

Judgment Sheet
PESHAWAR HIGH COURT, BANNU
BENCH
(Judicial Department)

Cr. A No.57-B/2024.

Rehmat Ullah & another
Vs.
The State & another

JUDGMENT

For Appellant: Haji Humayun Khan Wazir
and Farooq Khan Sokari,
Advocates.

For Respondents: M/s Muhammad Rashid
Khan Dirma Khel and
Abid Iqbal, Advocates.

For State: Mr. Muhammad Asghar
Khan Ahmadzai, A. A.G.

Date of hearing: 16.9.2025

ABDUL FAYAZ, J.- The appellants; Rehmat Ullah and Ali Marjan have called in question the judgment dated 18.4.2024, rendered by learned Additional Sessions Judge-III, Lakki Marwat, whereby the appellants were convicted and sentenced as under:

1. **Under section 302(b)/34 PPC,** the appellants Rehmatullah son of Gul Tayaz and Ali Marjan son of Ghazi Marjan were convicted and sentenced to life imprisonment as Ta'azir and to pay Rs. 10 lacs each to the legal heirs of

deceased as compensation under section 511-A Cr.P.C and in case of default thereof, they shall suffer further simple imprisonment for six months

Benefit of section 382-B Cr.P.C was extended in favour of the convicts.

2. Muhammad Ismail, father of deceased moved Cr.R No.38-B/2024 for enhancement of sentence of appellants. Since both the matters have arisen out of one and the same judgment, therefore, we intend to decide the same through this common judgment.

3. Brief facts of the prosecution case as per contents of FIR are that complainant Sadar Nawaz deceased then injured on 28.01.2022 at 15:50 hours reported the matter to the local police at police station Dadiwala to the effect that on the eventful day he after offering his Jumma prayer at mosque of Mohallah Habib Khel was coming back to his house. In the meanwhile, at about 14:30 hours, when he reached at Kacha path near the house of one Khan Bahadar situated at Wanda Shahab Khel, the accused/appellants, who were his co-villagers, duly armed with Kalashnikovs appeared there and started firing at him, as a result of which he got hit on his both thighs and fell down. After the occurrence the accused decamped from the spot. The prosecution

alleged that the motive was an earlier quarrel between the accused and the complainant's father. The accused were initially charged under section 324/34 PPC; however, the injured later on died, therefore section 324 PPC was replaced by section 302 PPC, Hence, the ibid FIR.

4. After arrest of accused and completion of investigation, prosecution submitted challan against the accused/ appellants for trial. The accused were summoned, who were produced in custody from jail and copies of the relevant statements and documents were handed over to them on 30.5.2022 in compliance with the provisions of section 265C Cr.P.C. Thereafter they were charge sheeted on 09.6.2022 to which they pleaded not guilty and claimed trial. At the commencement of trial, the prosecution produced and examined as many as 09 witnesses, out of which Dr. Syed Ahmad Shah recorded his statement as PW-4, constable Sherin Jan No.681 (PW-8) and investigating officer recorded his statement as PW-9. The statements of the aforesaid witnesses are reproduced below:

“PW-4 Statement of Dr. Syed Ahmad Shah posted at RHC Landiwah, then posted at RHC Shahab Khel. On Oath,

On 28.01.2022 at about 04.38PM, injured Sadar Nawaz s/o

Muhammad Ismail r/o Shahab Khel was brought to the RHC Shahab Khel in injured condition and I conducted his medical examination, During examination, I found the following injuries.

Wounds: -

1. Entry wound on the lateral side of right thigh.
2. Exit wound on medial side of right thigh.
3. Wound on anterior medial side of left thigh.
4. Wound on anterior aspect of left thigh.
5. Single bullet exit re-entry and re-exit.

Nature of injuries:- Grievous.....jurh.

Probable time of injury: - 02 to 03 hours.

Kind of weapon used: Fire Arm

After medical examination, the injured was referred to DHQ Bannu for medical treatment and further management.

