

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

Cr.A No. 57-M/2015

(1) *Bismillah Jan son of Mohammad Sadiq*
(2) *Mohammad Ayaz*
(3) *Inamullah*
(4) *Sajjad Ali sons of Bismillah Jan (Appellants)*
Versus

(1) *The State*
(2) *Ahmad Khan son of Sher Mohammad Khan*
(Respondents)

Present: *Sahibzada Assadullah, Advocate for the appellants.*

Hafiz Bakht Amin, State counsel.

Mr. Sher Muhammad Khan, Advocate.

Cr.R No. 17-M/2015

Ahmad Khan son of Sher Mohammad Khan
(Petitioner)
Versus

1) *Mohammad Ayaz son of Bismillah Jan*
2) *State through A.A.G.*
(Respondents)

Present: *Mr. Sher Muhammad Khan, Advocate.*

Hafiz Bakht Amin, State counsel.

Sahibzada Assadullah, Advocate for the respondent/convict.

Date of hearing:- **06.11.2018**

CONSOLIDATED
JUDGMENT

SYED ARSHAD ALI, J.- Through this single judgment, we propose to decide this criminal appeal bearing No. 57-M/2015 as well as the connected Criminal Revision bearing No. 17-M/2015, as both these matters emanate from

one and the same impugned judgment dated 07.03.2015 rendered by the learned Additional Sessions Judge/Izafi Zilla Qazi Swat at Kabal, in case F.I.R No. 58 dated 18.02.2014 under sections 302,34 PPC registered at Police Station Kanju District Swat, whereby the appellants Bismillah Jan, Mohammad Ayaz, Inamullah and Sajjad Ali were convicted under sections 302 (b)/34 PPC and sentenced to life imprisonment each alongwith payment of compensation of Rs.200,000/- (two lacs) each payable to the legal heirs of the deceased under section 544-A Cr.P.C, or in default thereof, they were ordered to undergo further 6 months S.I. each. However, the accused/appellants were extended the benefit of section 382-B Cr.P.C.

2. The complainant Ahmad Khan, PW-1 on 18.02.2014 at 11:40 hours reported the matter to Umar Zada, ASI, PW-3 at the casualty of Saidu Sharif hospital accompanied by Salim Jan, PW-2 who had brought the dead body of the deceased Sardar Ali wherein he (complainant) charged the present accused/appellants Bismillah Jan, Inamullah



and Sajjad for catching-hold of the deceased, while the accused/appellant Mohammad Ayaz stabbed the said Sardar Ali repeatedly with a knife, due to which he (deceased) received multiple injuries on his body and died at the spot. The complainant also received body aches and pain. The motive was disclosed to be a dispute over the landed property.

3. Investigation in the case was entrusted to Njjad Khan, S.I./C.I.O, PW-10, who visited the spot and prepared the site plan Ex. PW-10/1 at the pointation of the complainant and other eye-witnesses. He has recorded statements of the witnesses u/s 161 Cr.P.C and collected blood stained grass, Ex.P-1, a *boot Cheeta* Ex. P-2 and a mobile phone Nokia Ex. P-3 from the spot in presence of the marginal witnesses. One Salim Jan, PW-2 produced the weapon of offence i.e. knife blood-stained, vide which the deceased Sardar Ali was stabbed by the accused Mohammad Ayaz, the Investigation Officer has taken into possession the said knife Ex. P-4 in presence of its marginal witnesses. He has taken into possession blood-stained



clothes of the deceased vide recovery memo Ex. PW-10/2 alongwith weapon of offence through recovery memo Ex. PW-10/3 coupled with blood stained grass via recovery memo Ex. PW-10/4. He has issued card arrest memo of the accused Sajjad Ex. PW-10/5 and recorded statements of the witnesses u/s 161 Cr.P.C. Vide application Ex. PW-10/6 the accused Sajjad was produced before the Court for obtaining of police custody and through another application Ex. PW-10/7 police custody of the accused was obtained for 2 days. Blood stained garments of the accused Sajjad Ex. P-6, mobile phones of accused Muhammad Ayaz, Ex. P-7 and Inamullah Ex. P-8 were taken into possession vide recovery memo Ex. PW-5/1 (already exhibited). Vide application Ex. PW-10/8, he has produced the accused Sajjad before the Court for recording of his confessional statement but the said accused refused to record his statement, therefore, he was sent to judicial lock up. On 22.02.2014, vide application Ex. PW-10/9 rest of the accused were produced before the Court for recording of their



