

**Judgment Sheet**  
**PESHAWAR HIGH COURT, BANNU BENCH**  
(Judicial Department)

**Cr. A No.10-B of 2021**

Tariq Mahmood  
Vs  
The State etc

**JUDGMENT**

For Appellant: Messrs Anwar-ul-Haq and Quaidullah Khan Khattak, Advocates

For Respondent: Messrs Sultan Mehmood Khan and Muhammad Qadeer Khan Khattak, Advocates

For State: Sardar Muhammad Asif, Asstt: AG for the State

Date of hearing: 11.05.2022

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**SAHIBZADA ASADULLAH, J.-** The appellant; Tariq Mahmood alias Asif Khan, has called in question the judgment dated 14.01.2021, rendered by learned Additional Sessions Judge, Banda Daud Shah, District Karak, whereby, the appellant was convicted under section 302(b) P.P.C. and sentenced to imprisonment for life alongwith fine of Rs.100,000/- and in default thereof, to undergo S.I for 06 months. Benefit of section 382-B Cr.P.C was also extended in favour of convict/appellant.

2. Complainant, Mst. Darkhona moved criminal revision petition No.08-B/2021 for enhancement of sentence of appellant. Since both the matters have arisen out of the same judgment, therefore, we intend to decide the same through this common judgment.

3. The prosecution case, as per contents of F.I.R ExPA, is that, on 05.09.2013, complainant Mst. Darkhona, brought the dead body of her deceased husband Sher Muhammad Khan to the police station Gurguri, Karak and lodged report to the effect that on eventful day, she alongwith her husband Sher Muhammad Khan left their house for their field to cultivate Mustard crop. When at about 08:00 AM, complainant alongwith her husband was busy in cultivation of the crop, appellant / convict Tariq Mehmood alongwith absconding co-accused Sarwar Din duly armed, came there and started abusing her husband and started firing at him with murderous intention, due to which, her husband got hit and died on the spot. Motive for the commission of offence is alleged to be previous blood feud. Hence, the FIR.

4. After completion of investigation and arrest of the accused / appellant, prosecution submitted supplementary challan against him, where at the commencement of trial, the prosecution produced and examined as many as 13 witnesses. On close of prosecution evidence, statement of accused was recorded under section 342 Cr.P.C, wherein he professed innocence and false implication, however, neither he opted to be examined on oath as provided under section 340(2) Cr.P.C, nor wished to produce defence evidence. After hearing arguments, the learned trial Court vide impugned judgment dated 14.01.2021, convicted and sentenced the accused /

appellant Tariq Mahmood alias Asif Khan as mentioned above. Hence, the instant appeal and revision against the judgment of conviction.

5. We have heard learned counsel for the parties alongwith learned A.A.G for the State at length and with their valuable assistance, the record was gone through.

6. In the incident, the deceased Sher Muhammad received firearm injuries, who died on the spot and thereafter, his dead body was shifted to the local police station, where the matter was reported by the complainant and the appellant alongwith the absconding co-accused were charged for the death of the deceased. After making the report, the injury sheet and inquest report were prepared, whereafter, the dead body was sent to the doctor for postmortem examination. The investigating officer after collecting copy of the F.I.R, visited the spot and on pointation of the eye witness, prepared the site plan. During spot inspection, the investigating officer collected two empties of 7.62 bore near from the places of the accused and bloodstained earth from the place of the deceased. The appellant was arrested on 06.09.2018, after his arrest, the appellant was charge sheeted and faced trial before the Court of Additional Sessions Judge, Banda Daud Shah, and after a full dressed trial, the appellant was convicted as stated above. Feeling aggrieved, the appellant approached this Court through the instant criminal appeal.

7. The learned trial court dealt with the matter comprehensively and after application of judicial mind to the collected evidence, convicted the appellant vide the impugned judgment.

8. As this being an appeal against conviction, so this Court is under the obligation to reassess the already assessed evidence and to ascertain as to whether the learned trial court was justified in convicting the appellant. True that the matter was promptly reported by widow of the deceased, but that alone is not sufficient to hold the appellant guilty for commission of the offence, rather the prosecution is under the obligation to prove its case through independent witnesses. We feel it essential to once again scan through the record, so to reach to a just and correct conclusion.