After medical examination, the MLC, injury sheet, blood stained Shalwar of the injured were given to police constable Imran at 05.38PM on the same day. The MLC is ExPW4/1 and my endorsement on injury sheet is ExPW4/2. All the documents prepared by me correctly bear my signatures.

XX... On 28.012022, I posted at RHC Shahab Khel. In total, 04 doctors are posted at RHC Shahab Khel, anyhow, at the time of examination of injured, only I was on duty as rest of the doctors had their own duty hours. The injured was brought to me at 04.38 PM, self stated that in the MIC the time of has been mentioned 04.38AM

and that was mistakenly written by me. On 04.38PM, the injured was produced to me by constable Imran along with injury sheet. The injury sheet which I endorsed has been addressed by the concerned police officer to the doctor of THQ hospital Naurang. RHC Shahab Khel and THQ hospital Naurang might be at a distance of 40KM. The writing on injury sheet in respect of detail of wounds in english with my endorsement is in my hand writing. I have not given any report on the MLC regarding the talking capability of the injured and also regarding the senses. Similarly, I have not given the details of the GCS the injured. I based my opinion on my own observation that the entrance wounds are of bullets. I have mentioned entry wound No.01 in the MLC having size of 1/3 inch having its exit which I mentioned at serial No.2. Wound no.3 which I mentioned in the MLC is also an entrance wound having a size of 1x1 inch. I have not detected any fracture in the aforementioned wound, The writing which is noted in MLC at serial No.5 in respect of handing over the blood stained shalwar to police are in the hand writing of Doctor Bilal who was on night duty. The MLC bears my own signature. The injured remained under my treatment for 20 minutes and then I referred him to THQ hospital Serai Nauranp Police did not seek my opinion through any application regarding senses and talking capability of injured.

PW-8

18.07.2023

Statement of Sherin Jan constable No.681 posted at PS Naurang then posted at PS Dadiwala District Lakki Marwat.

On Oath:

Stated that on 28.01.2022, I was present with the investigating officer on the spot in connection of investigation of FIR No.32 dated 28.01.2022 of PS Dadiwala. IO prepared the site plan at his own instance as then the complainant was hospitalized. During spot inspection and in my presence, the IO took into possession blood stained earth from the place of then injured namely Sadar Nawaz s/o Muhammad Ismail r/o Wanda Shahab Khel and sealed the same into parcel No.1. Similarly, during spot inspection and in my presence, the IO also secured 3/3 crime empty shells of 7.62 bore from 02 different places and after signing each of crime empties, those 3/3 were sealed into 02 separate parcels i.e. parcel No.2 and parcel No.3. To this effect a recovery memo was prepared which bears my correct signature as one of its marginal witnesses. Similarly, I am also a marginal witness to another recovery memo vide which constable Imran No.6515 produced MLC, injury sheet and one shalwar of blue color of then injured Sadar Nawaz Khan having stains of blood and corresponding bullet hit marks sent by the doctor from THQ hospital Naurang. An injury sheet and MLC were placed on file whereas Shalwar was sealed in parcel No.4. To this effect, a recovery memo was prepared which also bears my correct signature on the same as one of its marginal witnesses. After the death of then injured Sadar Nawaz s/o Muhammad Ismail who was under treatment in DHQ hospital Bannu, when he expired, then on 03.02.2022, the ASI handed over to me his dead body and inquest report to produce the same to the doctor at RHC Wanda Shahab Khel District Lakki for PM examination, which I accordingly did. After PM examination, the doctor handed over to me the dead body of

deceased along with its PM papers. The dead body was given to the relative of the deceased whereas the PM papers were handed over to IO. My statement was also recorded by the IO u/s 161 CrPC on 03.02.2022.

XX.

