

JUDGMENT SHEET
PESHAWAR HIGH COURT, D.I.KHAN BENCH.
(Judicial Department)

Criminal Appeal No. 06-D/2025.

Sharab Din
 Vs
 The State etc.

JUDGMENT

For Appellant: M/S Ahmad Ali Khan and
 Muhammad Naveed, Advocates.

For State: Mr. Kifayat Ullah Khan, Advocate.

For Respondent: Mr. Fazal Karim Khan, Advocate.

Date of hearing: **02.12.2025.**

INAM ULLAH KHAN, J.- This single judgment shall dispose of the instant criminal appeal and connected Cr.A.No.07-D of 2025, titled '*Salah-ud-Din v. the State etc*, Cr.A.No.09-D of 2025, titled '*Baqi Rehman v. Salah-ud-Din etc*' and Cr.A.No.22-D of 2025, titled '*State through Advocate-General, Khyber Pakhtunkhwa, Peshawar v. Salah-ud-Din*' as all these matters are the outcome of one and the same judgment dated 07.02.2025, passed by learned Additional Sessions Judge-I, Tank, in case FIR N.555, dated 28.11.2021, registered under Section 302/324/34 PPC of Police Station SMA, District Tank. Through his impugned judgment dated 07.02.2025, learned Additional Sessions Judge-I, Tank convicted the appellant and co-accused as following:

(i) Accused Sharab Din is convicted under Section 302(b) PPC for committing *Qatl-e-Amd* of Qazi Rehman, and sentenced to imprisonment for life as *Ta'zir*. He was also held liable to pay Rs.500,000/- (five hundred thousand) as compensation under Section 544-A, Cr.P.C to the legal heirs of deceased or in default thereof, to further undergo six months simple imprisonment. Benefit of Section 382-B, Cr.P.C. was extended to the convict/appellant.

(ii) Accused Salah-ud-Din and Qamar Din are convicted under Section 337-A(i) PPC and sentenced to jointly pay the compensation amount of Rs.100,000/- (one hundred thousand) as Daman under section 337-Y(1)(2) PPC to the injured Baqri Rehman, within two months or in default thereof, shall be kept in jail till payment of amount or be released on furnishing security/surety equivalent to the amount of Daman to the satisfaction of trial Court.

(iii) Accused Sharab Din is acquitted of the charges under Sections 324, 337-A(i)/34 PPC, while accused Salah-ud-Din and Qamar Din are acquitted of charges under sections 302/324/34 PPC.

2. Factual background of the case, as spelt out from the FIR, in brief, is that on 28.11.2021, at about 09:30 hours, complainant Baqi Rehman, in injured condition, alongside dead body of his brother Qazi Rehman, reported the occurrence at Emergency Room of DHQ Hospital, Tank, that on the fateful day at early morning, he alongwith his brother Qazi Rehman were sitting in front of shop of one Asghar at Tank-Jandola main road and at about 08:00 a.m, accused Sharab Din alias Shera ur Din, Salah-ud-Din and Qamar Din, armed with pistols, came there in a Datsun, deboarded therefrom, called the complainant and asked as to why they had lodged the report against them; and started beating the complainant with kicks,

fists and stones, due to which he got injured on his nose and forehead; that when his brother Qazi Rehman came forward, all the three accused started firing with their respective pistols; that with the fire shots of accused Sharab Din alias Shera ud Din, his brother got hit while he escaped unhurt. After commission of the occurrence, the accused fled from the spot in the Datsun towards Dabara. The injured succumbed to his injuries on the way to the hospital. Besides the complainant, the occurrence was stated to have been witnessed by the people present at the spot. Motive for the offence was stated to be a dispute over womenfolk.

3. On completion of investigation, challan was submitted against the accused before the learned trial Court. After compliance of provisions of Section 265-C Cr.P.C, formal charge was framed against the accused to which they pleaded not guilty and claimed trial. In order to prove the charge as framed against the accused, the prosecution examined as many as eleven (11) witnesses. On conclusion of prosecution evidence, accused were examined under section 342 Cr.P.C, wherein they once again, professed innocence and false implication, however, neither they opted to be examined under Section 340(2), Cr.P.C., nor produced defence evidence. The learned counsel for the complainant submitted an application for additional question in the statements of accused recorded under section 342, Cr.P.C and upon endorsing no objection by learned defence counsel, additional statements of

accused were recorded. On conclusion of trial, the learned trial Court, vide impugned judgment and order dated 07.02.2025, convicted the accused and sentenced them, as mentioned above, which has been assailed by the appellant through the instant appeal. While the connected criminal appeals have also been filed against acquittal of the accused.

