

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR.**

**JUDICIAL DEPARTMENT**

**J U D G M E N T**

**Cr. Appeal No. 269-P of 2015.**

Date of hearing: 14.09.2022.  
Appellant: (Mansoor Khan) By Syed  
Hamad Tariq, Advocate.  
Respondent: (State), By Mr. Muhammad  
Inam Khan Yousafzai, Addl: A.G.  
(Tahir complainant) By Nemo.

**ISHTIAQ IBRAHIM, J.-** Through the present

Criminal Appeal, Mansoor Khan son of Aziz Khan, the appellant,  
has challenged the legality of the judgment dated 29.04.2015 of  
the learned Additional Sessions Judge-V, Nowshera, rendered in  
case FIR No. 839 dated 21.12.2012 under sections-302/324/34  
PPC registered at Police Station, Pabbi, District Nowshera,  
whereby the appellant has been convicted and sentenced as  
follows;

- i. Under section 302(b) PPC sentenced to life imprisonment on two counts for the murder of deceased Luqman son of Murad and Imtiaz son of Nadam Shah. He was also sentenced to pay Rs.300,000/- as compensation to be paid to the legal heirs of the deceased under section-544-A Cr.PC for each deceased, or in default of payment, he shall further undergo for six months simple imprisonment each.

- ii. **Under Section-324/34 PPC sentenced to suffer imprisonment for five years and also sentenced to pay fine to the tune of Rs.50,000/- or in default of payment of fine, shall undergo further simple imprisonment for a term of three months.**

2. The matrix of the prosecution case is that on 21.12.2012 at 17:00 hours Tahir son of Nadan Shah (injured) reported the matter to Rooh-ul-Amin SI posted at Casualty LRH, to the effect that on the day of occurrence at 15:45 hours he, alongwith Imtiaz, Luqman and Ansar were going towards "Taru Stop" in a Qingqi Rickshaw and when reached the place of occurrence, a fight was going on in between Khan Zali resident of Ali Baig and Niaz Ali, Mansoor, Shoaib and Masood residents of Bazid Khel, Punj Khatta, on the issue of females; that he (complainant) and his companions came down from the "Qingqi Rickshaw" and tried to separate them, when in the meanwhile Niaz Ali etc started firing with deadly weapons at Khan Zali and complainant as well as his companions, resultantly he, Luqman, Imtiaz, Ansar and a passerby got hit and sustained injuries, however, Luqman and Imtiaz succumbed to the injuries and died; that one Asad and Pervez brought them to Hospital; that there was no enmity

between Niaz Ali (accused party) and complainant party; that the occurrence was witnessed by complainant, Akhtar Ali and Ansar. Report of the complainant was reduced into writing in the shape of murasila (EX PA/1) and sent to police station for registration of case FIR against the accused. The injury sheets of the injured/victims and deceased and inquest reports of deceased were prepared, and referred the dead bodies of deceased to Khyber Medical College for postmortem examination. The accused were avoiding their lawful arrest, therefore, proceedings under section-512 Cr.PC were initiated against them and challan under section-512 Cr.PC was submitted against them. Accused-appellant was confined in Central Jail, Peshawar, in case FIR No.238 dated 16.03.2013 under section-13 A.O registered at Police Station Badh Bhair, therefore, after observing legal formalities, he was formally arrested in the present case and shifted to District Nowshera through Zamima-B. He was thoroughly interrogated in the present case and after completion of investigation, supplementary challan was submitted against him.

3. The convict-appellant was summoned by the trial Court, and after compliance of provisions u/s-265-Cr.PC, formal charge against him was framed to which he did not plead guilty and claimed trial.

4. The prosecution in order to prove its case examined as many as eleven (11) witnesses.

5. On closure of prosecution evidence, the accused-appellant was examined under Section 342 Cr.P.C, wherein he pleaded innocence being falsely charged by the complainant. He neither wished to be examined on oath within the meaning of section-340(2) Cr.PC nor opted to produce evidence in defence.

6. On conclusion of trial, after hearing the learned counsel for the parties and appraisal of evidence available on the file, the learned trial Judge vide impugned judgment dated 29.04.2015 convicted and sentenced the appellant, the details whereof are mentioned in the opening paragraph of the judgment.

