

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR**

(Judicial Department)

**Cr.A.No.1154 of 2018.**

Date of hearing: 03.11.2022.

Mr. Muhammad Saeed Khan, Advocate, for  
the appellants.

Mr. Muhammad Bashir Naveed, AAG for  
the State.

Mian Fahim Akbar, Advocate, for the  
respondent-complainant.

**JUDGMENT**

**LAL JAN KHATTAK, J.-** Through this  
judgment, we shall also decide Cr.R  
No.170-P of 2018 titled "Fida  
Muhammad Vs Manzoor etc" as both the  
matters have emanated from judgment  
dated 08.12.2018 of the learned  
Additional Sessions Judge-III, Swabi  
delivered in case FIR No.27 dated  
30.10.2012 under sections 302/427/34  
PPC of Police Station Permolli, Swabi  
whereby upon conviction under section  
302 (b) PPC, the appellants have been  
sentenced to imprisonment for life and to  
pay compensation to the tune of  
Rs.200,000/- to legal heirs of the  
deceased under section 544-A Cr.PC.

*Gain*

They have further been convicted under section 427 PPC and sentenced to imprisonment of one year each with benefit under section 382-B Cr.PC.

2. Brief facts of the case are that on 30.10.2012, deceased Baz Muhammad, the then injured, himself reported the matter to SI Jehanzeb (PW-9) in Civil Hospital, Kalu Khan to the effect that he was proceeding on motorbike from his house to "arhat" and when reached the place of occurrence there appellants Manzoor and Ayaz, both sons of Iqbal, appeared duly armed with firearms and started firing in order to kill him with which he was hit. As per FIR, the occurrence was witnessed by one Fida Muhammad. Motive as given in the First Information Report was a dispute over crops between the first informer and the appellants who were working in the former's fields. It was worth to mention that the deceased was first taken to Civil Hospital Kalu Khan for medical treatment and then was referred to another hospital for further management as his condition



was critical but on his way to the hospital he breathed his last.

3. After arrest of the accused and completion of investigation, case was put in Court for trial culminated in their conviction and sentence as mentioned above whereagainst they have filed the instant appeal while the complainant has preferred Cr.R No.170-P of 2018 seeking enhancement of the sentence awarded to the convicts.

4. Arguments heard and record gone through.

5. Perusal of the case record would show that no doubt both the appellants have been charged by the deceased, the then injured, in his FIR for their firing at him and the occurrence was stated to have been witnessed by PW-10 Fida Muhammad but the important fact for determination in the case is that the ocular account has been furnished by uncle of the deceased and as such his testimony is to appreciated with much care and caution. No doubt, evidence provided by closely related eyewitness is

*Gains*

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(Judicial Department)

**Cr.A.No.1154 of 2018.**

Date of hearing: 03.11.2022.

Mr. Muhammad Saeed Khan, Advocate, for the appellants.

Mr. Muhammad Bashir Naveed, AAG for the State.

Mian Fahim Akbar, Advocate, for the respondent-complainant.

**JUDGMENT**

**LAL JAN KHATTAK, J.-** Through this judgment, we shall also decide Cr.R No.170-P of 2018 titled "Fida Muhammad Vs Manzoor etc" as both the matters have emanated from judgment dated 08.12.2018 of the learned Additional Sessions Judge-III, Swabi delivered in case FIR No.27 dated 30.10.2012 under sections 302/427/34 PPC of Police Station Permolli, Swabi whereby upon conviction under section 302 (b) PPC, the appellants have been sentenced to imprisonment for life and to pay compensation to the tune of Rs.200,000/- to legal heirs of the deceased under section 544-A Cr.PC.

*Gain*

They have further been convicted under section 427 PPC and sentenced to imprisonment of one year each with benefit under section 382-B Cr.PC.

2. Brief facts of the case are that on 30.10.2012, deceased Baz Muhammad, the then injured, himself reported the matter to SI Jehanzeb (PW-9) in Civil Hospital, Kalu Khan to the effect that he was proceeding on motorbike from his house to "arhat" and when reached the place of occurrence there appellants Manzoor and Ayaz, both sons of Iqbal, appeared duly armed with firearms and started firing in order to kill him with which he was hit. As per FIR, the occurrence was witnessed by one Fida Muhammad. Motive as given in the First Information Report was a dispute over crops between the first informer and the appellants who were working in the former's fields. It was worth to mention that the deceased was first taken to Civil Hospital Kalu Khan for medical treatment and then was referred to another hospital for further management as his condition



was critical but on his way to the hospital he breathed his last.

3. After arrest of the accused and completion of investigation, case was put in Court for trial culminated in their conviction and sentence as mentioned above whereagainst they have filed the instant appeal while the complainant has preferred Cr.R No.170-P of 2018 seeking enhancement of the sentence awarded to the convicts.