4. Arguments heard. Record gone through.

5. Considering the available record, evidence led by the prosecution and the arguments advanced by both the learned counsel for the parties, the core points for us are;

(i) Whether the presence of eyewitness at the spot at the time of occurrence is established beyond doubt?

(ii) Whether the ocular account is true, confidence-inspiring, and consistent with medical and circumstantial evidence? and

(iii) Whether the prosecution has successfully proved the occurrence in the mode and manner as alleged in the FIR and in terms of formal charge framed against the accused?

6. The record indicates that in instant case, one person was done to death while the complainant sustained injuries. As per prosecution version, the occurrence took place on 28.11.2021 at about 08:00 hours when the complainant alongwith his brother Qazi Rehman were sitting in front of the shop of one Asghar at Tank-Jandola main road at early morning. The matter was reported on said date at about 09:30 hours, hence, it can safely be held that the report was promptly lodged, excluding the possibility of false involvement of the

accused/appellants. In Muhammad Bashir¹ case, it was held that:-

“Undeniably, this occurrence has taken place at 05.00 a.m. in the morning whereas the matter was reported to the police at 09:15 a.m. on the same day while the inter se distance between the place of occurrence and the Police Station is six miles. This aspect of the case clearly reflects that the matter was reported to Police without any inordinate delay. As the occurrence has taken place in the broad daylight and it is not denied anywhere that the parties were not known to each other, therefore, there is no chance of misidentification”.

7. In the present case, the ocular version of the incident was furnished by the injured complainant. He was examined before the trial Court as Pw-8. Admittedly, the deceased was brother of the complainant, hence, we have to scrutinize his testimony with great care and caution and if proved trustworthy, then no other conclusion would be drawn contrary to the one arrived at by learned trial Court, as held in Sughra Begum² case, that:-

“It is cardinal principle of justice that ocular account in such cases plays a decisive and vital role and once its intrinsic worth is accepted and believed then the rest of the evidence, both circumstantial and corroboratory in nature, would be required as a matter of caution. To the contrary, once the ocular account is disbelieved then no other evidence, even of a high degree and value, would be sufficient for recording conviction on a capital charge therefore, we have to see the probative value of the ocular account in light of the facts and circumstances of the case”.

¹ Muhammad Bashir and another v. The State and others (2023 SCMR 190)

² Mst. Sughra Begum and another v. Qaisar Pervez and others (2015 SCMR 1142)

8. While scanning the ocular account, we observed that undeniably the occurrence took place in daylight and testimony of the injured complainant was in line with the events as narrated in the FIR. Despite taxing cross-examination, nothing adverse could be extracted by the defence from the mouth of complainant, who remained firm in his deposition on material aspects of the case. His presence on the spot at the time of occurrence is further corroborated by the medical evidence qua injuries sustained by him during the occurrence. The mere fact that the deceased was brother of the complainant would not be a ground, especially when he himself sustained injuries, his otherwise confidence inspiring testimony corroborated by the medical evidence could not be discarded on this score alone. Wisdom, in this context is drawn from Ghulam Murtaz³ case, wherein the apex Court has held that:-

“Although the deceased-Mst. Saima Bibi is the daughter-in-law of the eye-witness Mst. Rukhsana (PW.7) but it has been settled by this Court that mere relationship of a witness with the victim would not discard her/his evidence if it is otherwise confidence inspiring and trustworthy”.

9. It is settled proposition of law that where ocular account is confidence-inspiring and supported by medical evidence, the same is sufficient for maintaining conviction. Perusal of the ocular account reveals that the complainant remained consistent while giving details qua his presence on the spot, arrival of the accused at the crime scene, armed with

³ Ghulam Murtaza v. The State (2021 SCMR 149)

pistols, asking from the complainant as to why they had lodged the report against them and beating the complainant with kicks, fists and stones and as a result sustaining injuries on his nose and forehead and subsequent firing by the accused at the complainant party, which resulted into the death of the brother of complainant. He also remained firm qua shifting of the dead body from the spot to the hospital while disclosing the mode of transportation. The mode and manner of the occurrence was explained in a natural and coherent manner and could not be shaken in cross-examination. The learned trial Court rightly relied upon his testimony to base the conviction of the appellant in line with the principles reiterated, in Imtiaz alias Taji's case⁴, wherein it was held that:-

