JUDGMENT SHEET

PESHAWAR HIGH COURT, PESHAWAR

(*Judicial Department*)

Cr. A No. 361-P/2025

Farman Ullah alias Kotay

Vs

The State & another

JUDGMENT

Date of hearing: **30.10.2025**

Appellant by: Barrister Amir Khan Chamkani.

The State by Mr. Mushtaq Rahim, AAG.

Respondent/complainant by Mr. Hussain Ali, Advocate.

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SAHIBZADA ASADULLAH, J.- Through this single judgment, this court is intending to decide the instant appeal as well as connected **Cr.R No. 74-P/2025** titled ***"Shehzad vs Farman Ullah alias Kotey & another."*** as both the matters are arising out of one and the same judgment dated 26.03.2025 passed by the learned Judge Special Court/Additional Sessions Judge-XXII, Peshawar delivered in case FIR No. 939 dated 21.06.2022 under

sections 302/324/34 PPC read with section 15 AA at police station Tehkal, Peshawar, whereby the appellant was convicted and sentenced as under: -

> ***"Under section 302(b) PPC to imprisonment for life on two counts i.e. for the murder of deceased Altaf as well as in furtherance of common intention for the murder of Azeem Ullah. The appellant is also liable to pay compensation to the tune of Rs.10,00,000/- (rupees ten lac) to the legal heirs of the deceased Altaf and Rs.5,00,000/- (rupees five lac) to the legal heirs of the deceased Azeem Ullah within the meaning of section 544-A Cr.PC recoverable as arrears of land revenue and, in default of payment, he shall further undergo simple imprisonment for six months on two counts for each deceased.***
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> ***"Under section 324 PPC for attempting at the lives of complainant Shehzad and eye witness Ilyas to rigorous imprisonment for 03 years on two counts and to pay Rs. 1,00,000/- (one lac) to each***

victim and in default whereof, to further undergo simple imprisonment for two months on two counts.

Benefit of section 382-B Cr.PC was extended in favor of the appellant. And all the sentences shall run concurrently."

2. The theme set forth by the complainant Shahzad in the *murasila* recorded at Khyber Teaching Hospital, Peshawar, is that on 21.06.2022, he, alongwith his brothers and cousin, was proceeding to play volleyball when, upon reaching the place of occurrence, accused Zohaib, Farman Ullah alias Kotay, and Ghani ur Rehman Makizai (who was driving the motorcycle) intercepted them and started firing at them as a result of firing of Farman, Altaf received firearm injuries whereas, from the firing of accused Zohaib, Azeem Ullah was hit; that both the injured succumbed to their injuries en-route to the hospital, whereas the complainant and his brother Ilyas remained unhurt; that motive behind the occurrence was blood feud between the accused and the

relatives of the complainant; that the accused were charged with the commission of the present offence hence, the present FIR.

3. It is worth to note that soon after the occurrence, accused Zohaib and Ghani ur Rehman went into hiding whereas, the appellant on his arrest faced the trial. Complete challan was submitted to the court. Provisions of section 265-C CrPC were complied with and, the appellant was charge sheeted to which he pleaded not guilty and claimed trial. In order to prove its claim, the prosecution produced and examined as many as 12 witnesses. After closure of prosecution evidence, statement of 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 and sentenced the appellant vide the impugned judgment, hence, the instant appeal.

4. Arguments heard and available record scanned through.

5. It came as a profound shock when two innocent lives were tragically lost. The dead bodies were immediately shifted to the hospital where the complainant reported the matter. The injury sheets and inquest reports of the deceased were prepared and thereafter, the dead bodies were sent for post-mortem examination. Upon receiving a copy of the first information report, the Investigating Officer visited the place of occurrence and, on the pointation of the complainant, prepared the site plan. During the spot inspection, bloodstained earth was collected from the respective places of the deceased. In addition, 23 empties of 7.62 bore were recovered from the place attributed to the appellant, and 12 empties of 7.62 bore were recovered from the place of the absconding accused. All these items were taken into possession. The collected empties were sent to the Forensic Science Laboratory for ballistic examination, and the expert report revealed that they had been fired from different

weapons. Subsequently, the appellant was arrested, and his physical remand was obtained. During the course of investigation, he led the police party to his house, wherefrom an SMG rifle bearing number 2522908 alongwith 8 live rounds was recovered. The same was seized under Section 15 of the Arms Act. After completion of investigation, the appellant was sent up for trial. After a full-fledged trial, he was acquitted under section 15 AA however, convicted on the remaining count.