statements u/s 164/364 Cr.P.C but on their refusal they were sent to judicial lock up. Vide application Ex. PW-10/10 the recovered items were sent to the FSL Peshawar for forensic examination. On 25.02.2014, statements of the PWs Saleem Jan, Khalid Khan, Fayaz Khan and Ikram were recorded in the Court vide application Ex. PW-10/11. On receipt of the postmortem report of the deceased Ex. PW-6/2, the same was placed on file. On receipt of the FSL report from Peshawar, the same was placed on record as Ex. PW-10/12 by the Investigation Officer. On receipt of the *Naqal Mad* No. 24 of the daily diary dated 18.02.2014, the same was placed on record as Ex. PW-10/13. Upon completion of the investigation, complete *challan* was forwarded to the SHO concerned for onward submission before the competent Court.



4. During the trial, the prosecution examined as many as 11 witnesses whose statements were recorded and placed on file. On closure of the prosecution evidence, accused were examined under section 342, Cr.P.C,

wherein they denied the charges, claimed innocence and stated to have falsely been implicated in the case.

5. On conclusion of the trial, the learned Additional Sessions Judge/Izafi Zilla Qazi Swat at Kabal convicted and sentenced the accused/appellants vide the judgment impugned herein, hence these connected matters.

6. The learned counsel appearing on behalf of the appellants has argued that the entire prosecution case against the present accused/appellants is based on the testimony of the interested and chance witnesses without any corroboration, therefore, the impugned conviction on this score alone is not sustainable in the eye of law. He has further argued that the impartial witnesses who could be the alleged 'Jirga' members were never produced before the trial Court and one of the alleged star witness of the prosecution Khalid Khan was abandoned. Hence, the prosecution has failed to prove its case beyond reasonable doubt, therefore, the accused/appellants are entitled to be acquitted from the charges by giving them



the benefit of doubt not as a matter of mercy but as their right.

7. Conversely, the learned counsel appearing on behalf of the complainant and the learned State counsel while controverting the arguments of learned counsel for the appellants have argued that it was daylight occurrence and the accused/appellants were properly identified. There is no exaggeration of the charge and all the witnesses were natural and unanimous in their testimony regarding the guilt of the accused/appellants. They have further argued that the '*Jirga*' members were only the property dealers, therefore, their non-appearance before the Court is not fatal to the prosecution case as the criminal cases are always decided on the quality of the evidence and not on the basis of quantity of the evidence. They have further argued that all the accused in furtherance of their common intention have committed the murder of the deceased in brutal manner which was duly established at the trial. The medical evidence and recovery of blood-stained garments, grass etc. duly supported the



prosecution version. Hence, the impugned conviction is based on proper appreciation of evidence, which does not call for any interference.

8. Arguments heard and record of the case was perused with the valuable assistance of learned counsels for the parties.

9. As per '*Murasila*' Ex. PW-3/1 followed by FIR Ex. PW-7/1, it is the case of prosecution that on 18.02.2014 at 11:40 A.M, the complainant Ahmad Khan, PW-1 reported the matter to the police official Umar Zada, ASI, PW-3 at the casualty of Saidu Sharif hospital accompanied by Saleem Jan, PW-2 who had brought the dead body of Sardar Ali (deceased) that on the said day while he was sitting in his electronic shop situated at *Koza Bandai*, his maternal cousin Saleem Jan PW-2 called him through his cellular phone that he should come to his field situated at *Terona Shaheen Abad Koza Bandai* as the *Jirga* members had reached there. On such information, he ("*complainant*") and his deceased brother Sardar Ali went to the spot. On

