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IN THE PESHAWAR HIGH COURT, PESHAWAR.
(Judicial Department)

Appellate Side _____ Cr. A No. 04 P/2016

District.	Date of Filing Petition.	Whether filed by appellant in person or by Pleader or Agent	Stamps on Appeal
Nowshera	/2016	Advocate-General Khyber Pakhtunkhwa	Rs.

State through Advocate-General,
Khyber Pakhtunkhwa Peshawar.

.....Appellant

VERSUS

Nazim Ali S/O Jan Bahadar
r/o Mehmood Abad, Gidaro
Kili, District Mardan.

..... Accused/Respondent

APPEAL U/S 417 CR.P.C AGAINST THE
JUDGMENT/ORDER DATED 08/10/2016 PASSED BY
THE LEARNED ADDITIONAL SESSIONS JUDGE-I,
NOWSHERA, WHEREBY HE ACQUITTED THE
ABOVE NAMED ACCUSED/RESPONDENT, VIDE FIR
NO. 444, DATED 07/07/2013, CHARGED U/S
302/324/34 PPC POLICE STATION NOWSHERA
CANTT.

PRAYER:-

On acceptance of this appeal, the impugned
Judgment/Order passed by the learned trial Court may
kindly be set-aside and the accused/respondent be
convicted and sentenced in accordance with law.

FILED TODAY
Deputy Registrar
02 JAN 2017

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

Judicial department

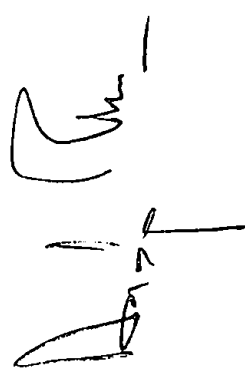
J U D G M E N T

Cr.A. No.04-P/2017

Date of hearing30.06.2017

***State through Advocate General,
KPK, Peshawar
Vs
Nazim Ali***

Appellant/State by: ***Mr. Muhammad Riaz Khan
Paindakhel, AAG***



MUHAMMAD AYUB KHAN, J.-. Through this criminal appeal under section 417 Cr.PC, State through Advocate General Khyber Pakhtunkhwa, Peshawar has called in question the judgment dated 08.10.2016 passed by learned Additional Sessions Judge-I, Nowshera whereby accused/respondent Nazim Ali, charged in case FIR No.444 dated 07.07.2013 under sections 302/324/34 PPC registered at Police Station Nowshera Cantt was acquitted.



2. Brief facts of the case as per FIR are that on 07.07.2013 at 01:30 hours complainant Suleman

accompanied the dead body of his brother namely Muhammad Zaman at Mortuary of DHQ, Hospital, Nowshera Kalan whereby he reported the matter to the local police that on 06.07.2013, he alongwith his brother Muhammad Zaman (deceased) were coming from Peshawar to their house after earning their daily livelihood, when they reached to the place of occurrence i.e. Pir Sabaq Guddar, the accused Nazim Ali and absconding co-accused Azmat Ali were already present there, started firing at them with the intention to commit their Qatl-e-Amd. Resultantly, his brother Muhammad Zaman got hit and died on the spot while he escaped unhurt. Motive behind the occurrence was stated to be previous enmity, he charged the accused party for the murder of his brother namely Muhammad Zaman and for attempt at his life, hence this FIR.

3. After completion of investigation challan was put in Court, Charge was framed against the accused to which he did not confess his guilt and claimed trial. In order to prove its case, prosecution produced **PW-1 Muhammad Saleem Khan SHO**, who incorporated the contents of murasila into FIR Ex.PW1/1. **PW-2 Suleman** who is the complainant of the instant case. **PW-3 is Dr. Salik Kashif (Rtd)**, who stated that during those days he

was posted as Medical Officer in DHQ Hospital, Nowshera Kalan and on 07.07.2013 at about 02:30 hours he conducted postmortem examination of deceased Muhammad Zaman brought by Amjid Khan and found the following injury:

1. *1x1 cm wound on left forehead, 2 cm above the lateral margin of left eyebrow (near hair line).*
2. *2x2 cm exit wound at junction of right parieto-occipital region just behind the upper margin of right ear.*



