

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.A No. 212-M/2018

Shah Rawan s/o Jehanzeb R/O Bogra Koz Pao, Tehsil Puran, District Shangla.

Versus

- 1) The State.
- 2) Gul Sangeen s/o Gul Zareen R/O Shati Dara, Tehsil Puran, District Shangla.

Present:

Mr. Shaiber Khan, Advocate for the appellant/convict.

Mr. Murad Akmal, Advocate for State.

Mr. Razaullah Khan, Advocate for complainant.

Cr.R No. 48-M/2018

Gul Sangeen s/o Gul Zarin resident of Shatai Dara, Tehsil Puran, District Shangla and two others.

Versus

- 1) Shah Rawan s/o Jehan Zeb resident of Bogra Koz Pao, Tehsil Puran, District Shangla.
- 2) The State through Additional Advocate General, Peshawar High Court, Bench Mingora, District Swat.

Present:

Mr. Razaullah Khan, Advocate for the petitioner.

Mr. Murad Akmal, Advocate for State.

Mr. Shaiber Khan, Advocate for the respondent/convict.

Date of hearing: **14.10.2020**

JUDGMENT

ISHTIAQ IBRAHIM, J.- This appeal has been preferred by appellant/convict Shah Rawan son of Jehanzeb against the judgment dated 18.08.2018 handed down by learned Sessions Judge/Zilla Qazi, Shangla, Camp Court at Swat in case F.I.R No. 331

dated 25.09.2013 u/s 302; 324; 109, 337-F(iii) P.P.C,
15 A.A. registered at Police Station *Aloch*, District
Shangla whereby he was convicted and sentenced as
under:

i) u/s 302(b) P.P.C

Life imprisonment with compensation of
Rs.300,000/- payable to legal heirs of
deceased Naik Amal u/s 544-A, Cr.P.C or
to further undergo six months S.I in
default thereof.

ii) u/s 324 P.P.C

Five years S.I for attempting at the life of
PW Kifayat Ullah with fine of Rs.50,000/-
or in case of default thereof to undergo
further two months S.I.

iii) u/s 337-F(iii) P.P.C.

Daman of Rs.25,000/- payable to the injured.

iv) u/s 15 A.A.

Three months S.I with fine of Rs. 1000/-
or to undergo further 15 days S.I in case
of non-payment of fine.

The sentences were ordered to run
concurrently with benefit u/s 382-B, Cr.P.C.

The complainant, widow of the
deceased as well as the injured have also filed the
connected Cr.R No. 48-M/2018 against the same
judgment of the trial Court whereby they have
questioned the quantum of sentence. Both the cases
being inter connected and arising out of the same
judgment are decided through this single judgment.

2. According to *Murasiala*/F.I.R lodged
on the report of complainant Gul Sangeen (PW-2)

on 25.09.2013 at 15:00 hours; on the same day he alongwith his nephew Naik Amal and Kifayat Ullah (PW-3) were present in the barren land known as *Bakaro* for collecting grass. At 12:30 hours the present appellant came there and questioned Naik Amal for cutting his grass. An altercation developed during which the present appellant drew out dagger (پیش قبض) from his trouser-fold and stabbed Naik Amal on his chest as result whereof he fell on the ground and died. PW Kifyat Ullah tried to overpower the appellant, however, he also caused stab injury on his right arm. The complainant, however, did not get closer to the appellant because of fear. The appellant decamped from the spot to the mountain waiving the dagger. According to the complainant, the occurrence took place on the motive of land dispute which was witnessed by him, the injured Kifayat Ullah (PW-3) and Bacha Zarin (not produced). The complainant also charged acquitted co-accused Kamal and Haroon Taj for abetting the offence.

3. After reducing the report of complainant into *Murasila* (Ex.PB), S.H.O

Muhammad Zaman (PW-10) prepared the inquest report (Ex.PW-12/1) and injury sheet (Ex.PW-12/2) and sent the dead body to Civil Hospital *Puran* for medical examination. Since, injured Kifayat Ullah had already proceeded to Civil Hospital *Puran* for medical treatment, therefore, P.S *Aloch* was informed for preparation of his injury sheet. The dead body was examined by Dr. Shaukat (PW-8).