reaching there, the present appellants/convicts namely Bismillah Jan, Mohammad Ayaz, Inam and Sajjad had chanted abuses and then started grappling and quarreling with them. Accused/appellants Bismillah Jan, Inam and Sajjad caught-hold of his deceased brother, while Mohammad Ayaz, the appellant/convict stabbed him repeatedly with knife, due to which his deceased brother Sardar Ali received multiple injuries on his body and died at the spot. He (complainant) also received some minor injuries on his body. The motive behind the occurrence was a dispute over the landed property and the occurrence was stated to have been witnessed by Khalid Khan (abandoned witness) and Saleem Jan, PW-2.

10. In support of the prosecution case, the complainant Ahmad Khan appeared as PW-1 and the eye-witness Saleem Jan was examined as PW-2, whereas the 3rd eye-witness Khalid Khan was abandoned by the prosecution. The close perusal of their testimony as recorded at the trial Court would show that the place of occurrence is situated at a distance, which can

be covered in 10/11 minutes' by walk from the house of the complainant. They had a dispute over demarcation of the property and on the day of occurrence, some elders/property dealers had fixed the said date for demarcation of their property which was the subject-matter of dispute among the parties. Saleem Jan, PW-2 is the maternal cousin of the complainant who indeed invited them at the place of occurrence and his house is situated at a distance of 500/600 feet from the place of occurrence.

11. The scrutiny of their testimony would reveal that when the complainant and his deceased brother reached at the spot, the appellants/convicts chanted abuses which led to a free fight/grappling between both the parties. At the first instance, both the parties were separated, the appellants/convicts were taken to a side by Khalid Khan (abandoned witness), whereas the complainant-party was taken to a side by PW-2 Saleem Jan. In the meanwhile, they once again were trying to fight and thus Khalid Khan could not sustain the resistance of the appellants and he fell down on the earth and

5/10/11

similarly Sardar Ali the deceased was also pushing himself towards the appellants/convicts, whereas the complainant was still caught by PW-2 Saleem Jan and the deceased succeed to free himself from Saleem Jan PW-2 and thus there was once again fight between the parties and as such the appellants/convicts Bismillah Jan, Inam and Sajjad caught-hold of Sardar Ali and Mohammad Ayaz, the appellant/convict repeatedly stabbed him with knife on various parts of his body. It also discerns from their testimony that all the accused/appellants other than Mohammad Ayaz had spade and 'Kassi' with them. In the first episode, the complainant as well as the eye-witnesses could not notice a knife in the hands of the accused Mohammad Ayaz, however, in the second episode they could only notice the knife when the convict/appellant Ayaz started inflicting-stabbing blows at the deceased.

Both the witnesses remained consistent in their testimony which could not be

shattered despite a lengthy cross-examination by the defence.

12. However, the learned counsel has objected on the testimony of the above said two witnesses on two grounds and has stated that their testimony could not be believed because they are not only related to the deceased but the PW-2 Saleem Jan is a chance witness, therefore, his testimony has to be ruled out from consideration. The concept of a related/interested witness was discussed elaborately by the august Supreme Court of Pakistan in "Nazir's case reported as PLD 1962 269", wherein it has been held:- *"Interested witness is a one who has a motive for falsely implicating an accused person"*. In "Khalil Ahmed vs the State (1976 SCMR 161)", the august Supreme Court of Pakistan accepted the testimony of the son of the deceased aged about 15 years. Similarly in Iqbal alias Bhala's case reported as 1994 SCMR 1 wherein it was held:- *"friendship or relationship with the deceased will not be sufficient to discredit a witness particularly when there is no motive to falsely*

