

JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(Judicial Department)

Cr.A No.32-B of 2014.

Shahid Amir alias Noor Kamal
Vs
The State.

JUDGEMENT

Date of hearing _____ 10.10.2017

Petitioner: **By Anwar-ul-Haq Advocate.**

Respondent : **State by Shahid Hameed Qureshi, Addl: AG, Others By Muhammad Rasheed Khan Dhirma Khel and Salah-ud-Din Marwat, Advocate.**

ABDUL SHAKOOR, J.- Through this single judgment we intend to decide the instant Cr.A No. 32-B / 2014 along-with connected Cr.A No.36-B / 2014, and Cr.R No. 13-B / 2014 as both the appeals and revision petition have arisen out of the same judgment and FIR and questions of facts and law in all the cases are identical.

2. Brief relevant facts of the case as set out in the FIR are that complainant Hayatullah on 25.10.2016 reported the matter to police to the

(D.B) Justice Ikramullah Khan and Justice Abdul Shakoor

effect that on the eventful at morning time he along-with his son Amjidullah started from their village Khoidad Khel on Motor cycle, which was driving by his son while complainant was sitting behind him. Near the maize crop of one Yousaf Khan the path was damaged and complainant started proceeding by feet while his son was riding on motor cycle. At about 07:00 hours, in front of maize crop of Yousaf Khan, accused /appellant duly armed with Kalashni-kov along-with his co-accused namely-Abid Khan duly armed with riffle, were present, who aimed his riffle at son of complainant saying to stop and the accused Noor Kamal alias Shahid made firing at him with intention to commit his murder as a result whereof the son of complainant got hit and fell down. The complainant could did nothing being empty handed and took shelter in ditches "Kurajaat". The accused fled away from the crime scene. The complainant on attending his son found that he

succumbed to his injuries. Motive for the offence was disclosed to be dispute over women folk.

3. After completion of investigation complete challan under section 512 Cr.P.C against the accused was put in Court as they were absconding by then. On 23.11.2010 accused/respondent Abid Mir was arrested, and on completion of necessary investigation, supplementary challan was submitted against him for trial. During trial of the accused Abir Mir appellant Noor Kamal was also arrested. Copies under section 265-C Cr.P.C were delivered to them and thereafter they were formally charge sheeted, to which they pleaded not guilty and claimed trial.

4. Trial commenced and the prosecution in order to prove its case produced as many as eleven witnesses. After closure of the prosecution evidence, statements of the accused were recorded under section 342 Cr.P.C, wherein they pleaded innocence; however, neither they

wished to produce evidence in defence nor to be examined on oath under section 340 (2) Cr.P.C.

After conclusion of the trial, the learned trial Court after hearing arguments of the learned public prosecutor, assisted by learned counsel for the complainant and learned counsel for the accused, acquitted the respondent / accused namely-Abid Mir while convicted and sentenced the appellant Shahid Mir alias Noor Kamal in the following terms:-

1- Under section 302 (b) PPC, as Tazir the appellant was awarded with the sentence of life imprisonment alongwith payment of Rs.1,00,000/- to the legal heirs of deceased Amjadullah as compensation U/S.544-A Cr.P.C, and in default whereof he shall further suffer six (06) months SI. However benefit of Section. 382-B Cr.P.C, was extended to appellant / accused.

5. Feeling aggrieved by the judgment of the learned trial Court, Shahid Amir alias Noor Kamal, appellant impugned the same through filing instant Cr. Appeal No. 32-B/2011 while the

complainant preferred a Criminal Appeal No. 36-B / 2014 against acquittal of accused Abid Mir and Criminal Revision No. 13-B / 2014 for enhancement of the sentences awarded to the accused / convict.

6. Learned counsel for the accused/appellant argued that the prosecution has failed to prove presence of the complainant on the spot, at the time of occurrence. He next argued that the complainant is interested eye-witness his statement is neither corroborative, nor confidence inspiring, hence could not be relied upon. He further argued that occurrence has not taken place at the time and in the mode and manner as alleged by the prosecution. He vehemently argued that the alleged case property i.e. the Motorcycle has been taken into possession by the I.O after many days of the occurrence. He went on to say that medical evidence contradicts the version of the complainant and prosecution has failed to prove

the motive, as alleged in the FIR. His further argument was that the FSL reports were produced at belated stage. He lastly argued that prosecution has badly failed to bring home charge against the accused/ appellant, hence, he deserves acquittal and reversal of conviction and sentence awarded through impugned judgment of learned trial Court.

7. On the other hand learned A.A.G assisted by learned counsel for the complainant vehemently rebutted the arguments advanced by learned counsel for the accused/ appellant by contending that report has been lodged promptly and there is no question of mis identification, as it is broad day light occurrence and the parties are well known to each other being relatives and resident of the same village. They next argued that solitary statement of complainant is credible and as such is sufficient to record conviction. Their next argument was that ocular account is supported by medical evidence, evidence of recoveries from the

spot, FSL report coupled with abscondence of accused. They lastly argued that the prosecution has proved its case up to the hilt and learned trial court has rendered a well reasoned judgment whereby convicted and sentenced the accused/ appellant, which need no interference except that punishment for the offence provided has not been awarded to its maximum, which he deserve. They prayed for dismissal of appeal filed by accused/appellant, acceptance of criminal revision for enhancement of sentence and criminal appeal filed by the complainant against acquittal of co-accused Abid Mir.

