

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

Cr. A No. 39-P/2024

Sher Wali etc VS Muhammad Ismail etc

Date of hearing: 16.10.2025.

**Appellants by: Mr. Shabbir Hussain Gigyani,
Advocate.**

**The State by: Mr. Nauman-ul-Haq Kakakhel,
AAG.**

**Complainant by: Mr. Ashfaq Ahmad Afridi,
Advocate.**

JUDGMENT

SAHIBZADA ASADULLAH, J.- Through this single order, we intend to decide the instant matter as well as the connected **Criminal Revision No. 157-P/2025, titled “Muhammad Ismail vs. The State and others”,** both arising out of and challenging the judgment dated 23.12.2023, passed by the learned Additional Sessions Judge-I, Nowshera, in case FIR No. 173, dated 07.04.2015, registered under sections 302, 324, 449, and 34 PPC at Police Station Nowshera Kalan, District Nowshera, whereby the learned trial Court convicted and sentenced the appellants as under:

- i. U/s 302(b)/34 PPC, for committing Qatl-i-amd of deceased Amjad, to*

Imprisonment for life and to pay compensation of Rs. 1,00,000/- to the LRs of the deceased Amjad within the meaning of section 544-A Cr.P.C. In default of payment, they shall further suffer six months imprisonment.

- ii. U/s 302(b)/34 PPC for committing Qatl-i-amd of deceased Zubair, to Imprisonment for life and to pay compensation of Rs. 1,00,000/- to the LRs of the deceased Zubair within the meaning of section 544-A Cr.P.C. In default of payment, they shall further suffer six months imprisonment.*
- iii. U/s 302(b)/34 PPC for committing Qatl-i-amd of deceased Suleman, to Imprisonment for life and to pay compensation of Rs. 1,00,000/- to the LRs of the deceased Suleman within the meaning of section 544-A Cr.P.C. In default of payment, they shall further suffer six months imprisonment.*
- iv. U/s 324/34 PPC for attempting at the life of injured Mst. Jameela, to rigorous imprisonment for 10 years and to pay compensation of Rs. 50,000/- to the victim Mst. Jameela, in terms of section 544-A Cr.P.C. or in default to suffer imprisonment for three (03) months.*
- v. U/s 324/34 PPC for attempting at the life of injured Mst. Ghuncha, to rigorous imprisonment for 10 years and to pay compensation of Rs. 50,000/- to the victim Mst. Ghuncha,*

in terms of section 544-A Cr.P.C. or in default to suffer imprisonment for three (03) months.

vi. U/s 324/34 PPC for attempting at the life of injured Nazeer, to rigorous imprisonment for 10 years and to pay compensation of Rs. 50,000/- to the victim Nazeer, in terms of section 544-A Cr.P.C. or in default to suffer imprisonment for three (03) months.

vii. U/s 449/34 PPC, for committing house trespass for causing hurt in shape of murder and attempt to murder, to suffer rigorous imprisonment for five (05) years and to pay compensation of Rs. 5000/- to the complainant party in terms of section 544-A Cr.P.C. in default, to suffer imprisonment for one (01) month.

Benefit of section 382-B Cr.P.C was extended in favor of the appellants.

All the sentences shall run concurrently.

2. Facts of the case are that on 07.04.2015, the complainant Muhammad Ismail, while present in the casualty ward of DHQ Hospital, Nowshera, alongwith the dead bodies and injured persons, reported the matter to the Local Police, that he alongwith his family and brothers was present in the house when the accused Sher Wali, Sher Alam, and Basheer, duly armed with firearms, forcibly entered their house and opened

indiscriminate firing with the intent to kill; that his brothers Suleman, and Nazeer, his mother Mst. Jameela Bibi, and his wife Mst. Ghuncha Bibi, sustained firearm injuries, whereas his brother Zubair, and uncle Amjad, also received firearm injuries and succumbed to the same at the spot, while he himself remained unhurt. The motive behind the occurrence was stated to be an existing blood-feud. It is worth mentioning that on 21.04.2015, one of the injured, namely Suleman, also succumbed to his injuries and expired.

3. After completion of investigation, complete challan was put in Court. Provisions of section 265-C Cr.P.C were complied with and, the appellants were charge sheeted, to which they pleaded not guilty and claimed trial. In order to prove its claim, the prosecution produced and examined as many as 19 witnesses. After closure of prosecution evidence, statements of accused were recorded under section 342 Cr.P.C, wherein they posed innocence, however, neither they wished to be examined on oath as required under section 340 (2) Cr.P.C, nor wanted to produce evidence in defense. The learned trial Court, after full-fledged trial convicted and sentenced the

appellants, fully detailed in the earlier part of this judgment, hence, this appeal.