involve the accused". However, it is well settled principle of law that the evidence of a witness cannot be discarded merely on the ground of relationship; if the evidence of a related witness is confidence inspiring, his presence at the spot is established and he has no motive to falsely implicate the accused. It was held by the august Supreme Court of Pakistan in Muhammad Waris's case reported as 2008 SCMR 784:- "it is true, that Muhammad Amin P.W was a brother of Abbas deceased while Muhammad Hanif P.W was a brother-in-law of the two deceased persons but then nothing could be brought on record by the defence which could establish any ill-will, animosity or reason which could have led the said two eye-witnesses to falsely implicate the petitioner in the crime in question and to falsely substitute him for the actual offender". Indeed, the statement of a witness on account of being interested can only be discarded if it is proved that the witness has ulterior motive of falsely implicating an accused, which is not the case here.



13. Similarly, the assertion of the learned counsel for the appellants that PW-2 Salim Jan was a chance witness, therefore, his testimony should be out-rightly discarded does not appear to be legally tenable. In the present case, the house of PW-2 Salim Jan is situated at a distance of 500/600 feet from the place of occurrence and he has also justified his presence at the spot because it discerns from the evidence that the date on which the incident took place was already fixed by the alleged 'Jirga' members for demarcation of the disputed property. It was him (PW-2 Salim Jan) who informed the complainant regarding the demarcation of the disputed property. Hence, when not only the said witness resides in the close proximity of the place of occurrence but has justified his presence at the spot then in such circumstances his testimony is worth consideration. Even regarding the chance witness, the august Supreme Court of Pakistan in "Elahi Bakhsh's case reported as 2005 SCMR 810" has held:- "*If chance witness reasonably explains his presence at the spot and*

his narration of occurrence inspires confidence then he is not a chance witness and his testimony can be considered along with other evidence”.

In absence of deep rooted enmity between the parties and the principle laid down by the august Supreme Court of Pakistan in the above-referred cases when the testimony of the aforesaid two witnesses are confidence inspiring then the same is worth consideration even without any independent corroboration.

14. The ocular testimony also finds support from the medical evidence. The Medical Officer Dr. Mumtaz Ali Shah, PW-6 has reported regarding the injuries as *“stab wound with multiple injuries on chest, abdomen & back and injuries to the lungs, heart & stomach with extravasation of blood (loss of large amount of blood) leading to death especially heart injury. The time between the death and postmortem was stated to be 1,1-1/2 hour”*. The postmortem was conducted on 18.02.2014 at 11:43 A.M, whereas the time of occurrence as per FIR is 10:30 A.M, therefore, the postmortem report is

in line with the ocular testimony of the eye-witnesses. Thus, the prosecution has established the mode and manner of the incident.

15. Similarly, the assertion of the learned counsel for the appellants that despite the fact that the independent witnesses i.e. 'Jirga' members were available on the spot but their statements were not recorded before the Court, hence, this fact renders the entire prosecution case doubtful cannot be accepted, because it is settled law that it is not the quantity of the evidence but the quality of evidence which is to be considered by the Court while recording conviction of an accused. It is not the rule of law that in all circumstances all the witnesses who were present at the spot should be produced before the Court, however, there can be no rule of thumb in this regard and the matter of consideration before the Court varies from case to case. In the present case, when the aforesaid two witnesses have established their presence at the spot and their testimony is confidence inspiring then the non-production of



the alleged 'Jirga' members who indeed were the property dealers is not fatal to the prosecution case.

Similarly, the crime weapon was handed over by PW-2 Salim Jan to the Investigation Officer on the following day of the occurrence Ex. PW-10/3, hence the said recovery cannot be attributed to the accused/appellant Mohammad Ayaz. However, the non-recovery of crime weapon from the accused/appellant Ayaz is not fatal to the prosecution case, because the prosecution has established the case against the appellant Ayaz by producing ocular evidence, which fully support the prosecution story.

