

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

Cr.A.No.64-D/2024.

Kaleem Ullah
Vs.
The State etc.

JUDGMENT

For Appellant: Muhammad Kamran Baloch,
Advocate.

For State: Mr. Kifayat Ullah Kundi, Advocate.

For Respondent: Mr. Fazal Karim Khan, Advocate.

Date of hearing: **25.11.2025.**

FARAH JAMSHED, J.- This single judgment shall also dispose of the instant and the connected Criminal Revision No.10-D of 2024, titled '*Mst. Nazamina Bibi v. Kaleem Ullah etc*' as both the matters have arisen from one and the same judgment and order dated 13.7.2024, handed down by learned Additional Sessions Judge-I, Tank, in case F.I.R No.396 dated 30.12.2019, registered under Section 302 PPC of Police Station Mullazai, District Tank.

2. Through impugned judgment and order dated 13.7.2024, the appellant Kaleem Ullah son of Muhammad Shafique, was convicted under Section 302(b) PPC for the murder of Aleem Shah and sentenced to life imprisonment and to pay compensation of Rs.500,000/- to the legal heirs of deceased Aleem Shah, in terms of Section 544-A, Cr.P.C, or in default thereof

to further undergo simple imprisonment for six months. In addition, he was convicted under Section 316 PPC for the murder of Irfan Ullah and sentenced to ten years rigorous imprisonment along with fine of Rs.500,000/- to be paid to the legal heirs of deceased Irfan Ullah, or in default thereof, to undergo six months simple imprisonment. All the sentences were ordered to run concurrently. Benefit under Section 382-B, Cr.P.C. was extended to the convict/appellant.

3. Brief summary of prosecution case as divulged from the FIR, registered on the strength of a *Murasila*, indicates that on 30.12.2019 at about 11:35 hours, the complainant Mst. Nazamina Bibi (Pw-11), while present alongside the deceased—husband Aleem Shah, reported the incident to the local police at Emergency Room of DHQ Hospital, Tank. She reported that on the eventful day at about 10:30 a.m, her husband had parked the Datsun in front of their house for the purpose of loading the gas cylinder. In the meanwhile, accused Irfan Ullah arrived there and asked her husband to move the Datsun from the roadway leading to a verbal altercation. Upon hearing the noise, she also came outside her house. During this time, accused Kaleem Ullah, arrived armed with a pistol and started firing at her husband, resulting in injuries to her husband and Irfan Ullah (brother of accused), who subsequently succumbed to his injuries. After the incident, the

accused fled from the spot. The occurrence was reportedly witnessed by the people present at the spot. Motive for the occurrence was reported as a dispute over parking of vehicle.

4. It is worth mentioning that on 09.6.2021, statement of Mst. Bakht Bibi (mother of deceased Irfan Ullah) was recorded under Section 164/364, Cr.P.C., before the Judicial Magistrate, Tank, wherein she narrated different account of the occurrence.

5. Initially, the accused remained fugitive from law, leading to submission of challan under section 512, Cr.P.C. was submitted against him. After arrest of the accused, challan was submitted against him before the trial Court. The prosecution produced and examined twelve (12) witnesses. After conclusion of the prosecution evidence, the accused was examined under section 342, Cr.P.C., wherein he professed innocence and false implication. However, neither he opted to be examined on oath in terms of Section 340(2), Cr.P.C., nor produced defence evidence. The learned trial Court, after hearing arguments, convicted the appellant and sentenced him, as detailed in the judgment and order dated 13.7.2024, impugned herein. Hence, the instant appeal, while the connected criminal revision has been filed for enhancement of the sentence.

6. Arguments heard. Record perused.

7. Undeniably, single accused has been charged in this criminal case, hence, the chances of substitution and false implication would be a rare phenomenon. However, this fact alone would not be sufficient to absolve the prosecution of its liability to bring home guilt of the accused beyond any reasonable doubt. In Mst. Sughra Begum's¹ case, the apex Court held that it is cardinal principle of justice that ocular account in cases of capital punishment 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.

8. With this background, the points for determination before this Court would be:

- (i) Whether the occurrence took place in the mode, manner and time as alleged by the complainant and prosecution;
- (ii) Whether the presence of the appellant and alleged eyewitnesses at the crime scene is established;

¹ Mst. Sughra Begum and another vs. Qaiser Pervez and others (2015 SCMR 1142)

(iii) Whether the motive stands established.