4. The tragic incident cost three innocent lives and left several others wounded. The deceased and the injured were hurried to the hospital, where the matter was duly reported and the requisite injury sheets and inquest reports were prepared. Post-mortem examinations were conducted on the dead bodies, while the surviving injured were medically examined and medico-legal certificates were issued. On receipt of the FIR, the Investigating Officer visited the spot, recorded the statement of the complainant and prepared the site plan. During inspection, blood stains were taken from the deceased's bed and sixteen cartridge cases of 7.62 mm were recovered from the spot, the officer also observed and photographed bullet marks on the door and walls. One accused, Bashir, was arrested early on, tried, convicted and sentenced, his appeal to this Court was dismissed. Later, other accused were apprehended, produced before the competent Court and placed in physical custody for further investigation, they indicated several locations to the Investigating Officer. The appellants were committed for trial, and after

full proceedings the learned trial Court applied its judicial mind to the evidence and convicted them. While the Court cannot ignore the sorrow of three lives lost, the core question before us is whether the tragedy alone suffices to fix criminal responsibility, or whether the learned trial Court rightly considered the essential circumstances and evidence on record, so we must scrutinize the testimony and material so as to avert any miscarriage of justice.

5. The points for determination before this Court are as to whether the occurrence took place in the manner and at the time alleged by the prosecution; whether the complainant was present both at the spot and in the hospital at the time of reporting; whether the injuries sustained by the injured witnesses were the result of the same occurrence; whether the medical evidence supports the ocular account and whether the prosecution succeeded in bringing home the guilt to the appellants.

6. In order to appreciate the peculiar circumstances of the case, it is essential to examine the testimony of the witnesses, particularly the complainant and the injured eyewitnesses. The complainant, examined as PW-11, narrated the circumstances under

which the unfortunate incident unfolded. He explained how the accused entered the house, opened indiscriminate fire, resulting in the death of the deceased and injuries to others. He further detailed how the dead bodies and the injured were shifted to the hospital and the report lodged. The injured witnesses, examined as PW-12 and PW-13, corroborated the version of the complainant. They described the manner in which they sustained injuries and identified the hands from which those injuries were inflicted. They were cross-examined at length by the defense in an attempt to elicit something favorable to the appellants. The task before this Court is to assess whether the defense succeeded in creating any reasonable doubt in the case of prosecution. The witnesses were questioned on all material aspects, and this Court now proceeds to examine whether any inconsistencies have been brought on record that could benefit the appellants. It is not to be forgotten that prior to the arrest of the present appellants, one of their co-accused had already been arrested, tried, convicted, and sentenced. His conviction was maintained by this Court and thereafter upheld by the august Apex Court. The next question for consideration is whether the evidence recorded in the earlier

trial can be looked into for the purpose of determining the culpability of the present appellants, and whether their role is distinguishable from that of the convicted co-accused. It is true that the conviction of an accused in a prior trial cannot, by itself, be made the basis of conviction for those subsequently arrested, however, it is equally true that it lies upon the defense to show what substantial distinctions, if any, exist between the two sets of accused, and whether the evidence now recorded warrants a different appreciation. Undoubtedly, both cases are to be treated as independent. The evidence recorded, conviction awarded, and findings reached in the previous trial were to be judged on their own footing. Likewise, the present case must be assessed independently on the basis of the evidence adduced herein. Were this Court to rely mechanically upon the previous record, the very purpose and utility of a subsequent trial would stand undermined.

7. The Investigating Officer visited the place of occurrence and, on instance of the complainant, prepared the site plan. The site plan reveals that blood was recovered from the respective places where the deceased had fallen, and sixteen spent cartridges of 7.62 mm

caliber were taken into possession. The occurrence took place within the four walls of the house, hence, the presence of the eyewitnesses therein was most natural. During inspection, the Investigating Officer also noticed bullet marks on the walls and doors, of which photographs were duly taken. When the site plan supports the version of the complainant, and the recoveries effected from within the house include both bloodstains and empties, no ambiguity remains that the unfortunate incident occurred in the very house alleged by the prosecution. The dead bodies and injured were promptly shifted to the hospital, and the matter was reported without delay. The quick succession of events, from the occurrence to the transportation of the victims and the prompt lodging of the report, leaves no room to doubt either the timing of the incident or the presence of the complainant at the relevant moment. The dead bodies were identified by their respective identifiers. One such identifier appeared before the Court as PW-09, confirmed his presence at the hospital at the time of report, and stated that he had identified the body of the deceased before the doctor conducting the post-mortem examination.

