

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

Cr.A.No.66-D/2024.

Muhammad Zubair
Vs.
The State etc.

JUDGMENT

For Appellant: Mr. Saleem Ullah Khan Ranazai,
Advocate.

For State: Mr. Ghulam Muhammad Sappal AAG.

For Respondent: Mr. Nazar Muhammad Niazi, Advocate.

Date of hearing: **25.11.2025.**

FARAH JAMSHED, J.- This single judgment shall dispose of the instant criminal appeal and the connected Criminal Appeal No.70-D of 2024, titled '*Mst. Tasleem Bibi v. Habib Ullah etc*' and Criminal Revision No.14-D of 2024, titled '*Mst. Tasleem Bibi v. Muhammad Zubair etc*', as all the three matters are the outcome of one and the same judgment dated 28.8.2024, rendered by learned Additional Sessions Judge, Paharpur-D.I.Khan, in case F.I.R No.200 dated 20.6.2022, registered under Section 302/34 PPC read with Section 15 of the Khyber Pakhtunkhwa Arms Act, 2013 of Police Station SNK (Panyala), District D.I.Khan. Through his impugned judgment, the learned Additional Sessions Judge, Paharpur-D.I.Khan, convicted the appellant under Section 302(b) PPC and sentenced him to imprisonment

for life. He was also held liable 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 six months simple imprisonment. Benefit under Section 382-B, Cr.P.C. was extended to the convict/appellant.

2. Brief resume of the facts of prosecution case as divulged from the FIR, registered on the strength of a murasila, are that on 20.6.2022 at about 01:30 hours, the complainant Imam Shah, while present with the dead-body of his brother-in-law Akhtar Munir, reported the occurrence at Emergency Room of Type-D Hospital, Panyala, to the effect that on the fateful day, he was present in his house when he was informed by his son Asif Shah via mobile phone that on 19.6.2022 at 07:07 hours, his maternal uncle Akhtar Munir was fired at by someone in his garden/land, who was being taken to the hospital for treatment. On such information, he (the complainant) rushed to the hospital where his maternal uncle told him that he was busy in gardening when at about 05:20 hours, the appellant along with co-accused Habib Ullah fired at him with intention to commit his murder due to which he got hit and fell to the ground. Motive for the occurrence is stated to be a dispute over land. Subsequently, the injured succumbed to his injuries in the hospital.

3. After arrest of the accused, challan was submitted against him before the trial Court. The appellant was formally charged under Section 302(b) PPC, to which he pleaded not guilty. The prosecution examined fourteen (14) witnesses in support of its case. In his statement under Section 342 Cr.P.C., the appellant professed innocence and alleged false implication. However, he neither made statement on oath, under Section 340(2) Cr.P.C. nor produced any defence evidence. On conclusion of trial, the learned trial Court, after evaluating the evidence, convicted and sentenced the appellant, vide impugned judgment and order dated 28.8.2024, as mentioned earlier, while co-accused Habib Ullah was acquitted of the charge. The appellant has impugned his conviction through the instant appeal, whereas Mst. Tasleem Bibi, widow of deceased Akhtar Munir has filed the connected criminal appeal against acquittal of co-accused, bearing Cr.A.No.70-D of 2024 and the connected Criminal Revision No.14-D of 2024 for enhancement of the sentence awarded to the appellant, hence, all the matters are being decided through this single judgment.

4. Arguments heard. Record perused.

5. It is well settled preposition of law that circumstantial evidence may sometimes be conclusive, but it must always be narrowly examined in cases that

rested entirely on circumstantial evidence. At the same time, it is of the utmost importance that the circumstances should be ascertained with minute care and caution, before any conclusion or inference adverse to the accused person is drawn. The process of inference and deduction involved in such cases is of a delicate and perplexing character, liable to numerous causes of fallacy. This danger pointed the need for great caution in accepting proof of the facts and circumstances, before those were held to be established for the purpose of drawing inferences therefrom. A mere concurrence of circumstances, some or all of which are supported by defective or inadequate evidence, could create a specious appearance, leading to fallacious inferences. Hence, it is necessary that only such circumstances should be accepted as the basis of inferences that are, on careful examination of the evidence, found to be well-established. A high quality of evidence is, therefore, required to prove the facts and circumstances from which the inference of the guilt of the accused person is to be drawn.

