Judgment Sheet
PESHAWAR HIGH COURT, BANNU BENCH.
(Judicial Department)

Cr. A No.213-B of 2018

Lal Sherin
Vs.
The State and another.

JUDGMENT

Date of hearing: **29.09.2020**

For Appellant: **M/S Muhammad Rashid Khan Dirma Khel & Zafar Jamal Advocates.**

For State: **Mr. Shahid Hameed Qureshi Addl: A.G.**

For Respondent: **Mr. Salamat Shah Mahsood Advocate.**

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SAHIBZADA ASADULLAH, J.- The appellant Lal Sherin has called in question the judgment dated 02.11.2018, authored by learned Additional Sessions Judge, Takht-e-Nasrati, Karak, whereby the appellant has been convicted under section 302(b) P.P.C and sentenced to rigorous imprisonment for life with Rs.200000/-(two lac) compensation under section 544-A Cr.P.C. to the legal heirs of deceased or in default thereof, to undergo six months simple imprisonment. The benefit of section 382-B Cr.P.C has also been extended to the convict. The complainant Zarnab Gul has also filed criminal revision, bearing Cr.R No. 55-B of 2018 for enhancement of sentence awarded to the appellant. Since both the matters are the outcome of one and the same judgment, therefore, we intend to dispose of the same through this common judgment.

2. Brief facts of the case are that on 12.12.1998 at 09.30 hours, complainant Zarnab Gul (PW-4) alongwith his brother Shahnaz Gul, in injured condition, reported the matter to Rohan Gul ASI in the Police Station, to the effect that he alongwith injured Shahnaz Gul, Haqnawaz were proceeding towards Cattle Fair for purchasing household articles, when they reached Chowk Garrang Siraj Khel, in the meanwhile, accused Lal Sherin emerged and started giving dagger blows to Shahnaz Gul, as a result whereof, he sustained injuries and fell down, while they being empty-handed could do nothing. The accused after commission of offence decamped from the spot. Motive behind the occurrence was stated to be a dispute over thoroughfare. Rohangul Khan ASI (PW-5) reduced report of the complainant in shape of F.I.R (Ex: PA), prepared injury sheet of the injured Shahnaz Gul and sent him to the doctor under the escort of constable Mushtaq (PW-10). On the same date, after the injured was examined in the hospital, he was referred to Peshawar for further treatment but unfortunately, on the way, the injured succumbed to his injuries.

3. Initially, the accused absconded, hence, complete challan was submitted against him under section 512 Cr.P.C, and after recording statements of witnesses, the accused was declared a Proclaimed Offender vide judgment dated 05.06.2002. Subsequently, on 07.5.2016, the accused was

arrested by the Kohat Police and was transferred to Central Jail, Karak in the present case, where on commencement of trial, the appellant was formally charge-sheeted on 17.10.2017, to which he pleaded not guilty and claimed trial. The prosecution to prove its case produced and examined as many as 10 witnesses, whereafter, the accused was examined under section 342 Cr.P.C, where he professed innocence and false implication, however, he did not wish to be examined on oath as provided under section 340(2) Cr.P.C, nor opted to produce defence evidence. After hearing arguments from both the sides, the learned trial Court vide impugned judgment dated 01.11.2018, convicted the accused and sentenced him, as mentioned above, hence, this appeal and the connected criminal revision.

4. The learned counsel for the parties alongwith Addl: Advocate General representing the State were heard at length and with their valuable assistance the record was gone through.

5. The incident occurred on 12.12.1998 at 08.00 a.m. when the deceased alongwith the complainant and eyewitness Haq Nawaz were proceeding to cattle fair Takht-e-Nasrati, Karak, to purchase house-hold articles, when they reached to Garrang Chowk the accused/ appellant emerged and inflicted dagger blows to the deceased. The injured was shifted to Police Station Yaqoob Khan Shaheed, where the matter was reported

by the complainant Zarnab Gul, charging the accused/ appellant for the murder of the deceased.

6. True, that single accused is charged for dagger blows to the deceased, but equally true that the Courts of law are not absolved of the liability to assess and reassess the evidence available on file so to prevent miscarriage of justice, particularly, when a single witness deposes against a single accused.

