

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT, PESHAWAR**  
(Judicial Department)

**Cr.A No. 713-P/2020**

(Riaz and 01 other versus The State and another)

Date of hearing: **14.09.2021**

Appellant(s): (Riaz and another) by  
M/S Syed Abdul Fayaz, Syed Mubashir Shah and  
Mian Sher Akbar Bacha, Advocates.

Respondents by: (State) by  
Mr. Khalid Rehman, A.A.G.

**JUDGMENT**

**ISHTIAQ IBRAHIM, J.-** Through this appeal, the appellants have challenged the judgment dated 15.09.2020 of the learned Additional Sessions Judge-I, Swabi passed in case FIR No. 416 dated 25.07.2019 u/s 15 A.A of P.S Yar Hussain, District Swabi, whereby they were convicted and sentenced to undergo three years R.I each with fine of Rs.10,000/- each. In default of payment of fine, they were directed to undergo further one month S.I each. Benefit of section 382-B, Cr.P.C was extended to them.

It is pertinent to note here that separate challan under section 15 A.A had been submitted against the appellants, as such, they have been convicted and sentenced through a separate judgment in the same FIR but inadvertently it was mentioned in the short order that the reasons of

acquittal of the appellants will be later recorded in the connected Cr.A No. 712-P/2020. The mistake being inadvertent, is rectified and this appeal is decided through a separate judgment independent of the murder case.

2. Brief facts of the case are that during investigation of the case against the present appellants with regard to murder of deceased Ibne Ameen, they disclosed that they had fired at the deceased through their respective Kalashnikovs and the said weapons have been concealed by them in their house after the occurrence. Thus they led the police to their house and a Kalashnikov having no number with five rounds of 7.62 bore was recovered on pointation of appellant Riaz Ali from an iron box inside his residential room. Thereafter another Kalashnikov bearing No.5617327729 with ten rounds was recovered on pointation of appellant Rehman Ali which he had concealed in an iron box in his room. Both the weapons were taken into possession vide recovery memo Ex.PW-1/1 attested by Afsar Khan ASI (abandoned) and Mushtaq Hussain ASI (PW-1).

3. After completion of investigation, separate challan u/s 15 A.A was put in Court for trial

of the appellants on commencement whereof they were formally charge-sheeted for the offence to which they did not plead guilty and opted to face the trial. Prosecution, in order to further substantiate its case against the appellants, examined 03 PWs and closed the evidence. After examination of the appellants u/s 342, Cr.P.C, the learned trial Court convicted the appellants in this case by awarding them the sentences already detailed in the earlier part of this judgment. Hence, this appeal.

4. Arguments heard and record of the case was perused.

5. Perusal of the record shows that as per prosecution version, the rifles recovered in the present case were shown as the crime weapons in the murder case, however, the said allegation against the present appellants is disproved by FSL, copy of which is available on record. According to the said report, the Kalashnikovs allegedly recovered in this case have not matched with the 05 crime empties recovered from the spot, however, the learned trial Court has convicted the appellants for keeping unlicensed arms in their house.

6. Admittedly, the alleged recovery has been made on joint pointation of the appellants and a

joint recovery memo was prepared regarding both the weapons. Recovery of incriminating articles on joint pointation of two or more accused is inadmissible in evidence under Article 40 of the Qanun-e-Shahadat Order, 1984. In this regard we would refer the judgment in the case titled Ghulam Mustafa Vs. Ali Nawaz and 2 others 2020 M L D 1260 [Sindh (Hyderabad Bench)], wherein it was held that:

Moreover, it is alleged that the recovery was made on the joint pointation of both the accused and there is plethora of case laws that recovery which is made on the pointation of more than one accused on their joint pointation is inadmissible in evidence and cannot be relied upon. In this respect, we are supported by the dictum laid down by the honourable Supreme Court in the case of Gul Jamal and another v. The State (1980 SCMR 654).

7. In addition to above, the PWs have not supported each other on material particulars of the recovery. According to Ashfaq Hussain ASI (PW-1), who is the attesting witness of recovery memo Ex.PW-1/1, admitted in his cross-examination that female, children as well as other male members of the accused family were present at the time of recovery of weapons, however, the Investigating Officer Aurangzeb Khan S.I (PW-2) has denied

presence of males except the accused inside the house. Furthermore, no sketch of recovery is available on record of this case to support the above version of prosecution. The afore-referred aspects of the case suggest that the recovery of weapons has not been effected in the mode and manner as alleged by prosecution.

8. The record further transpires that the I.O has not complied with the provision of section 103, Cr.P.C. Although non-compliance of the said provision by police alone would not damage the entire case of prosecution, however, the I.O in the present case has failed to offer any plausible explanation to justify non-association of private witnesses with the recovery of unlicensed weapons from the house of appellant. Moreso, the prosecution has also failed to prove the charge of murder against the present appellants and they have been acquitted by this Court through a separate judgment in the connected Cr.A No. 712-M/2020.

