JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr.A.No.71-D/2019

Hameedullah Khan

Versus

Nazir Khan and the State.

JUDGMENT

For appellant:	Mr. Saif-ur-Rahman Khan Advocate.
For respondents:	Mr. Ahmad Ali, Advocate for respondent No.1.
	Mr. Rahmatullah, Asstt: A.G. for State.
Date of hearing:	**13.10.2022.**

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SHAHID KHAN, J.- Hameedullah, the appellant/ complainant, has called in question, acquittal of Nazir Khan, respondent/accused, through the subject appeal, under Section 417(2-A) Cr.PC, whereof, the learned Additional Sessions Judge, Model Criminal Trial Court, D.I.Khan, on conclusion of trial of the respondent/accused, charged in case FIR No.378, dated 10.9.1990, under Sections 302/34 PPC, of police station City, D.I.Khan, recorded acquittal of the accused by extending him the benefit of doubt.

2. The facts, in brief, are that the on 10.9.1990 at 12:30 p.m., the appellant/complainant

namely Hameedullah brought the dead body of his father Musa Khan and reported to the local police in Emergency Room of Civil Hospital, D.I.Khan to the effect that after attending the Courts, he alongwith his father were on their way to Ustrana Hotel, Commissionery Bazar, D.I.Khan for a lunch. The appellant/complainant was ahead of his father. At 11:45 a.m., they reached at the end of Mohallah Hayatullah. The appellant/complainant heard his father, he turned back and saw that Zarif Khan (acquitted co-accused) had caught hold of his father and commanded the respondent/accused Nazir to kill him. In the meanwhile, the respondent/accused Nazir gave two dagger blows on his back, as a result of it, he got injured and fell down. On hue and cry of the appellant/complainant, the accused fled away from the spot. The appellant/complainant being empty handed could do nothing. The appellant/ complainant while shifting his injured father to the hospital in a rickshaw, he succumbed to the injuries on the way to the hospital. Motive for the occurrence is stated to be dispute over lands and previous blood feud. The report of the appellant/ complainant was reduced into writing in the shape of murasila which culminated into registration of above referred FIR.

3. After the occurrence, both the accused opted for hiding, therefore, after completion of the investigation, complete challan was drawn under Section 512 Cr.PC and was sent up for trial. The learned trial Court preserved the evidence and in view of the evidence so collected, prima facie involvement of the accused in the commission of offence being could not be ruled out, as such, vide order, dated, 10.5.1993, perpetual warrants of arrest of the accused were issued accordingly.

4. On arrest of co-accused Zarif Khan followed by completion of investigation to his extent, challan was drawn and routed through the relevant prosecution branch followed by sent up for trial. On conclusion of the trial, the learned trial Court arrived at the conclusion that the prosecution in view of the evidence so recorded has substantiated its version, as such, vide judgment, dated 01.6.2006, the learned Additional Sessions Judge-V, D.I.Khan, convicted and sentenced the accused for life imprisonment. However, his Cr.A.No.59-D/2006, was accepted by this Court, vide judgment dated 28.01.2010, and he was acquitted of the charges levelled against him.

5. On arrest of the respondent/accused (Nazir Khan) followed by completion of investigation, challan was drawn and routed through the relevant prosecution branch followed by sent up for trial.

6. On commencement of trial, copies of the evidence (oral & documentary) delivered to the respondent/accused. He was confronted with the statements of allegations through formal charge, he denied the allegations and pleaded not guilty and claimed trial.

7. The prosecution to bring home charge against the respondent/accused, recorded the account of eight (08) witnesses and closed its evidence. At the conclusion of prosecution evidence, the respondent/accused was examined under Section 342 Cr.PC. He professed innocence and false implication in the case. However, neither he wished to be examined on Oath as required under Section 340(2) Cr.PC nor wanted to produce evidence in his defence. On conclusion of trial, the learned Additional Sessions Judge/Model Criminal Trial Court, D.I.Khan, in view of the evidence so recorded and assistance at the bar, arrived at the conclusion that the allegations of respondent/

accused Nazir Khan are tainted with doubts, as such, vide impugned judgment, dated, 04.7.2019, his acquittal was recorded accordingly.

