

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

Cr. A No. 136-P/2025

Waseem
Vs
Muhammad Hasnain & another

JUDGMENT

Date of hearing: **05.11.2025**

Appellant by: Mr. Gohar Saleem,
Advocate.

The State by: Mr. Ayub Zaman, AAG

Respondent/Complainant by Mr. Fawad
Hussain, Advocate.

SAHIBZADA ASADULLAH, J.- Through this criminal appeal, appellant Waseem has questioned the judgment of the learned Additional Sessions Judge-II, Kohat dated 30.01.2025 rendered in case FIR No. 260 dated 14.04.2020 under sections 302/324 PPC read with section 15-AA registered at Police Station Jungal Khel, District Kohat whereby, the appellant was convicted and sentenced as under: -

“U/s 302 (b) PPC to rigorous imprisonment for life as Tazir and also to pay a compensation of Rs.5,00,000/- (rupees five lac) to the LRs of the deceased within the meaning of section 544-A CrPC recoverable as arrears of land revenue and, in default whereof, to suffer simple imprisonment for six months.

Under section 324 PPC for attempting at the life of complainant Muhammad Hasnain to rigorous imprisonment for 04 years and to pay a fine of Rs. 20,000/- (twenty thousand) and, in default whereof, to suffer simple imprisonment for six months.

Both the sentences shall run concurrently and benefit of section 382-B Cr.PC was extended in favor of the appellant.

2. As per contents of the murasila, the local police present at Nakabandi near Charbagh graveyard, upon hearing fire shots, reached the spot and found a young boy lying in pool of blood with a firearm injury on his

head, who was shifted to the hospital by the locals; that a spy at the scene informed that accused Waseem s/o Nadir Khan had committed the offence and fled to his house; that during raid over his house, the accused was apprehended from the upper portion of his house in possession of .30-bore pistol bearing No. A-3770 with 02 live rounds. Subsequently, complainant Muhammad Hasnain s/o Muhammad Jameel reported that while proceeding with his friend Mansoor Khan s/o Abdul Jalil for Maghrib prayer, accused Waseem emerged from a nearby ground and fired upon them, causing a fatal head injury to Mansoor Khan, while the complainant managed to escape unhurt; that motive was stated to be a prior quarrel between the nephews of the accused and younger brother of the complainant namely Hamdan; that the accused was charged for the commission of offence hence, the present FIR. It is pertinent to mention that the injured succumbed to his injuries while on the way to LRH, Peshawar, whereupon Section 302, PPC was inserted.

3. After completion of investigation, complete challan was submitted to the court. Provisions of section 265-C CrPC were complied with and the appellant was charged sheeted, to which he pleaded not guilty and claimed trial. In order to prove its claim, the prosecution produced and examined as many as 17 witnesses. After closure of prosecution evidence, statement of the appellant was recorded under section 342 CrPC, wherein he posed innocence, however, neither he wished to be examined on Oath as required under section 340 (2) Cr.PC, nor wanted to produce evidence in defence. The learned trial Court, after full-fledged trial, convicted the appellant vide the impugned judgment hence, the instant appeal.

4. Arguments heard and available record gone through.

5. The unfortunate incident, which forms the subject matter of the present proceedings, resulted in the death of the deceased, who was initially shifted to the hospital in an injured condition by the locals.

The occurrence was reported by the complainant Muhammad Hasnain, upon the arrival of the local police at the place of incident. However, before the formal registration of the case, the Station House Officer (SHO) of the concerned police station proceeded to the residence of the accused, apprehended him from the upper portion of his house, and recovered from his possession a .30-bore pistol alongwith two rounds of the same bore stated to have been used in the commission of the offence. The accused was thereafter brought to the place of occurrence, where the complainant narrated the details of the incident in the presence of the police party. Since the injured had already been shifted to the hospital, one Javed Khan SI was directed to proceed there to ensure completion of medico-legal formalities. In compliance with the said direction, he visited the hospital, where the injured was examined by the medical officer, the injury sheet and medico-legal certificate were prepared, and the injured was referred to Peshawar for further treatment. Unfortunately,