I along with Rafiullah ASI and two other constables started from PS at about 04.25PM in official pickup and reached to the spot at about 05.20PM. When we reached to the spot, no private person was present on the spot. We have not taken any private person from the village, however, Syed Nawaz came to the spot behind us after 15/20 minutes. We took into possession blood stained earth from the place of injured and had taken in total 06 crime empties of 7.62 bore from 02 different positions. The crime empties were lying towards east of the blood. Some houses were situated at a distance of 15 paces from crime empties. The distance between crime empties and blood might be more than 10 feet. There is barrani nala situated near the place of occurrence and thoroughfare is also passing through the same barrani nala. The crime empties and blood were secured from the algadda/barrani nala, however, those were lying towards the sides of thoroughfare. The empties were lying towards the eastern side of thoroughfare while the blood was towards the western side of thoroughfare. It is incorrect to suggest that I have not been to the spot and all the formalities were conducted in the PS. The dead body was given to me by the IO in hospital, which I produced to the doctor at about 09.20AM.
RO&AC
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PW-9

07.09.2023

Statement of Rafiullah Khan ASI posted at PS Bragi then posted at PS Dadiwala District Lakki Marwat. On Oath:

Stated that on 28.01.2022, at about 1625 hours, I received the copy of FIR of the instant case at PS Dadiwala. Thereafter, I along with other police officials proceeded to the place of occurrence. As the complainant Sadar Nawaz s/o Muhammad Ismail r/o Wanda Shahab Khel was initially injured and he was hospitalized, so I prepared the site plan upon my own observation which is ExPB, the same is correct with all its footnotes and also correctly bears my signature. During spot inspection, and in the presence of marginal witnesses, I took into possession blood stained earth from the place of then injured Sadar Nawaz and sealed the same in a parcel No.1. I also collected 3/3 crime empty shells ExP1 and ExP2 respectively from two different places lying scattered on the spot. After signing each of the crime empty shell with sharp object, those were sealed separately into parcel No.2 and parcel No.3. To this effect, I prepared a recovery memo ExPW9/1 which is correct and correctly bears my signature as well as the signatures of marginal witnesses. Likewise, during spot inspection and in the presence of marginal witnesses, constable Imran No.6515 who was left with the injured at Naurang Hospital came to the spot and produced MLC, injury sheet, one Shalwar ExP3 of blue color having stains of blood and corresponding bullet cut marks of the injured which were sent by the doctor from Naurang hospital. The MLC and injury sheet were placed on file whereas blood

stained Shalwar of then injured now deceased was sealed into parcel No.4. In this respect a recovery memo ExPW9/2 which is correct and correctly bears my signature as well as the signatures of marginal witnesses. Thereafter, I recorded the statements of PWs there on the spot. I also conducted house search of the accused Rahmantullah and Ali Marjan but I could not find them in their houses. Likewise, nothing incriminating could be effected from their houses. In this respect I prepared the house search memo of the accused which is correct and correctly bears my signature. After completion of my first day investigation, when I came back to the PS, I handed over the entire case property to muharrir of the PS through two different applications ExPW9/3 and ExPW9/4 for their onwards transmission to the FSL. I have also placed on file the details of my departure vide mad No.15 dated 28.01.2022 and arrival back vide mad No.19 of the same date to the PS. It is ExPW9/5 and ExPW9/6 respectively. As after initial medical examination of then injured, he had been referred to DHQ Bannu and he was still under treatment there, so on 29.01.2022, I went to DHQ hospital Bannu and there I found the injured in the hospital. I recorded his statement and also verified my already prepared site plan from him and he was agreed with the site plan. On 30.01.2022, I applied to the magistrate vide my application ExPW9/7 for the issuance of warrants u/s 204 CrPC against both the accused which was allowed and thereafter, the warrants were entrusted to the DFC concerned for execution. The application is correct and correctly bears my signature. On 02.02.2022, I formally arrested both the accused and issued their formal card of arrest when they obtained an ad interim pre arrest