16. The next crucial point for determination of this Court is as to whether the appellants Bismillah Jan, Inamullah and Sajjad Ali were sharing common intention with the principal accused i.e. appellant/convict Mohammad Ayaz who stabbed the deceased Sardar Ali with a knife. The concept to award similar sentence in addition to the principal accused who had the common intention of

killing the accused has been embodied in sections 34 and 149 of the Pakistan Penal Code ("**Code**"). The role of co-accused who were either present at the spot or had taken some steps in commission of offence alongwith the principal accused remained subject-matter before the superior Courts for awarding conviction to the said co-accused. In '**Hameeda Bano's case vs Ashiq Hussain & another PLD 1963 109**', the august Supreme Court has elaborately discussed the concept of common intention, wherein it was held:- *"A joint action by a number of persons is not necessarily an action performed with a common object. It may be performed on the spur of the moment as a reaction to some incident, and such a case would fall more correctly within the rule of constructive liability laid down in section 34, P.P.C., which is based on "common intention", a condition mind which is more directly and proximately connected with the action than is the formation of a common object. This may appear more clear when it is recalled that the law makes specific provision for dispersing an*

unlawful assembly. Such an incident is not applicable to the jointness of action envisaged in section 34, P.P.C., which consists of translation of intention', commonly held, into effect. The persons who have in the present case been held to have joined in a common assault on the Thanedar can be more precisely held to have acted with a common intention within the meaning of section 34, P.P.C. than in furtherance of a common object. The Judicial Committee of the Privy Council have held in the case of *Mahbub Shah v. The King Emperor* 72 IA. 148, that proof of pre-concert is necessary in order to bring a criminal act performed by several persons within the ambit of section 34, but in a later case that of *Mamand v. The King Emperor* A I R 1946 PC 45, it was clarified that the existence of such pre-concert could be established even by proof of acts performed by individuals after the completion of the main crime. Even regarding the case in the light of the requisite of pre-concert, there seems no doubt whatsoever that such a consensus can be achieved among the participants in the crime

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immediately before its execution, e.g. where the crime is excited by some action on the part of the person against whom it is committed."

In '**Khair Muhammad alias Khairoo vs the State PLD 1975 S.C. 351**', the august Supreme Court of Pakistan regarding the common intention of the co-accused has held:-
"It is not inconceivable that where several persons belonging to a single party are already present at the spot, they might suddenly develop common intention or even common object at the spur of the moment and commit the illegal act in prosecution or furtherance thereof. In fact quite realistically such an eventuality was been clearly envisaged in the "Explanation" to section 141, P.P.C. which says that an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly".

In '**Hassan Din's case vs Muhammad Mushtaq and 2 others 1978 SCMR 49**', the august Supreme Court of Pakistan although declined leave against the acquittal of certain accused tried under section 302, 34 PPC has *inter alia* observed that

“under section 34 vicarious liability cannot be visited unless some strong circumstance exists showing common intention and that mere presence of a person on the spot does not necessarily attract section 34, P.P.C.”

In **‘Muhammad Riaz alias Riasti and another vs the State 1987 SCMR 177’**, in respect of the common intention the august Supreme Court of Pakistan has held:- *“In the above case, one appellant inflicted dagger blow while the other appellant threw brickbat on the face of the fallen victim. It was urged before this Court that the accused who threw brickbat, did not know that the other co-accused was carrying knife or that he would stab deceased in abdomen and thus did not share common intention to murder. The above contention was repelled and it was held that from his throwing brickbat on the face of the deceased after he had been stabbed in the abdomen, it was evident that he shared intention with the co-accused on spot to murder the deceased. The appeal was dismissed and the judgments of the two Courts below were maintained.”*

In "Gheba & others vs the Crown

PLD 1949 Lahore 453" the august Division

Bench of the Lahore High Court has observed:-

"Common intention within the meaning of section 34 implies a prearranged plan. To convict the accused of an offence applying section 34 it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. It is no doubt difficult if not impossible to procure direct evidence to prove the intention of an individual; it has to be inferred from his act or conduct or other relevant circumstances of the case. Care must be taken not to confuse same or similar intention with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice. The inference of common intention within the meaning of the term in section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case."

