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

Cr.A. No.144-P/2017.

Muhammad Hussan
Vs.
The State & another.

JUDGMENT

For Appellant: **Mr. Shabbir Husain Gigyani, Advocate.**

For respondents: **Syed Sikandar Hayat Shah, A.A.G. & Javed Ali Asghar, Advocate for the complainant.**

Date of hearing: **11.9.2019.**

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SAHIBZADA ASADULLAH, J.- This appeal has been filed by appellant Muhammad Hussain alias Mushfiq against the judgment dated 31.01.2017, rendered by learned Additional Sessions Judge-VIII, Peshawar, in case FIR No.229 dated 24.4.2011, under Section 302 PPC, registered at police station Tehkal, Peshawar, whereby he was convicted under Section 302(b) PPC and sentenced to life imprisonment with the direction to pay Rs.6,00,000/- each payable to the legal heirs of deceased under Section 544-A, Cr.P.C., recoverable as arrears of land revenue or in default thereof, to undergo simple imprisonment for six months. Benefit of Section 382-B, Cr.P.C. was extended to the appellant.

2. The facts of the prosecution case, in brief, are that on 24.4.2011 at 1230 hours, complainant Ayub Khan (PW-4) made report on the spot to Dawaye Khan S.I (now dead) to the effect that he was present in his house and got information that dead body of his murdered son was lying on the spot. On this information, the complainant rushed to the spot where he came to know that his son Imran was selling vegetables on the spot, the appellant came there and committed *qatl-e-amd* of his son by firing at him with firearm. Motive for the occurrence is stated to be a money dispute between the complainant and the accused. He charged the accused for the commission of offence. On this report, the afore-named S.I drafted murasila and sent the same to police station for registration of the case, where FIR was registered by Iftikhar Khan S.I. (PW-12). Injury sheet Ex. PM/1 and inquest report Ex. PM/2 were also prepared by Dawaye Khan S.I.

3. After arrest of the accused and completion of investigation, challan was submitted in Court, which indicted the accused for commission of the offence to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution produced and examined twelve witnesses in all, whereafter, accused was examined under Section 342, Cr.P.C, wherein, he denied the allegations and professed

innocence, however, he neither opted to be examined on oath, nor produced evidence in his defence. The learned trial Court, after conclusion of the trial, vide impugned judgment dated 31.01.2017, found the accused guilty of the charge and upon conviction under Section 302(b) PPC, sentenced him as mentioned above, which is under challenge in the instant appeal.

5. We have heard the learned counsel for the parties and have gone through the file from cover to cover.

6. It is the case of prosecution that the complainant was present in his house and received information regarding murder of his son, whereafter he went to the spot and came to know that his son who had left in the morning for selling vegetables was killed by the appellant with firearm. Firstly, we would like to refer statement of the complainant for the reason that his testimony touches the very roots of the case. Complainant, while appearing as PW-4, stated before the Court that on the day of occurrence he was present in his house situated at *Pirano Palosi,* where he was informed by his son Shoaib about the murder of his son Imran by the appellant; he came out of his house and saw the dead body of his deceased son brought by elders of the locality; meanwhile, the police came to the place of occurrence to whom he reported the matter. This

improvement, in our considered view, is unbelievable for the reasons that had Shoaib PW-6 been present with the deceased, why the complainant did not mention so while lodging the report. Needless to say that complainant did not disclose the source of information in his report, rather he subsequently introduced that he was informed by his son PW-6 about the occurrence, which appears to be an embroidery work of the complainant just to cover an unseen occurrence. The Honourable Supreme Court, in the case of ***Rashid Ahmed Vs. Muhammad Nawaz and others (2006 SCMR 1152)***, held that testimony of a witness not mentioned in the F.I.R. but introduced subsequently has no evidentiary value. Similarly, during cross-examination, complainant PW-4 stated that besides his son PW-6, one Gul Agha also informed him. If, for the sake of arguments, this deposition is believed, then why PW-6 or for that matter said Gul Agha did not report the matter to the police or signed/thumb impressed the report as rider of the same. The august Supreme Court of Pakistan in ***Akhtar Ali's case (2008 SCMR-6)***, held that when a witness improves his version to strengthen the prosecution case, his improved statement subsequently made cannot be relied upon as the witness has improved his statement dishonestly, therefore, his credibility becomes doubtful on the well-known principle of

criminal jurisprudence that improvements once found deliberate and dishonest cast serious doubt on the veracity of such witness. The Hon'ble Supreme Court in case ***Farman Ahmad Vs. Muhammad Inayat and others (2007 SCMR 1825)***, has laid down the dictum about validity of statement of a witness improving his version subsequently to strengthen the prosecution case. The same view has been re-enforced by the apex Court in ***Muhammad Saleem's case (2011 SCMR 474)***. Ref: ***Muhammad Rafique and others Vs. The State and others (2010 SCMR 385), Sardar Bibi and another Vs. Munir Ahmed and others (2017 SCMR 344), Muhammad Mansha Vs. The State (2018 SCMR 772)***.

