

PESHAWAR HIGH COURT  
ABBOTTABAD BENCH  
FORM 'A'  
FORM OF ORDER SHEET

Date of Order or Proceedings	ORDER OR PROCEEDINGS WITH SIGNATURE OF JUDGE/JUDGES
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12.05.2020	<p><b><u>Cr.A No. 89-A/2019.</u></b></p> <p><b>Present:-</b> Nemo for the appellant.</p> <p>***</p> <p><b><u>AHMAD ALI, J.-</u></b>The appellant Muhammad Saleem, has filed instant appeal against acquittal of respondentsvide judgment and order dated 07.02.2019 passed by Additional Sessions Judge-I, Haripur, in case FIR No. 372 dated 12.12.2012 under Section 302/34 PPC of Police Station KTS, District Haripur.</p> <p>2. Brief fact of the case are that the grandfather of the deceased namely Muhammad Saleem reported the matter to the local police at the spot on 12.12.2012 at 11:40 hours to the effect that his grandson Ansar Ahmed aged about 18 years left the house for offering Isha Prayers but did not return, on which they started his search in the nearby vicinity and also inquired about him from his friends and relatives, but could not find him. In the morning, the son of the complainant</p>

	<p>informed him that the deceased was murdered and his dead body was lying in the way leading to Committee Ground Dor. The complainant rushed to the spot and found the dead body of his deceased grandson. No one was charged by the complainant in his initial report, nor any enmity with anyone was disclosed. On the following day, i.e. on 13.12.2012, complainant recorded his supplementary statement under Section 161 Cr.P.C wherein he charged the respondents for the murder of deceased. Upon completion of investigation, the local police submitted complete challan against the respondents for trial.</p> <p>3. The learned trial court framed charge against the accused/respondents and directed prosecution to produce its evidence. Upon conclusion of evidence, statements of accused/respondents were recorded under Section 342 Cr.P.C. and ultimately, vide judgment and order dated 07.02.2019, the learned trial court acquitted the accused/respondents from the charge levelled against them, hence the instant appeal.</p> <p>4. Learned counsel for the appellant was served, however, not in attendance today, therefore, the available record was sifted.</p> <p>5. Perusal of the record reveals that it was a blind</p>
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	<p>murder and there was no eyewitness of the occurrence, therefore, the entire prosecution cases rests upon circumstantial evidence i.e. recovery of dead body from the spot, recovery of blood and one empty from the place of occurrence, Postmortem report of the deceased, recovery of crime weapon and confessional statement of accused/respondent Jawad Ali Shah.</p> <p>6. PW-14 in his statement deposed that they were in search of the deceased when his son namely Nasir Jameel informed him that the dead body of the deceased was lying on the place of occurrence. The complainant thus rushed to the spot and upon arrival of the police, made report. The son of the complainant namely Nasir Jameel, however, never informed the police about the presence of dead body of the deceased at the spot, rather he rushed towards the complainant and informed him about the presence of dead body of the deceased at the spot.</p> <p>The dead body of the deceased was then shifted to hospital where Dr. Tahir Aziz Chughtai, (PW-1) conducted the autopsy on the dead body of the deceased following injuries:-</p> <ol style="list-style-type: none"> <li>i. <i>Entry wound measuring <math>\frac{1}{2} \times \frac{1}{2}</math> cm at lower end of left ear of the face.</i></li> <li>ii. <i>Exit wound measuring 1 x 1 cm at front side of right</i></li> </ol>
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*ear of face.*

Thus the postmortem report Ex PW-1/1 confirms that the death of the deceased was the result of firearm injury.

7. The respondents were charged by the complainant through his supplementary statement recorded on 13.12.2012. In the said statement, the complainant neither mentioned any source of his satisfaction regarding involvement of the respondents in the commission of offence, nor any motive could be put forth, which resulted in the commission of murder of the deceased by the accused/respondents.

8. The prosecution seeks corroboration from recovery of one empty of 30 bore from the spot and recovery of pistol from the accused/respondent Faraz Hussain Shah, at the time of his arrest. The evidence on record, however, suggests that the IO visited the spot and recovered blood stained stones and two bullets during spot inspection through recovery memo Ex PW-10/1, while on the same day, through a separate recovery memo Ex PW-4/1, the IO recovered one empty of 30 bore. The marginal witnesses of both the recovery memos are different and the marginal witness to recovery memos Ex PW-10/1 & Ex PW-4/1 materially

