JUDGMENT SHEET

PESHAWAR HIGH COURT, PESHAWAR

(*Judicial Department*)

Cr. A No. 1232-P/2019

Fayaz Khan

Vs

Faizan Qazi & another

JUDGMENT

Date of hearing: **04.11.2025**

Appellant/complainant by: Ms. Rooh-un-Nisa, Advocate.

The State by: Mr. Ayub Zaman, AAG

Respondent/accused by Mr. Imran Khan, Advocate.

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SAHIBZADA ASADULLAH, J.- Through this criminal appeal, appellant/complainant Fayaz Khan has questioned the judgment of the learned Additional Sessions Judge/Model Criminal Trial Court, Peshawar dated 25.09.2019 whereby, the respondent/ accused Faizan Qazi was acquitted of the charges levelled against him in case FIR No. 1200 dated 20.05.2016 under section 302 PPC

registered at Police Station Faqir Abad, Peshawar.

2. The narration of facts in the murasila reflects that Said Rasool Shah ASI reported that while he was on duty at LRH, Peshawar, Rescue 1122 personnel brought a semi-conscious injured person accompanied by three young men, namely Mansoor Amin, Muhammad Javed and Asghar Khan, who stated that they had shifted him from Wazir Colony; that subsequently, another person arrived, identified himself as the father of the injured, and, upon seeing his son in that condition, began weeping and thereafter lodged a report; that he was serving as a Security Guard at Abasyn University, where the injured Ikram was also employed, and that he had received information that accused Faizan Qazi had fired at his son, causing grievous injuries; that he rushed to the hospital and narrated the occurrence, which was allegedly witnessed by persons present at the spot, while he professed ignorance regarding the motive; that the accused were charged for

the commission of offence hence, the present FIR. It is pertinent to mention that the case was initially registered under section 324 PPC however, upon the death of the injured, the section of law was altered from section 324 to 302 PPC.

3. It is pertinent to mention that soon after the occurrence, the respondent/accused went into hiding and it was upon his arrest, that challan was submitted to the court. Provisions of section 265-C CrPC were complied with and the respondent/accused 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 14 witnesses. After closure of prosecution evidence, statement of respondent/accused 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, acquitted the

respondent/accused of the charge vide the impugned judgment hence, the instant appeal.

4. Arguments heard and available record gone through.

5. After sustaining firearm injuries, the deceased then injured was immediately transported to the hospital in a pressing effort to preserve his life. Upon their arrival, the complainant reported the occurrence to the police. The injury sheet and inquest report were prepared, and the doctor examined the injured and issued his medico-legal certificate. Despite being admitted for treatment, the injured succumbed to his injuries on the very next day, whereupon the offence was altered from 324 to 302 PPC. After receiving copy of FIR, the investigating officer visited the place of occurrence and on the pointation of the eyewitnesses, prepared the site plan. During spot inspection, blood stained earth was collected from the place of the deceased and 02 empties of .30-bore pistol were secured. These empties were forwarded to the firearms expert, whose report confirmed that both had been

fired from one and the same weapon. Subsequently, the accused Faizan Qazi, was arrested. On his arrest, one .30-bore pistol No. FA-1594 was recovered from his possession, for which a separate FIR No. 1265 was registered. The weapon was taken into custody and handed over to the relevant officials before being entrusted to the investigating officer of the main case i.e. under section 302 PPC. The said weapon was then dispatched to the firearms expert, who reported that the empties recovered from the scene had indeed been fired from the recovered pistol. Upon the request of the police, physical remand of the accused was granted. It was during this period that on 8th June 2016, that the accused expressed his desire to confess his guilt. He was accordingly produced before the learned Judicial Magistrate, where his confessional statement was duly recorded in accordance with law. Thereafter, he was sent up for trial, and upon conclusion of the trial, was acquitted of the charge through the impugned judgment.

