

Judgment Sheet

PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.A No.364-A of 2019

JUDGMENT

Date of hearing.....22.04.2020.....

Appellant...(Abdul Haleem) by Malik Amjad Ali, Advocate

Respondent...(The State etc)

AHMAD ALI, J:- Appellant, Abdul Haleem son of Abdul Hayee, has called in question the acquittal of accused/respondents, Saif-ur-Rehman son of Qass Malook, Qazi Malook son of Sherwan, Shikrat Khan son of Sagheer Shah and Roop Mian son of Mamar Shah, in case F.I.R No. 677 dated 06.06.2016 under Sections 302/34 PPC of PS City, District Mansehra, vide impugned judgment dated 26.09.2019 of the learned Additional Sessions Judge-III, Mansehra by filing instant appeal under section 417 (2-A) Cr.P.C.

2. Brief facts of the case are that the complainant, Abdul Haleem son of Abdul Hayee, lodged the report to Qaim Ali Shah, IHC, Police

Station City, Mansehra, in Emergency Ward of KATH, Mansehra, who reached there on receipt of information about the occurrence, on 06.06.2016 at 18.45 hours to the effect that at '*Asar waila*' he alongwith his brothers Shabbir Ahmad and Abdul Malik was proceedings towards '*Lari Adda*' Mansehra, on link road behind Pakistan Hotel; when they reached near Kohistan Service Station, a 20D motorcar bearing registration No.401-Sindh red colour was already parked there and Saif-ur-Rehman duly armed with 30 bore pistol was standing near the car, while Qazi Malook, Shikrat Khan and Roop Mian alighted from the motorcar; Qazi Malook commanded to kill them, Saif-ur-Rehman, Shikrat Khan and Roop Mian started firing at them, as a result, Shabbir Ahmad, his brother got injured on his head with the firing of Saif-ur-Rehman. Accused fled away from the spot after commission of the offence. The occurrence was stated to have witnessed by the complainant, his brother Abdul Malik and other people on the spot. Motive for the offence was stated to be family dispute. The injured was succumbed to his injuries on the way when he was being shifted to



hospital. He charged the accused for '*Qatl-i-Amd*' of his brother, Shabbir Ahmad. The report of the complainant was recorded in shape of '*Murasila*' (Ex.PA) by Qaim Ali Shah, IHC (PW-4) and the instant case was registered against him vide F.I.R (Ex.PW 5/1).

3. After completion of investigation, complete/ supplementary challans were submitted by the SHO in the Court of Sessions for trial against accused/respondents, named above, who were charged for the offence under section 302/34 PPC, but they pleaded not guilty and claimed trial. The prosecution in support of its case, examined twenty one witnesses including Abdul Haleem, complainant/eyewitness (PW-19) and Abdul Malik, eyewitness (PW-20). After closure of prosecution evidence, accused/ respondents were also examined under section 342 Cr.P.C, wherein, they denied the allegations of the prosecution leveled against them in this case. However, they wished not to produce defence evidence or to appear on Oath as their own witnesses under section 340 (2) Cr.P.C.

4. The learned trial Court, after hearing the arguments of learned counsel for the parties, acquitted the accused/respondents vide impugned judgment/order dated 26/09/2019. Hence, the present appeal.

5. Arguments of the learned counsel for the appellant-complainant heard. Record perused.

6. Admittedly, the alleged occurrence was stated to have taken place on 06.06.2016 at '*Asar Waila*' on link Road behind Pakistan Hotel near Kohistan Service Station Mansehra. However, the report of the occurrence was lodged by Abdul Haleem complainant-cum-eyewitness (**PW-19**) at 18.45 hours and the occurrence was stated to have also witnessed by his brother, Abul Malik (**PW-20**). In this case the exact time of occurrence was not established and in this regard the statements of the eyewitnesses and the investigation officers are contradictory and the learned trial Court has discussed this aspect of the case in the judgment elaborately and has rightly concluded at the very outset that the time of occurrence was doubtful. This Court has also gone through the evidence of the abovementioned eyewitnesses and the scribe of '*Murasila*', namely,



Qaim Ali Shah, IHC (PW-4) and Fida Muhammad, investigation Officer (PW-16). Although the alleged eyewitnesses in their statements before the Court had taken another stance to cover up the inordinate delay of more than four hours in lodging report qua the occurrence by saying that due to heavy rush of traffic on road they could not timely reach the hospital but the above explanation of the P.Ws also could not be substantiated by the police officials i.e. PW-4 and PW-16 in their statements rather they belied this stance of the eyewitnesses. Even otherwise while keeping in view the distance between the spot and the hospital, it would hardly take half an hour to reach the hospital from the spot. Thus, the alleged delay in lodging the report in view of peculiar facts and circumstances gained much significance, as such, the factors of deliberation, consultation and preliminary investigation could not be ruled out.