the injured succumbed to his injuries while being shifted to Peshawar, whereupon Section 302 PPC was incorporated in the case. It is pertinent to mention that the said Javed Khan SI prepared inquest report of the deceased and the dead body was sent for post mortem examination. Subsequently, the Investigating Officer visited the place of occurrence and, at the instance of the complainant, prepared the site plan. During spot inspection, blood through cotton was secured from the place of the deceased alongwith one empty of .30-bore. As the accused had already been arrested, the weapon recovered from him was taken into possession and later forwarded to the Forensic Science Laboratory for examination. The report of the Firearms Expert, however, revealed that the pistol was not in proper working condition; hence, no definite matching opinion could be furnished with regard to the empty recovered from the spot. It also transpires from the record that the father of the deceased recorded his statement under Section 161, Cr.P.C. before the Investigating Officer.

While generally corroborating the version of the complainant, he ascribed a different motive for the occurrence, alleging that the complainant and the accused were both friends of the deceased, and that their mutual relations had given rise to ill-will, culminating in the unfortunate incident. Upon completion of investigation, the accused was sent up to face trial. The learned Trial Court, after a full-dressed trial and appraisal of the evidence adduced by the prosecution, convicted and sentenced the appellant through the impugned judgment, which is now under challenge before this Court.

6. The learned Trial Court, after carefully reviewing the evidence, held the appellant responsible for the offence and was accordingly convicted and sentenced him. This Court now considers whether the Trial Court was justified in finding the appellant guilty and whether the evidence was properly assessed. It is true that only one person has been charged. However, this does not relieve the prosecution of its duty to prove the case beyond reasonable

doubt, nor does it excuse the Trial Court from applying its judicial mind to the evidence. In order to prevent miscarriage of justice, this Court deems it essential to examine the record and reappraise the evidence available on file.

7. The main questions before this Court are as to whether the incident occurred in the mode, manner and at the stated time as claimed by the prosecution; whether the complainant was present at the scene of occurrence at the stated time and a true eyewitness; whether the accused was arrested in the stated manner and at the time alleged; whether the medical evidence supports the case of the prosecution and as to whether the prosecution succeeded in proving its case against the appellant.

8. To understand the case, the Court has examined the statements of key witnesses, particularly the complainant, who was examined as PW-10 and the father of the deceased, who was examined as PW-15. The complainant described how the accused arrived at the scene, fired at the deceased, who then

fell, and how the deceased was shifted to the hospital. The father of the deceased, though not present at the scene, supported the prosecution version and suggested a possible motive for the accused. The witnesses were cross-examined at length. This Court must decide whether the defence successfully raised any reasonable doubt and whether the prosecution still proved the case. The scribe was examined as PW-7, who also stated that after hearing fire shots, he went to the scene, found a crowd gathered and saw the deceased lying in a pool of blood. He helped in shifting the injured to the hospital and later participated in the arrest of the accused, from whom a weapon was recovered. Upon returning to the scene after the arrest of the appellant, the complainant claimed to have witnessed the incident. However, this Court notes that if the complainant was truly present at the scene, it is unclear why he went to a nearby mosque and remained there until the deceased had already been shifted to the hospital. Given the proximity of the mosque, he could have returned immediately. This

delay casts serious doubt on his presence at the critical moment. Furthermore, the complainant claimed that the accused intended to kill him, but the deceased was shot instead. This explanation appears unlikely. If the accused wanted to kill the complainant, it is difficult to understand why the complainant escaped unhurt. Similarly, if a family dispute was the motive, then it remains unexplained that why the deceased was killed instead. These inconsistencies are serious and raise doubts about the true course of events. Considering these circumstances, this Court is inclined to hold that the complainant was either not present at the scene or has concealed crucial facts for reasons best known to him. This Court is deeply concerned to ascertain whether the complainant was, in fact, present at the time when the unfortunate incident of firing occurred. The statement of the complainant, rather than dispelling doubts, has heightened the apprehensions of the court regarding the circumstances in which the occurrence occurred and the manner in which the deceased