9. The points for determination before this Court are that; as to whether the complainant was present at the time of incident; and as to whether the incident occurred in the mode, manner and at the stated time; and as to whether the prosecution succeeded in bringing home guilt against the appellant and as to whether the motive alleged was proved to connect the appellant with the murder of the deceased.

10. The complainant was produced as PW-02 who stated that on the day of incident, she left her house in the company of her deceased husband to sow the mastered seed in their property; that it was about 08:00 AM, when the accused attracted to the

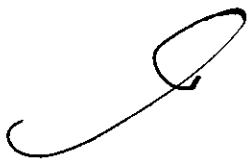
spot, hurled abuses at the deceased and thereafter, started firing at the deceased, who after receiving firearm injuries, fell to the ground, died on the spot and the accused decamped from the spot. She further stated that the dead body was shifted to the local police station with the help of co-villagers, where the matter was reported. The record tells that the house of the deceased is situated at a short distance from the place of incident, which could be covered within five minutes. It floats on the surface of record that during the days of occurrence, the deceased was a proclaimed offender whose arrest was required in case F.I.R No.73 dated 08.08.2013 U/S 302/324/34 P.P.C, Police Station Gurguri. The previous involvement of the deceased in different criminal cases has put this court on guard to apply due care & caution, so that miscarriage of justice could be avoided.

11. The investigating officer prepared the site plan on pointation of the complainant, where both the parties were given specific points and from the place of incident alongwith blood stained earth, two empties of 7.62 bore were also taken into possession. This Court is to see as to whether the complainant was present at the time of incident and as to whether it was the complainant who shifted the dead body to the local police station and reported the matter. The complainant during her cross-examination, stated that soon after the incident, the local police attracted to the spot and she is

further contradicted by the investigating officer when he stated that on receiving copy of F.I.R, he reached to the place of incident, where the complainant was called from her house who came to the spot alongwith other people after 50 minutes of his arrival. The complainant was examined on this particular aspect of the case, who stated that she and others accompanied the investigating officer from police station to the spot. The contradictions between the statements of these two witnesses leave no ambiguity in mind that the complainant could not establish her presence on the spot at the time of incident.

12. The record is to tell as to whether the complainant in fact visited the spot field with her deceased husband to sow the mastered seed. We scanned through the record, but could not come across any such evidence which could tell that on the day of incident, both the deceased and the complainant visited the spot field for the purpose. The investigating officer admitted it correct that no agricultural instrument was taken into possession nor any seed was lying on the spot. The investigating officer disclosed that he did not record statements of any independent witnesses regarding the ownership of the property and even the complainant did not produce any revenue record to confirm her stance. The site plan depicts and so admitted by the investigating officer that the spot fields were barren and no crop was available in the vicinity, what to say of sowing the same. The investigating officer admitted it correct

that there were no signs of sowing the seeds in the fields. Keeping in view the shortest distance of the house of the complainant from the place of incident, the possibility cannot be excluded that the complainant attracted to the spot, when she was informed regarding the death of the deceased.



13. The presence of the complainant is hard to be believed, as she admitted that soon after the incident, the local police attracted to the spot. The situation tells that in fact the deceased was done to death and nobody witnessed the incident, this was on receiving information that both the complainant and local police attracted to the spot. The complainant could not disclose the names of the persons who shifted the dead body from spot to the police station. It is pertinent to mention that despite approach to the place of incident soon after the incident, the local police did not record the report on spot, as in that eventuality, the prosecution case would have suffered a lot, but to make its case a success, the F.I.R was shown to have been registered in the police station. The conflict between the statements of the investigating officer and the complainant in respect of their arrival to the spot for spot proceedings has confirmed that the complainant was not present on the spot at the time of incident. The involvement of the deceased in numerous cases is evident from the record and even details of the same were asked from the complainant as well as the investigating officer, more particularly, during the days of