8. The learned counsel for the appellants endeavored to persuade this Court that the incident did not occur in the manner or at the time alleged by the prosecution, and that no independent or plausible evidence was adduced, asserting that only interested and related witnesses had come forward to depose against the accused. However, such contention failed to convince the judicial mind of this Court, as the place of occurrence stands admitted, recoveries were effected from there, and the complainant as well as the injured witnesses were residents of the said house. Furthermore, an electric bulb was recovered from the premises, which served as the source of identification of the accused. The circumstances, therefore, strongly indicate that the witnesses remained consistent on all material particulars, and despite strenuous cross-examination, the defense could not extract any substantial contradictions or discrepancies from their statements. It is true that the witnesses are closely related to the deceased, yet it is equally true that such relationship, by itself, cannot be a ground for discarding their testimony. The defense could not bring on record any material suggesting malice, ill will, or motive on their part to falsely

implicate the accused. When the witnesses have stood firm and consistent, and when no *mala fide* or ulterior motive has been shown, the mere relationship of the witnesses with the deceased cannot be considered a valid reason for excluding their evidence from consideration. Reliance is placed on the judgment of the august Supreme Court of Pakistan reported as **Imran Mehmood v. The State and another (2023 SCMR 795)**, wherein it has been held that the mere relationship of prosecution witnesses with the deceased is not, by itself, a valid ground to discard their testimony. If the presence of such witnesses at the time of occurrence appears natural and their statements are straightforward, consistent, and confidence-inspiring, their evidence can be safely relied upon even for awarding a capital sentence.

9. The record reflects that in the unfortunate incident, two persons initially lost their lives, while one of the injured, namely Suleiman, later succumbed to his injuries. The injured witnesses, all of whom sustained firearm injuries in the same episode, appeared before the Court and their statements were duly recorded. They were cross-examined at length on material aspects of the case, yet no

substantial contradiction could be elicited from their testimony. Two of the injured happen to be ladies, thus, their presence within the house at the relevant time stands naturally explained and firmly established on record. The nature and location of their injuries further corroborate their presence at the spot. It is true that the mere existence of injuries on a witness does not, by itself, render his or her statement wholly truthful yet, when the consistency of their evidence is examined in the light of medical and circumstantial corroboration, no ambiguity remains that their account supports the version of the complainant. The presence of these witnesses in the house at the time of occurrence, and later in the hospital at the time of reporting, stands duly established. The doctors who medically examined the injured witnesses and conducted the post-mortem examinations of the deceased appeared before the learned trial Court. They confirmed the seat and nature of the injuries both on the bodies of the deceased and on those of the injured witnesses. When it stands admitted that the injuries were caused by firearms, and when the complainant, at the earliest point of time, attributed the role of firing to all three accused, there remains no reason to doubt that the

witnesses were present and that their narration of events is truthful. In such circumstances, this Court finds confidence in holding that the prosecution has successfully brought home the guilt of the accused. The parties were admittedly known to each other, being embroiled in a blood feud. In such a backdrop, there appears no plausible reason for the eyewitnesses, particularly the complainant, to falsely implicate the accused by substituting the real culprits, a phenomenon rare in cases of this nature. Hence, the possibility of false implication stands effectively excluded. In a similar context, guidance can be drawn from the judgment of the august Supreme Court of Pakistan reported as "**Aqil Shah v. The State**" (**2023 SCMR 831**), wherein it was observed that the learned counsel for the petitioner could not furnish any plausible reason as to why the complainant would falsely implicate the petitioner in the case while allowing the real culprit, who had committed the murder of her mother and sister, to go unpunished. The august Court further emphasized that substitution in such like cases is an extremely rare phenomenon.

