JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR

(Judicial Department)

Cr.A.No.692 of 2011.

Date of hearing: 17.10.2017.

Mr.Shabbir Hussain Gigyani, advocate for the appellant.

Mian Arshad Jan, AAG for State.

Mr.Aftab Khan, advocate for the complainant.

JUDGMENT

LAL JAN KHATTAK, J.- Through this judgment, we shall also decide the connected criminal appeal bearing No. 540-P of 2017 as both the appeals have emanated from same FIR No.249 dated 14.3.2003 u/ss 302/324/34 PPC of Police Station, Tangi District Charsadda whereby the learned Additional Sessions Judge, Charsadda at Tangi through two separate judgments dated 25.10.2011 and 19.07.2017 have convicted both the appellants u/s 302 PPC and sentenced each of them to imprisonment for life on two counts with payment of compensation of Rs.1,00,000/- to the legal heirs of both the deceased or in default whereof to undergo 6 months S.I. They have also been convicted

u/s 324 PPC and sentenced to imprisonment of seven years R.I. with fine of Rs.5,000/- or in default whereof to further suffer ten months S.I. The appellants have further been convicted u/s 337-F (ii)/34 PPC and sentenced to pay Rs.10,000/- to the complainant as *Daman* or in default whereof to remain in jail till its payment. Benefit u/s 382-B Cr.P.C. has been extended to the appellants. All the sentences were ordered to run concurrently.

2. Brief facts of the case are that on 14.3.2003, complainant Amanullah (PW-11) reported to ASI Shah Jehan Khan (PW-2) at Civil Hospital Tangi to the effect that on the day of occurrence there had been a quarrel between deceased Naveed and appellant Ghafoor on which deceased Daud, brother of deceased Naveed, complained to Ghafoor which annoyed him. Complainant went on alleging in his FIR that at the time of occurrence he and his nephews i.e., both the deceased, were present on the spot when in the meanwhile Riaz and Ghafoor came there duly armed and opened firing at them with which he, Daud and Naveed were

hit and injured. Daud died on the spot while Naveed succumbed to his injury later on.

3. On arrest of accused Riaz, complete challan was put in court, which indicted him for commission of the offence to which he pleaded not guilty. After conclusion of the trial, the learned trial court found him guilty and while recording his conviction sentenced him as mentioned above vide judgment dated 25.10.2011.

4. Thereafter, on 01.10.2014, appellant Ghafoor was arrested, who was indicted for the crime to which he too pleaded not guilty. Prosecution in order to prove its case produced evidence whereafter the learned trial court found him guilty of the charge and while recording his conviction sentenced him vide judgment dated 19.07.2017.

5. Both the convicts have impugned their convictions, which are being decided through this single judgment, being the outcome of same FIR.

6. Arguments heard and record gone through.

7. Instant is a case, wherein, two persons have lost their lives while one has critically been injured for which two persons, who are father and son, have been charged. No doubt, the occurrence was reported within a short span of time, wherein, both the accused have been charged for effective firing at the three victims but whether the act of taking the lives of two and rendering the third one injured is the job of one or more than one person is the crucial question, which this court will determine in light of the case evidence.

8. Perusal of the case record would show that in support of the prosecution's case complainant appeared as PW-11 whereas eyewitness Sher Bahader testified as PW-12. Both the witnesses have deposed in line with what was alleged in the FIR (Ex.PA/1) but noticeable aspect of the case is that both the appellants have been assigned the role of simultaneous firing at both the deceased and the injured i.e. PW-11. According to the record, both the eyewitnesses have admitted that they did not know that with whose fire shot who

was hit or that how many shots were fired by the accused. Ordinarily, no victim or a witness can give a photographic account of an occurrence or the detail of shots fired by an accused or that with whose shot who was hit but when the deceased or injured sustained a single wound, as in the case of both the deceased, then in that situation the person, who claims to be an eyewitness of the occurrence, must specify the accused by name, who has caused the fatal shot in case more than one accused are charged for the crime but in the case in hand, the complainant, who himself bears the stamp of injuries on his person, was unable to point out the particular assailant, who had fired at him. Likewise, he could not identify that who out of the two accused had fired at which deceased. Same is the position of eyewitness Sher Bahader, who too did not know that who amongst the two assailants, had fired at the injured and the deceased. Non-specification of the accused for firing at a particular victim, in the attending circumstances of the case, shows that the charge leveled by the two prosecution

witnesses against the appellants is exaggerated one.

9. Another pronounced aspect of the case is that the Medical Officer, who had examined the deceased and the injured, has not given dimensions of injuries sustained by the victims. Giving dimensions of the injuries sustained by the victims was must so as to know through medical evidence that more than one weapon were used and more than one persons had participated in the crime. Failure to mention the dimensions of injuries on the bodies of the victims has caused colossal damage to the prosecution's case because in absence whereof it cannot be safely held that the casualties were caused by two persons as has been claimed.

10. Further noticeable aspect of the case is that the motive taken in the FIR for commission of the offence has not been proved. No doubt, establishing a motive for a crime is not necessary as crimes are often committed sans any motive but when in the FIR same is alleged, then its establishment becomes necessary. Besides, the motive

alleged by the complainant is so trivial that it cannot be made a base for a father and son to come together on the spot duly armed and take the lives of two and rendering another as injured.

11. Another important aspect of the case is that from the spot one empty of .30 bore has been recovered, which shows that in the crime .30 bore pistol was used but in the FIR the complainant has alleged that the accused had come on the spot with '*Aslaha Atishsheen*'. Being villagers, the complainant and eyewitness Sher Bahadar were supposed to distinguish between pistol and '*Aslaha Atishsheen'.*

12. True that the complainant bears firearm injuries on his person and ordinarily presence of a person on a crime spot, who has a stamp of injury on his person, is accepted but it is well settled that if the prosecution story does not get corroboration from overall surrounding circumstances of the case, then mere stamp of injury on the body of a person would not be sufficient to hold that whatever he has testified is a whole truth. As there is no independent

corroboration to the testimony of the injured witness, therefore, for the safe administration of justice, we are unable to give any credit to his evidence albeit he has firearm injuries on his person.

13. So far as the evidence of PW Sher Bahader is concerned, suffice it to say that his presence on the spot is not established through worth reliable evidence, therefore, his testimony too is kept out of consideration.

14. Thorough and careful examination of the case record would show that the prosecution has not proved beyond any shadow of doubt that the appellants had committed the offence they were charged with. It appears from the record that the occurrence was the act of one person but with mala fide intention through an exaggerated charge two persons were roped in the case, which practice is very common in the country. As there is no clear-cut evidence that who amongst the appellants has committed the offence, therefore, we give benefit of doubt to both the appellants-accused as it is better that

ten guilty persons escape than one innocent suffer.

15. For what has been discussed above, we accept both the appeals, set aside the impugned judgments and acquit the appellants of the charges leveled against them. They be set at liberty forthwith, if not required to be detained in some other case.

16. Above are the reasons of our short order of even date, which is reproduced as under:-

> "For the reasons to be recorded later, this appeal is allowed, conviction and sentence of the appellant recorded by the learned Additional Sessions Judge, Charsadda at Tangi vide impugned judgment dated 25.10.2011 delivered in case FIR No.249 dated 14.03.2003 u/ss 302/324/337-F(ii)/34 PPC of Police Station Tangi, Charsadda are set aside. He is acquitted of the charge leveled against him and be set free forthwith if not required to be detained in any other case".

JUDGE

JUDGE

Announced
17.10.2017.