8. Arguments of learned counsel for the accused/ appellant and learned A.A.G representing the state assisted by learned counsel for complainant heard and record perused with their valuable assistance.

9. Ocular account in this case was furnished by the sole eye witness/ complainant

PW-09, Hayatullah, who is father of the deceased, therefore, his testimony needs to be appreciated with absolute care and caution. There is no denial that interestedness or disinterestedness is not the yardstick for believing or disbelieving a witness, rather intrinsic worth or inherent merit of the testimony of a witness is to be considered. In order to believe an interested witness, first the prosecution has to satisfy the Court regarding presence of the witnesses at the spot and secondly whether he is credible truthful witnesses and thereafter conviction can be based on testimony of interested witness, if same is corroborated by some strong corroborative piece of evidence. Reliance is placed on case titled *“Haroon alias Harooni Vs the State and another” (1995 SCMR 1627) and “Haji Rab Nawaz Vs Sikandar Zulqarnain and 7 others” (1998 SCMR 25)*, wherein it is held that:

“One salutary principle laid down by this Court in this behalf and which is now firmly established is,

that in a case involving capital punishment, the Courts will not base conviction of an accused solely on the testimony of interested witness unless such evidence finds corroboration by some other independent and unimpeachable nature of evidence or circumstance in the case. This rule of prudence though not statutory in nature, has been followed by Courts so consistently through years that it has come to be recognized almost as a rule of law. The departure from this rule is to be found rarely and in very exceptional circumstances of a case. Therefore, to say that the evidence of an interested witness is to be accepted solely on the ground that it remained unshaken during cross-examination is not a correct proposition.”

10. Complainant Hayatullah appeared before the court and examined as PW-09, he in his cross examination stated that:

“The accused did not make firing at me. I took shelter in Kurrajat. I had shown the place to the IO where I took shelter. (Confronted not so shown in the site plan). If the accused

want to kill me, it was easy for them to commit my murder. No one was present there, who could rescue me from the accused.”

11. According to first information report Ex:PA, the motive behind the occurrence was dispute over women folk, meaning thereby that both the deceased and the complainant were having equal enmity with the accused, but strange enough that the accused fired at the deceased and left the complainant to depose against them. The complainant admits in his cross examination that if the accused wanted to kill him they could easily kill him and no one was present to rescue him. In view of this admission of PW-9/ complainant a clear inference can be drawn that the complainant was not present at the spot.

12. According to site plan Ex:PW11/1, at the crime spot there were maize crop and kurrajat. The complainant admits that he had taken the shelter in kurrajat. If there was maize crop and kurrajat, the accused could conceal themselves there and without showing their identity could accomplish their target of

killing the son of complainant. Meaning thereby that the incident has not been occurred in the mode and manner as alleged by the complainant.

13. In the occurrence the motorcycle in question was not taken into possession during spot inspection, rather it was produced after many days of the occurrence. Hence, this fact could not corroborate to the version of prosecution that at the time of occurrence, the complainant and deceased were riding on motorcycle.

14. Circumstances of the case and intrinsic worth of statement of witness would determine the veracity and his credibility. The statement of sole eye witness cannot be relied upon in absence of any corroboration. In such eventuality, on the basis of sole uncorroborated testimony of eye-witness no conviction can be based.

15. When ocular account of complainant is not believed then the recoveries, medical report, FSL report and site plan are not material and do not furnish justification for

holding that the accused /appellant has committed the offence.

15. It is the centuries old principle of administration of criminal justice that prosecution is bound to prove its case beyond any shadow of doubt. If any reasonable doubt arises in the prosecution case, the benefit of the same must be extended to the accused not as a grace or concession, but as a matter of right lest no innocent be convicted and punished.

16. The learned trial Court has erred in law by convicting appellant on the basis of weak type of evidence of PW-9, which was not corroborated by circumstantial evidence. It would not be safe to maintain conviction on the basis of such shaky and scanty evidence. Learned trial court on one hand believed the evidence for convicting the appellant while on the other hand disbelieved the same evidence for the acquittal of co-accused, (against which the complainant filed criminal appeal No.13-B/2014). Both the accused, as discussed above, deserve acquittal, but learned trial court erred in law by acquitting one and convicting

other, hence, the impugned judgment is liable to be set at naught.

17. Above are the reasons of our short order of the even date, which is reproduced herein below:

“For the reasons to be recorded later, the instant Criminal appeal is accepted, the impugned judgment of conviction and sentence dated 17.02.2014, passed by learned Sessions Judge, Lakki Marwat is set aside and consequently the appellant Shahid Amir alias Noor Kamal is acquitted of the charges leveled against him. He be set at liberty forthwith if not required in any other case. Connected Cr. A No.36-B/2014 and Cr.R No.13-B/2014 stand dismissed.”

Announced
10.10.2017

JUDGE.

JUDGE.