bail from the competent court. Card of arrest bears my correct signature. I also recorded the statements of accused u/s 161 CrPC. On 03.02.2022, when I was present in the PS, when information was conveyed to me which had been received from civil hospital Naurang about the death of then injured Sadar Nawaz s/o Muhammad Ismail r/o Wanda Shahab Khel, who was under treatment in DHQ hospital Bannu. The information was of the nature that someone should come to Naurang hospital for preparation of inquest report and thereafter, the PM to be conducted. Information was entered in a daily dairy of the PS Dadiwala vide mad No.7 dated 03.02.2022, the copy of mad No.7 is ExPW9/8. After receiving information about the death of injured Sadar Nawaz, the section of law was altered from 324 PPC to 302 PPC and to this effect, the information slip available on file is ExPW9/9. I proceeded to Naurang hospital along with other police officials where I prepared inquest report of deceased Sadar Nawaz ExPW9/10 which is correct and correctly bears my signature. Thereafter, the dead body of deceased along with its report was handed over to constable Sherin No.681 to produce the same before the doctor for PM examination. I have also placed on file the FSL in respect of blood stained articles ExPK and crime empty shells ExPK/1. On 26.02.2022, when BBA of the accused was recalled, then I arrested them and issued their card of arrest. On 27.02.2022, I produced both the accused to the magistrate and sought their 07 days physical remand, when the initial remand of the accused was expired vide my application ExPW9/11, however, only 02 days remand was allowed. I interrogated the accused and prepared their

interrogation reports which are ExPW9/12 and ExPW9/13. After expiry of 02 days physical remand, I again produced the accused to the magistrate and sought for another physical remand of 05 days, however, it was denied and the accused were committed to judicial lockup. After the completion of investigation, the case file was handed over to SHO for onward proceedings.

XX...

I received the copy of FIR at 16.25 hours in the PS for the purpose of investigation. Then I read over the contents of FIR and on 16.30 hours, I started from PS towards the spot in official vehicle along with police party consisting of one driver and 02 other police officials and reached to the spot at about 17.35 hours and it was time of sunset. Then I soon started spot inspection. On the spot, I took blood stained earth and beside it, I secured 06 crime empties from the spot i.e. 03 from one position and 03 from another place which were lying at a distance of 07 feet from each other, however, all the crime empties were laying in 07 feet diameter area. I have shown the baraani canal in line and its width might be 200 feet. The crime empties were found by me outside the baraani canal which were lying on the bank of the baraani canal. The blood was secured in the area of baraani canal. The distance between blood and the crime empties might be 110/125 feet respectively. The house of Khan Akbar is at a distance of 07 and 10 feet from the two places of crime empties. The house of Khan Bahadur is situated towards west of the place of occurrence at a distance of 350 feet. It is correct that metal road is situated between the house of Khan Bahadur and barani canal. The house of Khan Bahadur is situated at

close distance to metal road. I have not shown the masjid in site plan where the deceased was going for paying Jumma prayer. The masjid is situated in village abaadi which is situated towards east of the house of Khan Bahadur. House of complainant now deceased is situated towards west of the house of Khan Bahadur and also from the place of occurrence. I have inspected the nearby area of the house of Khan Bahadur but I have not found any article incriminating articles in its nearby except from the spot which is situated at a distance of 350 feet from the house of Khan Baghadar. People have claimed that they were also going to masjid for praying Jumma prayer but no one was ready to give any statement to me. I have not recorded statement of pesh imam of the masjid to ascertain whether the day of occurrence was Friday/Jumma. Similarly, I have not placed on file year calendar on judicial file to ascertain whether the day of occurrence was Friday or not. I proceeded to the DHQ hospital Bannu where the injured now deceased was admitted and was under treatment. I have not obtained the opinion of any doctor to confirm the senses of the injured. Self stated that he was in senses, that's why I have not obtained any certificate/opinion of the doctor. Similarly, I have not obtained any permission from any doctor to record statement of the injured. I have not written any note on the site plan to confirm that I have verified the site plan in hospital from the injured. It is incorrect to suggest that in order to fill up the lacunas in prosecution case, I on my own added in my statement today in the court that I have verified the site plan from the injured in hospital. It is incorrect to suggest that I conducted biased investigation in the instant case in order to connect the

accused with the commission of offence.

