

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

Cr. A No. 417-P/2024

Sawar Shah & others

Vs

The State & another

JUDGMENT

Date of hearing: **14.10.2025**

**Appellants by: Mr. Hussain Ali,
Advocate.**

The State by: Mr. Jawad Ali, AAG.

**Complainant by: Barrister Amir Khan
Chamkani.**

SAHIBZADA ASADULLAH, J.- Through this single judgment, we are intending to decide the instant criminal appeal as well as the connected **Criminal Revision No. 155-P/2024** titled "**Ajab Khan Vs The State & others**", as both the matters are arising out of one and the same judgment dated 02.05.2024, passed by learned Additional Sessions Judge-II, Mohmand delivered in case FIR No. 53 dated 21.08.2022 under sections 302/324/337-F(v)/148/149 PPC registered at Police Station Prang Ghar,

District Mohmand, whereby the appellants were convicted and sentenced as under:

- i. Under section 302 (b) PPC each to imprisonment for life in three counts for each deceased and shall also pay a fine of Rs.5,00,000/- (Rupees five lac) each as compensation within the meaning of Section 544-A Cr.P.C to be recovered as arrears of land revenue under section 544-A (2) CrPC. In default of payment of fine, they shall further undergo simple imprisonment for six months each.*
- ii. Under section 324 PPC for attempting at the lives of the complainant Ajab Khan and PW Jameel Khan to imprisonment for five years in each case and to pay a fine of Rs.100,000/- (rupees one lac) each to both the injured as compensation within the meaning of Section 544-A Cr.P.C to be recovered as arrears of land revenue under section 544-A (2) CrPC. In default of payment of fine, they shall further undergo*

simple imprisonment for six months each.

The sentences shall run concurrently and benefit of section 382-B Cr.P.C is extended to the appellants.

2. Facts forming the background of the instant case are that upon receiving information regarding the occurrence, Muhammad Nawab Khan, S.I, proceeded to the place of incident situated at Bakaro Sar, Prang Ghar, where he found the dead bodies of Nawab Khan and his sons Imad Khan and Habeel, alongwith injured Samar Gul; that the complainant Ajab Khan reported the matter to the effect that they were present at their quartz site when in the meanwhile, accused Muhammad Shah and Ikram Shah sons of Meer Hassan Shah, Sarwar and Muzammil sons of Muhammad Shah, Niamat Shah and Masood Shah sons of Zahir Shah, all armed with firearms, started firing at them as a result of which Nawab Khan, Imad Khan, and Habeel were hit died on the spot, while Samar Gul sustained firearm injuries while, the complainant and his brother escaped unhurt;

that motive behind the occurrence was attributed to be a dispute over mining hence, the present FIR. .

3. It is pertinent to mention that on the said date, accused Masood Shah reported the matter to the effect that the deceased Nawab Khan and Imad were carrying out work at his hill, whereupon he, alongwith Ikram, Wajid, and Wakeel, went to the spot to restrain them from continuing such work; that the deceased Nawab Khan and Imad opened fire at them as a result of which he sustained firearm injury on the left side of his chest, while Ikram also received injuries; that the remaining companions, however, managed to escape unhurt; that the report of the accused Masood Shah was penned down in shape of daily diary No.16, dated 21.08.2022.

4. It is pertinent to mention that soon after the occurrence accused Muhammad Shah, Muzammil Shah and Niamat Shah went into hiding. After completion of investigation in both the case, and arrest of the accused, 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 substantiate its claim, the prosecution produced and examined as many as 23 PWs.

After closure of prosecution evidence, statements of accused were recorded under section 342 CrPC, wherein they posed innocence, however, neither they wished to be examined on oath under section 340(2) Cr.P.C, nor wanted to produce defence evidence. It is pertinent to mention here that, on the application of the learned Deputy Public Prosecutor and learned counsel for the complainant, an additional charge was framed on 29.02.2024. The learned counsel for both parties recorded their statements, submitting that they relied upon the evidence already brought on record. Consequently, the statements of the accused under Section 342, Cr.P.C. were re-recorded, wherein they once again neither opted to be examined on oath under Section 340(2), Cr.P.C., nor desired to produce any evidence in their defence. The learned trial Court, after full-fledged trial, convicted and sentenced the appellants vide

the impugned judgment, hence, instant appeal.