incident, the deceased was a proclaimed offender. When the appellant and the absconding co-accused had blood feud with the deceased then instead of killing the deceased, they would have also killed the complainant, as she was the sole surviving witness. No prudent mind would accept the choice exercised by the accused in killing the deceased and leaving the complainant, knowing the fact that she would depose against them before the court of law. As the deceased was having a criminal history and enmities in the vicinity, so many people must be after his blood and in such eventuality, the possibility that he would have been killed by someone else when he was found all alone cannot be ruled out. Similar situation was beautifully dealt with in case titled **“Pasand Khan Vs The State” (2011 YLR 1664 Peshawar)** in the following manner:

**“As the deceased was having to his credit a long criminal history and had earned many enmities in the area as he was involved in serious crimes thus, many people must be after his blood. The possibility that he was killed by someone else when he was found all alone cannot be ruled out.”**

14. The medical evidence is in conflict with the ocular account, as while reporting the matter, the complainant stated that when the appellant and the absconding co-accused attracted to the spot, they hurled abuses at the deceased and thereafter, fired at the deceased. The medical evidence tells that the



deceased received firearm entry wounds on his back with its exit on his chest, which belies the stance of the complainant. Had the incident occurred in the mode & manner, then in that eventuality, the deceased would have received firearm injuries on his chest and not on his back, as admittedly, the deceased was addressed by the accused before starting firing. When the complainant realized this blunder, she made an attempt to improve her statement and during her cross-examination, she stated that when the accused wanted to kill the deceased, he started fleeing from the spot and in that the eventuality, the deceased received firearm injuries on his back, this improvement on part of the complainant can be termed as a dishonest improvement made with the sole purpose to bring the medical evidence in line with the ocular account. Though, a conscious attempt was made on part of the complainant to make this Court believe the portrayed situation, but the same went to the disadvantage of the prosecution. True that medical evidence is confirmatory in nature and in case of direct eye witness account, the same has a little role to play, but equally true that when the prosecution fails to establish its case through trustworthy witnesses, then in that situation, the medical evidence gains importance and the present case is no exception.

15. During trial, an interesting situation arose when both the sides wanted to satisfy each other through special oath and for that purpose, arrangements were made by the learned trial court

and even statement of the complainant was recorded regarding innocence of the appellant provided the appellant prepares to take a special oath. The learned counsel for the appellant wanted to reap the harvest of the proceedings conducted by the learned trial court, but he failed to understand that in fact in criminal cases, no special oath can be administered and if administered, the same has no utility and cannot be taken into consideration. Though, an attempt was made to convince this Court that when the complainant wanted her satisfaction through special oath then the same can only and only be interpreted that she was not present at the place of occurrence and that she did not witness the incident to have been committed by the appellant and the absconding co-accused. True that an attempt was made in that respect, but when no sanctity is attached to the proceedings conducted by the learned trial court regarding special oath, so the same cannot be taken into consideration to believe or disbelieve the prosecution story. The attending circumstances of the case lead us to draw an inference that neither at the time of incident, the complainant was present nor the purpose of her presence was to sow the mastered seed is proved from the record. The attending circumstances of the case makes the case of the prosecution full of doubt and the same should be extended to the accused. In this regard, reliance can be placed on case titled **“The State through P.G Sindh and others Vs Ahmed Omar Sheikh**

**and others” (2021 SCMR 873)** in which the Apex Court held as under:

**“It is settled since centuries that benefit of doubt automatically goes in favour of an accused. Even if a single circumstance creates reasonable doubt in a prudent mind regarding guilt of an accused then the accused shall be entitled to such benefit not as a matter of grace and concession but as a matter of right and such benefit must be extended to the accused person(s) by the Courts without any reservation”.**

16. It was stressed hard and hard that the collected empties were sent to the firearms expert wherefrom a positive opinion was received that those were fired from two different weapons. The learned counsel for the complainant wanted to take its benefit and submitted that the recoveries of two empties from the spot corroborate the statement of the complainant regarding the involvement of the appellant and another. As the prosecution could not bring on record substantial evidence, so the collected empties being supportive in nature, cannot be taken into consideration to determine the fate of the appellant, as the same can be taken into consideration only and only in support of direct ocular account, which is missing and as such, this important piece of evidence has lost its utility.