Similarly, in 'Khalil & another vs the State PLD 60 (West Pakistan) Karachi 38', the august Division Bench of the Karachi High Court regarding the accused being sharing common intention has held:- *"Common intention is sometimes proved by direct evidence, such as confessions or an approver's testimony, but in most cases its determination depends upon inference from acts done and motives possessed, judged in the light of the habits and notions of the class of people concerned. Where for instance 3 or 4 armed relatives burst upon a habitation, kill or injure 2 or 3 persons, and carry off a girl, the subject of a dispute between the two sides, the only reasonable inference is that these acts are unified by a common intention possessed by each, namely to use force even to the extent of murder in carrying off the girl. But in the present case, though the girl was the subject of bitter dispute, and though both the appellants came armed, yet no attempt seems to have been made to carry off the girl apart from the oral demand. True she ran away but not far, and*



nothing is said why she could not have been pursued and captured. The only acts of Habib are that he demanded surrender of the girl armed himself and accompanied, Khalil also armed. It appears to us that we cannot rule out as beyond the bounds of reasonable probability the inference that Habib had agreed that they should both go to demand the girl and that they should go armed in order to prevent an attack upon themselves, and that the shooting by Khalil occurred not as part of a common intention, but as an independent act arising from his loss of temper. We do not say that this is the right inference, but merely that it is a reasonable and probable inference. It is to be remembered that in order to attract section 34 it is not sufficient to prove that an offence is a likely consequence of a common intention; the prosecution must show that the offence committed was covered by the common intention. We see no reason to reject the evidence of the eye-witnesses that Habib was armed with a pistol."

Lastly, the august Supreme Court of Pakistan in its celebrated judgment "Muhammad Akbar & 2 others vs The State PLD 1991 Supreme Court 923, His Lordship Mr. Ajmal Mian while referring to various pronouncements as cited above on the subject while speaking for the Court regarding the common intention in Para 12 of the judgment has held:- *'From the above-referred cases, it is evident that a joint action by a number of persons is not necessarily an action performed with a common object, but it may be performed on the spur of the moment as a reaction to some incident and such a case would fall within the ambit of section 34, P.P.C. However, it may be pointed out that section 34, P.P.C. contemplates an act in furtherance of common intention and not the common intention simpliciter and that there is a marked distinction between similar intention and common intention and between knowledge and common intention. It may also be observed that mere presence of an accused at the place of incident with a co-accused who commits offence may not be sufficient to visit the*

former with the vicarious liability, but there should be some Wong circumstance manifesting a common intention. Generally common intention inter alia precedes by some or all of the following elements, namely, common motive, pre-planned preparation and concert pursuant to such plan. However, common intention may develop even at the spur of moment or during the commission of offence as pointed out hereinabove. Conversely common intention may undergo change during the commission of offence''.

17. In context of the present case, the appellant Mohammad Ayaz, who is a principal accused had inflicted knife blows upon the deceased Sardar Ali repeatedly and has caused nine (9) injuries on his body, therefore, there is no doubt that he had the intention to kill the deceased and thus he was rightly convicted by the learned trial Court through the impugned judgment. However, the role of co-accused Bismillah Jan, Inamullah and Sajjad is to be viewed in view of the law laid down by the august Supreme Court of Pakistan as referred to

above. It is evident from the evidence, that accused Bismillah Jan, Inam and Sajjad had spade and *Kassi* at their hands and the fight between the parties took place in two episodes. In the first episode, there was a free fight between the convicts/appellants and the complainant-party, who were then separated by Khalid Khan (abandoned witness) and PW-2 Salim Jan. However, in the second episode as evident from the statement of the PW-2 the deceased was pushing himself towards the appellants/convicts and similarly the appellants/convicts were also pushing themselves towards the deceased/complainant-party. Once again there was a scuffle, however, despite the fact that the appellants Bismillah Jan, Inam and Sajjad had spade and *Kassi* with them at their hands but they did not hit the deceased with the said tools and only got hold of the deceased which is quite natural in a free fight between the two parties. Mohammad Ayaz, the appellant/convict although inflicted repeated knife blows at the deceased but from the conduct of the co-accused Bismillah Jan,

Inam and Sajjad it does not appear that they were also sharing common intention with him. If they had any intention to kill the deceased they had a clear chance even in the first episode of the fight to hit the deceased with the spade and *Kassi*. It also discerns from record that the complainant at the relevant time was at sheer mercy of the accused-party i.e. co-accused Bismillah Jan, Inam and Sajjad having spade and *Kassi*, therefore, if they had any intention to kill the complainant-party, they had the opportunity to even kill the complainant.