6. The learned trial court, while delivering the impugned judgment, took into account the entire material available on record and assessed the evidence produced by the prosecution. It now falls upon this Court to examine whether the learned trial court was justified in reaching to such a conclusion, and whether the prosecution was able to establish a credible connection between the respondent/ accused and the commission of the offence. True that only a single accused stands charged, but this fact does not, in any manner, lighten the burden of the prosecution to prove its case beyond reasonable doubt, nor does it diminish the duty of the Court to properly appreciate the evidence brought on. While substitution of an accused is generally rare when only one person is nominated, it is equally well-settled that in cases involving a sole accused, the courts must exercise heightened caution. In order to properly understand the circumstances surrounding the case, we consider it imperative to revisit the record and reassess the statements of the witnesses as well as the evidence

collected, so that no miscarriage of justice may occur.

7. The points for determination before this Court are: whether the incident took place in the mode, manner and at the stated time; whether the complainant indeed reported the matter and whether the occurrence was actually witnessed by the stated eyewitnesses; whether the accused was arrested as claimed and whether the weapon recovered from his possession stands reliably connected with the crime through the positive forensic report; whether the confessional statement of the respondent/accused inspires confidence; and whether the prosecution has succeeded in proving the guilt of the respondent/accused beyond any shadow of reasonable doubt.

8. Since the present matter arises out of an appeal against acquittal, this Court is under an obligation to examine the approach adopted by the learned trial court in extending the benefit of doubt to the respondent/ accused. The task of this court is to determine whether the learned trial court was justified in

acquitting the respondent/accused and whether the prosecution had, in fact, failed to establish its case to the requisite standard. In order to properly appreciate the reasoning of the learned trial court, we find it necessary to revisit the statements of the material witnesses and to scrutinize the grounds which persuaded the learned trial court to pass the impugned judgment. It is a settled principle that an accused is presumed innocent unless proven guilty, and once an acquittal is recorded, the presumption of innocence stands doubled; therefore, only exceptional and compelling circumstances would justify interference with such a finding. It is in this backdrop that we proceed to examine whether the impugned decision is in accordance with law and whether the reasons furnished therein reflect a judicious and proper appraisal of the evidence. For this particular purpose, we have carefully reassessed the testimony of the eyewitness, produced as PW-3, and the complainant was examined as PW-4. In his court statement, PW-3 narrated the circumstances in which the

unfortunate occurrence took place. According to him, he, the deceased, PW Mansoor Amin, and the accused were present at the spot, engaged in casual conversation, when a sudden altercation erupted between the deceased and the accused, prompting the accused to fire upon the deceased. He further stated that after the firing, Mansoor Amin arranged a rickshaw in which the injured was placed and taken towards Lady Reading Hospital, Peshawar. However, on the way to hospital, they intercepted Rescue-1122 ambulance and shifted the injured into it. It was at the casualty department of Lady Reading Hospital that the complainant lodged the report. The complainant (PW-4) explained how he received information about the incident, how he reached the hospital, and how he nominated the respondent/accused for the commission of offence in the FIR. It is not disputed that the incident was stated to have been witnessed by two persons, namely, Mansoor Amin and Asghar Ali. Although Asghar Ali appeared as PW-3, the prosecution did not produce

Mansoor Amin for reasons not disclosed on record. Nonetheless, PW-3 was neither related to the deceased nor to the accused, rather he was a mutual friend to both, and it was due to this friendship that he happened to be present at the spot. His testimony is thus free from the taint of partisan interest. Despite extensive cross-examination on material aspects, the defence could not extract any substantial contradiction from PW-3 that might favour the respondent/accused, nor could his credibility be shaken. While the non-production of the second eyewitness may at first appear to weaken the prosecution case, the fact that PW-3 was completely independent and not under the influence or control of the complainant, minimizes the impact of this omission. His presence at the scene stands naturally explained, and his version remains consistent throughout. On the other hand, the complainant did not attempt to pose himself as an eyewitness, despite the opportunity to do so. His narrative remains simple and bonafide and he disclosed that he received information from

