

JUDGMENT SHEET

**IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

Cr.A. No. 76-M/2016.

JUDGMENT

Date of hearing: **23.02.2017.**

**Appellant:- (Sabir Shah) by Mr. Said Hakim,
Advocate.**

**Respondents:- (the State & 1 another) by Barrister
Asad Hameed-ur-Rahman State counsel and Mr.
Inamullah, Advocate.**

MOHAMMAD IBRAHIM KHAN, J.- By the

findings in the judgment in Sessions Case No. 30/2 of
2014 titled "the State vs Sabir Shah", the Court of
learned Sessions Judge/Zila Qazi Malakand at
Batkhela on appraisal of the evidence found the
prosecution to have successfully brought home the
charges. Thereby upon conviction of the
accused/Appellant Sabir Shah passed the following
sentences:

- 1. Under Section 324 PPC for 7 years
rigorous imprisonment.***
- 2. Under Section 337 (D) PPC the
Appellant has been convicted and
sentenced to pay 1/3rd of the Diyat
amount to the complainant i.e.
Rs. 7, 15, 859/-.***

3. Under Section 337 F (iii) PPC, the Appellant has been further convicted and sentenced to pay Rs. 60,000/- as Daman to the complainant, with further direction that till payment of the above payments under Diyat & Daman to the complainant he will remain in jail. Benefit of Section 382-B Cr.P.C was however also extended to the accused/Appellant

2. The conviction and sentences are in case FIR No. 16 dated 19.8.2012, whereby under section 324 PPC Nek Muhammad alias Neko the complainant set the charges against Sabir Shah in the manner that on 4.10 hours he in order to attend the call of nature was on way to the nearby field of one Hameed Gul. When reached there, he noticed Sabir Shah son of Amir Shah resident of Kot who was armed with pistol and simultaneously fired at him with the intention to commit his *Qatl-i-Amd*. Thus received bullet injuries on his hands and lumber region. The occurrence was stated to have been witnessed by Salih Muhammad and Shah Riaz who were present there. The accused/Appellant then decamped from the spot. During the time the accused Sabir Shah remained fugitive from justice, he was proceeded under section

512 Cr.P.C and declared proclaimed offender on 02.04.2013 under the trial held in absentia. Later, on arrest this trial was initiated on 14.03.2013 and upon framing the charge he did not plead guilty and claimed trial.

3. In order to bring home charges prosecution examined Dr. Amjad Ali as PW-1, who on 19.8.2012 at 5.15 P.M. examined the injured/complainant Nek Muhammad alias Neko and found the following:

“Multiple gunshot wound present on right hand of middle finger crushed wound present on left hand also slightly would present on plumber region 3rd wound of bullet present on right lower spine region cross the abdomen and exist present on the right iliac fossa.”

Taj Muhammad was examined as PW-2, who submitted the complete challan within the meaning of 512 Cr.P.C . Aziz Khan IHC appeared as PW-3, who arrested the accused/Appellant Sabir Shah vide card arrest memo Ex. PW-3/1. Badshah Rahman Post Commander Levy Post Khar was examined as

PW-4 who presented supplementary challan against the accused/Appellant. Abdul Samad, Levy Official appeared as PW-5, who is marginal witness to the recovery memos Ex. PW-5/1 to Ex. PW-5/3, vide which the Investigating Officer took into possession blood stained earth through cotton as Ex. P-1 from the spot, 5 empty shell of 30 bore pistol as Ex. P-2 and above all the Torch as Ex-P, which was in possession of the injured/complainant at the time of commission of offence. Zaidullah Khan Levy Official examined as PW-6 who is marginal witness to the recovery memo Ex. PW-6/1 via which blood stained garments of the injured/complainant was taken into possession by the Investigating Officer as Ex. P3. Muhammad Naeem DFC Levy post Kot examined as PW-7, who executed warrant of arrest within the meaning of 204 Cr.P.C as Ex. PW-7/1 coupled with proclamation notice U/S 87 Cr.P.C against the accused/Appellant. In this behalf his reports are placed on file as Ex. PW-7/2 & Ex. PW-7/4. The complainant/injured himself appeared as PW-8,