PW-4 Said Ahmad Khan SI (Rtd), is the Investigation Officer of the instant case. He prepared the site plan Ex.PW4/1 in the presence of complainant vide recovery memo Ex.PW4/2, took into possession blood stained earth and sealed the same into parcel No.1 (Ex.P1). He also took into possession blood stained garments of deceased consisting of Qameez, Shalwar and Banyan vide recovery memo Ex.PW4/3 and sealed the same into parcel No.2 (Ex.P2). He prepared the list of legal heirs of deceased Ex.PW4/4, searched memo vide Ex.PW4/5 in the presence of marginal witnesses and after completion of investigation he handed over the case file to the SHO Muhammad Iqbal Khan for submission of complete challan against the accused. **PW-5 Sher**

Hassan HC No.1036 is marginal witness to the recovery memo Ex.PW5/1. *PW-6 Arshad Khan Inspector*, he obtained 05 days custody of the accused. *PW-7 Muhammad Ishaq Khan Inspector* who submitted complete challan against the accused which is Ex.PW7/1. *PW-8 Jamroz Khan*, is marginal witness to the recovery memo already exhibited as Ex.PW4/1, *PW-9 Haji Muhammad Khan SI*, stated that after completion of investigation he submitted supplementary challan against the accused which is Ex.PW9/1. *PW-10, Abdul Wali No.519*, stated that he was entrusted with the warrants of arrests under section 204 Cr.PC against accused Nazim Ali and Azmat Ali. *PW-11 Ijaz Nabi SI*, he incorporated the report of the complainant in shape of murasila Ex.PA/1. He also prepared the inquest report and injury sheet of the deceased which are Ex.PW11/1 and Ex.PW11/2.

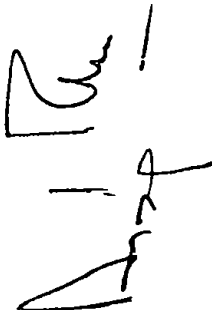
4. After closure of prosecution evidence, accused was examined under section 342 Cr.PC wherein he denied the allegations leveled against him and claimed himself innocent, he neither opted to be examined on oath nor wished to produce evidence in his defence.

5. Having heard arguments of learned AAG for the State and record with his valuable assistance gone through.

6. It was noticed with great concerned that complainant who is the eye witness of the occurrence and also victim of attempt at his life still mentioned the time of occurrence as unknown in the FIR. Similarly no empties have been recovered from the place of occurrence despite the fact that complainant alleging that numerous fire shots being made at them by the accused party. The complainant deposed in his cross-examination that;

"I cannot say from which direction we were coming and to which direction we were proceeding."

"I do not know at what time my brother Muhammad Zaman had died."



It is also astonishing to mention here that the accused party having deadly weapons and the complainant party was empty handed, it does not applicable to a prudent mind that how the complainant escaped unhurt. It is also worthwhile to mention here that the complainant narrated in the FIR that he had brought the dead body of his deceased brother to the DHQ Hospital while as per statement of doctor on duty, the relative Amjid Ali brought the dead body to the hospital at 02:00 am which

could suggest that complainant was not present with his deceased brother. Furthermore, the dead body was identified by Jamroz Khan and Amjid Ali. There are glaring contradictions in the statement of the complainant who has charged the accused/respondent for the murder of his brother and also eye witness of the occurrence but he could not plausibly prove his presence on the spot which makes case of the respondent highly doubtful.

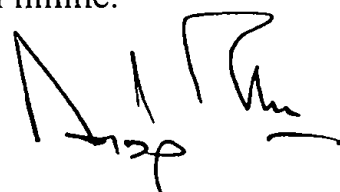
7. The august Supreme Court of Pakistan in *Paio Khan Vs Sher Baz (2009 SCMR 803)* has enunciated a guiding principle for the appellate Court to consider and evaluate the evidence of the prosecution on the touchstone of the said principle in an appeal against acquittal of an accused under section 417(2) (c) Cr.PC wherein it is held that:

"It needs no reiteration that when an accused person is acquitted from the charge of a Court of competent jurisdiction then double presumption of innocence is attached to its order with which the superior Courts also not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record."

When the Courts are satisfied that there seems to a simple circumstance which creates reasonable doubt in a prudent mind about the guilt of accused it makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.

8. It is a settled principle of law that after earning the acquittal from the trial Court, double presumption of innocence is acquired by the accused. The Court sitting in appeal against acquittal always remain slow in reversing the judgment of acquittal, unless it is found to be arbitrary, fanciful and capricious on the face of it or is the result of misreading or non-reading of any material evidence. In the instant case, no such infirmity worth consideration has been found in the impugned judgment, hence warrants no interference. This appeal is devoid of legal merit which is hereby dismissed in limine.

Announced.
30.06.2017



JUDGE



JUDGE

Ihsan