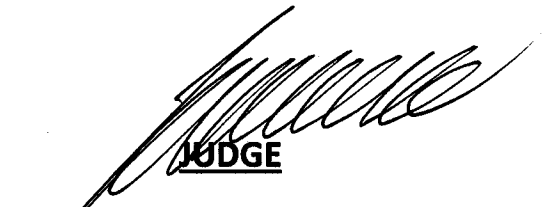
9. In view of the above, prosecution has not proved its case against the appellants beyond reasonable doubt, therefore, the impugned judgment needs reversal in circumstances of the case. Resultantly, this appeal is allowed, the impugned

judgment is set aside and appellants are acquitted of the charge leveled against them in the present case. They be released forthwith from jail if not required in any other case.

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

Announced.  
14.09.2021

  
JUDGE

  
JUDGE



*The*  
**PESHAWAR HIGH COURT**  
*Peshawar*

Ph: No. 091-9210149-58

No. 40694 (1)/181/2021/DEC

Dated. 15-September-2021

From

Additional Registrar (J),  
Peshawar High Court,  
Peshawar.

To

The District & Session Judge, Swabi.

Subject: Criminal Appeals:(Short Sen.) Cr.A 713/2020 Title: Riaz VS State (FIR No.416 Dated 25-Jul-19 U/S 15 AA PS. Yar Hussain)

RELEASE ORDER.

Accused/appellants (1) Riaz S/o Mir Afzal (2) Rehman S/o Riaz both r/o Shaheeda Yar Hussain, Tehsil Lahor, District Swabi.

Date of hearing on 14.09.2021.

DB Mr. Justice Lal Jan Khattak & Mr. Justice Ishtiaq Ibrahim.

Previous History of the Case.

Convicted & Sentenced u/s 15 AA to suffer 03 years RI each with a fine of Rs. 10,000/- each or in default to further suffer one month SI each. Benefit of Section 382- B Cr.P.C, was extended to the accused by Mr. Atta Ullah Jan, Addl: Sessions Judge-I, Swabi at Lahor, vide order dated 15.09.2020.

High Court Oder: (Operative Part only).

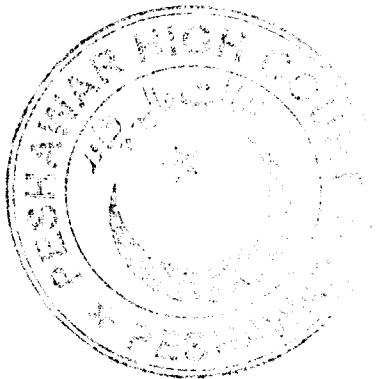
For the reasons to be recorded later in connected Cr. A No. 712-P/2020 titled "Riaz and another vs the state and another", the instant appeal is allowed. The conviction and sentence awarded to the appellants (i) Riaz son of Mir Afzal and (ii) Rehman son of Riaz by the learned Additional Sessions Judge-I Swabi vide judgment dated 15.09.2020, passed in case FIR No. 416 dated 25.07.2019 under section 15 AA of Police Station Yar Hussain, District Swabi is set-aside and they are acquitted of the charges leveled against them in the instant case. They be set at liberty forthwith if not required to be detained in any other case.

Copy of order is attached herewith.

Direction. As per order mentioned above.

Additional Registrar  
Peshawar High Court

16/09/21  
Additional Registrar(J)



**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**  
**JUDGMENT SHEET**

**Criminal Appeal No.713-P/2020**

**Riaz and another**  
**Vs**  
**The State and another**

**Date of hearing: .....14.09.2021.....**

**Appellant(s) by: Syed Abdul Fayaz, Syed Mubashir  
Shah and Mian Sher Akbar Bacha,  
Advocates**

**State by: Mr. Khalid Rahman, AAG**

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**JUDGEMENT**

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**ISHTIAQ IBRAHIM, J:** For the reasons to be recorded later in connected **Cr.A No. 712-P/2020** titled **"Riaz and another vs the state and another"**, the instant appeal is allowed. The conviction and sentence awarded to the appellants (i) Riaz son of Mir Afzal and (ii) Rehman son of Riaz by the learned Additional Sessions Judge-I Swabi vide judgement dated 15.09.2020, passed in case FIR No. 416 dated 25.7.2019 under sections 15 AA of Police Station Yar Hussain, District Swabi is set aside and they are acquitted of the charges leveled against them in the instant case. They be set at liberty forthwith if not required to be detained in any other case.

  
**Judge**

  
**Judge**

**Announced**  
**Dated.14.09.2021**

(D.B) Hon'ble Mr. Justice Lal Jan Khattak and Hon'ble Mr. Justice Ishtiaq Ibrahim