	<p>contradicted the investigating officer. Moreover, the preparation of two separate recovery memos at the same spot, during the same proceedings, does not appeal to a prudent mind and create a reasonable doubt in recovery of empty from the spot.</p> <p>9. So far as recovery of pistol from possession of accused/respondent Faraz Hussain Shah, is concerned. The said recovery is witnessed by PW-11 Akhtar Mehmood. He states that accused Faraz Hussain Shah was arrested on 14.12.2012 at 12:30 PM and in his presence, the crime pistol was recovered from the possession of Faraz Hussain which was taken into possession through memo Ex PW-11/1. He further stated that accused Jawad Ali Shah was not with the police at the time of arrest of accused Faraz Hussain Shah. The investigating officer of the case (PW-15) on the other hand, negated the stance of PW-11, by stating that at the time of arrest of Faraz Hussain Shah, he was alone and none else was present there. He further contradicted PW-11 by stating that accused Jawad Ali Shah was with them at the time of arrest of accused Faraz Hussain Shah. Thus not only the recovery of empty from the spot of occurrence is doubtful, rather the recovery of pistol from the possession of</p>
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	<p>respondent Faraz Hussain Shah is also full of doubts.</p> <p>10. So far as confessional statement of the respondent-accused is concerned, record shows that respondent/accused Jawad Ali Shah was arrested on 14.12.2012 and remained in police custody till 17.12.2012. the confessional statement of the respondent Jawad Ali Shah was recorded by PW-12. In her statement, PW-12 stated that accused might have been produced before her at 08:30 to 08:45 AM. She gave him time to ponder over his confession and after an hour. The accused was produced before the Court for confessional statement by Shamraiz Khan (PW-6). He states that he produced the accused before the Court for recording his confessional statement at 10:00 AM. When the statement of PW-6 and PW-12, is read in juxtaposition, it seems that no proper time was given to the accused before recording his confessional statement. Moreover, after recording confessional statement, the respondent was again handed over to the police and the probability that he was under the fear that in case he would not tender his confessional statement, he would be again handed over to police, cannot be ruled out. There is no cavil to the proposition that conviction can be awarded to the accused on</p>
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the basis of his sole confession, however, for that the confession must be voluntary, inculpatory, true, without any inducement, fear and coercion. In “***Manjeet Singh Vs. The State (PLD 2006 SC 30)***”, the august Supreme Court held that:-

*“There is no rule of criminal administration of justice that the Court having found the retracted confession voluntary and true, must also look for the corroboration and in absence of corroborative evidence conviction cannot be maintained. The retraction of a judicial or extra-judicial confession itself is not an infirmity to be considered sufficient to withhold the conviction because the evidentiary value of a confession is not diminished by mere fact that it was retracted by the maker at the trial and thus the independent corroboration from other source direct or circumstantial, cannot be insisted in every case as a mandatory rule rather the rule of corroboration is applied as abundant caution and in a case depending entirely on the confessional statement of a person or only of the circumstantial evidence, this rule is applied more cautiously.”*

In the circumstance and the manner and mode, the confessions of the respondent/accused was recorded which was subsequently retracted, as a rule of caution, it must be supported by some connecting/corroborative evidence.

***“State Vs Waqar (1992 SCMR 950), Nazir Hussain Vs The Crown (1969 SCMR 442) , Habib Ullah Vs The State (1971 SCMR 341) and Staet Vs. Minhun (PLD 1964 SC 813)”.***

11. Moreover, even if the confessional statement of the accused/respondent is taken into account, it is in the nature of exculpatory confessional statement, as in the said statement, the role of firing at the deceased has been attributed to accused/respondent Faraz Hussain Shah. Another important aspect of the case is that, from beginning till end, there is no motive between the accused and the deceased, which could have been the basis for the instant occurrence.

12. The sifting of evidence available on record suggest that the prosecution has miserably failed to build up a chain of circumstances to prima-facie connect the respondents/ accused with the commission of alleged offence. There are material dents and doubts in the prosecution case, which cannot be based for conviction of the respondents. Moreover, it is settled proposition of law that after acquittal, the accused earns double innocence. Reliance is placed on **“Zaheer Sadiq Vs. Muhammad Ijaz & others (2017 SCMR 2007), Mst. Anwar Begum Vs. Akhtar Hussain alias Kaka & others (2017 SCMR 1710), Muhammad Zaman Vs. The**



	<p><u><i>State (2014 SCMR 749), Muhammad Tasweer Vs. Hafiz Zulkarnain (PLD 2009 SC 53), Shahid Abbas Vs. Shahbaz &amp; others (2009 SCMR 237), Muhammad Shafi Vs. Muhammad Raza &amp; others (2008 SCMR 329)”.</i></u></p> <p>13. For what has been discussed above, it is held that learned trial court has committed no legal or jurisdictional error by acquitting the respondents. No illegality or irregularity was found in the impugned order passed by the learned trial court warranting interference by this court.</p> <p>14. Resultantly, instant appeal fails which is, thus dismissed <u><i>in limine</i></u>.</p> <p><u><i>Announced.</i></u> 12.05.2020</p> <p><i>JUDGE</i></p> <p><i>JUDGE</i></p>
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	<div>Tufail/*</div> <div>Hon'ble Justices Shakeel Ahmad &amp;Hon'ble Justice Ahmad Ali.</div>
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