6. The learned Trial Court, upon appreciation of the evidence available on record, found the appellant responsible for the unfortunate occurrence. This Court is now called upon to examine whether the learned Trial Court had properly applied its judicial mind to the material on record and whether the reasons assigned for holding the appellant culpable find support from the evidence produced during trial. It is true that the tragic incident resulted in the loss of two innocent lives; however, it is equally well-settled that

the gravity of the offence or the extent of the loss cannot, by itself, determine the guilt of an accused. The prosecution, under all circumstances, carries the burden to establish its case through independent, trustworthy, and confidence-inspiring evidence. This Court, therefore, deems it essential to scrutinize the entire evidence afresh to ascertain the true involvement of the appellant and to determine the actual manner in which the incident unfolded. The principles of propriety demand that the record be examined in its entirety and that the statements of the prosecution witnesses be re-appreciated to ensure that no miscarriage of justice occurs.

7. The pivotal questions for determination before this Court are as to whether the incident took place in the mode, manner, and at the stated time; whether the complainant and the eyewitnesses were in fact present at the spot at the relevant time and subsequently at the hospital when the report was lodged; whether the medical evidence lends support to the prosecution version; and

whether the prosecution has succeeded in bringing home the guilt of the appellant beyond the shadow of reasonable doubt.

8. In order to properly appreciate the peculiar circumstances of this case, we deemed it essential to carefully examine the statements of the prosecution witnesses, particularly the complainant, who was examined as PW-9, and the eyewitness, who was examined as PW-10. Both witnesses were subjected to lengthy cross-examination on all essential aspects of the prosecution case, in an effort by the defence to extract something favourable to the appellants. It is therefore, necessary for this Court to determine whether the defence succeeded in creating any dents in the prosecution's version or extracted any material beneficial to the appellant. The complainant, while appearing before the learned Trial Court, clearly explained the circumstances in which the unfortunate incident took place. He described in detail how the occurrence unfolded, the manner in which the accused opened fire upon the deceased, and how the

dead bodies were subsequently collected from the spot, shifted to the hospital, and the matter was reported to the police. The eyewitness fully corroborated the testimony of the complainant by confirming the mode and manner of the occurrence, the time at which the dead bodies were transported to the hospital, and the subsequent lodging of the report by the complainant. This Court considers it imperative to re-appreciate the statements of these witnesses to assess their credibility and to ascertain whether their presence at the scene of occurrence was natural and believable. It is an admitted fact that the incident occurred in close proximity to the residences of the deceased and the complainant, and that the stated purpose of their presence was to proceed towards the nearby volleyball ground for a scheduled match. The site plan indeed depicts the volleyball ground situated a short distance ahead of the place of occurrence, lending support to the prosecution’s assertion that the accused, the deceased, and the eyewitnesses

were on their way to the ground at the relevant time. The evidence on record, particularly the recovery of blood-stained earth from the respective places of the deceased, the collection of 23 empties of 7.62 bore from near the position attributed to the appellant, and 12 empties of the same caliber from the area of the absconding accused, sufficiently establishes the place of occurrence and the fact that the deceased met their deaths at the stated spot. One of the points requiring the determination of this Court is whether the complainant and the eyewitness were indeed present at the scene, and if so, why not sustained any firearm injury. The surrounding circumstances, however, suggest their presence, as they were the very individuals who immediately after the occurrence collected the dead bodies, transported them to the hospital, and lodged the report without any noticeable delay. The uninterrupted sequence of events right from the time of firing, removal of the bodies and lodging of the report, excludes the possibility of consultation and

deliberation. The learned counsel for the appellant nonetheless contended that the delay in shifting the bodies to the hospital, despite the distance being approximately 1.5 kilometers, renders the prosecution story doubtful. It was urged that such delay should persuade this Court to infer that the witnesses were subsequently procured and that the report was lodged after due deliberation. In order to properly appreciate this contention, we have minutely examined the relevant documents and the statements of the material witnesses. Of particular importance is the statement of the scribe, examined as PW-6, who deposed that upon receiving information regarding the incident, he immediately proceeded to the hospital, where he found the dead bodies as well as the complainant and the eyewitness present. The complainant then reported the matter, and the eyewitness confirmed the same. This witness was thoroughly cross-examined on all material points, yet nothing adverse to the prosecution could be extracted from his mouth. True that the hospital has its own

casualty police; equally true, the report was not made to the police officials posted therein. However, it is a matter of common observation that in homicide cases, the police from the station within whose territorial jurisdiction the incident occurs, or the in-charge of the respective police post, often reaches the hospital, and the reports are generally made to them. In the present case, PW-6, who was the in-charge of Police Post Jahangir Abad at the relevant time, explained that the place of occurrence fell within his jurisdiction, after receiving information, he proceeded to the hospital where he found the dead bodies alongwith the complainant and the eyewitnesses, and it was there that the complainant reported the matter to him. The scribe was examined on all essential aspects and was specifically questioned about how and when he received the information and when he reached the hospital. He categorically stated that upon receiving information about the incident and the shifting of the dead bodies, he immediately rushed to the hospital, where the

