PESHAWAR HIGH COURT, PESHAWAR.
FORM "A"
FORM OF ORDER SHEET.

Date of Order or Proceeding	Order or other proceedings with Signature of judge
14.11.2019	Cr.A.No.43-P/2019 Present: Mr. Umar Farooq, AAG for the appellant/State. **** **AHMAD ALI, J.** Through this common judgment we propose to decide the instant as well the connected Criminal Appeal bearing No.973-P/2018 filed under section 417 Cr.P.C, questioning one and the same judgment dated 29.09.2018 by the complainant as well State, whereby the learned Additional Sessions Judge-III, Kohat, has acquitted the respondents (Ijaz Khan & Muhammad Shakir) from the charges levelled against them under section 302/34 PPC, in case FIR No.1250 dated 20.12.2013, registered at Police Station MRS (District Kohat). 2. Brief facts of the prosecution's case are that on the eventful day, Miftah-ud-Din ASHO, received information from PS concerned on phone, about presence of a dead body lying on

	the spot of occurrence, he rushed to the spot, where he found a dead body alongwith the complainant Nasir Kamal (PW-2) who disclosed that the dead body is of his brother Yasir Arafat and reported the matter to police in terms that on the day of occurrence, he as usual, went to the fields and was present at some distance from the spot of occurrence, when, he saw his brother Yasir Arafat (deceased), running towards his house with the accused Ijaz Khan and Shakir, duly armed with Kalashnikovs, chasing him. When they reached near Yasir Arafat, both the accused-respondents opened fire at him due to which he was put to death on the spot and made their escape good from the spot. Motive was stated to be previous enmity between the parties. Both the accused were charged by the complainant for the episode. On the basis of Murasila Ex.PA, FIR ibid was registered against the accused-respondents. 3. On completion of investigation, challan was submitted in Court, which indicted the present respondents for the crime to which they pleaded not guilty and claimed trial. Prosecution

	in order to prove its case, examined 12 witnesses in all, whereafter statement of the accused were recorded, wherein, they professed their innocence. The learned Trial Court, after conclusion of trial, acquitted the present respondents-accused of the charge levelled against them vide judgment impugned herein whereagainst the appellant and the State have filed the above mentioned appeals. 4. We have given our anxious consideration to the submissions made by the learned AAG appearing on behalf of the State and perused the record with his able assistance. Whereas, in the connected criminal appeal filed by Nasir Kamal, complainant, no one turned up on his behalf. 5. The ocular account in the instant case been furnished by the complainant /PW-2 who was the sole eyewitness in the episode, therefore, same is crucial for determination of the fate of the case. It is on record that the occurrence took place at about 5:40 pm whereas the call for Maghreb prayer is made after the sunset. the complainant has categorically stated in his cross-examination that in the month of

	December the sunset occurs at about 05: pm, but during his examination in chief, he stated that he saw his brother Yasir Arafat (deceased), running towards his home, a little while before the sunset . This contradiction regarding the time of occurrence creates serious doubt in his version. If the occurrence has taken place a little while before the sunset, then the time of occurrence, as per his own admission during his cross examination is earlier than 05:00 pm. If time of occurrence is presumed to be 05:40 pm then it was not before the sunset rather the occurrence has taken place in dark hours, after 30/40 minutes of sunset, because in the month of December at this time full darkness is spread, and as is admitted by the complainant. Be that as it may, the complainant has not mentioned any source of light for the identification of the deceased and the accused-respondents. Keeping in view the distance shown in the site plan and as narrated by the complainant, identification of respondents is impossible. To dislodge this fact, the complainant stated that the occurrence took place a while before the sunset.

	6. When the complainant while appearing as PW-11, after submission of supplementary challan against accused-respondent No.2, deposed that the respondents were chasing the deceased, the deceased turned towards the accused and they opened fire at him due to which he was done to death. In his initial report, the complainant stated that the accused-respondents were chasing the accused and when reached the place of occurrence they opened fire at his deceased brother, resultantly, he got hit and died on the spot. If his initial report is taken qua the injuries on the body of the deceased, the entry should have been on the backside of the deceased. As per the autopsy report (Ex.PW1/1), the entry wounds are present on the front side of the deceased meaning thereby, that the deceased was fired upon from front side and not from back side. Though, the complainant, during his examination in chief, stated that, when reached to the spot of occurrence, the deceased turned towards the accused-respondents, however, this account has never been disclosed by him either in the initial report or during his 161 Cr.P.C

	statement made before the IO. Such stance of the complainant termed to be improvement to make his case in accordance with the postmortem report (Ex.PW1/1). Thus, the medical evidence does not support the version of the complainant as disclosed in his initial report. 7. As per version of the complainant that, after the occurrence took place, he rushed to his house for a Cot, remained there for 07 minutes and returned to the spot within 10 minutes. Admittedly, his house is situated at a distance of 10 minutes or about 01 km. Earlier, according to the complainant, he remained with his deceased brother for about 15 minutes. As per FIR, the deceased died at the spot, but as per postmortem report the time that elapsed between the injuries and death of the deceased is 30 minutes. The complainant remained with his injured brother for about 15 minutes but even then he did not try to shift him to hospital for treatment rather, he waited for his brother to breath his last and then left for his home to bring a cot to carry the dead body, such conduct of the complainant is

