

*Judgment Sheet***PESHAWAR HIGH COURT, BANNU BENCH**
(Judicial Department)**Cr.A No. 308-B/2019.**Abdur Rehman
Versus
The State, etc.**JUDGMENT**Date of hearing: **04.02.2021.**For Appellant: **Mr. Mir Zali Khattak, Advocate.**For Respondent: **Mr. Haroon-ur-Rashid, Advocate.**For State: **Mr. Qudrat Ullah Khan, Asstt: A.G.**

SAHIBZADA ASADULLAH, J.- This judgment shall dispose of Cr.A. No.308-B of 2019, filed by Abdur Rehman against his conviction and sentence, Cr.A. No.326-B of 2019, filed by Bibi Asia against acquittal of accused Saira Parveen and the connected Cr.R. No.62-B of 2019, filed by Bibi Asia for enhancement of sentence awarded to convict Abdur Rehman. Since all the matters have arisen out of one and same impugned judgment, therefore, I intend to decide all the connected matters through this single judgment.

2. The appellant and acquitted co-accused Mst. Saira Parveen faced trial in sessions Case No.38/VII of 2018-19 before learned Sessions Judge, Karak and vide judgment

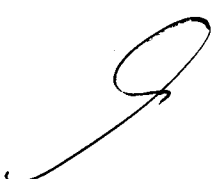
dated 10.10.2019, the appellant Abdur Rehman was convicted under Section 324 PPC for attempting at the lives of complainant Fazal Karim, injured Mst. Bibi Asia and Abid Karim, and was sentenced to imprisonment for three years R.I. with fine of Rs.20,000/- on three counts or in default thereof to undergo six months S.I. He was also convicted under section 337-F(v) PPC and sentenced to pay Rs.2,00,000/- as Daman to injured Mst. Bibi Asia, to be paid in lump sum in equal monthly installments during the remaining period of awarded sentence or in default thereof, to be dealt with under section 337-Y(ii) PPC. Benefit of section 382-B, Cr.P.C. was extended to the convict/appellant. Whereas, co-accused Mst. Saira Parveen was acquitted of the charges.

3. The prosecution story as divulged from the first information report (F.I.R.) Ex. PA, registered on the basis of murasila Ex. PA/1, in brief, is that on 09.9.2016 at 18:25 hours, complainant Fazal Karim alongwith his injured daughter Mst. Bibi Ayesha/Bibi Asia (PW-7), made report to Qismat Khan ASI (PW-9), in the Emergency Room of Civil Hospital, Karak, to the effect that on the day of occurrence, his son Abid Karim (PW-8) was going on a motorcycle to Chungi No.2, meanwhile, accused Abdur Rehman intercepted him and started altercation, upon which he came out of his house and asked the accused that

what was wrong with him to which the accused replied that his son was staring at him; that he (complainant) made him understand but he became annoyed and voiced towards his house for bringing the weapon, upon which his wife co-accused Mst. Saira Parveen brought the weapon and handed it over to him with which the accused started firing at his son, resultantly, his daughter (PW-7), who by then came out of the house was hit on her right thigh and sustained injury, whereas the complainant and his son fortunately escaped unhurt. Besides the complainant, the occurrence is stated to be witnessed by his son PW Abid Karim. Motive for the offence is stated to be an altercation prior to the occurrence. Hence the FIR (ibid).

4. On completion of the investigation, complete challan was submitted against the accused to the trial Court where at the commencement of trial, the prosecution produced and examined as many as eleven witnesses, whereafter, accused were examined under section 342 Cr.P.C, wherein they denied the allegations and professed innocence, however, neither they opted to be examined on oath in terms of Section 340(2), Cr.P.C., nor produced evidence in their defence. The learned trial Court after hearing arguments of learned counsel for the parties vide judgment impugned herein, convicted the appellant and sentenced him, as mentioned in the earlier part of the judgment,

whereas co-accused Mst. Saira Parveen was acquitted of the charges. The convict/appellant has preferred instant criminal appeal against his conviction, while Bibi Asia has moved Cr.A. No.326-B of 2019 against acquittal of co-accused Mst. Saira Parveen, alongwith connected Cr.R. No.62-B of 2019 for enhancement of sentence awarded to the convict Abdur Rehman.



5. The learned counsel for the parties alongwith the Addl: A.G. were heard at length and with their valuable assistance, the record was gone through.

6. No doubt, for the incident in issue, the appellant is singularly charged with no previous blood feud or animosity and the substitution is a rare phenomenon, but this Court is to see as to whether the incident happened in the manner as projected and at the stated time. This Court is to see as to whether the complainant came forward with the whole truth. Though the learned trial court dealt with the matter comprehensively, yet, I feel the need to reassess the collected evidence and statements recorded, to ascertain as to whether the learned trial Court was correct in its approach and that no other view was possible.