8. We have heard the arguments of learned counsel for the parties as well as learned Asstt: A.G. representing the State and have gone through the record of the case.

9. The version of appellant/complainant is that on the fateful day, date & time (10.9.1990 at 11:45 a.m.), after attending the Courts, he alongwith his father were on their way to Ustrana Hotel, Commissionery Bazar, D.I.Khan, for a lunch. He was ahead of his father and when reached to the venue of the occurrence, he heard his father and turned back. It was observed that Zarif Khan (acquitted co-accused) had caught hold of his father and commanded the respondent/accused Nazir to kill him, as a result of the successive dagger blows on the back of his father, he was injured and fell down. He shifted his injured father in a rickshaw to the hospital but he succumbed to his injuries on the way. Motive for the occurrence is disclosed as land dispute and blood feud enmity.

10. The appellant/complainant appeared in the witness box as PW-8. He reiterated the contents

of FIR in his examination-in-chief. It is unnatural that the appellant/complainant was sure enough of the fact that his injured father has succumbed to his injuries but instead to approach the local police, he opted for the hospital, knowingly, that the police station falls on way to the hospital. On this score alone, strong presumption can no way be ruled out regarding the element of consultation and deliberation.

11. The appellant/complainant disclosed in his examination-in-cross that his hands and clothes were besmeared with blood of his deceased father and it is nothing but natural that the signs and symptoms of the blood could also be observed in the rickshaw while shifting him to the hospital. Strangely enough, neither the Investigation Officer has taken the pain to ask for the garments of the appellant/complainant besmeared with blood nor the rickshaw in question has been inspected during the investigation, whereof, the signs and symptoms of the blood could be observed. Not to procure and produce the subject circumstantial evidence, it can be observed that either the investigation is of substandard or the subject disclosure of the complainant is not all correct so disclosed on his turn in the witness box.

12. Likewise, tangible circumstantial evidence as a '*Parcha Peshi*' has not been collected by the Investigation Officer from the complainant and on this score too, a strong circumstantial evidence as on return of the complainant party after attending the Court were on their way to the hotel, whereof, the tragic incident took place. It makes the Court to believe that not to furnish *Parcha Peshi* before the I.O, whereof, the I.O on his turn in the witness box has never stated that *Parcha Peshi* in question was asked from the complainant party but failed to produce, as such, non production of the *Parcha Peshi* is also fatal.

13. Similarly, due particulars of the rickshaw and its driver as registration number coupled with the identity of the driver is neither part and parcel of the investigation nor that of the trial.

14. Undoubtedly, the account of a solitary witness is sufficient enough to procure conviction of the accused in such like cases but in the circumstances where strong circumstantial evidence as garments of the complainant, besmeared with the blood of the deceased coupled with not only stains of blood do figure in and around the rickshaw in question, it can safely be observed that the solitary

statement of the complainant does not find its positive support from the circumstantial evidence and it shall not skip the attention of the Court about the chequered history of the blood feud enmity of the parties, it is hard to believe the story of prosecution regarding the mode and manner of the occurrence and the Court is left with no option but to observe that the occurrence has not taken place in the mode and the manner so alleged and attempted to substantiate during the trial.

15. The prosecution in this case has also failed to bring on record any supportive or corroborative piece of evidence to prove the guilt of accused. Circumstantial evidence as weapon of offence could not have been secured and recovered during the investigation. The appellant/complainant disclosed in his statement as well as in the crime report that motive for the occurrence is land dispute and blood feud enmity between the parties, however, he pointed out in his examination-in-cross that as some 150 years ago the grandfathers of deceased namely Abdul Rahman and Gul Dad Khan were done to death by forefathers of the accused. He admitted that the previous enmity was between their predecessor and the predecessor of the acquitted co-accused and not with the predecessor of respondent/

accused. Nothing in black & white has been produced regarding the alleged motive. No doubt, motive is a circumstantial evidence and it is not fatal at all but by now it is well settled, the motive once alleged is to be proved; otherwise, it will adversely affect the prosecution case because motive is a double edged weapon and cuts both ways.