10. The medical evidence on record lends full support to the case of the

prosecution. The deceased lost their lives in the same transaction in which the injured sustained firearm injuries. All the doctors concerned appeared before the Court and categorically confirmed the seat and nature of the injuries found on the bodies of both the deceased and the injured witnesses. The medical evidence, therefore, stands in complete harmony with the ocular account. It is settled law that medical evidence is ordinarily of a corroborative and confirmatory nature, however, when the ocular account is found to be trustworthy and confidence-inspiring, medical evidence that aligns with it further fortifies the case of prosecution. In the present matter, as the medical findings are in complete consonance with the statements of the eyewitnesses, they lend additional strength and credibility to the stance of the complainant. In similar circumstances, guidance is drawn from the judgment of the Supreme Court of Pakistan reported as "**Aqil v. The State**" (2023 SCMR 831), wherein it was held that the medical evidence available on record corroborated the ocular account with respect to the nature, time, locale, and impact of the injuries sustained by the deceased and the injured. It was further observed that it is a well-settled principle of law

that when the ocular testimony is found to be trustworthy and confidence-inspiring, it prevails over the medical evidence and, on its own, is sufficient to sustain the conviction of an accused.

11. The motive behind the occurrence was an old and deep-rooted blood feud between the parties. It is true that the Investigating Officer did not record the statement of any specific witness in respect of the motive, however, that omission carries little weight in the circumstances of the case. The motive had already been taken into consideration in the earlier trial of the co-accused who was convicted and sentenced, whose conviction was upheld by this Court and later maintained by the august Apex Court. It was in view of that established motive that the co-accused was awarded a comparatively lesser sentence. The learned trial Court in the present case, therefore, rightly followed the same reasoning and took into account the pre-existing enmity while determining the measure of punishment. The mere weakness or even absence of a clearly proved motive is not, by itself, a sufficient ground for the acquittal of an accused where reliable ocular and corroborative evidence is otherwise available on record. Motive primarily

assists the Court in determining the degree of culpability and, consequently, the quantum of sentence to be imposed in the particular facts of each case. In the present case, as the surrounding circumstances suggested the same cause of enmity and a comparable footing with the earlier convicted co-accused, this Court finds no reason to depart from the approach adopted by the learned trial Court. Hence, the consideration of motive and the corresponding sentence awarded appear to be fully justified.

12. The accused, soon after the occurrence, went into hiding. The incident took place in the year 2015, whereas the appellants were arrested in 2019. No plausible explanation has been offered by them as to why they did not surrender before the law enforcement agencies during this considerable period. The circumstances clearly indicate that they did not voluntarily present themselves before the Police rather, they were apprehended by the local authorities from two different places. It is, of course, a settled proposition that mere absconcence, in isolation, cannot be made the sole basis for conviction. However, where the prosecution has successfully established its case through reliable and

confidence-inspiring evidence, and where the credibility of the witnesses remains unshaken, prolonged and unexplained absconce may legitimately be treated as an additional incriminating circumstance lending support to the stance of the prosecution. This Court is, therefore, inclined to consider such conduct of the appellants in the present case. Reliance is placed on the judgment of the Supreme Court of Pakistan reported as "**Mst. Roheeda v. Khan Bahadur and another**" (**1992 SCMR 1036**), wherein it was held that although absconce alone may not be sufficient to convict an accused person, it nevertheless constitutes a strong piece of corroborative evidence when considered alongside other direct or circumstantial evidence on record. In that case, the accused, Jahanzeb, and his brother Aurangzeb remained fugitives from justice for a considerable period without offering any plausible or reasonable explanation. Their conduct after the occurrence was regarded as indicative of their guilt when viewed in conjunction with the ocular and circumstantial evidence available in the case.

13. The cumulative effect of all the circumstances discussed above leads this Court to the irresistible conclusion that the

prosecution has succeeded in bringing home the guilt of the accused beyond reasonable doubt. The learned trial Court has duly appreciated the evidence on record and rendered a well-reasoned judgment, which does not call for any interference. The impugned judgment is maintained, and the appeal, being devoid of merit, stands dismissed.

14. Turning now to the connected Criminal Revision No. 157-P/2025, as no independent corroboration was brought on record to substantiate the alleged motive of previous blood feud between the parties. Furthermore, since the co-accused Basheer, had already been convicted and sentenced to imprisonment for life, and his conviction was upheld up to the Supreme Court of Pakistan, this Court cannot take a view contrary to or beyond the findings already affirmed by the apex Court. Hence, the revision petition stands dismissed.

**Announced
16.10.2025**

Naqqash Haider

-SD-
J U D G E

-SD-
J U D G E

Division Bench.

Hon'ble Mr. Justice Sahibzada Asadullah, J.
Hon'ble Mr. Justice Dr. Khurshid Iqbal, J.