who narrated the whole story as advanced in the ‘*Murasila*’ and First Information Report Ex. PA. He also disclosed that he was hospitalized and thereafter visited the spot with Investigating Officer and on his instance the site plan Ex. PB was prepared. Muslim Shah IHC was examined as PW-9, he alongwith other levy official visited the hospital on the day of occurrence, wherein the complainant was in conscious condition, who reported the matter which was reduced into writing in shape of ‘*Murasila*’ Ex. PA/1. He also prepared injury sheet of the injured/complainant as Ex. PW-9/1. He took into possession blood stained garments of the injured/complainant through recovery memo Ex. PW-6/1 and on the instance of complainant Nek Muhammad prepared site plan Ex. PB. He also taken into possession blood through cotton, 5 empty shells of 30 bore pistol and Torch vide recovery memos Ex. PW-5/1 to Ex. PW-5/3. This PW also recorded statements of the alleged eyewitnesses Salih Muhammad and Shah Riaz and through applications

Ex. PW-9/2 & Ex. PW-9/3 obtained warrant of arrest U/S 204 Cr.P.C and proclamation notice U/S 87 Cr.P.C against the accused/Appellant as by that he was avoiding his lawful arrest.

4. After closure of the prosecution evidence, accused/Appellant was examined under section 342, Cr.P.C, wherein he denied the charges, posed innocence and stated to have falsely been implicated in the case. He, however wished to produce no defence, nor to examine himself on oath as required under section 340(2), Cr.P.C

5. Evidence of the prosecution entailed judicial prudent mind of the Presiding Officer of the Court of learned Sessions Judge/ Zila Qazi Malakand at Batkhela, therefore sentences thought for were awarded through the impugned order, hence the present appeal.

6. Here, fair opportunity of hearing was afforded to the learned counsel for accused/Appellant, learned counsel for the complainant and learned State

counsel, record with their valuable assistance gone through.

7. Learned counsel for the accused/Appellant relied on NLR 2014 Criminal 495 “Jehad Ali vs Riaz Ali and another”, 2010 SCMR 374 “Muhammad Saleem vs the State”, 2008 SCMR 6 “Akhtar Ali and others vs the State”, NLR 2014 Criminal 516 “Muhammad Sharif vs the State”, 2007 SCMR 1825 “Farman Ahmed vs Muhammad Inayat and others”, 2007 SCMR 670 “Muhammad Pervez and others vs the State and others”, 2011 SCMR 527 “Nazir Ahmad vs Muhammad Iqbal”, 2012 MLD 964 (Peshawar) “Abdul Majeed and 2 others vs the State and another”, 2006 P Cr. L J 1827 (Lahore) “Muhammad Arif vs the State” and 2007 MLD 613 (Peshawar) “Sajjad Ali vs Mst. Mah Pari and another”. In the light of these dictums of the Hon’ble superior Courts, prayed for acceptance of the appeal and acquittal of the convict-appellant as the prosecution failed to prove their version in respect of

ocular account as the alleged eyewitnesses of the occurrence were abandoned coupled with the fact that the identification of the accused/Appellant at the time of occurrence is also shrouded in mystery. Inversely the learned counsel for the complainant referred to 2016 MLD 1997 (Sindh) “ Irfan alias Irfoo and 2 others vs the State”, 2016 P Cr. L J 722 (Lahore) “ Abdul Sattar vs the State”, 2005 P Cr. L J 667 (Lahore) “ Muhammad Hanif vs the State” and 2012 P Cr. L J 1662 (Peshawar) “ Khan Ahmad Khan and another vs the State and 2 others”. Learned State counsel also placed reliance on PLD 2015 Sindh 426 “ Qadan alias Qadir Bux and another vs the State”, 2016 P Cr. L J 1408 (Peshawar Mingora Bench Dar-ul-Qaza) “ Mst. Bukhti-Haram vs Sabir and 4 others” , PLD 1995 Supreme Court 46 “ Mushtaq alias Shaman vs the State” and 2012 YLR 1355 (Baluchistan) “ Shah Jehan and another vs the State

They both vehemently opposed the arguments advanced by learned counsel for the accused/Appellant

and prayed for dismissal of the appeal being shorn of merits as the medical evidence, self-stated testimony of the injured/complainant and recoveries effected from the spot in shape of blood stained earth, empty shells of 30 bore pistol and above all the Torch fully corroborates the version of prosecution.