6. Considering the available record, evidence led by the prosecution and the arguments advanced by both the learned counsel for the parties, the core points for us are;

(i) Whether the occurrence took place in the mode, manner and time as alleged by the prosecution?

(ii) Whether the circumstantial evidence collected against the appellant is sufficient to make a chain connecting him with the commission of offence?

(iii) Whether the testimony of complainant Pw-9 and his son Asif Shah Pw-10 are sufficient to believe that the appellant is involved in the commission of offence? and

(iv) Whether the motive, as alleged in the FIR, stands established?

7. Undeniably, the occurrence was unwitnessed, which allegedly took place on 19.6.2022 at about 05:20 hours and was reported to the local police on 20.6.2022 at about 01:30 hours. On the face of it, there was inordinate delay in reporting the occurrence to the police. Although the complainant, while reporting the matter explained the delay, however, the explanation so tendered could not be endorsed straightaway which would be discussed later while analyzing the testimony of the complainant. Keeping in view the inordinate delay in reporting the matter to the police, the element of consultation and deliberations could not be ruled out, as held in the cases reported as (AIR 1983 S.C.-810) titled 'Ranji Suriya and another Vs. The State of Maharashtra', 'Allahyar Vs. The State' (1990 SCMR-1134), 'Mahmood Ahmad and 3 others Vs. The State and another' (1995 SCMR-127), 'Imran

Hussain Vs. Amir Arshad and 2 others' (1997

SCMR-438) and 'Muhammad Rafique Vs. The

State' (2014 SCMR-1698). In Mst. Asia Bibi¹ case, it

was held by the apex Court that:

“In absence of any plausible explanation, the Supreme Court had always considered the delay in lodging of FIR to be fatal and it casted a suspicion on the prosecution story, extending the benefit of doubt to the accused--If there was any delay in lodging of FIR and commencement of investigation, it gave rise to a doubt, which, could not be extended to anyone else except to the accused”.

In Muhammad Hassan² case, the apex Court in

Para-6 of the judgment, held that:

“The incident in this case (as per the contents of the FIR and the Private Complaint) took place on 17.04.2008 at 4:00 p.m. However, the matter was reported to the police by the complainant, Muhammad Ibrahim (PW-1), through a written complaint (Ex. PA) on 18.04.2008. Consequently, the formal FIR (Ex.PA/1) was registered at 8:10 a.m., approximately more than sixteen hours after the incident, despite the police station being only 16 km away from the scene of the occurrence. Nowhere in the entire evidence, the prosecution has explained the reason for the delay in reporting the matter to the Police with such a delay. The delayed F.I.R. shows dishonesty on the part of the complainant and that it was lodged with deliberation and consultation. Reference in this regard may be made to the case of Amir Muhammad Khan v. The State (2023 SCMR 566) wherein a delay of only five hours and ten minutes in reporting the matter to and lodging the FIR by the police was considered indicative of dishonesty on the part of the complainant.

8. Having a glance over the prosecution evidence, it reveals that the occurrence was reported by

¹ Mst. Asia Bibi v. The State and others (PLD 2019 S.C 64)

² Muhammad Hassan and another v. The State and others (2024 SCMR 1427)

Imam Shah and according to him, he was informed by his son Pw Asif Shah. Both were examined before the trial Court as Pw-9 and Pw-10, respectively, hence, at first instance, it would be convenient to discuss their depositions, being star witnesses of the prosecution. There is no denial to this fact that both the witnesses are closely related to the deceased, hence, great care and caution would be required while scrutinizing their testimonies, as consistently held by the apex Court in a cantena of judgments. The complainant (Pw-9) was informed about the occurrence by his son Pw-10, on 19.6.2022 at about 07:07 p.m through mobile phone when he was present in his house. He reached the hospital where he found Akhtar Munir in injured condition. On query, the injured told him that at about 05:20 p.m, he was working in the field when the appellant and acquitted co-accused Habib Ullah fired upon him and as a result he got injured. The complainant explained the delay in lodging the report to be critical condition of the then injured and his shifting to DHQ Hospital D.I.Khan for medical treatment where the injured breathed his last. In the last portion of his examination-in-chief, the complainant stated that, “Moreover, I was informed that my son Asif Shah in car of one Muhammad Naseeb shifted the Akhtar Munir injured from the spot to the Type-D Hospital Panyala”.

