

**THE PESHAWAR HIGH COURT,**  
**BANNU BENCH.**

*[Judicial Department].*

**Cr.A No. 101-B of 2012**

***Pio Rehman***  
**Vs.**  
***Safeer Badshah etc:***

**JUDGMENT**

*Date of hearing* \_\_\_\_\_ *07.10.2019* \_\_\_\_\_.

*Appellant-Petitioner* \_\_\_\_\_

\_\_\_\_\_

*Respondent* \_\_\_\_\_

\_\_\_\_\_

**SAHIBZADA ASADULLAH, J.---** Appellant namely-

Pio Rehman (complainant), being aggrieved from judgment dated 19.5.2012 passed by the learned Additional Sessions Judge, Banda Daud Shah, Karak whereby the respondent was acquitted from the charge.

2- Briefly stated facts of the case are that appellant/complainant on 16.02.2008 at 12:20 hours reported the matter to police to the effect that on the eventful morning he along with Latif-ur-Rehman and Atta-

ur-Rehman came to Gurguri Bazar for purchase of household articles, at about 11:30 hours on reaching the spot, accused Faqir Gul, Salim Jan and Safeer Badshah duly armed emerged and on seeing them, all the accused fired at complainant party with intention to kill, resultantly, Atta-ur-Rehman got hit and died on the spot, while complainant and his other companion escaped unhurt luckily. Motive advanced was dispute over property.

On completion of investigation, trial commenced against the respondent/accused U/S. 512 Cr.P.C, wherein they were declared proclaimed offenders, but after arrest of respondents/accused, supplementary challan against him was put in court, prosecution produced as many as twelve (12) witnesses. On the conclusion of prosecution evidence, respondent/accused was examined U/S. 342 Cr.P.C, wherein he professed innocence and false implication, however, neither he opted to be examined on Oath U/S. 340 (2) Cr.P.C nor produced defence. The learned trial court after hearing pro and contra arguments,

acquitted the respondent/accused from the charges leveled against him by giving him benefit of doubt, hence, the instant criminal appeal.

It is worth mentioning here that co-accused Saleem Jan died and proceedings against him were abated by the trial court vide order dated 26.6.2019 in the initial trial U/S. 512 Cr.P.C, against the respondent/ accused, and so was a co-accused Faqir Gul.

**3-** Learned counsel for the parties as well as learned Addl: A.G for the State were heard and with their valuable assistance the record was thoroughly perused.

**4-** In the incident one Atta-ur-Rehman lost his life and two eye-witnesses, i.e, the complainant and Latif-ur-Rehman escaped unhurt. The prosecution story is unfolded when in the morning at 08:00 AM all the three, i.e, the deceased, complainant and Latif-ur-Rehman eye-witness left for Gurguri Bazar with the sole purpose to purchase wheat, they after purchase at 11:00 AM left for

their village and when reached at the place of occurrence known as Alwara Banda, it was 11:30 AM when the accused facing trial with his co-accused Faqir Gul s/o Haleem Gul, Saleem Khan s/o Hakeem Gul opened indiscriminate firing which resulted in the death of the deceased, but luckily the complainant (PW-7) and eye-witness (PW-8) escaped unhurt.

The site-plan was prepared as Ex.PB on the pointation of the complainant. The place is deserted one and the three accused were shown duly armed with fire-arms, whereas, the complainant side was empty handed, but strange enough that only the deceased received fatal shots.

The motive was shown as property dispute between the parties, but it surprises that when the dispute was common then why only the deceased was targeted when the other two were also at the mercy of accused. The accused shown armed with AK-47, a sophisticated weapon and the selection of the weapon leaves no doubt in mind,

had the witnesses been present at the time on the spot, their fate would be no less than the deceased.

**5-** The site-plan contradicts the eye-witness account and even the statements of the witnesses are pole apart on this particular aspect of the case, Point-1 was given to the deceased and similarly Point-2 and 3 to the complainant and eye-witness respectively. On the other hand, Point-4, 5, 6 to the appellant and co-accused, if the stance of the witnesses is accepted that they were proceeding from South to North then it disturbs, that why the accused duly armed at Point-6 let the deceased and others to pass smoothly without being fired upon and how the fire made by the appellant landed on the extreme left of the deceased when yet front of the deceased was exposed to the appellant. The question still remained unanswered that why the two who were leading the deceased did not receive even a single fire arm injury. It leaves us nowhere but to hold that the eye-witnesses were not present at the time with the deceased. The witnesses remained inconsistent and

made conscious improvements, the eye-witness admitted the presence of 2/3 feet ridge (Bana) between them whereas the investigating officer confirmed its height as  $\frac{3}{4}$  feet then why the assailants would expose their identity and why they did not take shelter behind, on one hand to accomplish their target and on the other to avoid of having been identified. It is again surprising that though three persons made indiscriminate firing, but only one empty of 7.62 bore was recovered from the spot. Though the investigating officer in his examination-in-chief stated that the site-plan was prepared on pointation of the eye-witnesses, but the witnesses denies to accept as they excluded the presence of each other.