home, rushed to the hospital, and reported the matter as it was conveyed to him. Had he desired to falsely strengthen the case, he would undoubtedly have named the eyewitnesses in the FIR; however, his failure to do so reflects honesty rather than suppression. PW-3 further corroborates that it was he, who informed the family of the injured, thereby explaining how the complainant received timely information. When the statements of PW-3 and PW-4 are juxtaposed, they are found to be mutually supportive, consistent, and free from material discrepancy. These circumstances firmly suggest that both witnesses acted in good faith from the very outset. No malafide motive can be attributed to either PW-3, being an independent friend of both the deceased and the accused, and the complainant though father of the deceased, refraining from claiming himself an eyewitness. Their testimonies harmonize on material particulars such as the occurrence, the movement of the injured, the manner in which information was conveyed, and the subsequent reporting of the matter. In

such a situation, the relationship of the complainant with the deceased does not, by itself furnish a reason to discard his testimony especially when it stands reinforced by an independent eyewitness whose presence and narrative bear the hallmark of truth. There is no dispute that the case of the prosecution rests primarily upon the circumstantial account furnished by a single eyewitness. It is equally undisputed that the matter was reported by the complainant, father of the deceased, immediately after he received information from the family of the eyewitness. As the complainant did not personally know the young men, who were present with the deceased at the time of the occurrence, he was unable to name them in his initial report. Instead, he simply stated that the incident had been witnessed. Had there been any malafide intention on his part, he could have easily mentioned specific names or attempted to implicate others but he refrained from doing so. In the same manner, although he had the opportunity to portray himself as an

eyewitness, he avoided such embellishment. Rather, he confined his narration to the true account of how he received information about the firing upon his son. The record reflects that the witnesses remained consistent on all material aspects of the case and did not resort to exaggeration. While only one eyewitness was produced, it must also be noted that this witness stood on neutral ground, sharing an equal association with both the deceased and the accused. His relationship thus strengthens, rather than weakens, the reliability of his testimony.

9. The investigating officer was examined as PW-6 and provided a clear and coherent account of the steps he undertook. He explained how he received the FIR, visited the spot, and prepared the site plan on the indication of the eyewitness. He further stated that after the arrest of the accused, he led the police party to the place of occurrence, upon which additions were made to the site plan in red ink which confirms the accuracy of the layout. The defence attempted to cast doubt by

questioning the possible involvement of the accused, the deceased, and the witnesses in street crime. However, the investigating officer categorically stated that he found no such record, nor was any FIR ever registered against them. No material contradiction could be extracted in his cross-examination, and his testimony remained firm and consistent. PW-11, the scribe, deposed that he was present in the casualty ward when the injured teenager was brought to the hospital. He stated that the complainant rushed inside, recognized his son, began to weep, and informed that the respondent/accused had fired upon the deceased. Although the complainant did not name the person who conveyed the initial information to him, he later clarified that it was the family members of the eyewitness who had telephonically informed him. The medical evidence also supports the prosecution version. The doctor who conducted the post-mortem examination appeared as PW-10, and the doctor who examined the deceased in injured condition appeared as PW-12. Both witnesses

detailed the nature, location, and number of injuries and their statements is in harmony with the ocular and circumstantial evidence.

10. After arrest of the respondent/ accused, the investigating agency sought his physical custody. During investigation, he led the police to the place of occurrence and pointed out various locations where, according to him, he himself, the deceased and the eyewitnesses had been present at the relevant time. It was the respondent/accused, who expressed his desire to confess his guilt, whereupon he was produced before the learned Judicial Magistrate for the recording of his confessional statement. The learned Judicial Magistrate appeared as PW-13 and explained, in clear terms, the circumstances in which the respondent/accused was produced before him. He further deposed that the respondent/accused was afforded ample time to think, and that only after the Magistrate was fully satisfied regarding the voluntariness of the statement, he proceeded to record it. We have carefully examined the questionnaire prepared by the

learned Judicial Magistrate, and it is evident that rational and probing questions were put to the respondent/accused, to which he furnished coherent and reasoned answers. The confessional statement, when read in its entirety, narrates in detail the manner in which the unfortunate incident unfolded and how the deceased received the firearm injuries. Although the respondent/accused attempted to mitigate his culpability by asserting that the pistol had gone off unintentionally, the nature and placement of the injuries leave no room for ambiguity. Had his version regarding lack of intention been correct, all injuries would likely have been in close proximity; instead, the deliberate selection of multiple areas of the body unmistakably indicates an intention to cause death. It was argued before us that when the confessional statement is read alongside the statements of the witnesses and the medical evidence, certain conflicts appear, and therefore the benefit of such discrepancies should accrue to the respondent/accused. It was further contended that a confessional statement