7. The appellant challenged the legality and validity of the judgment passed by the trial Court before this Court by filing Criminal Appeal cited above with the prayer that the

impugned judgment may be set aside and he may be acquitted from the charges leveled against him.

8. Valuable arguments of the learned counsel for the parties heard and perused the record carefully with their valuable assistance.

9. Before dilating upon the evidence led by the prosecution during the course of trial, first we have to see the mode and manner of the occurrence, which was alleged by the prosecution has been duly proved or not. To sustain conviction in a criminal case it is not only the presence of the PWs, which is to be established by the prosecution, in addition to that prosecution is under obligation to convince the Court through cogent and reliable evidence that the occurrence had taken place in the mode and manner as alleged. If there is any flaw or unreasonableness in the prosecution case regarding its story then of course it has bearing on the fate of the case. In other words the prosecution story being foundation on which the superstructure of case is raised and that occupies vital position in a case it must stand to reason and should be natural, convincing and free from any inherent

improbability. It is quite unsafe to believe an improper prosecution story to base conviction upon the same. In this case the deceased and the PWs are residents of different villages. As per their stance, they had arrived there per chance to pacify the scuffle between Khan Zali and the accused side, which in our view is not the correct narration on their part rather an element of concealment is apparent on the face of record and their version is repellent to natural probabilities and common course of natural events. Instead of doing away with Khan Zali with whom there was womenfolk's dispute of the accused party, spared him and committed the present occurrence.

10. Article 129 of Qanoon-e-Shahadat is of much relevance for the resolution of the controversy in the present case which is re-produced below:-

**129. Court may presume existence of certain facts.---** *The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case---*

This article is fully attracted to the facts and circumstances of the present case. It is to be seen that behavior and narration of the prosecution witnesses is natural or it ran counter to natural human conduct and the behavior explained in the ibid article of Qanoon-e-Shahdat.

By keeping in mind the above referred discussion, we will evaluate the prosecution evidence in the subsequent paragraphs.

11. The prosecution case is based upon the ocular account furnished by Tahir injured-complainant (PW-02) and injured witness namely Ansar (PW-03). The complainant Tahir in his initial report (EX PA/1) as well as in his Court statement stated that he alongwith his deceased brother Imtiaz, deceased Luqman and injured Ansar. The injured Ansar (PW-3) is nephew of complainant Tahir (PW-2) and both are the residents of village Ali Baig, District Nowshera, while the convict-appellant Mansoor Khan and the co-accused namely Niaz Ali, Masood and Shoaib Khan are the residents of village Bazid Khel, District Peshawar and there is no relationship / friendship whatsoever in between the complainant and all

the accused, but, despite that the complainant charged all the accused by name in his initial report i.e. murasila (EX PA/1) and Court statement. The complainant in his initial report stated that all the accused were armed with "*Aslaha Atasheen*" and started firing at Khan Zali as well as at them and that he, the two deceased, injured Ansar and passerby (injured) Akhtar Ali were shifted by Asad son of Pervez and others to the Hospital and that besides him, the occurrence was also witnessed by injured Akhtar Ali and Ansar. The complainant in his initial report (EX PA/1) has not disclosed the purpose of his visit to Taru Stop and during cross examination he also stated that he does not know that for which purpose they were coming to Taru Stop, however, he volunteered that they were coming to their vehicle, even then he did not disclose the description of his vehicle and the later portion of his statement comes within the definition of improvement. As per complainant, he alongwith his companions were coming in a Qingqi Rickshaw and when reached the place of occurrence, they deboarded from the rickshaw in order to separate the parties i.e. accused party and one Khan Zali, but, the



prosecution did not bother to record the statement of driver of Motor Rickshaw, who was admittedly co-villager of complainant, and the I.O has not taken into possession the said Motor Rickshaw, which could prove and establish the version of complainant. The complainant in his report EX PA/1 stated that all the accused were armed with *Aslaha Atasheen*, however, in cross examination he stated that all the accused have fired indiscriminately and continued for 04/05 minutes and that the pistols were automatic and the firing was rapid and the assertion regarding firing with automatic pistols is for the reason that during spot inspection, the I.O recovered one empty of 30 bore. The complainant in his cross examination further stated that they remained after firing for 04/05 minutes on the spot and then they were shifted to the hospital in an Ambulance which was available on the spot and that blood was also oozing in the vehicle in which they were shifted to the Hospital. The availability of Ambulance at the crime spot at the relevant time is a question mark and not appealable to a prudent mind as no blood was taken into possession by the I.O from the vehicle. Even statement of its driver has

also not been recorded to establish the prosecution version.