PW-8 Latif-ur-Rehman when cross-examined, stated that he after Postmortem examination hired a taxi and reached the spot where I.O and complainant were present and pointed-out the spot whereas the investigating officer said that after spot pointation by the complainant, they went to the house of the deceased where PW-8 was present, so in

his company they again came to the spot for pointation. We are anxious to know that once the spot had already been pointed by the complainant and the recoveries were effected then what led the investigating officer to come again to the spot with witnesses, it leads nowhere but to hold that the witnesses were not present with the deceased and the dead body was taken to PS by the nearby villagers and later on the witnesses were procured and appellant along with others were charged.

6- The conduct of the witnesses is unnatural and they tell nothing, but lie with the sole purpose to connect the appellant with the offence, their presence is further doubted when they say that the villagers hearing the fire shots came to the spot after 30/35 minutes with a COT, how did the villagers come to know that someone was killed and a COT was needed to shift the body to hospital as none from the eye-witnesses informed them, it leaves no ambiguity that the witnesses were informed in the village of the incident which admittedly was situated at a 30 minutes' walk.

Their presence is further shattered as the eye-witness says that the COT was taken to the PS on foot where as PW-4 Hafiz-ur-Rehman stated that the dead body was brought to PS in vehicle.

The presence of PWs is further questioned when PW-8 stated that after registration of FIR, the police examined the dead body of the deceased at about 12:00 hours, on the other hand the report was made at 12:20 hours, so it makes us believe that the dead body was brought to the PS, proceedings were conducted and when the complainant was procured, report was made.

7- This is on record that the deceased and witnesses were involved in criminal cases including abduction of ladies and this position was frankly conceded by the investigating officer rather he admitted that the deceased was a criminal and a thief.

The list of criminal cases gives the background of the witnesses and deceased and if so, then how the



witnesses at the time of occurrence were empty handed and had they been present they would not have so easily surrendered and they would have specify that what accused was armed with what weapon.

They admitted joint enmities with others and their criminal association with the deceased confirms their status of interested and chance witnesses and great care is needed to award conviction on the evidence of such a witness.

In case titled *"Rohtas Khan Vs. The State"*

**(2010 SCMR 566 (C))**, wherein it has been held:-

*"Story of following the deceased by eye-witnesses just before the occurrence did not appeal to common sense, being against their natural conduct --- Despite indiscriminate firing of about 100 rounds at the place of incident and deceased having sustained 26 fire-arm injuries, no empties of kalashnikov were found on the spot---Motive was against the complainant, but accused did not cause any injury to him despite being within the*

*range of his firing---Ocular witnesses, thus, did not seem to be present at the place of occurrence---Ocular testimony having inherent defects was neither plausible nor reasonable and did not fall within any exception, where the statements of interested witnesses could be accepted without corroboration, which was even lacking in the case"*

8- Though the motive alleged was landed property dispute, but no revenue record was placed on file to substantiate the claim of the witnesses and even the investigating officer did not bother to collect evidence in this respect. Once the motive is alleged, the prosecution is bound to prove the same, failing which negative inference shall be taken against the prosecution.

In case titled "*Muhammad Ashraf alias Acchu Vs The State*" (2019 SCMR 652 Para-7), wherein it has been held:-

*"7. The motive is always a double-edged weapon. The complainant Sultan Ahmad (PW9) has admitted murder enmity between the parties and has also*

*given details of the same in his statement recorded before the trial court. No doubt, previous enmity can be a reason for the appellant to commit the alleged crime, but it can equally be a reason for the complainant side to falsely implicate the appellant in this case for previous grouse."*

9- The learned counsel for the appellant vehemently argued that the respondent/accused remained absconder for sufficient long time, but mere absconcion of accused is not conclusive guilt of an accused person; it is only a suspicious circumstance against an accused that he was found guilty of the offence. However, suspicions after all are suspicions, the same cannot take the place of proof, the value of absconcion, therefore, depends on the facts of each case.

In case titled "*Liaqat Hussain and others Vs Falak Sher and others*" (2003 SCMR 611(a)), wherein it has been held:-

*"(a) Eye-witnesses including the complainant had failed to furnish a plausible and acceptable explanation for*

*being present on the scene of occurrence and were chance witnesses---Prosecution case did not inspire confidence and fell for short of sounding probable to a man of reasonable prudence---Abscondence of accused in such circumstances could not offer any useful corroboration to the case of prosecution"*

10- Needless to emphasis that when an accused person is acquitted from the charge by a court of competent jurisdiction then, double presumption of innocence is attached to its order, with which the superior courts do not interfere unless the impugned order is arbitrary, capricious, fanciful and against the record. As was observed by the Supreme Court of Pakistan in *Muhammad Mansha Kausar Vs. Muhammad Asghar & others* (2003 SCMR 477) "*that the law relating to reappraisal of evidence in appeals against acquittal is stringent in that the presumption of innocence is doubled and multiplied after a finding of not guilty is recorded by a competent court of law Such findings cannot be reversed, upset and disturbed except when the judgment is found to be perverse, shocking,*

*alarming, artificial and suffering from error of jurisdiction or mis reading, non-reading of evidence.....law requires that a judgment of acquittal shall not be disturbed even though second opinion may reasonably be possible."*

In view of what has been discussed above, we do not find any ground to interfere with the impugned judgment. Accordingly, the appeal being devoid of force is dismissed.

Announced:  
07.10.2019

**JUDGE**

**JUDGE**