

**JUDGMENT SHEET**

**PESHAWAR HIGH COURT, MINGORA  
BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

**Cr.A No. 68-M/2018**

*Naseeb Khan son of Dost Muhammad Khan (Appellant)  
Versus*

*(1) The State through A.A.G.  
(2) Shakirullah son of Alim Khan*

*(Respondents)*

**Present:**

*Mr. Sher Muhammad Khan, Advocate.*

*Mr. Inayat Ullah Khatir, State counsel*

*M/S Muhammad Rashid and Sabir Shah, Advocates*

**Cr.R. No. 18-M/2018**

*Shakirullah son of Alim Khan*

*(Petitioner)*

*Versus*

*(1) The State through A.A.G  
(2) Nasib Khan son of Dost Muhammad*

*(Respondents)*

**Present:**

*M/S Muhammad Rashid and Sabir Shah,  
Advocates.*

*Mr. Inayat Ullah Khatir, State counsel*

*Mr. Sher Muhammad Khan, Advocate.*

Date of hearing: **15.10.2020**

**JUDGMENT**

**WIQAR AHMAD, J.-** Appellant namely Naseeb

Khan has called in question judgment of his conviction

and sentence dated 28.03.2018 passed by learned

Additional Sessions-II Dir Upper, vide which he was

sentenced as follows;

- *U/S 302 (b) PPC to life imprisonment along with payment of fine of Rs. 50,000/- (fifty thousand), or in default thereof, he shall further undergo six months' simple imprisonment. He was also directed to pay compensation of Rs. 100,000/- (one hundred thousand) under section 544-A Cr.P.C, payable to legal heirs of deceased, or in default thereof, to suffer one-year simple imprisonment.*
- *U/S 341 PPC to one-month simple imprisonment.*
- *U/S 427 PPC to six months' simple imprisonment.*
- *All the sentences were ordered to run concurrently.*
- *Appellant was also extended benefit of section 382-B Cr.P.C.*

2. Appellant faced trial in case FIR No. 908 (Ex.PW-11/1) dated 27.08.2014 under sections 302, 341, 427, 34 PPC registered at Police Station Dir, District Dir Upper, on the basis of 'Murasila' (Ex. PW-5/1) sent by Rahat Khan SHO (PW-5) on 27.08.2014, wherein he has stated that the local police received information that a murder had taken place in village Muhammad Amin Kalay. On receipt of such information a police party headed by Khaista Muhammad Sub Inspector Investigation proceeded to the village, where they found dead body of Alim Khan in his house. Complainant namely Shakirullah who was son of the deceased, was present there and lodged report of the occurrence in the presence of one

Muhammad Haroon Khan son of Mohd. Hakim Khan, cousin of the complainant. He stated in his report that his father namely Alim Khan had been going to look after his carriage truck parked in Dir Bazar through a motorcar being driven by driver namely Malak Azam. When the motorcar reached the mosque at village Shahi Bagh on 11:30 A.M, it was stopped by accused Naseeb Khan son of Dost Muhammad Khan, Khan Bacha son of Muhammad Sardar, Munasib son of Zareef Khan, who had already been present there. They started indiscriminate firing on his father who got injured as a result of firing of appellant namely Naseeb Khan and died at the spot. The occurrence was stated to have been witnessed by driver of the vehicle namely Malak Azam, Muhammad Baz Khan and Muhammad Jan all residents of village Muhammad Amin Kalay. Previous blood feud was stated to have been constituting motive for commission of the offence. Delay in lodging of report was stated to have been due to the area being hilly and far away from the police station, as well as due to lack of knowledge about the legal know-how.

3. Since accused were avoiding their lawful arrest initially, therefore proceedings under section 512

Cr.P.C were initiated against them and they were declared proclaimed offenders by learned Sessions judge Dir Upper vide his judgment dated 28.08.2015.

4. On completion of investigation, supplementary *challan* was submitted against appellant before learned trial Court. After compliance of proceedings of 265-C Cr.P.C, charge was framed against him on 28.03.2018, to which he pleaded "*not guilty*" and claimed trial. Prosecution produced as many as twelve (12) witnesses, whose statements were recorded and placed on file. On conclusion of proceedings in the case, accused was examined under section 342 Cr.P.C. Learned trial Court convicted and sentenced the appellant vide impugned judgment dated 28.03.2018, as stated earlier.