The complainant in his cross examination has further stated that Khan Zali was also fired at by all the accused, but, despite indiscriminate firing for 04/05 minutes as per complainant version, Khan Zali did not receive a single injury or a scratch despite that the altercation was in between Khan Zali and the accused party, which is not believable and fits in the natural probabilities. Besides the above, the said Khan Zali has not been produced by the prosecution to prove the factum of quarrel / altercation took place in between him and the accused party and that the complainant party intervened between them for their separation. The complainant stated that the firing continued for 04/05 minutes while injured Ansar (PW-3) in his cross examination stated that the accused have fired for 15 minutes with their respective pistols. It is also pertinent to mention that passerby Akhtar Ali also sustained firearm injuries in the present occurrence, but, the prosecution did not bother to produce him before the Court and record his statement in order to corroborate the prosecution version.

The complainant stated that the accused also fired at Khan

Zali while injured Ansar (PW-3) stated that Khan Zali was not at all fired at. Medicolegal report (EX PW 11/1) of injured Ansar (PW-3) would reveals that the injured was conscious at the time of his examination by the doctor, however, this Ansar in his court statement stated that he was seriously injured and was unconscious. The complainant as well as injured witness Ansar in their statements have stated that the firing continued for about 04/05 and 15 minutes respectively and the Investigating Officer (PW-7) in his cross examination stated the shops shown in the site plan do come in the firing range, but, he has not noted any firing marks on the walls of the said shops. In this case four accused have been charged for the commission of offence. The Investigating officer during spot inspection recovered only one empty of 30 bore from the crime spot while the complainant charged four persons have been attributed the role of firing with pistols while the injured witness and complainant in their respective statements have stated that the firing was continued for about 4/5 to 15 minutes, which is unbelievable and also


goes to the roots of the prosecution case and element of exaggeration and false implication could not be ruled out.

12. Tahir complainant (PW-02) and Ansar sustained firearm injuries in the occurrence. No doubt, stamp of injuries shows the presence of injured at the spot, but it is not the guarantee that he/she is truthful witness, the Court has to evaluate the intrinsic worth of statement of the injured witness by considering the circumstances of each and every case. In this regard reliance is placed upon the judgment rendered by the Hon'ble Supreme Court in Amin Ali's case ((2011 SCMR-323), wherein it has been held that;

*"Certainly, the presence of the injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise, because merely the injuries on the persons of PWs would not stamp them truthful witnesses."*

13. By deriving wisdom from the judgments of the Hon'ble apex court in case titled "**Tariq Mehmood Vs State**" reported in 2019 SCMR 1140 and "**Mst.Rukhsana Begum Vs Sajjad and others**" reported in 2017 SCMR 596, we come to the conclusion that the prosecution case is replete with doubts. The presence of

the deceased and the PWs at the scene of occurrence at the relevant time was not for the purpose which has been advanced by the complainant right from the time of registration of the FIR rather it shows that they had come to the place of occurrence for some purpose other than disclosed by them. The mode and manner of the occurrence has also been suppressed by the prosecution.



Therefore, by evaluating the evidence led by the prosecution, we are left with no choice to extend the benefit of doubt to the appellants. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. For giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.

14. As a sequel to what has been discussed above, we accept the instant Cr. Appeal, the impugned judgment

dated 29.04.2015 passed by the trial Court is set aside, and the appellant is acquitted of the charges leveled against him.

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

**Announced:**  
**14.09.2022.**

*Rooh-ul-Amin*  
**SENIOR PUISNE JUDGE**

*[Signature]*  
**JUDGE**

(D.B of)  
Hon'ble Mr. Justice Rooh-ul-Amin Khan,  
Hon'ble Mr. Justice Ishtiaq Ibrahim,  
(Kausar Ali PS)