5. Arguments heard and record scanned with their valuable assistance.

6. August 21st, 2022, was no less than a doomsday, as three innocent souls lost their lives on one side, while two persons sustained injuries on the other. Regarding the deceased, the matter was initially reported by one Ajab Khan upon the arrival of the local police at the spot. After registration of the report, injury sheets and inquest reports were prepared, and the dead bodies were dispatched for post-mortem examination. Meanwhile, the injured, namely Masood Shah and Ikram, were shifted to the hospital at Tangi. While in injured condition, Masood Shah reported the matter, which was reduced into writing in the shape of Daily Diary (DD) No. 16. Their injury sheets were prepared, and both were medically examined by the doctor, who issued their respective medico-legal certificates. As one of the injured, Ikram, was in critical condition, so he was referred to Lady Reading Hospital, Peshawar, for further treatment, where he remained hospitalized for

a considerable period. The Investigating Officer, upon receiving copy of the FIR, visited the spot and, in the presence of the complainant Ajab Khan, prepared the site plan in the FIR case. During spot inspection, blood samples were collected from the respective places of the deceased and injured. The Investigating Officer also took into possession fifteen (15) empties of 7.62-bore and twenty-two (22) empties of 9 mm-bore. It is pertinent to mention that the same Investigating Officer also prepared the site plan in DD No. 16, as the place of occurrence was common in both incidents. During that inspection, blood was again collected from the spots related to the injured, and four (04) empties of 30-bore were recovered from near the deceased. The Investigating Officer dispatched all recovered empties to the Firearms Expert. The ballistic report confirmed that the fifteen empties of 7.62-bore had been fired from different weapons, while the twenty-two empties of 9 mm-bore were also fired from different weapons. After completion of investigation, the accused were arrested and sent to face trial. Upon

conclusion of the proceedings, the learned Trial Court convicted and sentenced the accused through the impugned judgment. However, the connected case under DD No. 16 could not proceed further as the accused therein had expired, resulting in the abatement of proceedings to that extent.

7. The learned Trial Court took into consideration the essential aspects of the case and, after proper appreciation of the evidence available on record, reached to a conclusion regarding the involvement of the appellants in the tragic occurrence. Now, this Court is to examine whether the learned Trial Court properly appreciated the evidence brought on record, and whether its approach was in conformity with the settled principles of law. True that the unfortunate incident claimed the lives of three innocent persons, yet it is equally true that from the other side two individuals also sustained grievous injuries, one on the chest and the other on the lower part of his body. Hence, this Court is duty-bound to assess what actually led to the tragic incident, who was responsible for the loss of lives, and whether the learned Trial

Court's findings are supported by reliable and convincing evidence. In order to avoid miscarriage of justice, we deem it appropriate to re-appraise the entire evidence available on record and re-evaluate the circumstances surrounding this unfortunate episode.

8. The points for determination before this Court are as to whether the incident occurred in the mode, manner and at the time alleged by the prosecution; whether it was the complainant who initially reported the matter; whether the medical evidence corroborates the prosecution's version of events; and whether the prosecution has succeeded in proving its case and bringing home the guilt of the accused. Furthermore, this Court is required to ascertain as to whether two of the accused sustained firearm injuries during the same episode; whether such injuries were caused by the deceased; whether either party concealed the material facts during investigation; and if such concealment or suppression is established, what legal consequences are to follow therefrom.