RO&AC

07.09.2023.”

5. After closure of the prosecution evidence, the accused were examined under section 342 Cr.P.C, wherein they professed innocence and false implication. They also wished to be examined on oath under section 340(2) Cr.P.C, and to produce defence evidence. After recording statements of accused on oath and other defence witnesses and hearing arguments, the learned trial Court vide impugned judgment dated 18.4.2024, convicted the accused/appellants and sentenced them, as mentioned above, hence, the instant criminal appeal against the judgment of conviction and connected criminal revision petition.

6. We have heard learned counsel for the parties alongwith learned A.A.G for the State at length and with their valuable assistance, the record was gone through.

7. The prosecution case is based on the report of deceased then injured Saddar Nawaz, which is reproduced as under:

مندرجہ خانہ نمبر 2 بحالت مجروحیت بوقت بالا بسواری ڈاؤن پرائیوٹ بہ
امداد دیہہ والان تھانہ آکر رپورٹ کرتا ہے کہ امروز میں نے نماز جمعہ
مسجد حبیب خیل میں ادا کر کے خانہ خود آ رہا تھا کچھ رستہ پر جب نزد خانہ

بہادر خان واقع دیہہ ام پینچے 14:30 بجے کا وقت تھا کہ ملزمان 1- رحمت اللہ ولد گل تیار 2- علی مرجان ولد غازی جان سکناے ام مسلح بہ کلاشنکوف ہانمودار ہو کر دونوں نے فوراً مجھ پر بہ نیت قتل فائرنگ شروع کی جنکے فائروں سے میں دونوں رانوں پر لگ کر زخمی ہو کر گر پڑا۔ ملزمان بعد وقوعہ چلے گئے۔ وجہ عداوت والد ام و ملزمان بالا کے مابین قبل ازیں ہاتھ پائی ہوئی تھی۔ بدیں وجہ وقوعہ ہزار و نما ہوا ہے۔ میں اپنی مجروحیت کا برخلاف ہر دو ملزمان بالاد عمویدار ہوں۔

8. The only evidence in the instant case, which has got its admissibility i.e. the dying declaration recorded by the police from the mouth of the deceased then injured Safdar Nawaz son of Muhammad Ismail, complainant of the instant case. No doubt in this case the alleged occurrence has taken place on 28.01.2022 at 14:30 hours while the matter was reported to the local police in police station Dadiwala at 15:50 hours with a delay of one hour and 20 minutes. In this case since the learned trial Court has relied only on dying declaration but it is the foremost duty of the Court to see as to whether the deceased then injured at the time of report was in full senses, whether his statement is true and supported by the circumstantial evidence and whether the statement of the deceased then injured in the shape of dying declaration is consistent with the site plan or not. For that matter we have already reproduced the contents of the FIR and would like to mention here the

site plan, wherein the deceased has been shown at point-A wherefrom the blood has been recovered while from points B and C 3/3 empties have been recovered and it is in the report of the deceased then injured that:

کہ امروز میں نے نماز جمعہ مسجد حبیب خیل
میں ادا کر کے خانہ خود آ رہا تھا کچے رستہ پر جب
نزد خانہ بہادر خان واقع دیہہ ام پنچے 14:30
بجے کا وقت تھا کہ ملزمان 1- رحمت اللہ ولد گل
تیار 2- علی مرجان ولد غازی جان سکناے ام
مسلح بہ کلاشکوف ہانمودار ہو کر دونوں نے فوراً
مجھ پر بہ نیت قتل فائرنگ شروع کی۔

Now if we see the place wherefrom the blood has been recovered, it shows the presence of the deceased then injured Sadar Nawaz, which has been shown in the middle of the ravine خڑ and at a distance of 350 feet from house of Khan Bahadar, so the dying declaration is contradictory to the site plan, firstly that the deceased then injured has been shown at point-A which is center of ravine instead of *Kacha Rasta* while it has been recorded in the report that “*No sooner I reached to the house of Khan Bahadar, I was fired at by the accused party.*” Now if we look again, his statement is contradictory to the site plan for the reason that he is very close to the house of Khan Akbar instead of Khan Bahadar, which is at a distance of 350 feet from the place of the deceased then injured.