must either be accepted or rejected in its entirety. We find ourselves unable to agree. The confessional statement contains precise details of the occurrence, tallies with the narration provided by PW-3, and accurately reflects the inter-se relationship of the parties as well as the presence of the eyewitnesses at the crucial time. Upon a holistic appraisal of the statement, we find no hesitation in concluding that it is both true and voluntary. The learned Judicial Magistrate clearly explained the circumstances under which the statement was recorded, the opportunity granted to the respondent/accused to reconsider, and the careful satisfaction reached before proceeding. The questionnaire, the answers, and the testimony of the Magistrate all reinforce the authenticity and voluntariness of the confession. It is a well-settled proposition that a conviction may rest solely upon a voluntary and truthful confessional statement. In the present case, the confession satisfies all legal requirements, and the learned Judicial Magistrate has duly verified its

voluntariness. This important piece of evidence ought to have been given due weight by the learned trial court, yet unfortunately it escaped its notice. In our considered view, the confessional statement stands firmly within the bounds of law, is voluntary, and aligns seamlessly with the other evidence brought on record. No ambiguity remains in its acceptance as a material and reliable piece of evidence. Reliance is placed on the judgment of the Apex Court in case titled ***"Muhammad Talha Hussain alias Noman and another Versus the State",*** **(PLD 2008 Supreme Court 115)**.

11. The medical evidence fully supports the case of the prosecution. The eyewitnesses categorically stated that the deceased teenager was fired upon, and the respondent/accused himself, in his confessional statement, admitted that he fired three to four shots. The medical evidence confirms that the deceased sustained three firearm entry wounds. Thus, when the ocular account is confidence-inspiring, and the medical evidence aligns both with the eyewitness testimonies and with the

confession of the respondent/accused, the harmony among these essential components of evidence is, by itself, sufficient to establish that the prosecution has successfully brought home the charge against the respondent/accused. True that medical evidence is generally corroborative in nature; however, it is equally true that it may form the basis of conviction when it supports otherwise reliable prosecution evidence. In the present case, the consistency between the ocular account and the medical evidence was clear and compelling. Yet, unfortunately, even this crucial aspect escaped the notice of the learned trial court, which proceeded to extend the benefit of doubt to the respondent/accused by overlooking these vital pieces of evidence. In similar circumstances, we derive wisdom from the judgment of the apex Court titled ***"Aqil Versus The State",*** **(2023 SCMR 831).**

12. It is correct that no motive was stated by the complainant when he lodged the report. Had any motive been alleged, the burden to prove it would indeed have rested on

the complainant. However, the complainant reported the matter exactly as he had been informed, and in the manner in which the incident had occurred. For this purpose, the testimony of the eyewitness, who actually witnessed the occurrence as well as the confessional statement of the respondent/ accused, which clearly narrates how the incident unfolded, may be considered without hesitation. These circumstances show that even in the absence of a motive, the ocular account and the confessional statement provide a coherent and reliable chain of events. This was a motive-less killing; the complainant had no knowledge of any prior strained relationship between the accused and the deceased. Rather, it was a sudden and timely altercation that tragically escalated into violence. Therefore, the weakness or absence of motive is of little consequence in the present case and certainly cannot be stretched to such an extreme as to justify an acquittal.