16. The medical evidence can no way pin point the accused nor can establish the identity of the accused. It is hard fact that medical evidence can never be considered to be a corroborative piece of evidence and at the most can be considered a supporting evidence only to the extent of specification of seat of injuries, the weapon of offence, duration, the cause of death etc. ***"Muhammad Mansha Vs. The State"*** **(2018 SCMR 772),** ***"Tariq Hussain and another Vs. The State and 04 others"*** **(2018 MLD 1573 [Federal Shariat Court]).**

17. Admittedly, after the commission of offence, the respondent/accused was in hiding and his service was attempted through warrant of arrest under Section 204 Cr.PC followed by proclamation notice under Section 87 Cr.PC followed by formal order of the learned trial Court to declare the

accused. Nothing in black & white has been produced regarding the alleged motive. No doubt, motive is a circumstantial evidence and it is not fatal at all but by now it is well settled, the motive once alleged is to be proved; otherwise, it will adversely affect the prosecution case because motive is a double edged weapon and cuts both ways.

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accused as proclaimed offender. But it shall not skip the attention of the Court that not only the accused persons, irrespective of their innocence or otherwise, they skip from the scene, particularly during the patience cooling period but also for a considerable length so as to avoid animosity & hostility of the bereaved family but also to avoid gravity of the situation.

18. Even otherwise abscondence is a corroborative piece of evidence, it cannot be taken into consideration in isolation but has to be taken into consideration with substantive piece of evidence. The august Apex Court has declared the abscondence as just a corroborative piece of evidence and can no way be considered as substantive evidence followed by conviction of the accused on its strength. ***"Asadullah v. Muhammad Ali"*** **(PLD 1971 SC 541)** observed that both corroborative and ocular evidence are to be read together and not in isolation. In the case of "***Rasool Muhammad Vs. Asal Muhammad"*** **(1995 SCMR 1373),** the august Apex Court observed that abscondence is only a suspicion circumstance. In the case of "***Muhammad Sadiq v. Najeeb Ali"*** **(1995 SCMR 1632)** it is observed that abscondence itself has no value in the absence of any other evidence. It

was also held in the case of ***"Muhammad Khan v. State"*** (1999 SCMR 1220) that abscondence of the accused can never remedy the defects in the prosecution case. In the case of ***"Gul Khan v. State"*** (1999 SCMR 304), it was observed that abscondence per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence. In the cases of ***"Muhammad Arshad v. Qasim Ali"*** (1992 SCMR 814), ***"Pir Badshah v. State"*** (1985 SCMR 2070) and ***"Amir Gul v. State"*** (1981 SCMR 182), it was observed that conviction on abscondence alone cannot be sustained. In the present case, substantive piece of evidence in the shape of ocular account has been disbelieved, therefore, no conviction can be based on abscondence alone.

19. Moreover, this Court, in Cr.A.No.59-D/2006 of co-accused Zarif Khan, has disbelieved the statement of the appellant/complainant and acquitted him of the charges, vide judgment, dated 28.10.2010. The peculiar facts and circumstances are sufficient enough that the prosecution could not be able to discharge the burden of proof.

20. It is well settled, benefit of doubt is not a grace but right of the accused and it is not

necessary that there should be many circumstances creating doubts, even a single circumstance, creating reasonable doubt in a prudent mind about the guilt of accused, makes him entitled to its benefit, not as a matter of grace & concession but as a matter of right. Reference is made to the case ***"Muhammad Akram v. State"*** **(2009 SCMR 230).**

21. Beside the above, generally the order of acquittal cannot be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is less than the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate Court to re-appreciate the evidence in a case where the accused has been acquitted, or the purpose of ascertaining as to whether the accused committed the offence or not. The principle to be

followed by this Court considering the appeal against the judgment of acquittal is, to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, only then it is a compelling reason for interference.

22. For the afore-stated reasons, learned counsel representing the appellant/complainant could not point out any illegality and material irregularity in the impugned judgment so that the Court could incline to interfere in the impugned judgment of the learned trial Court.

23. Resultantly, this appeal having no merit and substance stands dismissed.

Announced.
Dt:13.10.2022.
*Imran/**

JUDGE

18/10

JUDGE

(D.B)
Hon'ble Mr. Justice Muhammad Faheem Wali
Hon'ble Mr. Justice Shahid Khan