

Judgment Sheet

PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr. A No.19-A of 2018

JUDGMENT

Date of hearing.....29/11/2018.....

Appellant...(Abdul Hassan) by Syed Waqas Naqvi, Advocates.....

Respondent...(The State etc)

SYED MUHAMMAD ATTIQUE SHAH, J:-

This appeal under Section 417(2-A) Cr.P.C is directed against acquittal of accused/respondents Mir Wali, Said Wali, Mir Alam sons of Awal Khan, Gul Jehan, Zahir Shah sons of Jamal and Muhammad Nabi son of Akram Khan, in case F.I.R No.120 dated 10.06.2016 under section 302/324/506/148/149 registered against them in Police Station Dobair, District Kohistan, by the learned Sessions Judge, Kohistan, vide his judgment dated 10.01.2018.


2. Learned counsel for the appellant vehemently argued that the impugned order of acquittal of the learned trial Court is against the material available on record of the case and the law applicable thereto and the inference drawn by the learned Sessions Judge are

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based on presumption, surmises and conjectures; that where evidence on the record was credible and despite production of confidence inspiring and reliable evidence to establish the case of the prosecution, the learned trial Court acquitted the respondents on the basis of minor discrepancies, technicalities; that acquittal of respondents through impugned judgment is against the settled principle of administration of criminal justice, as the learned trial Court failed to appreciate material evidence in its true perspective.

3. Arguments of learned counsel for the appellant heard and record perused.


4. Perusal of record would reveal that the report of the occurrence was lodged by complainant/petitioner Abdul Hassan on 10/06/2016 at 17.30 hours to the effect that at about 14.30 hours, he alongwith Sher Bahadur and Mir Alam was going to Jejial Bazar from their house, when they reached near 'Kaar Jejial', they saw Mir Wali PTC Teacher, Mir Alam, and Said Wali PTC Teacher duly armed with firearms, sitting there, who on seeing them started abusing and started firing to kill them, as a result of firing of Mir Wali, Mir Alam sustained injury, while with the



firing of Said Wali, the complainant sustained injury on his head, whereas, Sher Bahadur sustained injury on his head with the firing of Mir Alam. He further alleged in his report that accused/respondents Muhammad Nabi, Zahir Shah and Gul Jehan duly armed with firearms and accompanying them, also made firing to frighten them. Motive for the offence was stated to be quarrel between Sher Bahadur and Mir Alam accused/respondent. The occurrence was stated to have also witnessed by Sher Zaman and Shah Alam. Mir Alam, injured was later on succumbed to his injuries, when he was being taken to Abbottabad for treatment.


5. The occurrence was allegedly committed at 14.30 hours on 10.06.2016.07.2015 and the report was lodged on the spot at 17.30 hours, after delay of three hours, whereas, the police station was situated at a distance of 8/9 kms from the spot. The peculiar facts and circumstances of the case would suggest that the case was registered after preliminary investigation after due deliberation and consultation and no independent witness has been produced despite the fact that the occurrence had taken place on a busy road at 14.30 hours. The star witnesses of the prosecution in this case are injured-

complainant Abdul Hassan (PW-6) and injured Sher Bahadur (PW-7), who appeared before the learned trial Court and furnished their testimony as eyewitnesses of the occurrence. The complainant in his report has attributed the role of firing to each of the accused/respondents, which resulted in injuries to a specific injured person, however, this Court believes that when indiscriminate firing is being made by three persons, no one can distinguish their role with exactitude as to whose fire shot hit to whom. Moreover, the I.O. Razeem Shah (PW-9) has shown accused/respondents Mir Wali, Said Wali and Mir Alam at points No.6, 7 and 8, respectively, in the site plan (Ex.PB), however, nine empties of 7.62 bore were recovered from point 'A', which is adjacent to point No.6, where, Mir Alam, accused/respondent was shown standing at the time of alleged occurrence and no empty was found from the places of other accused/respondents. The prosecution has failed to resolve this anomaly by producing cogent, reliable and confidence inspiring evidence, which means, that the occurrence had not taken place in the mode and manner as alleged by the prosecution. The empties of 7.62 bore recovered from the spot were sent to the firearms expert



alongwith firearms recovered from possession of accused/respondents Zahir Shah and Mir Wali, however, the report was received in negative. The postmortem examination of the deceased was not conducted due to the tradition in vogue in Kohistan. The injuries on the persons of injured PW-6 and 7, Abdul Hassan complainant and Sher Bahadur were not caused with firearms, as per opinion of Dr. Muhammad Geer (PW-1). Thus, the very presence of PW-6 and PW-7 on the spot at the relevant time become doubtful. Thus, the above mentioned contradictions, discrepancies in the statements of the prosecution witnesses would lead to the obvious inference that it was an unseen occurrence and the alleged eyewitnesses were not present on the spot at the time of occurrence and the respondents were charged due to previous enmity.

6. The learned trial Court has committed no error in acquitting the respondents by extending the benefit of doubt. It is settled that even a single doubt, if found reasonable, is sufficient to justify acquittal of an accused. In the absence of truthful, trustworthy, reliable and confidence inspiring evidence, the learned trial Court



has rightly acquitted the accused/ respondents of the charge.

7. The Apex Court, in case titled 'Zaheer Sadiq Vs. Muhammad Ijaz and others (2017 SCMR 2007) has once again pressed into service the golden principle of presumption of double innocence, in the following manner:

"Even otherwise, it is well settled by now that in criminal cases every accused is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such presumption."

Reliance in this respect is also placed on 2017 SCMR 1710 and 2017 SCMR 1639.

8. For the reasons discussed above, this appeal being without substance is dismissed in *limine*.


JUDGE


JUDGE

Announced.
Dt. 29/11/2018.

/*M.Saleem*/

(DB) Mr. Justice Lal Jan Khattar and Mr. Justice Syed Muhammad Attique Shah