9. There is no denial to this fact that in this unfortunate incident two persons lost their lives for which the accusation was levelled against the appellant. Taking a glance of the ocular version furnished by complainant Nazamina Bibi (Pw.11) and the alleged eyewitness, Shaukat Ali (Pw.12), admittedly, the deceased was husband of Pw.11 and the occurrence allegedly took place in front of house of the complainant, where her husband (now deceased) had parked the Datsun for the purpose of loading of gas cylinders. An altercation took place between husband of the complainant and Irfan Ullah and on hearing noise the complainant came out of the house, while the appellant also attracted to the spot. Allegedly, due to the firing of appellant, husband of the complainant got hit and died at the spot, while Irfan Ullah was also hit and sustained injuries, who subsequently died in the hospital.

10. It is well settled that the testimony of a related witness is to be analyzed with great care and caution and could only be relied upon if the same rings true and natural. The complainant while entering into the witness box as Pw-11, reiterated same story as narrated in the FIR. She, however, admitted during cross-examination, that she attended her husband after

2/3 minutes of the occurrence, which clearly suggests that she did not witness the occurrence which had already occurred before her arrival to the spot. In such state of affair, presence of the accused on the spot at the time of occurrence is highly doubtful. On further perusal of the cross-examination of this witness, it is evident that the same is not corroborated by any other independent evidence, hence, could not be believed for sustaining conviction.

11. The alleged eyewitness Shaukat Ali deposed as Pw-12. Although name of this witness is not mentioned in the FIR as an eyewitness, however, while preparing the site plan, the Investigating Officer shown him along with Habib-ur-Rehman, at points No.5 & 6, as the eyewitnesses of the occurrence. For the sake of substantial justice, we would like to discuss the testimony of this witness to reach at a just decision. This witness reiterated the same story as narrated in the FIR, however, during cross-examination, he stated that they left the spot for the hospital after about 5/6 minutes of the occurrence and reached there at about 11:30 a.m. According to him, the hospital is at a distance of one hour drive from the house of the deceased. He stated that the dead-body of the deceased was shifted to the hospital in a motorcar, however, this fact was neither mentioned by him in his examination-in-chief, nor in his statement recorded under section 161, Cr.P.C. He was

unable to tell about the registration number of the motorcar through which the dead-body was allegedly shifted to the hospital. According to him, the blood was flowing from wounds of the dead-body and his clothes were also tarnished with blood, however, he did not hand-over the same to the police. In our view, the disclosers made by both the alleged eyewitnesses in their statements were sufficient to conclude that they were subsequently procured. Needless to say that both the alleged eyewitnesses have tried to bring their testimonies in line with the prosecution story. In such view of the matter, their testimonies could not be relied upon for sustaining conviction. In Abid Ali² case, it was held in paragraph-21, that:-

“To believe or disbelieve a witness all depends upon intrinsic value of the statement made by him. Even otherwise, there cannot be universal principle that in every case interested witness shall be disbelieved or disinterested witness shall be believed. It all depends upon the rule of prudence and reasonableness to hold that a particular witness was present on the scene of crime and that he is making true statement. A person who is reported otherwise to be very honest, above board and very respectable in society if gives a statement which is illogical and unbelievable, no prudent man despite his nobility would accept such statement”.

12. It is worth mentioning that on 09.6.2021 i.e. after about one and half year of the occurrence, statement of Mst. Bakht Bibi wife of Shafique (mother of deceased Irfan Ullah) was recorded under Section

² Abid Ali and 2 others v. The State (2011 SCMR 208)

164/364, Cr.P.C., before the Judicial Magistrate, Tank, wherein she narrated the occurrence as an eye-witness, however, in support of her statement, she was not produced before the Court during the trial, hence, her statement, recorded after one and a half year of the occurrence, could not be relied upon for sustaining conviction of the appellant. Prosecution failed to justify the reason for not producing her as an eye-witness of the occurrence or the reason for recording her statement after 1½ years of the occurrence. In Fateh Khan³ case, it was held that:-

“Neither both witnesses nor the Investigating Officer furnished any explanation for the delay in recording their 161, Cr.P.C. statements”.

In Muhammad Asif⁴ case, it was held by the apex Court that:-

“There is a long line of authorities precedents of this court and the High Courts that even one or two days unexplained delay in recording the statement of eye-witnesses would be fatal and testimony of such witnesses cannot be safely relied upon”.

The prosecution withheld the best evidence, which was necessary for doing the substantial justice. In Muhammad Ramzan⁵ case, it was observed that:-

“At the trial, the prosecution has not produced Matloob Hussain, the owner of the house as witness. An adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above witness been

³ Fatah Khan v. The State and others (2025 SCMR 1408)

⁴ Muhammad Asif v. The State (2017 SCMR 486)

⁵ Muhammad Ramzan v. The State (2025 SCMR 762)

produced by the prosecution at the trial, they would not have supported the version of the prosecution. Reliance in this regard is placed on the case of "Mst Saima Noreen v. The State" (2024 SCMR 1310)".