	not acceptable to the prudent mind. 8. As per the complainant, the local police and his relatives arrived at the spot after 50 minutes of the occurrence. However, according to the PW-4 and PW-5 they reached the spot at 8:30 pm. In this way, not only the record but also PW-4 & 5 have contradicted the stance of the complainant regarding their arrival to the spot. Keeping in view the peculiar circumstances of the case, the time of arrival of these PWs to the spot has its own importance as it would, by itself prove the presence of the complainant on the spot. But, as per cross examinations of the PW-4 & PW-5, when they reached the spot at about 8:00 or 8:30 pm, the dead body was lying on the ground negating the complainant version. The occurrence has allegedly taken place at 5:40 pm, the local police reached the spot at about 8:30 pm and the dead body was lying at the ground despite of the specific claim by the complainant that soon after the occurrence, he rushed to his house, situated at a distance of 01 km, to bring cot for his deceased brother. This fact shows that the

	complainant was never present at the spot at the time of occurrence as alleged by him. 9. Record further reveals that the blood as well as the empties were shown to have been recovered from one spot within the radius of 4 feet and thereby denying the assertions/allegations of the complainant that the accused-respondents fired upon his deceased brother Yasir Arafat during a hot pursuit. If the deceased was hit during a pursuit there should be a trial of blood as well as empties at the spot. In present case, the recovery of articles, i.e. blood, empties & blood stained garments, all being corroborative pieces of evidence, are not sufficient by themselves to substantiate the prosecution case as the ocular account itself has altogether botched. 4. Besides, the complainant is the brother of deceased, who showed extraordinary strange conduct after having seen his brother murdered and tried his level best to suppress certain facts proving that it was an un-witnessed occurrence and he had seen just the deceased (then injured) and not the occurrence in action. Exclusion of

	the said witness from consideration would result that no evidence was left on record to connect the accused with the crime because the rest of the evidence is corroborative piece of evidence. Reference can be made to case law reported in **1984 SCMR 42, PLD 1981 SC 472, 1972 SCMR 578, 2007 SCMR 1825, 1990 SCMR 158 & 2011 SCMR 474.** Even, otherwise, testimony of close related witnesses is required to be scrutinized with great care and caution, especially when the witness is interested and inimical and is, thus, likely to falsely implicate the accused. It is essential to seek independent corroboration which is lacking in the instant case. Moreover, while appreciating the evidence, court had to take into consideration, omission, improvements, embellishments etc, had been of such magnitude that they might materially affect the trail, and where there are doubts about the testimony, the Court would insist on corroboration. Guidance could be safely sought from the case law laid down in **2015 P.Cr.L.J 81**.

	10. Complainant/PW2/11 being important witnesses of the episode was not consistent, trustworthy and confidence-inspiring. Moreover, there are glaring contradictions in the statements of other PWs, which proves that occurrence has not taken place in the mood, manner, time and place as alleged by the prosecution. 11. As stated above the witnesses produced by the prosecution were either not telling the truth or trying to suppress the actual facts before the court, therefore, the testimony cannot be relied upon. A witness who lied about any material fact must be disbelieved as to all facts. '***Falsus in uno, falsus in omnibus'*** is a Latin phrase meaning "false in one thing, false in everything". The rule held that a witness who lied about any material fact must be disbelieved as to all facts because of the reason that the "presumption that the witness will declare the truth ceases as soon as it manifestly appears that he is capable of perjury" and that "Faith in a witness's testimony cannot be partial or factional. Guidance could be placed on ***"PLJ 2019 SC (Criminal Cases) 265"***. This view

	stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that said witness will declare the truth about any other aspect of the case. A court of law cannot grant a license to a witness to tell lies or to mix truth with falsehood and then take it upon itself to sift grain from chaff when law of land makes perjury are testifying falsely a culpable offence. 12. So in the light of above-mentioned judgment of the Apex Court, the testimony of witnesses could not be relied upon and uncalled-for. 13. The learned Trial Court has fully appreciated the case evidence both, ocular and circumstantial, in its true perspective and, while keeping in view, incredible inconsistencies and grave lacunae going to the very roots of prosecution case, contradictions in the statements of the PWs on certain material points has rightly concluded qua acquittal of the respondents from the charge levelled against them. On re-appraisal of case evidence, there is no room for interference of this Court in the

impugned judgment.

14. In addition, before us is an appeal against acquittal where standard for appreciation of evidence is different than the one in appeal against conviction, as once an accused is acquitted, then he earns double presumption of his innocence, which cannot be taken away from him unless it is shown that the judgment of acquittal is based on surmises or presumptions, which is not the case here.

15. In view of the above discussion, this appeal, being bereft of any merit, is hereby dismissed in limine.

Announced;
14.11.2019

CHIEF JUSTICE

J U D G E