9. In order to appreciate the peculiar circumstances of this case, we deem it essential to examine the evidence collected by the Investigating Officer, particularly regarding the presence of the parties at the place of occurrence and their respective claims over the disputed property. Both sides, while reporting the matter, remained consistent with respect to the motive, and both attributed the occurrence to a dispute over the same piece of land. The crucial question before this Court is whether it was the complainant party who first reached the spot and were subsequently attacked by the appellants, or whether the appellants were already present at the place of occurrence when the complainant party arrived. It is an admitted position that the time of occurrence, the place of incident, and the parties involved are common in both versions. Therefore, this Court must determine which of the two parties was the aggressor and whether both sides simultaneously engaged in the exchange of fire resulting in the unfortunate loss of lives. To properly assess these aspects, it is imperative to scrutinize the statements of the

material witnesses, particularly the complainant and the eyewitness. The complainant, examined as PW-18, narrated the circumstances leading to the occurrence, explaining how the accused arrived at the spot, how the altercation ensued, and how the firing took place. He also detailed the manner in which the matter was reported to the police and how the dead bodies were dispatched for post-mortem examination. The eyewitness, examined as PW-19, supported the complainant's version and reiterated the circumstances in which the unfortunate incident took place. He also described how the deceased were fired upon, how the report was lodged, and how the dead bodies were shifted from the spot to the hospital. Both witnesses were cross-examined on material aspects of the case in an effort to extract contradictions favourable to the defence. Hence, it becomes necessary for this Court to determine whether the defence succeeded in creating reasonable doubt in the prosecution's case. It is an admitted fact that not only three persons lost their lives in the incident, but two individuals from the opposite side also

sustained firearm injuries. Therefore, this Court must determine whether the complainant and the eyewitnesses have deposed truthfully or whether material facts were intentionally concealed. To further appreciate the evidence, the statement of the Investigating Officer assumes great significance. Although the complainant did not disclose the injuries suffered by the two persons from the opposite side, the Investigating Officer, when examined before the Court, explained in detail the circumstances under which he visited the spot, recovered blood-stained earth from the respective places of the deceased and the injured, and took various empties into possession. He confirmed that fifteen (15) empties of 7.62-bore and twenty-two (22) empties of 9 mm-bore were recovered in the FIR case, while four (04) empties of 30-bore were recovered near the deceased in the cross-version. The Investigating Officer further admitted that, with respect to the injuries received by the appellants, a separate report was lodged, which was reduced into writing as Daily Diary No. 16. He thus

confirmed that the appellants had indeed received firearm injuries at the stated time, place, and during the same incident. When the statements of the prosecution witnesses are examined in juxtaposition with the testimony of the Investigating Officer, it leaves no room for doubt that the complainant and eyewitness attempted to suppress material facts and projected the occurrence as if only the appellants were the aggressors. However, the Investigating Officer's evidence clearly establishes that two individuals from the appellants' side also sustained firearm injuries in the same episode and that the matter was separately reported at the Casualty Department of Civil Hospital, Tangi. The scribe of DD No. 16, as well as the person who incorporated it into the police record, appeared before the Court and were duly examined. Both confirmed the arrival of the injured at the hospital and the treatment extended to them. The doctor who examined one of the injured, namely Ikram, appeared as PW-10 and testified that the injured was brought to the hospital in an injured condition, was medically examined by him, and a

medico-legal certificate was accordingly prepared. The record further reveals that another injured, Masood Shah, was also examined at the same hospital, whereas due to the precarious condition of Ikram, he was referred to Lady Reading Hospital, Peshawar, where he remained hospitalized for a considerable period. In view of the above, when it stands established that both parties received firearm injuries in the same episode, resulting in the death of three persons from one side and injuries to two from the other, no ambiguity is left that both sides participated in the exchange of fire, and it was as a result of this mutual firing that the tragic incident occurred.

10. The Investigating Officer, soon after receiving copies of the reports, proceeded to the spot. In the presence of the witnesses, he prepared site plans in both the respective cases. It is evident from the record that during spot inspection, blood was collected from the respective places of the deceased, and the recovered crime empties were also taken into possession. Likewise, blood was collected from the respective

places of the injured, and four empties of .30-bore were recovered lying near one of the deceased. In his statement before the Court, the Investigating Officer elaborated on the time of his arrival at the spot and explained the manner in which the site plans were prepared, as well as the witnesses on whose pointation the same were drawn. He confirmed that the place of occurrence was the very property under dispute and further admitted that both parties were present at the spot at the stated time. When the subject of dispute is common and both sides claim ownership of the same property, this Court has no reason to doubt that both parties had come to the spot duly armed. It appears that a sudden altercation erupted between them, turning the situation from bad to worse, which ultimately culminated in the tragic incident.