9. Another aspect of the case is that the distance between point-A and point-B is 110 feet from point-A to point-C is 125 feet. Now if the appellants had the intention to kill the deceased or if the occurrence has taken place in the mode and manner as narrated by the complainant then they would have come closer to fire at him.

10. Another aspect of the case is that the deceased then injured was brought to the police station for recording his report and he was lying inside the Datsun/Pick-up when allegedly his report was recorded and which fact has been confirmed by the hospital authorities that he was admitted in orthopedic ward meaning thereby that his thigh was fractured and because of severe blood for one hour and 20 minutes. Whether he was able to have been spoken or not, for that matter the doctor who examined the deceased then injured has not given his opinion or endorsed the MLC and injury sheet of the deceased that the deceased then injured was able to talk. Even no GCS level has been recorded. Similarly, in the report recorded by ASI police station Dadiwala, he has not stated in the report that:

کہ مقتول پورے خوش و خواص میں مجھے
رپورٹ کرتا ہے۔

In the absence of such wording and in the absence of doctor report, no doubt dying declaration is admissible piece of evidence but cannot be believed at this stage for the reason that two accused are charged and there is one fire arm entry wound with its exit on the person of the deceased then injured. Reliance in this regard is placed on case titled “**Darey Khan and another Vs. the State**” **(1972 SCMR 578)**, wherein the august Supreme Court has observed that:

“After hearing the learned counsel for both sides and perusing the evidence brought on the record we are inclined to the view that there is merit in the submissions made by Mr. Ziauddin. The medical evidence leaves no doubt whatsoever that the deceased was hit by only one shot, as out of the two injuries found on his person one is a wound of entrance and the other is a wound of exit. Such being the case, the medical evidence clearly contradicts the account given by the eye-witnesses as well as by the deceased himself in his dying statement to the effect that both the appellants had fired one shot each, and that both the shots had hit the deceased. This contradiction creates a reasonable doubt as to the participation of both the appellants in the crime.”

In another case titled “**Khalid Mehmood and another Vs. The state and another**” **(2021 SCMR 810)**, the apex Court has held that:

“5. In the FIR, it is the case of prosecution that the petitioner and his co-accused (of both parties i.e. Khalid Party and Sarwar Party) made firing at deceased Muhammad Aslam. However, Dr. Gul Nawaz (PW7) observed a single entry wound on the front of left upper chest of deceased. The learned trial Court by giving benefit of doubt acquitted co-accused Muhammad Idrees, Fahad Mehmood alias Faku, Muhammad Asghar, Muhammad Waris alias Shera, Abdul Sattar and Muhammad Sarwar. No appeal or petition against that acquittal has been filed by the complainant or the State.”

11. Police rules provide procedure for recording dying declaration. For convenience rule 25.21 is reproduced as under:

“25.21. Dying Declaration.—(1) A dying declaration shall, whenever possible, be recorded by a magistrate.

(2) The person making the declaration shall, if possible, be examined by a medical officer with a view of ascertaining that he is sufficiently in possession of his reason to make a lucid statement.

(3) If no magistrate can be obtained, the declaration shall, when a gazette police officer is not present be recorded in the presence of two or more reliable witnesses, unconnected with the police department and with the parties concerned in the case.

(4) if no such witnesses can be obtained without risk of the injured person dying before his statement can be recorded, it shall be recorded

in the presence of two or more police officers.

(5) A dying declaration made to a police officer should, under Section 162 Code of Criminal Procedure, be signed by the person making it.”