5. Feeling aggrieved from his conviction and sentences, accused/appellant has filed the instant appeal before this Court while complainant has also filed connected Criminal Revision No. 18-M of 2018 for enhancement of the sentences awarded to accused/respondent.

6. Learned counsel for appellant read the relevant evidence, so as to assist this Court in

reappraisal of the evidence. He thereafter contended that there has been extra-ordinary delay in lodging of report, which not only established that report of the occurrence had been lodged with consultations and deliberations, but also indicated that the prosecution witnesses had not been present on the spot at the time of commission of the offence, otherwise they would have taken the deceased to the hospital or would have lodged a timely report of the occurrence in police station. He further added that no blood has been recovered from the vehicle despite the fact that the deceased was stated to have received multiple injuries inside the motorcar. He also referred to a number of contradictions in the statements of two eyewitnesses recorded as PW-7 and PW-8 and argued that prosecution have not been able to prove commission of the offence in the mode and manner as stated in first report of the occurrence. Regarding recovery of six empties of 7.62 bore from the spot, the learned counsel submitted that the recovered empties had not been sent to the FSL for comparison, as no matching FSL report is available on file. In order to bolster his submissions, the

learned counsel placed reliance on judgments reported as 1995 SCMR 1345, 2012 SCMR 428, PLD 2019 Supreme Court 64, 2003 YLR 927 (Karachi), 2013 YLR 543 (Sindh), 2019 YLR 1073 (Peshawar), 2019 YLR 2082 (Islamabad) and 2020 P Cr. LJ 202 (Peshawar).

7. Learned counsel appearing on behalf of complainant submitted in rebuttal that the spot of occurrence was situated in a far of place, therefore happening of delay in lodging report of the occurrence was quite natural. Learned counsel further added that the eyewitnesses have been totally independent witnesses having no ill-will to depose falsely against the appellant, and therefore their statements could not be discarded, merely for the reasons that minor contractions have occurred therein. They further added that the statements of both the eyewitnesses were quite natural and through their statements the prosecution have been able to prove case against the appellant beyond reasonable doubt. In support of their assertions, learned counsel placed reliance on judgments reported as 2001 SCMR 177, 2002 SCMR 334, 2003 SCMR 522,

2004 SCMR 1185, 2006 SCMR 161, PLD 2007

Supreme Court 71, 2007 SCMR 1014, 2017 SCMR

1976 and 2010 YLR 1125 (Lahore). Learned

counsel appearing on behalf of State adopted arguments of learned counsel for the complainant and supported the impugned judgments.

8. We have heard arguments of learned counsel for the parties, learned counsel appearing on behalf of State and perused the record.

9. Perusal of record reveals that first report of the occurrence has not only been lodged with an unexplained delay but a preliminary investigation had also taken place before lodging of the report. The time of occurrence has been mentioned as 11:30 A.M on 27.08.2014 while the time of report has been shown as 15:45 P.M on said date. FIR has then been registered on the basis of '*Murasila*' at 18:20 P.M on 27.08.2014. Distance of the place of occurrence from police station has been shown as 12/13 kilometers. First report of the occurrence has been lodged with delay of four hours and 15 minutes. Such a delay has been tried to be explained by the complainant in the '*Murasila*' by stating, that spot of occurrence had

been a far of place from the police station, as well as less acquaintance with the legal know-how. None of the explanations given above appears to be correct. Cousin of the complainant namely Muhammad Haroon has been examined as PW-2, who has stated in his cross-examination that police had reached their home at 01:30 P.M. Similarly, the complainant namely Shakirullah while deposing in Court as PW-6 has also stated in his cross-examination that dead body of deceased had been brought to their house at 12:30 or 01:00 P.M. He has also stated that he had heard fire shots. PW-7 namely Malak Azam who has claimed to be an eyewitness of the occurrence has stated in his cross-examination that police had arrived at the spot on 02:35 P.M for the first time. In such circumstances, when the police had arrived at the spot then further delay, occurring in lodging of first report of the occurrence could not be explained by the prosecution. Both the explanations for delay given in first report of the occurrence cannot therefore be considered for the reason that police had arrived on the spot at 01:30 P.M, they were also having legal know-how, then why had the



complainant failed in lodging report of the occurrence. In such circumstances, delay would naturally be fatal to the case of prosecution, as it was not only delay simplicitor but preliminary investigations has also been taken before lodging of first report of the occurrence. Hon'ble Apex Court in its judgment rendered in the case of "Iftikhar Hussain and others v/s The State" reported as 2004 SCMR 1185 has treated such issues in the case of prosecution in the following manner;