Reference may also be made to Muhammad Nasir Butt⁶ case.

13. The case was investigated by Tahir Khan SI (Pw-4). In his statement, he explained the proceedings conducted by him during the course of his investigation. During cross-examination, he stated that he departed from the Police Station at 12:40 p.m and reached the spot at 13:10 hours. He remained on the spot for about 1 ½ hours. He admitted that there was no independent witness of the recovery memos. He further admitted that the seal monogram affixed on the parcels was not in his name. In this respect, the marginal witness namely Asmat Ullah (PW-3) was questioned, who replied that the seal monogram 'AR' is the name of Abdul Sattar, while Investigating Officer of the case is Muhammad Tahir Khan SI. He admitted that seal monogram affixed on parcel No.5 and 6 was not in the name of Investigating Officer Muhammad Tahir Khan SI. He also admitted that the proceedings pertaining to Ex. PW-3/1 (blood-stained Qameez of deceased Aleem Shah) and Ex. PW-3/2 (blood-stained Pajama and Shalwar of deceased Irfan Ullah) were completed by the

⁶ Muhammad Nasir Butt and 2 others v. The State and others (2025 SCMR 662)

I.O in the Police Station. In Akhtar Iqbal⁷ case, it was held that:

“The learned counsel for the appellant has taken us through the statement made by the sole surviving attesting witness of the Memorandum of Recovery namely Mati-ur-Rehman (P.W.2) and has pointed out a number of factors available in his statement which had created some doubts in the alleged recovery effected from the appellant but the most important factor in that connection, which compounded all those doubts and raised a big question mark upon the veracity of the prosecution's case against the appellant, was that after allegedly recovering the contraband substance from the boot of the motorcar driven by the appellant the parcels of the recovered substance were sealed with a monogram reading as SJ and it had been disclosed by Mati-ur-Rehman (P.W.2) before the learned trial Court that the said monogram belonged to one Sameen Jan Inspector who was not even posted at the relevant Police Station at the time of the alleged recovery from the appellant and as a matter of fact at the said time the said Inspector was serving at a Police Station in Quetta. Mati-ur-Rehman (P.W.2) had not been able to advance any explanation whatsoever as to why the recovery officer namely Assistant Director Rehmat had not put his own monogram on the seals of the parcels prepared by him and as to why he had used the monogram of some other officer who was not even posted at the relevant Police Station at the relevant time”. [Emphasis supplied]

The Investigating Officer (PW-4) further admitted that he did not specify the inter se distance between point No.2 to 5 in the site plan. According to him, Irfan Ullah deceased was present in between the accused and deceased Aleem Shah at the time of occurrence. He admitted that he had not given details of mark-B in the

⁷ Akhtar Iqbal v. The State (2015 SCMR 291)

site plan separately, however, the same is mentioned along with point N.4. He admitted it correct that he had not mentioned the distance between point No.4 and Mark-B in the site plan. He further admitted that the eyewitness in the site plan were not mentioned by name in the FIR. He also admitted that the crime scene is a populated area. According to him, when he received copy of the FIR, deceased Irfan Ullah then injured and he did not go to the hospital at Tank as he was informed by the Incharge Reporting Center Mehtab Khan ASI that he had already been referred to DHQ, Hospital, D.I.Khan. According to him, he had recorded the statement of complainant on the spot during spot inspection on the day of occurrence while the statements of eyewitnesses were recorded on 03.01.2020 in their *Baithak* at '*Dopehar Vellah*'.

14. Dr. Sami Ullah (Pw-6) examined the deceased then injured Irfan Ullah, on 30.12.2019 at about 12:10 p.m and observed firearm entry wound on left buttock of 1 c.m with its exit in left inguinal region of 2 cm; another firearm entry wound on right leg, 2x2 cm below right knee joint with its exit on right leg back below right knee joint above ankle joint. After the death of Irfan Ullah, the afore-named witness conducted autopsy on the dead body, on 30.12.2019 at about 07:10 p.m.

On said date at about 12:30 hours, he also conducted autopsy on the dead body of deceased Aleem Shah and observed the following wounds:

(i) FA entry wound one single deep wound of 3x3 cm at forehead.

(ii) A single linear wound at left side of abdomen subcutaneous wound with both entry and exit wound with 3 cm distance in between.

(iii) Single exit wound of 4x3 cm wide at vertex of scalp.