4. Arguments heard and record gone through.

5. Perusal of the case record would show that no doubt both the appellants have been charged by the deceased, the then injured, in his FIR for their firing at him and the occurrence was stated to have been witnessed by PW-10 Fida Muhammad but the important fact for determination in the case is that the ocular account has been furnished by uncle of the deceased and as such his testimony is to appreciated with much care and caution. No doubt, evidence provided by closely related eyewitness is

*Goin*

as good as given by another independent witness having no relations with the victim but before placing reliance on the ocular account of the related witness the Courts always look for independent source which could corroborate such evidence and same is taken into consideration only for recording conviction of the accused if same is corroborated by independent circumstantial evidence and factors of the case.

6. If on the touchstone of the above, the testimony of sole eyewitness in the case namely Fida Muhammad (PW-8) is tested it would then appear that same lacks corroboration from related circumstantial evidence of the case because according to the medical examination, the deceased has sustained two firearm entry wounds on his person, i.e. one on medial aspect of the middle part of his left thigh and the other on front of his right leg below the knee joint and per medico-legal report furnished by Dr. Fazle Hadi (PW-8)

*Goins*

dimensions of both the injuries sustained by the deceased are of one and the same size i.e. 1/2" x 1/2" inches. Besides the above, another point in the case for consideration is that though from the spot though three empties of 7.62 bore were taken into possession by the investigating agency but there is no report of FSL which could show that the recovered empties were fired from one or more than one weapon. Omission on the part of the prosecution to produce FSL report to the ibid aspect has cast reasonable doubt on its case in absence of which and keeping in view the similarity of dimensions of the injuries, it cannot be held with certainty that the deceased was done to death by more than one man as is the prosecution version benefit of which shall go to the appellants-accused being a century old principle of criminal jurisprudence.

*Gain*

7. In Addition, conduct of PW-10, namely Fida Muhammad who is uncle of the deceased too is questionable as according to him after taking the



deceased to Kalu Khan hospital, he thereafter returned to his village leaving the victim alone in critical condition who later on was referred to another hospital for further treatment. Leaving the injured in critical condition in the hospital alone and not accompanying him to another hospital for his further medical treatment by PW-10 is his such unnatural conduct which cannot be expected by a prudent mind from a very close relative. Had he been present on the spot at the time of firing and with the then injured in Civil Hospital, he must have accompanied him when he was referred to another hospital for further management which attitude of the witness amply excludes his presence on the crime spot and with the then injured in the Civil Hospital where the report was lodged.

*Gjens*

8. No doubt, initial version of the occurrence was provided by the deceased himself to PW Jehanzeb, who testified as PW-9 but there is no material on the case file which could show that said report was lodged by the then

injured in immediate presence of the Medical Officer who provided initial treatment to him. Though, while appearing as PW-8, Dr. Fazle Hadi has stated that at the time of his examination, the patient was fully conscious, able to talk and well oriented but as he has not stated in clear and unequivocal terms that in his presence the then injured had reported the matter to the police nominating therein the appellants, therefore, the report lodged by the then injured (Ex.PA) on which signatures of PW-8 do appear cannot be taken into account as his dying declaration for recording conviction of the appellants.

*Gair*

9. Site plan of the case too is not supporting the prosecution version according to which the eyewitness was found present in front of the house of the deceased for which he has not given any explanation that what for he was standing in front of the deceased house. Giving no justification qua his presence on the spot at the time of occurrence by PW-10 shows that his presence was

procured subsequently in order to strengthen the prosecution case.

10. Another important aspect of the case is that PW Sher Afsar, who is rider of the FIR, was not produced. Non-examination of said Sher Afsar too has weakened the prosecution case as in his presence the then injured had reported the matter to the local police regarding the occurrence. Examination of PW Sher Afsar was necessary as in his presence, per prosecution, the deceased had reported the matter. Thus, the prosecution for no valid reason withheld a very relevant piece of evidence.

*Gain*

11. Thorough and careful examination of the case record shows that the learned trial Court has not appreciated the case evidence in its true perspective. The deductions and conclusions drawn by the learned trial Court making base for recording the appellants' conviction are not borne out from the case evidence for which the impugned judgment cannot be sustained.

12. For what has been discussed above, this appeal is allowed, conviction and sentence recorded by the learned Additional Sessions Judge-III, Swabi vide impugned judgment dated 08.12.2018 are set aside and the appellants are acquitted of the charges leveled against them. They be released forthwith from custody if not required or wanted to be detained in any other case.

13. So far as Cr.R No.170-P/2018 is concerned, suffice it to say that as we have set aside the impugned judgment of conviction, therefore, this criminal revision for enhancement of the awarded sentences has become infructuous which is hereby dismissed.

Above are the reasons of our short order.

  
JUDGE

  
JUDGE

Announced.

03.11.2022

\*Sadiq Shah CS\*