was fired upon. It is, therefore, necessary to examine not only the conduct of the complainant, but also his relationship with the deceased. It is material to note that, if the complainant was indeed present with the deceased at the critical moment and witnessed the firing, there appears to be little rationale for him to have sought shelter in the mosque and remained there, only emerging after the deceased had already been removed from the scene. According to his own version, he remained in the mosque for ten minutes before returning to the spot, by which time the deceased then injured had allegedly been shifted and the accused was arrested. This account, however, appears inconsistent with the natural sequence of events. The reaching of the SHO to the crime scene, arranging transport, shifting the deceased then injured to the hospital, conducting a raid, arresting the accused, and recovering the weapon would necessarily have required considerable time. These circumstances suggest that the complainant may not have been present at the

scene at the relevant time or that he has suppressed material facts. His conduct, therefore, casts serious doubt on his reliability and credibility as a witness. Reliance is placed on the judgment of the apex court titled "*Abid Hussain and another versus The state and others*" 2024 SCMR 1608.

9. True that the case involves a single accused, and substitution in such matters is generally rare, the complainant appears to be an interested party. The father of the deceased disclosed that a dispute existed between the accused and the complainant over claims of friendship with the deceased. In the presence of such rivalry, the conduct of the complainant assumes critical significance. Under these circumstances, this Court is inclined to hold that the complainant was an interested, and possibly inimical, witness, and the possibility of his implicating the accused out of personal motive cannot be ignored. The concerns of the court are not confined solely to the conduct of the complainant but extend equally to that of the scribe of the FIR, namely, the SHO, who

was examined as PW-7, the SHO stated that he left the police station at 18:40 hours, laid a barricade near the place of occurrence, heard the firing, reached the spot, found the deceased lying there, shifted him to the hospital, raided the house of the accused, arrested him, and recovered the pistol. This account, however, is contradicted by PW-6, who alleged to have accompanied the SHO. He did not speak of any barricade being laid, nor did he claim to have heard the firing or to have been present at the spot immediately after the incident. Instead, he stated that he left the police station at 6:40 p.m. with the SHO and reached the house of the accused around 07:25 p.m. The omission of any reference to the scene of occurrence creates a material contradiction in the case of the prosecution. Even if the version of the SHO is accepted, it remains unclear whether he personally heard the firing or was informed by an informer. His testimony on this point was inconsistent, he claimed to have been informed by an informer, then asserted that he heard the shot himself, and later again stated that it was

the informer, who apprised him and directed him to the house of the accused. If the SHO had indeed heard the firing at first hand, the involvement of an informer would have been unnecessary. These contradictions, coupled with the informer's alleged role in identifying the accused and his residence, cast grave doubt on the reliability of the statement of the SHO. Considering the cumulative effect of these discrepancies, it appears probable that the SHO was neither present at the scene of occurrence nor involved in shifting the deceased and injured to the hospital. More likely, he proceeded directly, alongwith his subordinates, to the house of the accused, effected the arrest, but subsequently did not carry out the reporting process. In view of these circumstances, this Court entertains serious reservations regarding the credibility of the narrative of the prosecution, the assertions of the presence of the complainant at the scene, and the trustworthiness of the account of the SHO. The conduct of both the complainant and the SHO cannot be regarded as above board.

Their statements, therefore, can be relied upon only if corroborated by independent and credible evidence adduced by the prosecution.