7. The story of the prosecution begins with, that early in the morning the complainant alongwith the deceased and PW Haq Nawaz Khan, left their house for the cattle fair to purchase household articles, it was at 08.00 a.m. when they reached to the spot where the appellant emerged and inflicted dagger blows to the deceased. The deceased, then injured, was taken to the Police Station where the complainant reported the matter. Though the Investigating Officer approached the spot on the day of incident and recovered blood stained earth therefrom, but no further proceedings were carried out and it was on 13.12.1998, when the site-plan was prepared on pointation of the complainant, where different points were assigned to the deceased, the eyewitnesses and the assailant, but what is of prime importance, is the distance between the eyewitnesses and the deceased which was stated to be 30 paces. What we are to determine is to see as to whether the complainant was present

on the spot when the incident occurred and as to whether the occurrence took place in the mode, manner and at the stated time.

8. The deceased, then injured, was taken to the Police Station where the matter was reported, but what we are to see as to whether the conduct displayed by the complainant was natural, as admittedly, the deceased by then was injured and instead of taking him to the Police Station he should have been taken to the hospital to save his life. The scribe was examined as PW-5, who stated that on 12.12.1998 at about 09:30 hours, he was present in the Police Station when the complainant Zarnab Gul, with the help of co-villagers, brought the injured namely Shahnaz Gul, who was unconscious and that it was the complainant who reported the matter. He further stated that after drafting the murasila, he prepared the injury sheet of the injured and sent him to the doctor for his medical examination under the escort of constable Mushtaq Ahmad. The complainant was examined as PW-4, who stated that soon after the incident the injured was rushed to the Police Station for report, but the officials present in the Police Station refused to register the case and directed to take the injured to the hospital for his medical examination, so they reached to the hospital where the doctor examined the injured and prepared his medico-legal report. The doctor was examined as PW-1,

who stated that the injured was brought by the co-villagers at 09:05 a.m. who was examined and his medico-legal report was prepared. He further stated that at the time of examination, the injured was fully conscious and oriented in time and space. It increased our anxiety, that when the injured was taken to the Police Station, why the police refused to register a case and when injured was produced before the doctor prior to the report then how the injury sheet was produced along with the injured, when by then the report had not been made. We are surprised to see that when the doctor was examined before the trial Court he stated that he also endorsed the injury sheet but still the mystery prevails, as the time of examination of the injured is given as 09:05 a.m., whereas the report was made at 09:30 a.m. if we admit what the doctor stated as correct that the injured was conscious and capable to talk then why he did not call the police to pen down the report. This is surprising that when the injured was oriented in time and space at 09:05 a.m. how did the scribe tell that at 09:30 the injured was unconscious. This is intriguing on part of the scribe that while reporting the matter, he did not take it necessary to ask from the doctor as to whether the injured was capable to talk and that what precluded the scribe to take down the report with the injured as complainant. This leads us nowhere, but to hold that the complainant was not present with the deceased at the time of incident and it was on

information that he approached the concerned Police Station and the matter was reported. We lurk no doubt in our mind that first the injury sheet was prepared, the injured was examined and thereafter, on arrival of the complainant, the matter was reported and the appellant was charged. The medico-legal report tells that the column meant for 'who brought' is left blank, which helps in forming an opinion that the deceased soon after receiving injuries was rushed to the hospital by the nearby people and that the complainant was not present with the deceased at the time of incident and also at the time when the injured was examined by the doctor, had he been present his name would have been mentioned in the relevant column and even he would have reported the matter in the hospital where the deceased then injured was examined. The complainant was examined as PW-4, who stated that early in the morning all the three left for the cattle fair to purchase household articles. The prosecution is yet to establish that what collected all the three to go together for purchase of house hold articles, when it was not their routine. The complainant stated that when they reached to the place of occurrence, the deceased was walking thirty (30) paces ahead where the appellant emerged and inflicted repeated dagger blows. The postmortem report tells that the deceased has received ten dagger blows which took 5/6 minutes for the appellant to do away with the deceased and it was thereafter he

fled away. We are shocked to see that when two real brothers were just behind the deceased, what precluded them to rush and rescue, instead waiting to let the convict/appellant to quench his thirst. The witnesses displayed an abnormal conduct and they could not succeed in establishing their presence on the spot.