7. The version of the alleged eyewitnesses was that they alongwith their deceased brother, Shabbir Ahmad were proceeding towards '*Lari Adda*' Mansehra, when they confronted with the accused party on link road behind Pakistan Hotel, where

accused/respondent Saif-ur-Rehman duly armed with 30 bore pistol was standing near the car, while other three accused alighted from the car and they made indiscriminate firing at them on the command of co-acquitted accused Qazi Malook. The effective role of '*Qatl-i-Amd*' of deceased Shabbir Ahmad was attributed to accused/respondent, Saif-ur-Rehman. Astonishingly, despite alleged indiscriminate firing by three accused, none of the PWs tried to escape or hit with a single fire shot and they were surprisingly standing firm to watch minutely that the fire shot of Saif-ur-Rehman hit the deceased on his head, which in the ordinary course of life is impossible. It is also beyond one's comprehension as to why the accused let the alleged eyewitnesses to go safely to lodge report and stand eyewitnesses against them. The minute scrutiny of the entire evidence would lead to the obvious inference that the occurrence had not taken place in the mode and manner as alleged by the eyewitnesses. The ocular version furnished by the eyewitnesses is full of improvements and discrepancies and also does not support by the medical evidence.

8. It is settled law that once intrinsic worth of ocular account is accepted and believed then the rest of the evidence, both circumstantial and corroboratory in nature, would be required as a matter of caution. Conversely, 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. It is also settled principle of justice that on acquittal an accused person earns twofold innocence. Moreover, the standard and principle of appreciation of evidence is entirely different from that in a case of conviction. The findings of the trial Court could only be reversed by this Court in its appellate jurisdiction, when the same are found perverse, fanciful, arbitrary or based on misreading and non-reading of material evidence causing miscarriage of justice. Reliance can be placed on 1995 SCMR 127, 2015 SCMR 1142, 2017 SCMR 2002, 2017 SCMR 2007, and 2017 SCMR 1710.



9. In view of above discussions, it is crystal clear that the case of the prosecution is full of doubts and the statements of the complainant/eyewitnesses are contradictory, which create serious doubts about the

mode and manner of the occurrence and veracity of the testimony furnished by the alleged eyewitnesses. As such, the learned trial court has rightly acquitted the accused/respondent and its judgment does not need to be interfered with by this Court in its Appellate jurisdiction.

10. It is well settled law that even a single doubt, if found reasonable, would entitle the accused person to acquittal and not a combination of several doubts. Reliance is placed on case titled **Ghulam Qadir Vs. The State** (2008 SCMR 1221), wherein, it has held that:

"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of charge-makers the whole case doubtful. Merely because the burden is on accused to prove his innocence it does not absolve the prosecution to prove its case against the accused beyond any shadow of doubt in this duty does not change or vary in the case."

Reliance is also placed on case law reported as **1992 SCMR 366, 1995 SCMR 1345, 1995 SCMR 1730, 2004 SCMR 215, 2004 SCMR 140, 2009 SCMR 230, 2013 SCMR 192, 2016 SCMR 2073, 2016 PSC**

(Criminal) 612, 2017 PSC (Criminal) 14, 2017 S C
M R 986 and 2019 P.Cr.L.J. 337.

11. Accordingly, for the reasons stated hereinabove, this Court is of the considered view that the prosecution has failed to prove its case beyond any reasonable doubt against the accused/respondents, hence, the instant appeal being devoid of substance is hereby dismissed in *limine*.

JUDGE

 JUDGE

Announced.
Dt.22.04.2020.

/*M.Saleem*/

(DB) Mr. Justice Shakeel Ahmad and Mr. Justice Ahmad Ali