The learned counsel for the appellants has vehemently argued that when material facts were suppressed and when the injuries sustained by two individuals from the appellants' side occurred during the same episode, the learned Trial Court ought to have considered this vital aspect of the case, but

failed to do so. He further contended that once the essential circumstances of the occurrence are examined, it becomes clear that it was the deceased party who acted as aggressors, as the place of occurrence admittedly belonged to the appellants. The learned counsel maintained that once the factum of aggression is established and the deceased are found to have initiated the firing, then, in such an eventuality, the appellants had no option but to retaliate in self-defence. He argued that the firing resorted to by the appellants was not premeditated but an act committed in order to save their own lives. It was, according to him, in this process that the unfortunate deceased lost their lives. If the submissions of the learned counsel for the appellants are considered in light of the evidence on record, there remains no doubt that the appellants have admitted their presence at the place of occurrence at the stated time. Their own report confirms that the incident occurred in the stated manner, while their medico-legal certificates further substantiate that both the injured appellants had sustained firearm

injuries and were transported to Civil Hospital, Tangi, from where one of them was referred to Lady Reading Hospital, Peshawar, for further treatment. If this Court ultimately concludes that both parties acted in utter disregard of the law and that the altercation, which initially arose over the disputed property, turned the peaceful atmosphere into hostility and the incident occurred at the spur of the moment without premeditation, then the question that arises is whether, under such circumstances, the appellants would be entitled to any extraordinary concession, and whether the prevailing situation would justify their acquittal or mitigation of the sentence awarded to them. True that two of the injured were shifted to the hospital in an injured condition, where a report was recorded in the shape of Daily Diary No. 16. Their injury sheets were prepared, and upon medical examination, their medico-legal certificates were issued. The record further reveals that one of the injured was subsequently shifted to Lady Reading Hospital, Peshawar, in a serious condition, where he remained under treatment for a considerable period. However,

as the said injured were the accused persons in the FIR, and the deceased mentioned in the FIR case were the accused in cross version (daily diary), the proceedings in that case could not continue due to their demise, and consequently, the trial stood abated. This Court is now called upon to determine whether, in such circumstances, the benefit of the cross-case can be extended to the appellants, and whether the evidence collected therein may be taken into consideration while adjudging the present appeal. There is no denial to the fact that, with the death of the accused persons in the cross-version, the proceedings in DD-16 abated; however, the documents prepared during investigation do not lose their evidentiary value. The materials and evidence collected by the Investigating Officer, including the site plans, medico-legal certificates, and recovery memos, can still be taken into consideration for a just decision of the matter. It is pertinent to mention that when the Investigating Officer appeared before the Court, he categorically admitted the injuries sustained by two of the appellants and further

confirmed the recovery of blood-stained earth and empties from the respective spots where both the deceased and the injured were lying.

The relevant witnesses also appeared before the Court, and the documents pertaining to DD-16 were duly exhibited in evidence. The doctor who examined one of the injured also appeared as PW-10 and confirmed that the injured was brought to the hospital in a wounded condition, was examined by him, and the medico-legal certificate was accordingly prepared. In these circumstances, this Court holds with confidence that the evidence collected in the counter-version and the report reduced into writing as DD-16, alongwith the supporting medical documents, can legitimately be taken into consideration.

This Court is conscious of the fact that the defence, right from the inception of the trial, endeavored to explain the circumstances under which the unfortunate incident occurred, as well as the injuries sustained by two of the appellants. It is further noteworthy that during the recording of the statements of the accused under Section 342, Cr.P.C., specific questions were put to them regarding

the injuries received by two of the appellants in the same episode. The accused, in their replies, reiterated that both sustained firearm injuries during the same transaction. Thus, it stands established that the accused did not conceal this fact; rather, they consistently admitted the occurrence of injuries and the circumstances in which the same were received. When the plea of the appellants is read conjointly with the corroborating medical and documentary evidence, including the testimony of the doctor, the statement of the scribe of DD-16, and the admission of the Investigating Officer regarding the cross-version, no ambiguity remains that the incident did not occur in the manner portrayed by the prosecution, and that both the complainant and the eyewitness suppressed essential aspects of the case. In view of the above, when concealment of facts stands established on record and when both sides are shown to have suppressed material details from the Investigating Officer as well as from the learned Trial Court, this Court cannot overlook the conduct of either party. In similar situation the Hon'ble Supreme Court of