matter was reported. It was urged by the learned counsel for the appellant that the injury sheets, inquest reports, and murasila are in different handwriting and that the name of one ASI Asif Khan appears on these documents, who, according to him, was posted at the hospital's casualty police post at the relevant time. It was therefore suggested that the documents were in fact prepared by him, and that the co-villagers, not the witnesses, shifted the dead bodies thereby providing room for consultation and deliberation before the report was lodged. The scribe, however, clarified that he himself prepared the murasila, injury sheets and inquest reports and duly signed them. He further explained that though the name of ASI Asif Khan appears on the documents, it was not written by him. If the defence was genuinely interested in verifying the presence or posting of ASI Asif Khan, it could have visited the relevant police post or obtained official records to substantiate its claim. However, no such effort was made, and even till today, it remains uncertain who ASI Asif

Khan was and where he was posted. In these circumstances, this Court is inclined to hold that it was indeed the scribe (PW-6) who prepared the relevant documents and to whom the initial report was made. It is correct that the complainant and the eyewitness did not identify the deceased before the police at the time of the report, nor before the medical officer at the time of post-mortem examination. However, this omission, in our considered view, cannot be treated as detrimental to the case of the prosecution. The record clearly shows that two independent identifiers had reached the hospital from Village Palosi. The said village is situated at approximately the same distance from the hospital as the place of occurrence. As the identifiers were closely related to the deceased, they, like other villagers, received information regarding the arrival of the dead bodies at the hospital and accordingly proceeded there. It was these identifiers who identified the bodies of the deceased before the doctor at the time of the post-mortem examination and before the scribe

at the time of the report. The complainant and the eyewitness were both examined and cross-examined on material aspects relating to their presence at the hospital and the mode and manner in which the dead bodies were shifted from the place of occurrence. They consistently maintained that they were present with the dead bodies throughout, and that it was they who lifted the dead bodies from the spot, placed them in the vehicle, and brought them to the hospital. An attempt was made by the learned counsel for the appellant to argue that, being closely related to the deceased, the witnesses were procured and interested, and that they had not actually witnessed the occurrence. In order to evaluate this contention, this Court examined whether these witnesses remained consistent on the essential particulars of the incident and whether any contradiction or inconsistency existed in their testimony that could impair their credibility. Despite thorough scrutiny, we could not detect any such irregularity or contradiction. The defence, too, failed to establish that the

witnesses bore any motive or malice to falsely implicate the accused in the commission of the offence. It is a settled proposition that the evidence of related witnesses is to be assessed with caution; nevertheless, relationship by itself is no ground for discarding testimony if it appears to be natural, truthful, and consistent with the surrounding circumstances. In the instant case, the witnesses have remained steadfast on all material particulars of the prosecution case, and despite exhaustive cross-examination, nothing favourable to the appellants could be extracted. We, therefore, find the witnesses to be trustworthy, confidence-inspiring, and worthy of reliance. Their relationship with the deceased, in our view, does not diminish the evidentiary value of their testimony, and as such, we see no reason to exclude their statements from consideration. Reliance is placed on the judgment of the apex court reported as **2023 SCMR 1568** titled ***"Maskeen Ullah and another* vs *The State and another*".**

9. The foremost point for determination before this Court is whether, at the time of the occurrence, the prosecution witnesses were in the company of the deceased, and if so, for what purpose. The first information report itself explains that the complainant, alongwith the eyewitness and the deceased, was proceeding towards the volleyball ground with the intent to play a match and when reached near the place of occurrence, the accused, who were riding a motorcycle, arrived at the scene, went ahead of them, and opened indiscriminate firing at them, as a result of which the deceased sustained multiple firearm injuries. During cross-examination, the witnesses were questioned at length regarding their expertise in the game of volleyball, their physical height, and the usual number of players required for the game. However, such queries, in our considered view, were not of material significance. There existed no fixed rule or formal arrangement regarding the composition or physical attributes of the players, nor was there any

requirement that only players of a certain height or skill level could participate. These questions, though designed to test credibility, cannot by themselves discredit the witnesses, especially when there is nothing on record to suggest that the game was organized under any formal or institutional supervision requiring specific qualifications. Having regard to the site plan, which clearly depicts the volleyball ground situated in close proximity to the place of occurrence, the possibility that the deceased and the eyewitnesses were on their way to play a volleyball match cannot be excluded. It was further contended that, if the deceased were not directly connected to the motive in question, there was no reason for the accused to target them, and that it was equally improbable that the eyewitnesses escaped unhurt. There is, however, no denial of the fact that indiscriminate firing took place at the spot, from where as many as 35 empties of 7.62 bore were recovered. Such indiscriminate firing does not necessarily establish that the deceased were the primary targets or that the