12. No doubt these Rules are not mandatory but on safe side in case like this nature when the deceased was hospitalized and was admitted in the orthopedic ward at Bannu meaning thereby that his thigh was fractured, therefore, he was not in a position to have recorded his statement truly. **In case titled “Muhammad Rafique Vs. The State” (1995 PCrLJ 1753)**, this Court has held that:

“10. It is true that sanctity is attached to a dying declaration because a dying man is not expected to tell lies but being a weak kind of evidence it requires close scrutiny and corroboration. Some of the well-known tests for determining the genuineness of a dying declaration are as to whether it rings true, whether the dying man was capable of making it, whether it is free from outside prompting and is not inconsistent with other evidence and facts and circumstances of the case and whether there is no chance of mistake by the dying man in identifying or naming his assailant. The deceased had allegedly made two dying declarations but none of them satisfies the requisite conditions. The first dying declaration, Exh.P.Q., which was recorded by Dr. Mir Haider is incomplete inasmuch as it does not disclose the venue of occurrence and the weapon of crime. It is also not attested by any witness or supported

by a fitness certificate. Besides, it is not properly signed by its author. The second dying declaration Exh.P.A./1 which was recorded by Tehrizuddin, A.S.I. in the shape of a Murasila is not only altogether silent about the first dying declaration but is also touched up as it specifies the mosque as the venue of occurrence, .32 bore pistol as the weapon of crime and contains a distinct motive. Both the dying declarations are inconsistent with other evidence and facts and circumstances of the case because the occurrence had not taken place inside the mosque, the Paish Imam namely, Maulana Muhammad Saeed has not confirmed the presence of the deceased in the mosque and the altercation over timings of Taraveeh prayers or offering of Nafals had taken place between the appellant and the deceased's son Muhammad Rafiq and not between the deceased and the appellant. The absence of the fitness certificate and the admitted reluctance of the doctor concerned to treat the deceased in the Civil Hospital Charsadda go a long way to suggest that the condition of the deceased was precarious and he was not capable of making a dying declaration. Admittedly, both the dying declarations were recorded in presence of the sons of the deceased who had taken him in an injured condition to the Lady Reading Hospital, Peshawar, therefore, the possibility of outside prompting cannot be ruled out. The evidence available on record makes it manifest that the occurrence had taken place at 9 p.m. in a street having no electric or any other artificial light, therefore, the identification of the assailant was not possible and in any case the possibility of mistaken identity cannot be ruled out. Another intriguing circumstance, which reflects on the

genuineness of the dying declaration, is that the thumb impression of the deceased on the first dying declaration is bigger in size than his thumb-impression on the second dying declaration. Last but not least the dying declaration is not corroborated by any independent piece of evidence and in any event no corroborative evidence howsoever strong it may be can cure its patent and latent defects and infirmities.”

Reliance in this respect is placed on case titled **"Tai Muhammad Vs. The State" (2022 PCrLJ 126)**, wherein the Hon'ble Lahore High Court has held as under:

“41. One of the considerations to appreciate the dying declaration is that, it must be free from any outside promptness that means that at the relevant time no one has to be there to influence the deceased. Not only this, but also no one met him before his statement. In the case in hand Ghulam Qasim ASI (PW-12) admitted in cross-examination that at the time of recoding of statement of injured, Muhammad Ibrahim/complainant (PW-9), Muhammad Rafiq (PW-10) and Muhammad Hanif were also present there. This fact alone is enough to discard the evidence of dying declaration.