13. The weapon of offence was recovered from the possession of the accused

at the time of his arrest. In this regard, case FIR No. 1265 was registered under Section 15AA. The pistol was thereafter placed in safe custody at Police Station Faqir Abad. The same was subsequently collected by the investigating officer and dispatched alongwith the recovered empties to the FSL, where a positive report was received. It was argued on behalf of the respondent/accused that the pistol and empties were sent to the firearms expert after an undue delay, and that such delay diminished the evidentiary worth of this material. However, the learned counsel appearing for the respondent/accused overlooked a critical fact that the collected empties had initially been sent to the firearms expert, who reported that all empties had been fired from a single weapon. Thereafter, upon the arrest of the accused and recovery of the pistol, the same alongwith the collected empties were again forwarded to the expert. Thus, the laboratory report is confidence-inspiring. Even if one of the two reports is excluded from consideration, the other

standing alone, is sufficient to connect the accused with the weapon of offence. Although the laboratory report is circumstantial and supportive in nature, it nonetheless forms a valid link in the chain of evidence, particularly when viewed alongside the confession of the respondent/accused and the straightforward and consistent testimony of the prosecution witnesses. Hence, this piece of evidence can safely be relied upon. Reliance is placed on the judgment of apex court titled ***"Muhammad Hanif vs the State"*** **(2023 SCMR 2016)**.

14. It is pertinent to mention that the respondent /accused remained in hiding until his arrest; he did not voluntarily surrender before the law-enforcement agency. It is true that abscondence alone is not sufficient to establish guilt; however, unexplained abscondence may legitimately be considered as a relevant circumstance. In the present case, where the prosecution has led independent witnesses and produced essential circumstantial evidence, the abscondence of the accused assumes significance. Thus, when

the same, the forensic reports, and the surrounding circumstances are considered collectively, this Court has no hesitation in holding that the learned learned trial court was not justified in ignoring this evidence, which directly linked the accused with the commission of the offence. Reliance is placed on the judgment of the Apex Court titled ***"Mst. Roheeda Versus Khan Bahadur and another"*** **(1992 SCMR 1036)**.

15. We now turn to the most essential and crucial aspect of the case. As the respondent/accused was acquitted of the charge, and the present appeal has been filed to challenge that acquittal. This Court is therefore required to examine the circumstances under which an order of acquittal may be reversed, and further, whether such circumstances are present in the matter before us. It is an undisputed principle of criminal jurisprudence that an accused is presumed innocent until proven guilty. Once an accused has been acquitted, this presumption stands fortified, and a double presumption of innocence is

credited to his favour. To upset such a finding, extraordinary circumstances are required. It is equally well-settled that an appellate court must exercise heightened care while hearing an appeal against acquittal, and even greater caution when it intends to reverse such a finding, as superior courts are ordinarily reluctant to disturb an acquittal rendered by a trial court. True that where an order appears arbitrary or perverse, the appellate court must act with restraint; but equally true the principle that no court of appeal may permit an illegal or unjustified order to stand, if upon re-appraisal, it is satisfied that the evidence on record was not properly appreciated. In the present case, the learned trial court failed to take into consideration several essential aspects, the consistent and confidence-inspiring statements of the eyewitnesses, the contents of the report of the complainant, the voluntary confessional statement of the respondent/accused and the forensic evidence showing that the empties collected from the spot matched the weapon recovered from the respondent/accused. These

vital elements were either overlooked or inadequately evaluated. In our considered view, the learned trial court fell into serious error while handing down the impugned judgment. The circumstances of the case clearly warrant interference. The impugned judgment suffers from material infirmities and does not provide reasons capable of sustaining the acquittal, particularly when the respondent/accused stood alone charged for the commission of the offence. Accordingly, the instant appeal is allowed. The impugned judgment is set aside. The respondent/accused is hereby convicted and sentenced under section 302 (b) PPC to rigorous imprisonment for life as Tazir and also to pay a compensation of Rs.5,00,000/- (rupees five lac) to the LRs of the deceased within the meaning of section 544-A CrPC recoverable as arrears of land revenue and, in default whereof, to suffer simple imprisonment for six months. Benefit of Section 382-B Cr.P.C is extended to the respondent/accused. Since the respondent/ accused despite non-bailable warrant of arrest,

was not present before the court at the time of pronouncement of this judgment, so copy of this judgment be sent to the SHO Police Station Faqir Abad with the direction to arrest the respondent /accused and be sent to jail for serving the awarded sentence and thereafter, compliance report be submitted to the Additional Registrar (Judicial) of this court.

Announced
04.11.2025

J U D G E

J U D G E

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