7. The unfortunate incident was stated to be the outcome of an altercation between PW Abid Karim and the

appellant, which occurred a little earlier and explained by the complainant while reporting the matter. The report tells that on hearing commotion, the complainant came out of the house and heard an exchange of hot words between the two and that on inquiry the appellant disclosed that PW Fazal Karim was staring at him. The prosecution is to prove as to whether the incident occurred in the mode, manner and at the stated time. The complainant could not be examined owing to his earlier death, but instead PW Abid Karim alongwith injured appeared in support of their claim. Abid Karim was examined as PW-8, who stated that on the day of incident he was on his way to Chongi No.2, when intercepted by the accused, after altercation the accused demanded weapon from the house which was brought by the co-accused and the appellant fired at them which resulted into injury of Mst. Aysha Bibi. In the site plan, the witnesses are given different points and so to the accused. The site plan was prepared on pointation of the complainant which depicts that all the three were standing together at the time of altercation, but soon thereafter they receded to point 1A, 2A and 3A, respectively. It was further disclosed that when the appellant approached point No.3A, he was provided with a Kalashnikov by the co-accused, who then fired at the complainant and PW Abid Karim, which hit the injured PW, who by then after leaving her house had reached

to point No.4. The prosecution is yet to explain that when the complainant and PW Abid Karim had already receded to point 1A and 2A, what kept the injured moving to reach the allotted place and that why instead, Abid Karim with whom the appellant had an axe to grind, Mst. Aysha was targeted. The complainant while reporting the matter disclosed that after gaining possession of the weapon, the appellant started firing at them. The complainant disclosed that the firing continued till the victim came out of the house and received the injury. We are yet to know that how within seconds the situation worsened to an extent that the appellant was all out to kill. I am still searching for an answer that despite weapon in possession, how the complainant and his son escaped unhurt. The witnesses contradicted each other on material aspects of the case. The injured was examined as PW-7, who stated that burst firing was made, whereas according to complainant the firing was sporadic. If I accept what the injured stated, then this Court is to believe that the appellant after firing the initial rounds did not keep on firing, and if the complainant is to be believed, then what a courage the lady had to walk towards the appellant and for what purpose. PW-7 stated that after receiving firearm injury, the complainant without loss of time put her in a motorcar and left for the hospital, but her stance was contradicted by PW Abid Karim in the following

words "After hitting of my sister, I at once rushed towards my house while my father also came to the house. After 4/5 minutes we came out of our house and attended the injured", but the injured stated otherwise, "After sustaining injury I laid down on the ground and my father took me in his laps". When both the witnesses are read together, it leaves no room to doubt that they fully contradicted each other. What impression can be gathered from, is that PW Abid Karim was not present at the stated time, had he been present on the spot, he would have attended the injured instead of rushing to the house and attending the injured after 4/5 minutes of the occurrence. It does not appeal to a prudent mind that a real father and real brother would leave their daughter and sister unattended by taking shelter in the house. The prosecution is still to answer that why PW Abid Karim did not accompany the injured to the hospital alongwith his father and that why he did not verify the report. The Investigating Officer visited the spot and on pointation of the complainant the site plan was prepared and nothing has been mentioned regarding presence of the eyewitness i.e. PW Abid Karim at the spot. Had he been present on the spot at the time of spot inspection, the Investigating Officer would have mentioned his name as well.

In case titled "Basharat Ali Vs. Muhammad Safdar and another" (2017 SCMR 1601), it was held that:-

"Keeping in view the above bulk of contradictions in the statements of the PWs., the prosecution's story cannot be believed and that too when the same has been disbelieved to the extent of all the acquitted co-accused as such Respondent No.1 has rightly been acquitted by the High Court through the impugned judgment. In criminal cases if material contradictions are found in the statements of the witnesses the benefit thereof would go to the accused party. Resultantly, this appeal, having no merit, is hereby dismissed".

8. The incident occurred at 18:25 hours, whereas the matter was reported in the emergency room of Civil Hospital Karak at 19:30 hours and the injured was examined by the doctor at 7:15 PM. The prosecution is to tell that who accompanied the injured to the hospital and that what time the injured arrived to the hospital. Two of the witnesses confirmed that the injured reached to the hospital at 6:30 PM. It surprises that why the report was delayed till 19:30 hours and that how the injured was examined at 7:15 PM, the time when no report was made and injury sheet prepared. The prosecution is to tell that who out of the two i.e. the doctor or the scribe was telling a lie. The doctor was examined as PW-4, who stated that the injured was brought by the father and denied to receive the injury sheet at the time of examination of the injured in the following manner, "On 09.9.2016 the injured Aisha aged about 17 years daughter of Fazal Karim resident of Chungi Karak accompanied by her father Fazal Karim was brought before me at 7:15 PM". The

doctor was cross-examined on this particular aspect of the case to know as to whether the injured was escorted by a constable alongwith the injury sheet, the doctor explained as, *"The injured was brought at 7:15 PM. We only receive injury sheet alongwith the injured from police. It is correct that the column pertaining to number and date of police docket/constable is blank"*. The scribe was examined as PW-9, who contradicted to what the doctor stated, the relevant portion of his cross-examination reads as, *"When I reached Civil Hospital, the injured was lying in the emergency ward. When I handed over the injury sheet to the doctor, then the medical examination of the injured was started"*.