*"It is a case in which F.I.R. has been registered after consultation and conducting preliminary investigation. If both these witnesses in fact had witnessed the incident, there was no occasion to cause delay in lodging of F.I.R. It is significant to note that delay in lodging F.I.R. under section 154, Cr.P.C. is condonable keeping in view the facts and circumstances of each case particularly in those cases where the accused persons have not been nominated in the F.I.R. and the names of the witnesses who have seen the incident have also not been mentioned but where the complainant is fully aware about the culprits and the names of the witnesses are also known to him then if delay in lodging F.I.R. is caused, it creates heavy duty upon the prosecution to explain the same satisfactorily otherwise the prosecution case would become doubtful.*

10. The two PWs, whose statements has been recorded as PW-7 and PW-8 have also been carrying contradictions and discrepancies, regarding material aspects of the case. Malak Azam, whose statement was recorded as PW-7 has stated in his examination-in-chief that he had been driving the vehicle carrying the deceased then alive namely

Alim Khan as a passenger along with other passengers. This witness has stated, in his cross-examination that he had left the spot of occurrence for his own house, after the occurrence. He also stated that Muhammad Baz Khan and Muhammad Jan (PW-8) had also gone with him in his vehicle to their village. The other PW namely Muhammad Jan has however stated, in his cross-examination, that dead body of the deceased had been dispatched from the spot of occurrence towards home at 12:00 P.M (noon), and that he along with the other PW Malak Azam (PW-7) and Muhammad Baz Khan had accompanied the dead body. He also added that they had been carrying the dead body in a cot (چارپائی), on foot. PW-7 has also stated, further ahead in his cross-examination, that the dead body of deceased had been taken by police from the spot to police station. While in earlier part of his cross-examination he had stated that the dead body had been taken by people of the village to house of the deceased. All these contradictions are material in nature and have been regarding such aspects of the case, which in normal circumstances, are not supposed to be

forgotten by a PW who have seen the occurrence or was present there. These contradictions have created doubt regarding presence of both these PWs on the spot and to have seen the occurrence. Reliance in this respect is placed on judgment of Hon'ble Apex Court given in the case of "Muhammad Imran v/s The State reported as 2020 SCMR 857, wherein it has been held;

*"Ocular account had been furnished by the witnesses who were found out of tune with one another; they were discrepant on the manner and mode of their arrival at the crime scene; and there was no unanimity amongst them on the passage they took to take the deceased to the hospital. Such contradictions, viewed in the retrospect of arrival of the witnesses exactly at a point of time when the accused started inflicting blows to the deceased with their inability to apprehend him without there being any weapon to keep them effectively at bay, cast shadows on the hypothesis of their presence during the fateful moments.*

Substantial doubts have been lurking in the case, prosecution have therefore failed to prove case against the appellant beyond reasonable doubt.

11. So far as judgments of Hon'ble Supreme Court of Pakistan relied upon by learned counsel for complainant and reported as 2001 SCMR 177 and 2017 SCMR 1976, are concerned, there is no doubt that abscondence of the accused had been taken as a corroboratory circumstance in the case,

but when the prosecution have failed to prove case against the appellant beyond reasonable doubt, abscondence as a corroboratory piece of evidence would lose its significance. The other judgments reported as PLD 2007 Supreme Court 71, 2007 SCMR 1014 and 2010 YLR 1125, lays down that occurring of minor contradictions in the statements of PWs is natural, which may be ignored, but contradictions in the case in hand have been found material, said judgments are therefore of no help to the case of prosecution. The other judgments reported as 2005 SCMR 522 and 2006 SCMR 261 have not been of any help to the case of complainant or prosecution as well. Benefit of even a single doubt is to be extended to the accused wherever reasonably found in case of prosecution, as held by the Hon'ble Apex Court in the case of "Mst. Asia Bib v/s The State and others" reported as PLD 2019 Supreme Court 64.

12. In light of what has been discussed above, accused/appellant is extended benefit of doubt and resultantly acquitted of the charge of commission of the alleged offence by setting aside

the impugned judgment dated 28.03.2018 of the Court of learned Additional Sessions-II Dir Upper. The appeal in hand is allowed in above terms. Criminal revision No. 18-M of 2018 filed by complainant has become infructuous and same is accordingly dismissed.

13. These are reasons for our short order of even date.

Announced  
Dt.15.10.2020



JUDGE



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Office  
21/10/2020  
w/R