"The ocular account in this case was furnished by Tariq Ejaz (PW-10) and Meer Tahir (PW-11). Tariq Ejaz (PW-10) is the complainant of the case and is the real son of deceased Ejaz Ahmad. He has given sufficient explanation for his presence at the spot at the relevant time. Meer Tahir son of Noor Muhammad (PW-11) used to work at General Bus Stand and sustained fire-arm injuries during the occurrence. Both these witnesses by and large remained consistent on all the material aspects of the case and held the appellant responsible for fire-arm injury on the abdomen of Ejaz Ahmad (deceased). Their statements get support, from the medical evidence adduced by Dr. Nusrat Abbas (PW-8), who medically examined Ejaz Ahmad (deceased), in injured condition and observed a fire-arm wound of entry on left side of front of abdomen. The statement of Dr. Basharat Rasool (PW-16), who conducted autopsy on the dead body of Ejaz Ahmad, further affirms the case of prosecution against the appellant. In these circumstances, we have no manner of doubt in our mind that the prosecution has proved its

⁴ Imtiaz alias and another v. The State and others (2020 SCMR 287)

case against the appellant beyond reasonable doubt”.

10. Besides the above, the Investigating Officer, Said Marjan (PW-9), during the spot inspection, prepared site plan, secure blood-stained earth from the place of deceased, in presence of the marginal witnesses, recovered 04 crime empties of .30 bore from near the place of accused and also took into possession blood-stained garments of the deceased. The crime empties were sent to the FSL which were opined to have been fired from different weapons, thereby furnishing further corroborative support to the prosecution case.

11. The prosecution set up motive as a dispute over womenfolk, regarding which the prosecution placed on file copy of FR No.71, dated 03.3.2016, registered under sections 452, 365-B, 496-A, 109, 148, 149 PPC of Police Station Gomal University (Ex. Pw 11/3). Similarly, A Madd Report No.12 (Ex. PW 11/4), entered in Police Station Gomal University, a day prior to the present occurrence on the report of deceased against the accused for beating him and his wife, hence, the motive for the occurrence was duly proved by the prosecution.

12. Moreso, the accused Salah-ud-Din and Qamar Din remained fugitive from law for a sufficient period, so their willful absconcence is also a relevant factor which hints towards their involvement in the commission of offence.

13. So far as the role of each accused during the occurrence is concerned, undeniably accused Sharab Din was specifically charged for fatal shot at the deceased, while co-accused Salah-ud-Din and Qamar Din were charged for ineffective firing at the deceased and for attempting at the life of complainant, however, specific role of beating the complainant and causing him injuries was assigned to them during cross-examination of the complainant.

14. So far as quantum of sentence awarded to the appellant Sharab Din is concerned, the learned trial Court has rightly held his age to be mitigating circumstance while awarding conviction to him.

15. On a holistic re-appraisal of the entire material brought on record, it clearly envisages that the ocular account furnished by the injured complainant is natural, consistent and confidence-inspiring, duly supported by promptly lodged FIR, medical evidence and positive forensic reports. The defence failed to shatter the consistent narration of prosecution witness or to bring-forth material contradiction. The record is silent to suggest or establish any ground for false implication or substitution.

16. In these circumstances, the prosecution has successfully proved its case against the appellants. Their conviction and sentences recorded by the learned trial Court are

based upon sound appraisal of evidence and proper appreciation of law.

17. So far as acquittal of the appellant Sharab Din on the charges levelled against him under sections 324, 337-A(i)/34 PPC as well as acquittal of appellants Salah-ud-Din and Qamar Din, from the charges under sections 302/324/34 PPC, is concerned, suffice it to say that the learned trial Court has committed no illegality while acquitting them by distinguishing role of each accused during the occurrence, hence, the acquittal of the appellants from the ibid sections of law needs no interference.

18. Consequently, it is held that the learned trial Court after properly appreciating the evidence on record has delivered a well-balanced judgment, which being based upon sound reasoning is not open to any interference. Accordingly, the instant appeal alongwith connected appeals, being bereft of merits are hereby dismissed.

Announced.

02.12.2025.

-Sd/-
JUDGE

(D.B)
Hon'ble Justice Farah Jamshed
Hon'ble Justice Inam Ullah Khan

-Sd/-
JUDGE