18. The overall impression of the evidence would suggest that initially even all the accused had no intention to kill the deceased, however, at the spur of the moment it happened that the appellant Mohammad Ayaz had inflicted repeated knife blows upon the body of the deceased, therefore, his this act is an independent act on all counts, for which the co-accused Bismillah Jan, Inam and Sajjad cannot be burdened especially when there is no evidence whatsoever on record which could

suggest that the co-accused were sharing common intention with the principal accused Mohammad Ayaz.

19. In view of the above prevailing circumstances, we are constrained to partially allow this appeal to the extent of accused/appellants Inamullah and Sajjad Ali sons of Bismillah Jan, the impugned judgment dated 07.03.2015 rendered by the learned Additional Sessions Judge/Izafi Zila Qazi, Swat at Kabal is set aside to their extent, resultantly they are acquitted of the charges leveled against them and be released forthwith from jail, if not required in any other case, while the instant appeal to the extent of convict/appellant Mohammad Ayaz stands dismissed, thereby his conviction and sentence recorded by the learned trial Court through the impugned judgment is maintained. Since, the accused/appellant Bismillah Jan has died in jail on 07.08.2017 and to this effect confirmation letter bearing No. 9302-WE dated 06.11.2018 alongwith death certificate are available on



record, therefore, the present appeal to his extent stands abated.

20. Regarding the revision petition for enhancement preferred by the complainant-petitioner, we have noted that in view of the present facts and circumstances of the case particularly in eventuality when there was a free fight between the parties, the conviction of life imprisonment awarded to the accused/respondent Mohammad Ayaz is justified and does not warrant further enhancement. Therefore, the criminal revision in hand for enhancement also stands dismissed.

21. These are the reasons of our short order of even date.

Announced
Dt. 06.11.2018


JUDGE


JUDGE

Office
15/12/2018
W/R

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

Cr.A No. 57-M/2015

SHORT ORDER

Date of hearing: **06.11.2018**

Petitioners: (Bismillah Jan and 03 others) by
Sahibzada Assadullah, Advocate

Respondents: (State) by
Hafiz Bakht Amin, Advocate.
(Ahmad Khan) by
Mr. Sher Muhammad Khan, Advocate

SYED ARSHAD ALI, J.- For reasons to be recorded later on in the detailed judgment, this appeal is partially allowed to the extent of appellants Inamullah and Sajjad Ali sons of Bismillah Jan, the impugned judgment dated 07.03.2015 rendered by the learned Additional Sessions Judge/Izafi Zilla Qazi, Swat at Kabal, is set aside to the extent of above named appellants; resultantly, they are acquitted of the charge in case F.I.R No. 58 dated 18.02.2014 under sections 302/34 PPC of Police Station Kanju, District Swat while the instant appeal is dismissed to the extent of appellant Muhammad Ayaz. His conviction and sentence recorded by learned trial Court vide impugned judgment is maintained. The appellants namely Inamullah and Sajjad Ali be released forthwith from jail if not required in any other case. Since,

appellant Bismillah Jan has died in jail on 07.08.2017 and to this effect confirmation letter bearing No.9302-WE dated 06.11.2018 alongwith death certificate is available on file, so, the instant appeal to the extent of appellant Bismillah Jan stands abated. The connected Cr.R No. 17-M/2015 is dismissed.

Announced.
Dt: 06.11.2018


JUDGE

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08/11/2018