

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, BANNU BENCH**  
(Judicial Department)

**Cr.A. No.122-B/2021.**

Noor Ullah  
Vs.  
The State etc.

**JUDGMENT**

For Appellant: Mr. Shahid Naseem Khan Chamkani,  
Advocate.

For State: Mr. Saif ur Rehman Khan A.A.G.


For Respondent: Mr. Sawal Nazir, Advocate.

Date of hearing: 17.8.2022.

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**MUHAMMAD FAHEEM WALI, J.-** Noor Ullah, the appellant, faced trial in case FIR No.42 dated 16.5.2020, under section 302 PPC of police station Mir Ali, District North Waziristan, and on conclusion of trial the learned trial Court i.e. Sessions Judge/Judge Juvenile Court North Waziristan at Bannu, vide impugned judgment dated 24.7.2021, convicted him under section 302(b) of Pakistan Penal Code for committing *qatl-i-amd* of his brother Waqar Ahmad and sentenced to life imprisonment with compensation of Rs.700,000/- (seven lac) to be paid to the legal heirs of deceased in terms of Section 544-A, Cr.P.C. or in default thereof, to undergo simple imprisonment for six months. Benefit of section 382-B, Cr.P.C was extended to the convict/appellant.

2. The prosecution story as disclosed in the FIR, registered on the basis of *murasila*, in brief, is that on 16.5.2020, an information regarding transportation of the dead body to Civil Hospital Mir Ali was communicated to Dost Ayub Khan SHO (PW-9), during patrol duty, whereupon he alongwith other police *Nafri* rushed there and found dead body of Waqar Ahmad son of Rehman Syed Khan, where he was informed that the deceased was done to death by his brother (the present appellant) by firing at him in Khaddi Bazaar, as a result of domestic dispute.




3. On completion of the investigation, complete challan against the accused was submitted before the learned trial Court where at the commencement of trial, the prosecution produced and examined as many as nine (9) witnesses, whereafter, statement of the accused under section 342 Cr.P.C, was recorded wherein he professed innocence and false implication, however, neither he wished to be examined under section 340(2) Cr.P.C, nor opted to produce defence evidence. The learned trial after hearing arguments, convicted the appellant and sentenced him, as mentioned above, which has been assailed by the appellant through the instant criminal appeal.

4. We have heard the arguments of the counsel but for the sake of brevity without

reproducing the same it would be dealt with in the body of this judgment at appropriate junctures.

5. There is no denial to the fact that in case of single accused substitution is a rare phenomenon, however, it cannot equally be denied that charge against single accused will not absolve the prosecution of its liability to prove the case through trustworthy and confidence inspiring evidence. In order to ascertain as to whether the impugned judgment is based on proper reasoning and that the learned trial Court correctly applied its judicial mind to the facts and circumstances of the case keeping in view the evidence available on the file, we deem it essential to thrash out the evidence so as to avoid miscarriage of justice.




6. Scanning of the record reveals that as per prosecution version, the occurrence allegedly occurred in Khaddi Market situated within limits of Khaddi Adda, however, unfortunately no one amongst the shopkeepers was cited as witness to have seen the occurrence. Although the Medical Officer while appearing in the witness box as PW-2 stated that the dead body was brought and identified by Nasir ud Din and Suleman Khan, however, only Nasir ud Din appeared before the trial Court as PW-7, but he did not utter a single word regarding transportation of the dead body from the spot to the

hospital. The other witness namely Suleman Khan was not produced before the Court. Even the complainant SHO while deposing before the Court as PW-9, was unable to mention the name of the person who allegedly informed him about the occurrence on mobile phone, nor he mentioned cell phone number of the alleged informer. He was also unable to tell as to whether the dead body was brought to the hospital by relatives of the deceased or private persons. He stated that when he reached to the Emergency Room of hospital, only medical staff was present with the dead body. Even he was unable to give the name of the person who identified the dead body before him. He was also unaware about the wounds on the dead body. He clearly admitted that no private person as well as the relative of the deceased had come forward for report.

7. Since the occurrence is unseen one, therefore, to meet the ends of justice, it would be better to peruse the statement of Investigating Officer, namely Qaza Khan (PW-4). It is surprising that the spot was pointed out to the Investigating Officer by nearby shopkeepers, however, as per deposition of this witness those shopkeepers were reluctant to record their statements. He stated that he had not even mentioned their names in the investigation

proceedings. He stated that widow and aunt of the deceased were not the eyewitness to the occurrence. He further stated that the widow and aunt of the deceased were not present at the time of spot inspection. He further stated that he had not mentioned as to how the widow and aunt of the deceased came to know about the incident. Besides, this witness prepared site plan, took into possession blood stains through cotton and an empty of .30 bore, recorded statements of PWs as well as identifier and received blood stained garments of the deceased at the spot produced by police constable. In our considered view, the shopkeepers were the star witnesses of the occurrence, however, none amongst them came forward to become a witness. True that in this newly merged area, people avoid to become a witness in such like cases, however, it is equally true that law does not accept such type of an excuse.



