative piece of evidence.

13. Besides the above, generally the order of acquittal cannot be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is, that, if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is casted upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether the accused committed the offence or not. The principle to be followed by this Court considering the appeal against the judgment of acquittal is, to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.

14. We have gone through the impugned judgment of the learned trial Court and the Court in its judgment has dealt with each and every aspect of the case and the findings it rendered are based on proper appreciation of evidence, which being unexceptional cannot be interfered with.

15. For the reasons mentioned hereinabove, we see no illegality or irregularity in the impugned judgment which could attract this Court to reverse the same. Hence, this appeal being without merit and substance is hereby dismissed.

Announced.
Dt: 17.02.2020.
*Kifayat/**

JUDGE

JUDGE

(D.B)
Hon'ble Justice Abdul Shakoor
Hon'ble Justice Sahibzada Asadullah