eyewitnesses were specifically spared. The evidence suggests that both the deceased and the eyewitnesses were somewhat connected to the motive, which appears to have influenced the decision of the accused to open fire, resulting in the deaths. The recovery of numerous empties from the scene indicates that more than one assailant participated in the occurrence. The Investigating Officer, when examined as PW-12, was questioned regarding the non-collection of CCTV footage from the premises of Galaxy Hostel. He categorically explained that although he visited the hospital, the CCTV system was found non-functional, and hence no footage could be secured. The learned counsel for the appellant attempted to argue malafide on the part of the Investigating Officer for failing to collect the footage. Even if the omission is viewed as an irregularity in the investigation, such deficiency cannot, by itself, be taken as a circumstance to undermine the otherwise consistent and corroborated prosecution evidence. Apart from the non-availability of the CCTV footage, the

remaining evidence on record sufficiently establishes that the incident occurred at the stated time and in the stated manner. The testimonies of the witnesses are mutually corroborative, consistent on all essential aspects, and fully support the prosecution version that it was the accused who were responsible for the commission of the offence.

10. The medical evidence fully supports the case of the prosecution. The post-mortem reports confirm that the deceased sustained multiple firearm injuries on the frontal part of the body. The site plan further corroborates this fact, as it depicts that the firing was made from the front, thereby establishing a clear correspondence between the direction of fire and the location of the wounds. Hence, the medical evidence is in complete harmony with the ocular account. On one hand, the ocular account remained consistent, natural, and confidence-inspiring while on the other, the witnesses succeeded in establishing their credibility and truthfulness. This harmony between the medical and ocular

evidence constitutes an additional circumstance that lends strong support to the prosecution version. Undoubtedly, medical evidence, standing alone, may not be sufficient to fix culpability upon the accused, for its primary purpose is confirmatory in nature. However, when the medical findings are consistent with and corroborated by the testimony of reliable eyewitness and the surrounding circumstances, such concurrence substantially reinforces the prosecution's case and diminishes the possibility of false implication. Here, the medical evidence not only supports but also complements the ocular version, leaving no reasonable doubt as to the cause of death or the manner in which the occurrence took place. In similar circumstances, we derive wisdom from the judgment of the apex Court **2023 SCMR 831** titled ***"Aqil Versus The State".***

11. The motive, as alleged by the prosecution, was a continuing blood feud between the accused and the relatives of the complainant and the deceased. It was brought

on record that the appellants were under the impression that the deceased and the eyewitnesses were lending support to their rivals, and it was in retaliation to this perceived hostility that the fatal attack was launched. True, the investigating officer could not collect substantial or documentary proof directly establishing the motive; however, a few prior FIRs reflecting enmity between the parties were produced and placed on record. Equally true, the absence or weakness of motive, in itself, is not a circumstance sufficient to extend the benefit of doubt leading to the acquittal of an accused. At the most, it may have a bearing upon the quantum of sentence, but not upon the determination of guilt, particularly when the ocular and corroborative evidence stands firm and consistent.

12. The empties collected from the spot were forwarded to the Forensic Science Laboratory, and the expert report confirmed that they had been fired from more than one weapon. This forensic finding, though corroborative and supportive in nature, cannot

independently fix culpability; yet, when read in conjunction with the trustworthy and confidence-inspiring ocular account, it provides further assurance regarding the veracity of the prosecution version.

13. In view of the attending circumstances and the unimpeached consistency of the prosecution evidence, we are left with no hesitation in holding that the prosecution has successfully bring home the guilt of the appellant. The learned Trial Court, while handing down the impugned judgment, has duly appreciated the material aspects of the case. The judgment is well-reasoned, balanced, and based on a correct appraisal of evidence, leaving no occasion for interference. Consequently, the appeal, being devoid of substances, stands dismissed.

14. Now diverting to **Cr.R No. 74-P/2025** titled ***"Shehzad vs Farman Ullah alias Kotey & another"***, which has been filed by the complainant asking for the enhancement of the awarded sentence. This Court is called upon to examine whether the learned Trial Court was

justified in reaching its conclusion and what considerations prevailed upon the learned Judge in awarding a lesser sentence instead of the normal penalty of death. The record reveals that the alleged motive was weak in nature, as no independent witness came forward to support it, so the learned Trial Court, therefore, rightly treated the weak motive only for the purpose of determining the sentence and refrained from imposing the maximum penalty. This Court finds the approach adopted by the learned Trial Court to be legally sound and well-reasoned, warranting no interference, particularly with regard to enhancement of the sentence to capital punishment. Consequently, this criminal revision petition, being devoid of merit, is hereby dismissed.

Announced
30.10.2025

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 Dr. Khurshid Iqbal, J