8. Mst. Karishma, widow of the deceased appeared as PW-5, who stated that on the day of occurrence, her husband went to village Khaddai at about 4:00 PM to propitiate his father where his step-brother Noor Ullah committed his murder by firing at him. During cross-examination, although this witness stated that one or two months prior to the occurrence some grudges arose between the deceased and his father, however, she did not specify those grudges.

She stated that immediately after the incident she was informed, however, she admitted that she had not gone to police station for reporting the matter, rather police had come to their house where her statement was recorded. Even she was unable to testify as to who and through what source she was informed about the occurrence. Similar is the situation with the statement of Mst. Hakim Gulla (PW-6), who happens to be aunt of the appellant.

9. The record further transpires that although an empty of .30 bore was recovered during the spot inspection and as per statement of concerned Medical Officer (PW-2), an entrance wound on the left side of the neck just behind the ear and exit wound on the forehead just above the right eye was observed, however, since no recovery has been effected from the accused, therefore, the alleged recovery and the postmortem report become immaterial, as it is by now well settled that such piece of evidence is a corroboratory evidence which does not identify the assailant, especially when the site plan was prepared by the Investigating Officer on his own observation.

10. The prosecution did not succeed in establishing the alleged motive. As the parties were not in a blood-feud, so in such eventuality the importance of the alleged motive gains much weight and once alleged, the prosecution was under the

bounden duty to prove the same. True that absence or weakness of motive will not demolish the prosecution case, but the same principle does not apply here, as the motive was stated to be a dispute between the deceased and his father, so the prosecution was in all circumstances to prove the same. With regard to motive, specific question was put to the accused during his statement under section 342, Cr.P.C. to which he answered that there was no domestic issue because their father was still alive and was serving as a teacher at Government Middle School at 'Gardai Rogha' Tehsil Dosalli. In this view of the matter, when the prosecution has not succeeded in establishing the motive, then it is for the prosecution to suffer, as is held in case titled "Hakim Ali Vs. The State" (1971 SCMR-432), that the prosecution though not called upon to establish motive in every case, yet once it has setup a motive and failed to establish, the prosecution must suffer consequences and not the defence. The above view has been reiterated in the case of "Amin Ullah Vs. The State" (PLD 1976 SC 629), wherein, it has been observed by their lordships, that motive is an important constituent and if found by the Court to be untrue, the Court should be on guard to accept the prosecution story. It was again re-enforced by the august Supreme Court in the case of Muhammad Sadiq Vs. Muhammad



Sarwar (1997 SCMR 214). Again, on the same principle, case laws titled Noor Muhammad Vs. The State and another (2010 SCMR 997) and Amin Ali and another Vs. The State (2011 SCMR-323) can also be referred.

11. There is no two opinion about the fact that the cardinal principle of justice always laid emphasis on the quality of evidence which must be of first degree and sufficient enough to dispel the apprehension of the Court with regard to the implication of innocent persons alongwith guilty one by the prosecution, otherwise, the golden principle of justice would come into play that even a single doubt if found reasonable would be sufficient to acquit the accused, giving him/them benefit of doubt because bundle of doubts are not required to extend the legal benefit to the accused. In this regard, reliance is placed on a view held by the Hon'ble Supreme Court in case titled Riaz Masih alias Mithoo Vs. State (NLR 1995 Cr.SC 694).


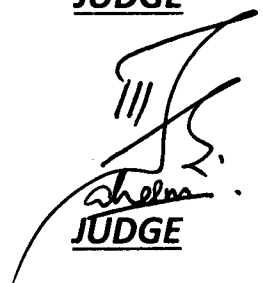
12. The accumulative effect of the whole aspects taken into consideration, leads us to an inescapable conclusion that the prosecution has miserably failed to establish the case against the appellant, otherwise to extend benefit of doubt so many circumstances are not required. In the case of Tariq Pervez Vs. The State 1995 SCMR 1345, it





was observed by Apex Court that, for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created 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. Accordingly, the instant criminal appeal is allowed, the impugned judgment is set aside and the appellant is acquitted of the charges levelled against him. He shall be released forthwith, if not required to be detained in connection with any other criminal case.

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

Announced.  
Dt: 17.8.2022.  
[Kifayat/PS\*]

  
JUDGE  
  
JUDGE

(D.B)  
Hon'ble Mr. Justice Sahibzada Asadullah  
Hon'ble Mr. Justice Muhammad Faheem Wali

  
SCANNED  
05 SEP 2022  
  
Khalid Khan