42. Investigating officer recorded the statement after seeking declaration from the lady Doctor, which means that she was present in hospital at the relevant time. It was his duty to record the statement in presence of lady doctor and then to obtain her signatures in token of its correctness with a certificate also that injured remained conscious throughout during his statement. In

"Mst. Zahida Bibi v. The State PLD-2006 SC 255" the facts were identical with regard to dying declaration as in the case in hand. Their Lordships were pleased to observe as under:-

"This is an admitted fact that the statement of the deceased was not recorded by the Sub-Inspector of police in hospital in presence of the Doctor and further neither any member of the hospital staff was associated at the time of recording the statement nor it was got verified by any official of the hospital that the statement was actually made by the deceased. Be that as it may, the status of such a statement would be hardly a statement under section 161, Cr.P.C. and not a dying declaration of the deceased. This may be seen that the dying declaration or a statement of a person without the test of cross-examination is a weak kind of evidence and its credibility certainly depends upon the authenticity of the record and the circumstances under which it is recorded, therefore, believing or disbelieving the evidence of dying declaration is a matter of judgment but it is dangerous to accept such statement without careful scrutiny of the evidence and the surrounding circumstances, to draw a correct conclusion regarding its truthfulness. The rule of criminal administration of justice is that the dying declaration like the statement of an interested witness requires a close scrutiny and is not to be believed merely for the reason that dying person is not expected to tell lie. This is the method of common knowledge that in such circumstances in preference to any other person, a

Doctor is most trustworthy and reliable person for a patient to depose confidence in him with the expectation of sympathy and better treatment to disclose the true facts. In the present case, in the manner in which the statement of deceased was recorded by the Sub-Inspector, would seriously reflect upon its correctness and consequently, could not be considered worthy of any credit to be relied upon as dying declaration."

43. Even otherwise, the dying declaration was factually incorrect on the following reasons: -

- i. Muhammad Shafiq had alleged sole fire by appellant whereas through medical evidence it has been established that he had received two fire shots and same was also maintained by two eye witnesses.
- ii. It is proved that Afshan Zareena is one and the same lady whereas in dying declaration he had stated that they were two different personalities.

44. The deliberations made above take me to a definite result that the alleged dying declaration has not been proved by the prosecution."

In another case titled **"Sajid Vs. The State and another" (2023 PCrLJ19)**, this Court has observed that:

"7. Moreover, the testimony of the Investigating officer is also not in line with the contents of report because he stated in his cross-examination that the occurrence took place in the field of one Waroki Haji while as per contents of FIR the occurrence took place in the

playground. He further stated that he has investigated the instant case regarding cricket match and found that there was cricket match at the relevant time. Similarly, the report of injured complainant was recorded on 31.07.2015 at 17.20 hours (05.20 p.m.), while according to the medico legal report Exh.PW 9/1, the victim was brought by Tahir Hussain, ASI on 31.07.2015 at 05.00 p.m., while, as per report the injured was brought by one Shahzada. Tahir Hussain was examined as PW-7, and he stated in cross-examination that the victim was taken by a passerby and the people who brought the injured to the hospital were present at the time of scribing the report. He further stated that the report was not endorsed by the doctor. Therefore, possibility cannot be ruled out that name of the appellant might have been shown by the people present with the deceased then injured at the time of recording report, thus, in the present scenario, the dying declaration is not free from doubt."

13. The cumulative effect of what has been stated above brings this Court to an inescapable conclusion that the prosecution failed to bring home guilt against the appellants and that the impugned judgment is suffering from inherent defects which calls for interference. The impugned judgment is devoid of reasons which failed to hold ground. The instant criminal appeal is, therefore, allowed, the impugned judgment is set-aside and the appellants are acquitted of the charges. They shall be released forthwith if not

required to be detained in connection of any other criminal case. When the criminal appeal against conviction succeeded and the appellants have been acquitted of the charges, in such eventuality, the connected Cr.R No.38-B/2024, filed by father of the deceased lost its utility and cannot proceed anymore, therefore, being bereft of merits, is hereby dismissed.

Announced
16.9.2025.

Ihsan

Officer
24/9

SCANNED

24 SEP 2025

Khalid Khan

(D.B)

*Hon'ble Mr. Justice Muhammad Tariq Afridi &
Hon'ble Mr. Justice Abdul Fayaz.*