Once the very arrival of the police at the place of occurrence is disputed, and when the SHO, who is described on the one hand as the scribe of the FIR and on the other, as the officer effecting the arrest, fails to satisfactorily explain his presence at the spot at the stated time, this Court finds it difficult to accept, without careful scrutiny, the version advanced by the prosecution regarding the apprehension of the accused immediately after the occurrence. It is significant that the scribe claimed to have reached the place of occurrence immediately upon hearing the sound of firing. However, in cross-examination, he admitted that he, alongwith certain police officials, had left the police station at 6:40 p.m., proceeded to the vicinity, and set up a barricade. He further asserted that one Abdul Quddus accompanied him from the police station to the scene. Yet, when Abdul Quddus appeared as a witness, he did not

corroborate the account of the scribe of hearing the shots, reaching the spot and transporting the injured to the hospital. His testimony was limited to confirming that they left the police station at 6:40 p.m. and reached the house of the accused around 7:25 p.m., where the arrest was effected. Had this witness been present with the SHO at the time of the preparation of the report, he would have been expected to describe the surrounding circumstances in material detail. His silence on these essential points indicates that the report was not prepared on the spot but was likely recorded at the hospital or elsewhere. This, in turn, casts doubt on the genuineness and spontaneity of the FIR.

10. The prosecution further contends that the appellant was apprehended immediately after the incident, with the weapon of offence in his possession. If this was so, the ballistic report would have shown a positive match between the recovered empty and the said weapon. However, the forensic report explicitly stated that the weapon was not

in working condition. This fact alone weak the version of the prosecution. Had the weapon been used in the commission of the offence and the arrest of the appellant was made immediately thereafter, the empty and the weapon ought to have matched beyond doubt. These circumstances strongly suggest that the witnesses did not depose truthfully regarding the time and manner of the arrest. It is further worth mentioning that the SHO admitted that he was initially unaware of the identity of the assailant, and only upon receiving information via phone from an unnamed informer, he come to know that the accused had killed the deceased and was present at his residence. This belated and uncorroborated claim of information significantly weakens the case of the prosecution and raises serious questions about the legality and propriety of the arrest. In view of the above, this Court finds that neither the arrest was effected in the manner, nor was the accused apprehended with the weapon of offence in his possession. The contradictions between the statements of the SHO, the scribe

and PW-6 greatly affect the credibility of the prosecution witnesses. The non-matching ballistic report further creates dents in the case of the prosecution and constitutes a circumstance warranting the benefit of doubt in favour of the accused. Reliance is placed on the judgment of the apex court titled “*Tariq Mehmood vs The State*” 2025 SCMR 780.

11. The record reflects that two divergent motives have been advanced, one by the complainant and the other by the father of the deceased. The essential question is that which of these motives merits acceptance as the true cause behind the tragic incident? If the motive put forward by the complainant is considered, it suggests that the complainant himself was the intended target as his younger brother quarreled with nephews of the complainant. This circumstance renders the motive of the complainant questionable and less persuasive. Conversely, if the motive advanced by the father of the deceased is taken into account, it emerges that a dispute existed regarding certain claims, wherein the

complainant and the deceased were aligned on one side, while the accused stood on the other. This raises the possibility that the complainant, being interested, may have had a personal motive to falsely implicate the accused. In the peculiar facts of this case, the possibility of false implication cannot be discounted. Where contradictory motives exist on the record, it becomes exceedingly difficult to ascertain with certainty what prompted the unfortunate incident. This uncertainty, coupled with inconsistencies in the statements of prosecution witnesses and the questionable manner of the arrest of the accused, entitles the appellant to the benefit of doubt.

12. It is true that in cases involving sole accused, substitution is a rare phenomenon. However, in the present case, given the peculiar facts and the position of the complainant as an interested witness, the likelihood of false implication cannot be ignored. In view of the foregoing, this Court is compelled to hold that the prosecution has failed to establish the guilt of the appellant

beyond reasonable doubt. The learned Trial Court did not appreciate the material evidence, and the impugned judgment is found to be vitiated by misreading and non-reading of the evidence on record. Accordingly, this criminal appeal is allowed. The impugned judgment of the learned Trial Court is set aside. The appellant is acquitted of the charge leveled against him. He shall be released forthwith if not required to be detained in connection with any other criminal case.

Announced
05.11.2025

J U D G E

J U D G E

Muhammad Fiaz ***D.B*** Hon'ble Mr. Justice Sahibzada Asadullah, J
Hon'ble Mr., Justice Inam Ullah Khan, J