In case titled ***"Pathan Vs The State (2015 SCMR 315)***, it is held that:

> *"The presence of witnesses on the crime spot due to their unnatural conduct has become highly doubtful, therefore, no explicit reliance can be placed on their testimony. They had only given photogenic/photographic narration of the occurrence but did nothing nor took a single step to rescue the deceased. The causing of that much of stab wounds on the deceased loudly speaks that if these three witnesses were present on the spot, being close blood relatives including the son, they would have definitely intervened, preventing the accused from causing further damage to the deceased rather strong presumption operates that the deceased was done to death in a merciless manner by the culprit when he was at the mercy of the latter and no one was there for his rescue."*

9. The motive was stated to be a dispute over thoroughfare which led to the death of the deceased but we are to see as to who out of the three should have been the target as the deceased was the youngest. The situation tells that had the complainant been present on the spot he would have been the prime target. Though the motive was stated to be a dispute over thoroughfare and in that respect a daily diary was submitted where the complainant is one Subaidar uncle of the deceased, but neither the complainant of the daily diary was produced nor the scribe, when so the daily diary has lost its utility to be considered as a valid piece of evidence and as such cannot be taken into consideration. The Investigating Officer did not record the statement of any independent witness to support the alleged motive and as such, the prosecution miserably failed to establish the same. We know that prosecution is not bound to setup motive in every case but once it is alleged and not proved, then ocular account is required to be scrutinized with great caution. It has been held in the case titled ***"Hakim Ali Vs. The State" (1971 SCMR-432)***, that the prosecution though not called upon to establish motive in every case, yet once it has setup a motive and failed to establish, the prosecution must suffer consequences and not the defence. The above view has been reiterated in the case of ***"Amin Ullah Vs. The State" (PLD 1976 SC 629)***, wherein, it has been observed by their

lordships, that motive is an important constituent and if found by the Court to be untrue, the Court should be on guard to accept the prosecution story.

10. The prosecution struggled hard from the beginning till the end to convince the Court and to establish on record that the incident occurred at the stated time, but the doctor who examined the injured and prepared his medico-legal report stated that the probable duration of the injuries caused was six hours. The time of incident is stated to be 08:00 a.m. whereas the patient was examined at 09:05 a.m. which clearly suggests that the incident did not occur at the stated time, though medical evidence is confirmatory in nature and it cannot outweigh the direct evidence, however, when direct evidence is not available then medical evidence can and should be considered to benefit the accused and the present case is no exception.

11. The learned counsel for the appellant vehemently argued that the appellant remained absconder for sufficient long time, but mere absconscion of accused is not conclusive guilt of an accused person; it is only a suspicious circumstance against an accused that he was found guilty of the offence. However, suspicions after all are suspicions, the same cannot take the place of proof, the value of absconcion, therefore, depends on the facts of each case. In case titled ***"Liaqat Hussain and***

<u>others Vs Falak Sher and others" (2003 SCMR 611(a),</u>

wherein it has been held:-

> *"(a) Eye-witnesses including the complainant had failed to furnish a plausible and acceptable explanation for being present on the scene of occurrence and were chance witnesses---Prosecution case did not inspire confidence and fell for short of sounding probable to a man of reasonable prudence---Abscondence of accused in such circumstances could not offer any useful corroboration to the case of prosecution"*

12. The basic principle of criminal administration of justice is that prosecution is under bounden duty to prove its case beyond any shadow of doubt and if any reasonable doubt arises in the prosecution case, the benefit of the same must be extended to the accused not as a grace or concession, but as a matter of right, the wisdom behind the same is that, lest no innocent be punished. In view of unbelievable prosecution story, unnatural conduct of witnesses and their presence, contradiction among the statements of complainant, doctor and the Investigating Officer, whole edifice of prosecution case has razed to the ground, which benefits only and only the appellant.

This Court reaches to an inescapable conclusion that the prosecution has miserably failed to prove its case against accused/appellant. Resultantly, this appeal is allowed, the conviction and sentence of the appellant recorded by the learned trial Court is set-aside and he is acquitted of the charge by extending him the benefit of doubt, he shall be released forthwith from jail, if not required to be detained in connection with any other case. Since the conviction and sentence awarded to the appellant has been set aside, therefore, the connected criminal revision, bearing Cr.R. No.55-B/2018 stands dismissed.

13. Above are the reasons of our short order of the even date.

Announced.
Dt: 29.9.2020
Azam/P.S

JUDGE

JUDGE

10/11/2020

(D.B)
Ms. Justice Musarrat Hilali and
Mr. Justice Sahibzada Asadullah