During cross-examination, he stated that the dead body of deceased Irfan Ullah was produced to him at about 07:00 p.m. According to him, Irfan Ullah, deceased then injured, was produced before him at 12:10 p.m, who was brought by the police and relatives, however, in the MLC report, the column meant for relatives was left blank. He admitted that in the postmortem report, relatives are not mentioned. He admitted that in postmortem reports of both the deceased, time of arrival of dead bodies was not mentioned. He admitted that he had not mentioned two injuries in PM report of deceased Irfan Ullah with two exit wounds. According to him, the deceased Irfan Ullah sustained one entry wound from front side while the other from back. He admitted it correct that the wound on abdomen of deceased Aleem Shah was of FAI.

15. It is pertinent to mention that the occurrence had taken place on 30.12.2019 at about

10:30 hours, which was reported in DHQ Hospital Tank, at about 11:35 a.m. Initially, Irfan Ullah, deceased then injured, was medically examined by Dr. Sami Ullah (Pw-6) on 30.12.2019 at about 12:10 p.m. In this respect, the doctor stated that the injured was brought by constable Shafi Ullah No.326. Said constable Shafi Ullah was not examined before the trial Court, rather he was relieved. Mehtab Ali SI (PW-1) scribed report made by the complainant, stated that, "Meanwhile, one injured Irfan Ullah was brought unconscious" and he prepared his injury sheet Ex. Pw-1/3 and referred him to the doctor for his medical examination, however, during cross-examination, he stated that after 10 to 15 minutes of the arrival of dead body of Aleem Shah, the deceased then injured Irfan Ullah was brought to the hospital. No evidence was led by the prosecution which could suggest that how and by whom, the said injured was shifted from the spot to the hospital. In such view of the matter, the above aspect of the case raises an eyebrow qua the prosecution story.

16. So far as the FSL report qua recovery of two empties of .30 bore, allegedly recovered from the crime scene is concerned, suffice it to say that since no independent witness was associated with the recovery proceedings, hence, no weight could be given to positive report of FSL, particularly when no crime

weapon was recovered from the appellant or at his pointation. Even otherwise, the recoveries are always considered as corroborative pieces of evidence and if direct evidence fails, then such type of evidence loses its efficacy, as held by the apex Court in Mst. Sughra Begum (*supra*).

17. The prosecution alleged motive to be altercation between husband of the complainant and deceased Irfan Ullah (brother of the appellant), however, it did not succeed in establishing the alleged motive and even no independent witness was produced in that respect. When the prosecution did not succeed in establishing the motive, then it is for the prosecution to suffer. In Tariq Mehmood⁸ case, it was held that:-

"The most crucial aspect of the case, in our view, being that the prosecution has miserably failed to prove any motive in the instant matter. It has nowhere been stated as to what prompted the accused to kill the two brothers as neither was there any enmity alleged to be between the parties nor there was any report with regard to any scuffle which took place between them prior to the incident. This Court in the case of Muhammad Hassan v. State (2024 SCMR 1427) held as under:

"11. The motive behind the occurrence, according to the contents of the FIR and the Private Complaint, was that the present incident stemmed from an enmity that began approximately five years ago. The Complainant (PW-1) further alleged that two years before the present incident the accused persons murdered his maternal uncle, Muhammad Sadiq,

⁸ Tariq Mehmood v. The State (2025 SCMR 780)

whose case was pending in court at that time”.

18. There is no two opinion about the fact that the cardinal principle of justice always laid emphasis on the quality of evidence which must be of first degree and sufficient enough to dispel the apprehension of the Court with regard to the implication of innocent persons alongwith guilty one by the prosecution, otherwise, the golden principle of justice would come into play that even a single doubt if found reasonable would be sufficient to acquit the accused, giving him/them benefit of doubt because bundle of doubts are not required to extend the legal benefit to the accused. Rel: Riaz Masih alias Mithoo vs. State⁹. In a recent pronouncement, reported in Ahmad Ali¹⁰ case, the apex Court has held that:-

“Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right”.

19. For the aforesaid reasons, we have come to an irresistible conclusion that the prosecution has failed to prove its case against the accused beyond any reasonable shadow of doubt, benefit of which, as stated

⁹ Riaz Masih alias Mithoo Vs. State” (NLR 1995 Cr.SC 694)

¹⁰ Ahmad Ali and another Vs. The State” (2023 SCMR 781)

above, is extended to the accused as matter of right and not as a matter of grace. The instant criminal appeal is allowed, the impugned judgment is set-aside, resultantly, the appellant is acquitted of the charges levelled against him. He is directed to be released forthwith, if not required to be detained in connection with any other case. Since we have set aside the impugned conviction awarded to the appellant, hence, the connected revision petition, bearing Cr.R.No.10-D/2024, titled '*Mst. Nazamina Bibi v. Kaleem Ullah etc*' has become infructuous, which stands dismissed accordingly.

20. Above are the reasons for our short order of even date.

Announced.
25.11.2025.

-Sd/-
JUDGE

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

-Sd/-
JUDGE