If I admit what the scribe stated, then by the time when the injured was examined no report was made and no injury sheet was prepared. The doctor further surprised when she stated, *"At the time of preparation of MLC report the injured was not present"*. The explanation given by the doctor casts serious doubts regarding examination of injured by the doctor and it is still to be answered that how in the absence of the injured the Medico-legal Certificate could be prepared. The matter does not end here, rather the prosecution is still to tell that why the injured did not report the matter and that why it was the father who opted for the same, despite the fact that the injured was fully conscious and such is her statement, *"I know senses/conscious and*

unconsciousness. I was in my senses in the Hospital". The dishonesty of the scribe is evident when he stated, "The injured was unconscious at the time of report by her father".

9. The Investigating Officer visited the spot and collected five empties of 7.62 bore which were allegedly sent to the Forensic Science Laboratory to ascertain as to whether the same were fired from one and the same weapon. It is pertinent to mention that the Investigating Officer wrote an application to the concerned authorities in that respect on 17.9.2016, whereas the same were received to the laboratory on 10.11.2016, with the delay of two months. The Investigating Officer is yet to explain that why the application was not written on the date when the empties were collected and that why the empties were not sent there and then. Though the report of Chemical Examiner is in positive, but the record is silent regarding its safe custody in the intervening period. This was essential for the prosecution, more particularly, for the Investigating Officer to examine Moharrir of the concerned Police Station alongwith the official who took the same to the laboratory for its analysis but none of them was examined and this laxity on the part of the Investigating Officer travels deep to the roots of the prosecution case and as such, this piece of evidence cannot be taken into consideration and is outrightly rejected. The situation has further been clarified by the

apex Court in its case titled "Ghulam Akbar and another Vs. The State" (2008 SCMR-1064.

10. So far as abscondence in the instant case is concerned, it is not denied that abscondence alone cannot be a substitute for real evidence because people do abscond though falsely charged in order to save themselves from agony of protracted trial and also to avoid duress and torture at the hands of police. In the instant case, abscondence is meaningless, because it can neither remove defects of the oral evidence, nor is by itself sufficient to bring guilt home to the accused. Ref: "Muhammad Sadiq Vs. State" (2017 SCMR 144). Needless to say that abscondence is a corroborative piece of evidence and in cases where direct evidence fails, corroborative piece of evidence is of no avail and the present case is no exception.

11. There is no denial to the fact that the co-accused has been acquitted of the charges which has been questioned before this Court through Cr.A. No.326-B of 2019, where the learned counsel for the complainant submitted that the findings of the trial Court are based on conjectures and surmises and that the learned trial Court went in error while acquitting the accused who shared common intention with the appellant. It was further submitted that it was the co-accused who provided the appellant

with the Kalashnikov which resulted into the injury on person of the victim, had she not provided the weapon, the result would have been otherwise. True, that the co-accused has been acquitted of the charges and equally true that she is charged for sharing common intention, but the prosecution could not succeed in proving the charges against the acquitted accused, as nothing was brought on record that it was no one else but Mst. Saira Parveen, who provided the Kalashnikov. The record is silent regarding the presence of the respondent before the firing was made and at the time of altercation. The Investigating Officer, who prepared the site plan on pointation of the complainant did not mention presence of the co-accused at the scene of occurrence and even no substantial evidence was produced on record that either she had nexus with the motive or that the situation was such which compelled her to facilitate her husband, rather in such eventuality, she instead of providing a Kalashnikov to kill, would have restrained the appellant to go to such an extent, as it is nothing but natural that women folk, more particularly, a wife in all possibilities would avoid misfortunes to her family. As the accused has been acquitted of the charges and she earned the presumption of double innocence to her credit, so to upset the same extraordinary circumstances are

needed which are lacking in the instant case. The instant criminal appeal is bereft of merit stands dismissed.

12. The cumulative effect of what has been stated above, leads this Court nowhere but to hold that the prosecution could not succeed in bringing home guilt against the appellant and the evidence produced suffers from inherent defects and lacking confidence, in such eventuality, this Court is fully convinced that the appellant has been succeeded in making out a case for indulgence of this Court. Resultantly, the appeal in hand is allowed, the conviction and sentences awarded to the appellant are set-aside and he is acquitted of the charges levelled against him. As the appellant is on bail, therefore, his sureties are discharged from the liability of bail bond. As the appeal against conviction has succeeded, so the criminal revision for enhancement of sentence has lost its efficacy, is dismissed.

Announced:
Dt: 04.02.2021.
Kifayat/ PS*



JUDGE

(S.B)
Hon'ble Mr. Justice Sahibzada Asadullah

9/5/21
26/5/2021

SCANNED

26 MAY 2021
Khalid Khan
Khalid Khan