17. Another important aspect of the case was highlighted by learned counsel for the parties that the scribe, who registered

the case and prepared the injury sheet and inquest report was not produced. Whether the non-production of that particular witness in itself is sufficient to discard the first information report and the documents prepared. We are not ready to accept that in such eventuality, both the F.I.R and the inquest report will lose its utility. As the complainant who reported the matter duly thumb impressed the same and during trial, she reiterated the contents of the F.I.R, so mere absence of the relevant witness will not be sufficient to say goodbye to this most important piece of evidence. The record tells that the learned trial court made repeated efforts to procure the attendance of the witness, but his attendance could not be procured, as he was not willing to appear before the Court. His reluctance to appear before the Court cannot be attributed to either side and as such, we are not ready to put it to the benefit of one side and to the disadvantage of the other. So far the injury sheet and inquest report are concerned, as the same were duly endorsed by the doctor and confirmed by the witness who appeared before the court to verify the signature and handwriting of the concerned doctor.

18. The motive was alleged as a blood feud between the parties, but neither the complainant nor the investigating officer could bring on record any evidence both oral as well as documentary to confirm the blood feud between the parties. The investigating officer did not record statement of any

independent witness in that respect. There is no cavil to the proposition that motive is a double edged weapon, as it cuts either way. If motive could be the cause to kill then the same could be a cause for false implication. True that weakness or absence of motive, in itself, is not sufficient to dislodge the prosecution case provided the prosecution succeeds in establishing its case through independent evidence, but in case in hand, the prosecution could not succeed in bringing home guilt against the appellant, as apart from the complainant, no other evidence was either available or brought on record. The circumstances do tell that it was because of the previous blood feud that the complainant charged the two real brothers for the murder of her husband. In this regard, reliance could be placed on case titled “Muhammad Ashraf alias Acchu Vs The State” 2019 SCMR 652:

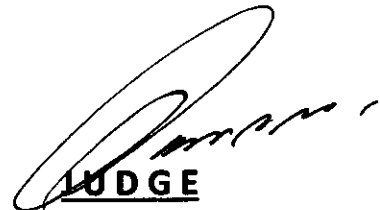
**“7. The motive is always a double-edged weapon. The complainant Sultan Ahmad (PW9) has admitted murder enmity between the parties and has also given details of the same in his statement recorded before the trial court. No doubt, previous enmity can be a reason for the appellant to commit the alleged crime, but it can equally be a reason for the complainant side to falsely implicate the appellant in this case for previous grouse.”**

19. The cumulative effect of what has been stated above brings this Court to a definite conclusion that the prosecution

could not succeed in bringing home guilt against the appellant and that the impugned judgment is suffering from inherent defects, which calls for interference. The learned trial judge while passing the impugned judgment, misdirected himself both in law and on facts of the case. The impugned judgment is, therefore, set aside. The appellant is acquitted of the charges. He shall be released forthwith from confinement, if he is not required to be detained in connection of any other criminal case.

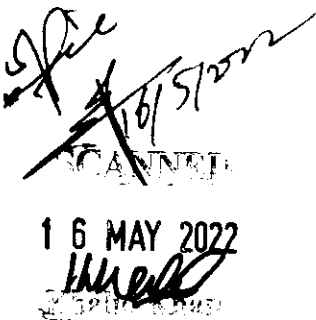
20. As the appeal of the appellant is allowed and he is acquitted of the charges, so in such eventuality, the instant criminal revision petition bearing No.08-B/2021 has lost its efficacy. The same cannot proceed further and is dismissed as such.

**Announced**  
11.05.2022  
Ghafoor Zaman/\*

  
**JUDGE**

  
**JUDGE**

(D.B)  
Hon'ble Mr. Justice S.M Attique Shah  
Hon'ble Mr. Justice Sahibzada Asadullah

  
16 MAY 2022  