7. The prosecution has mainly relied upon the testimony of Shoaib (PW-6). It is a rule of prudence that evidence of a child witness is a delicate matter and normally it is not safe to rely upon it unless corroborated. Great care is to be taken that in the evidence of a child element of coaching is not involved for the reason that children are most untrustworthy class of witnesses being of tender age. We have carefully perused the statement of the alleged eyewitness Shoaib, PW-6, who mentioned details of the occurrence. Again, it is reiterated that had he been present on the spot, why he did not report the matter or for that matter signed/thumb impressed the report as rider of the same.

In cross-examination, he stated that "*we used to sell the vegetable in Palosi Adda*", if this deposition is accepted, then what prevented the complainant to disclose that his son Shoaib PW-6 alongwith his deceased brother Imran used to sell vegetables in *Palosi Adda* and on the day of occurrence he had accompanied his deceased brother and had informed the complainant about the occurrence. PW-6 further stated that as the accused armed with pistol was after the life of their father so they followed to prevent the danger. This witnesses further stated that he and his deceased brother were about 20 paces away from the accused at the time of following him, while his brother was ahead of him (PW-6), but the postmortem report negates the said version for the reason that the doctor (PW-9) mentioned the entry wound on the left side back of the chest and exit wound on the right side front of the chest, which was not possible as according to PW-6, he and his deceased brother were following the convict at the time of occurrence. Furthermore, PW-9 in his cross-examination, negated the version of PW-6, by stating that the bullet hit from medium range which means that the same was fired from 1 to 5 feet. While as per site plan Ex. PB, the distance between the appellant and the deceased was 10 feet, whereas the PW-6 stated that he and his deceased brother were about 20 paces away from the accused while following him. It

creates doubt in a prudent mind regarding the mode and manner in which the occurrence had taken place.

8. This surprised us that till the date of recording of evidence, none could clarify that point No.3 in the site plan was attributed to whom, as there is nothing on the record to confirm that in-fact the un-named witness at point No.3 was Shoaib. Our anxiety was further increased that on whose pointation the site plan was prepared. The later improved story ensued from the vegetable cart in the bazaar but the place where the cart was standing at the place where the deceased was selling vegetable, nowhere find mention. It was a busy bazaar and no one was examined to confirm that in fact the occurrence took place at the time, place and in the manner so presented. The reply to our worries is an emphatic "No".

9. The prosecution came forward with a motive which, in no way, attracted our attention. PW-4 put forward that few days back the accused demanded an outstanding amount of Rs.14000/-, but he refused to pay being penniless. In cross-examination, his explanation took us aback where he divulged that the debt amount was not of the accused rather owned by a person namely Wahid, but later Wahid expired and it was his brother who arranged the accused for the purpose. We, while sitting in appeal, are under heavy obligation to assess by

thinking and rethinking, lest an innocent person falls a prey to our ignorance of facts and ignorance of law. The Court must not close its eyes to human conducts and behaviours while deciding criminal cases, failing which the results will be drastic and impacts will be far from repair. In case in hand, the accused had nothing to do with amount alleged, that too in a situation when the person whose debt was outstanding, had already died and this is far from believing that for such meager amount the accused will eliminate the deceased.

10. 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 the case of ***Riaz Masih alias Mithoo Vs. State (NLR 1995 Cr.SC 694) and Sardar Ali Vs. Hameedullah and others (2019 P.Cr.L.J. 186)***.

11. Keeping in view the infirmities in the prosecution case, as highlighted above, motive as alleged, was of no avail to the prosecution.

12. For the foregoing reasons and discussion, the conviction and sentence awarded to the appellant is not sustainable in the eye of law, therefore, the impugned judgment of conviction dated 31.01.2017 is set aside and the appellant is acquitted of the charge by extending the benefit of doubt to him.

13. Above are the reasons of our short order announced on 11.9.2019.

Kifayat/*

JUDGE

JUDGE

(D.B)
Hon'ble Mr. Justice Rooh-ul-Amin Khan
Hon'ble Mr. Justice Sahibzada Asadullah