While contradicting his own version, during cross-examination, he disclosed that his son Asif Shah asked him to reach firstly at *Toi* (stream of natural water) and he accordingly firstly visited there but could not find them. He further disclosed that the injured was shifted to DHQ Hospital, D.I.Khan through ambulance but on the way to the DHQ Hospital, he lost senses and died in DHQ Hospital D.I.Khan. According to him, when the injured disclosed to him the fact that he had been fired at by the accused, many persons including his son, Tahir, Hasnain and Ehsan Ullah were present there. He admitted that statement of the injured was not scribed. Contrary to the above, Dr. Muhammad Idrees (Pw-7), during cross-examination, stated that the injured was in critical condition and was in senses and that the injured had not disclosed the name of any accused who committed the offence.

9. The other witness of the prosecution, Asif Shah, as Pw-10, stated that on 19.6.2022, he was in the '*Toi*', Panyala, when he was informed through mobile phone by one Muhammad Sohail at about 06:50 p.m that his uncle Akhtar Munir had been shot down by someone, so he started towards the spot alongwith Tahir and Hasnain and on the way they took with them loader rickshaw driver Imtiaz; that when they reached near the spot, on the way, four persons namely Ali Ullah, Fati

Ullah, Irfan and an unknown person were carrying his uncle in injured condition; that they boarded the injured in the Rickshaw of Imtiaz and on the way, his uncle told him that he had been shot down by the appellant and acquitted co-accused Habib Ullah; that he called one Naseeb driver of the car to come as they had to shift the injured to the hospital; that when they reached near new bridge Panyala, Naseeb came and they shifted the injured from rickshaw into the car. He called his father and told him to reach Type-D Hospital Panyala as his uncle was injured. He shifted the injured to Type-D Hospital Panyala where they reached at about 07:30 p.m. He further stated that as the condition of injured was critical, he was shifted to Civil Hospital, D.I.Khan where they reached at about 09:30 p.m, and after some time the injured succumbed to his injuries. They remained in the hospital for about two hours and came back to Type-D Hospital Panyala at about 01:30 p.m. It is pertinent to mention here that none of the persons, whose names have been mentioned in the examination-in-chief by this witness, have been cited as witness to corroborate his testimony. Needless to mention that Muhammad Sohail, who allegedly informed this witness about the occurrence, was not examined before the trial Court. During cross-examination, Pw-10 disclosed that when the injured was brought to the Type-D Hospital

Panyala, he was attended by the doctor on duty but no treatment was given to him and was shifted to DHQ Hospital D.I.Khan through ambulance and reached there at 09:30 p.m. He further stated that they come back to the Type-D Hospital, Panyala at about 12:30 a.m from DHQ Hospital D.I.Khan and the dead body was handed over to them at about 03:00/03:30 a.m.

10. Dr. Muhammad Idress appeared as Pw-7 and stated that on 19.6.2022, at about 07:30 p.m, he examined the injured Akhtar Munir son of Abdullah, aged about 41/42 years, and found the following:-

1. Entry wound:-0.5x01-cm size wound transverse oriented with inverted regular smooth edges medial aspect of right arm 03-cm below axillary fold.
2. Exit wound:- 1.5x01-cm size wound with everted irregular edges dorsum right arm 11-cm above olecranon process.
3. Entry wound:-2.5 x 1.5 cm transverse-oriented wound inverted smooth edges 01-cm lateral to right nipple wound.
4. Exit wound:-03 x 02 cm wound with everted irregular edges 4.5 cm lateral to entry wound on anterior axillary line 06-cm below axillary fold.

Victim referred to DHQ Hospital D.I.Khan as a referred case. Kind of weapon used as Firearm injury. Probable duration of injury 02-03 hours approximately. MLC report Ex. Pw 7/1 in original duly signed Khaki coloured '*qameez*' handed over to police constable.

On 20.6.2022 at about 01:30 a.m, this witness also conducted autopsy on the dead body of Akhtar Munir. In his opinion, cause of death was cardiovascular collapse due to massive bleeding resulting from firearm injury. He observed time between injury and death as 05-06 hours approximately, while time between death and postmortem was observed as 03-04 hours approximately.

The doctor Pw-7, during cross-examination, admitted it correct that the injured was brought to him by his relative Ehsan Ullah, who has not deposed before the Court as a prosecution witness. He further admitted that the MLC was prepared by him without injury sheet, which is a glaring infirmity. He disclosed that the injured was brought to him at about 07:30 p.m and he examined him there and then.