Pakistan in a cited judgment "**Tahir Mehmood @ Achoo v. The State and another**" (2018 SCMR 169), has held that while examining two divergent versions put forth by the prosecution and the defence, observed that both parties had concealed material facts and that the true circumstances of the occurrence were not fully brought before the Court. It was held that in such a situation, where the prosecution and defence versions are mutually contradictory and the possibility of a third version cannot be ruled out, the Court is required to exercise utmost judicial care and caution while determining the question of sentence.

11. Although learned counsel for the appellants sought to argue that the deceased were the aggressors, this Court is not inclined to accept that contention in its entirety. The circumstances rather indicate that both parties arrived at the spot duly armed, each asserting ownership over the disputed property, and it was due to their rival claims that the situation escalated, ultimately leading to the fatal occurrence. In such a scenario, this Court is of the considered view that neither party can

be termed as the sole aggressor. The evidence clearly demonstrates that the altercation was sudden, arising out of a property dispute, and that both sides resorted to firing, which culminated in the tragic loss of lives. There is no denial to the fact that one side suffered more grievously, having lost three of its members; however, the other side also endured substantial harm, as two of the appellants sustained serious firearm injuries. In cases of this nature, it is not the extent of damage suffered by either side that determines culpability, but rather the circumstances leading to the incident and the conduct of the parties involved. Since both sides acted with equal disregard to law and prudence, both share responsibility for the unfortunate outcome. Accordingly, while the appellants cannot be fully exonerated, the circumstances do entitle them to some benefit arising from the mutual nature of aggression and the absence of premeditation. Therefore, this Court is inclined to examine whether, in light of the above findings, the sentence awarded to the appellants is proportionate or whether it calls for judicial interference and

reduction. Having assessed the matter from all legal and factual perspectives, this Court is confident in holding that the learned Trial Court failed to take into consideration the essential aspects of the case and consequently erred in law while handing down the impugned judgment. The learned Trial Court overlooked vital facts, including the place of occurrence where both parties sustained firearm injuries, the subject of dispute which was jointly claimed by the rival parties, and the admitted motive underlying the entire episode. When these crucial aspects of the case are properly appreciated, this Court arrives at the inescapable conclusion that the approach adopted by the learned Trial Court was neither in accordance with law nor based upon a proper appraisal of the evidence available on record. These circumstances, therefore, warrant interference by this Court in order to secure the ends of justice. Since it stands established that both parties were equally responsible for the occurrence and that the incident took place in the heat of the moment, without premeditation, arising out of a property

dispute, the sentence awarded to the appellants does not appear to be commensurate with the circumstances of the case. The learned Trial Court also failed to give due weight to the fact that two of the appellants themselves sustained serious firearm injuries during the same occurrence.

12. Accordingly, while maintaining the conviction of the appellants under the relevant provision of law, this Court finds the sentence of imprisonment for life to be harsh and disproportionate. Consequently, the instant criminal appeal is partially allowed whereby, the conviction of the appellant is converted from section 302(b) PPC to section 302 (c) PPC and his sentence is reduced to **12 years rigorous imprisonment** while the remaining portion of the impugned judgment shall remain intact.

13. Now diverting to **Criminal Revision No. 155-P/2024** titled "**Ajab Khan Vs The State & others**", whereby the petitioner/complainant has sought enhancement of the sentence awarded to the appellants/convicts. In order to examine this aspect, it is incumbent upon this Court to

evaluate the overall circumstances of the case and to assess the propriety of the approach adopted by the learned Trial Court while determining the sentence. However, as this Court, upon appraisal of the evidence available on record, has partly allowed the connected appeal by altering the conviction from Section 302(b), P.P.C. to Section 302(c), P.P.C. and reducing the sentence to twelve years' rigorous imprisonment, the instant criminal revision has, thus, become infructuous and is accordingly dismissed.

Announced
14.10.2025

JUDGE

JUDGE