8. In the case in hand PW-8 Nek Muhammad alias Neko is the complainant who was on his way to attend the call of nature at "*Fajr*" time. At the relevant a sole accused Sabir Shah who was armed with his pistol asked him where he is proceeding, he was replied that he is on way to attend the call of nature then the accused/Appellant Sabir Shah resorted to firing due to which the complainant was hit on various parts of his body. But the most deadly fire shot of the accused/Appellant proved effective which has hit him on his lumber region who has since been paralysed.

9. While developing his arguments, learned counsel for the accused/Appellant mainly prayed for the acquittal of his client (Appellant) on the ground

that the identification is at stake as it was "*Fajr*" time when the occurrence took place so due to low visibility identification of the accused/Appellant was almost impossible. The accused/Appellant was not properly identified hence it is an alone ground for his acquittal.

10. This proposition was replied to the effect that since the time of occurrence is not disputed as in the month of August otherwise at 4.10 A.M in the morning there is almost light as rays of the sun are next to come out. Besides the distance between the assailant and the victim is so short or in other words so nearer i.e. 7 paces that even in dark night if the parties are known to each other it would hardly be a matter of creating any doubt regarding identification. It has come in the statement of PW-8 Nek Muhammad alias Neko that while he was on his way to attend the call of nature he was holding a torch in his hand, thereby mistaken identification would hardly be ground for acquittal of the accused/Appellant. Even if identification for sake of arguments is taken as ground,

even then the torch light is sufficient source of light at the time of witnessing the incident. In this case the torch has been taken up vide recovery memo Ex. PW-5/3 and to this extent statement of PW-5 has been duly recorded thus leaving no room for misidentification of the accused/Appellant.

11. In this case as many as nine (9) witnesses have been examined and all statements of the prosecution witnesses are linked in chain. The Medical Officer Dr. Amjad Ali who has been examined as PW-1 has affirmed the injuries sustained by the complainant Nek Muhammad alias Neko. The complainant has narrated the version of happening/occurrence in the mode and manner when hardly cross-examined had adverted to disbelieve him. The fire shots of the accused/Appellant have been proved so effective that it has resulted into complete L1/L2 Paraplegia as affirmed by the Discharge Certificate from Paraplegic Centre Hayat Abad.

12. The report of the injured/complainant in shape '*Murasila*' would reveal that Salih Muhammad and Shah Riaz who were present at the time of occurrence have been named therein to have witnessed the occurrence but these witnesses were abandoned as they did not opt to record their statements as they have been pressurized, so mere on this score too the complainant being sole witness, his self-stated testimony cannot be brushed aside. The complainant has been held to be a truthful witness and whatever he has stated is confidence inspiring and it rings true. Then his version is further supported by the medical evidence which is sufficient to bring home the charges against the accused/Appellant. In all criminal cases when conviction is based on singular testimony of a witness it is always quality and not quantity of the evidence which is to be seen by the Court. Intrinsic value of the statement of the injured/complainant who has sustained injuries which has altogether brought him the endless misery by way of disability for the rest of

his life, the Court ought to have satisfied and it should be believed according to the Article 17 of the Qanun-e-Shahadat Order 1984. In the *Hudood* cases and financial matters there is requirement of the competency and number of witnesses but in all other criminal cases even the single injured/complainant could testify the occurrence, which in this case has been explained reasonably and alone the accused/Appellant has been charged.

13. Therefore, in view of what has been discussed above I am of the firm view that there is no persistence in this appeal in respect of extending of benefit of doubt to the accused/Appellant; hence it is hereby answered in negative. The findings of the learned Court of Sessions Judge/ Zila Qazi Malakand at Batkhela are absolutely decorously delivered for the sentences as awarded.

Announced.
Dt: 23.02.2017

JUDGE