11. The case was investigated by Zulfiqar Khan SI (Pw-8). During visit of the spot, he prepared site plan, took into possession blood-stained earth from the place of deceased, one blood-stained axe and sealed the same into parcels by affixing monogram of 'MA' on each parcel. He took into possession postmortem report, injury sheet, inquest report and MLC report along with blood-stained garments of the deceased produced to him by Noor Nawaz constable. He recorded statements of the witnesses. Pw.8, on his return to Police Station

handed over the case property to Moharrir of the Police Station for sending the same to FSL, Peshawar. On formal arrest of the appellant and co-accused, he prepared card of arrest. Thereafter, he handed over the case file to Anees-ul-Hassan SHO for submission of interim challan. On receipt of FSL report, he placed the same on file. He made photography of the pointation proceedings and made addition n the site plan. On the disclosure of appellant, on 20.7.2022, he recovered and took into possession .30 bore pistol alongwith fit magazine containing 05 rounds from briefcase of clothes lying near the southern wall inside the residential room of the accused, in presence of official witnesses. He prepared sketch of recovery. While perusing cross-examination, it surfaced that though he proceeded from the house of deceased to the spot on disclosure of the complainant and other persons present there, however, astonishingly, he prepared site plan at his own observations. He admitted that he had not sent the axe allegedly recovered from the spot to the FSL for finger-prints. He admitted that he had not recorded statement of Muhammad Naseem, in whose vehicle the injured was transported to Jadeed Pull Panyala, however, he recorded the statement of Imtiaz Ali in whose rickshaw injured was brought to Jadeed Pull & then to the Hospital. Regarding the motive, he stated that he

had not annexed documentary proof regarding motive. He admitted that no private person was associated during pointation proceedings. He admitted that acquitted co-accused Habib Ullah is an aged person and he is disable from his right hand, whose right hand is not in working condition.

12. So far as recovery of .30 bore pistol is concerned, the record transpires that the same was allegedly effected on pointation of the appellant from his residential room, however, no independent witness was associated with the recovery proceedings, which makes the same highly doubtful, hence, the FSL report in respect thereof could not be relied upon for sustaining conviction. Needless to mention that no empty was recovered from the spot by the Investigating Officer.

13. The prosecution alleged motive to be a dispute over land, 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 Mehmood³ 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

³ Tariq Mehmood v. The State (2025 SCMR 780)

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, whose case was pending in court at that time".

14. In view of the above discussion, it is held that:

(i) The matter was reported with an inordinate delay and the explanation tendered by the complainant was not acceptable to a prudent mind;

(ii) The occurrence was un-witnessed;

(iii) The testimonies of Pw-9 and Pw-10 could not be relied upon, as none from the persons mentioned by them in their statements has come forward in support of their depositions;

(iv) Muhammad Sohail, who initially informed Pw-10 about the occurrence was not cited as a witness to support his testimony;

(v) Ehsan Ullah, who as per deposition of doctor Pw-7, had brought the injured to the hospital, was not cited as a witness;

(vi) The complainant and the doctor, who initially examined the injured, have contradicted each other with respect to consciousness of the then injured, hence, it remained a mystery that whether the deceased then injured was capable to talk, however, from the evidence of both the aforesaid witnesses, there remains no doubt that the injured was in critical condition;

(vii) The driver, in whose rickshaw initially the injured was shifted to Jadeed Pull, Panyala, was not cited as a witness;

(viii) No empty was recovered during the spot inspection. Recovery of .30 bore pistol is highly doubtful as no independent witness was cited, hence, the FSL report could not be relied upon for sustaining conviction.

(x) Motive alleged by the prosecution was not proved.

15. 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. State⁴. In a recent pronouncement, reported in Ahmad Ali⁵ 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

⁴ Riaz Masih alias Mithoo Vs. State” (NLR 1995 Cr.SC 694)

⁵ Ahmad Ali and another Vs. The State” (2023 SCMR 781)

would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right”.

16. For the aforesaid reasons, we have come to an irresistible conclusion that the prosecution has failed to prove its case against the appellant beyond any reasonable shadow of doubt, benefit of which, as stated 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 Cr.A.No.70-D of 2024 and Cr.R.No.14-D of 2024, have become infructuous, which stands dismissed accordingly.

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

Announced.

25.11.2025.

-Sd/-

JUDGE

-Sd/-

JUDGE

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