The gist of his report Ex.PM is as under:

Detail of External Examination:

A stab wound on about 1 cm in size in the right 5th intercostal space just lateral to the sternum. A hole was present in the shirt, corresponding to the wound and the front of shirt was stained with blood. When the wound was probed, it was penetrating the chest wall and extended deeply into the chest cavity and chest cavity was full of blood.

Opinion:

Nature of injury: Fatal.

Weapon used: Sharp

Probable Duration: 2-6 hours.

Cause of Death: Fatal injury to the vital organs in the chest and heavy bleeding from the thoracic vessel.

Similarly, the injured PW Kifayat Ullah (PW-3) was medically examined by Dr. Zia-ud-Din (PW-9) whose report Ex.PW-9/1 is as follows:

Stab wound on right forearm lateral and middle aspect size approximately 3 cm in length, edges regular, depth proximately 7 cm. Bone not exposed.

4. The appellant remained absconder whereas his co-accused were arrested, therefore, challan u/s 512, Cr.P.C was put in Court against the appellant and his co-accused were tried for the offence, however, they were acquitted of the charge u/s 265-K, Cr.P.C on 27.05.2015.

5. After arrest of the appellant/convict on 23.07.2016, he made pointation of the place of occurrence and weapon of offence i.e *churri* was recovered on his pointation consequent upon which section 15 A.A was added in the case. Supplementary challan was submitted before the Court for his trial after completion of investigation. He was formally indicted for the offences u/s 302/324 P.P.C read with section 15 A.A on 09.02.2016 to which he did not plead guilty and opted to face the trial. Prosecution produced 12 witnesses in support of its case against the appellant. When examined u/s 324, Cr.P.C, the appellant denied the allegations and claimed to be innocent, however, he neither produced any witness in his defence nor opted to be examined on oath in terms of section 340 (2), Cr.P.C. During the course of

arguments before the trial Court, it surfaced that the appellant was not charge sheeted for the injury he had caused to injured Kifayat Ullah, thus, the charge was altered and the appellant was also charge sheeted u/s 337-F(iii), P.P.C. He refused to call the PWs for re-examination or further cross-examination when specifically asked in this regard by trial Court. On conclusion of trial, the learned trial Court vide impugned judgment convicted and sentenced the appellant in the manner already mentioned in the earlier part of this judgment, hence, this appeal.

6. We have heard the arguments of learned counsel for the parties including the learned A.A.G. for State and gone through the record with their able assistance.

7. It is the case of prosecution against the present appellant that he committed murder of Naik Amal and attempted at the life of PW Kifayat Ullah by causing to them stab injuries on 25.09.2013 at 12:30 hours in the barren land/*warsho* known as *Bakaro* within the area of *Shatai* at a distance of 24/25 kilometers from P.S *Aloch*. The place of occurrence is established in view of the site plan

Ex.PB/1, recovery of blood from the spot through recovery memo Ex.PW-4/2 as well ocular account given by complainant Gul Sangeen (PW-2) and injured Kifayat Ullah (PW-3).

8. The important evidence which is available on the record against the appellant is in shape of ocular account of the aforesaid witnesses duly corroborated by circumstantial evidence on the record. Complainant Gul Sangeen appeared before the Court as PW-2 and stated that he was present with the deceased and other eye witnesses Kifayat Ullah and Bacha Zarin for collecting grass in the land of deceased when the present appellant approached to the spot and thereafter caused stab injuries to deceased and injured during altercation. He verified his report by reiterating the contents thereof in his examination-in-chief and also confirmed that he led the I.O to spot alongwith the injured PW and made pointation of the place of occurrence in light of which the site plan was prepared. During cross-examination, this witness has narrated in detail the mode and manner as well as the purpose of his departure to the place of


occurrence in the company of deceased and other eye witnesses. He also confirmed that he was at a distance of 100/120 feet from the deceased when the appellant came closer to him. The statement of the complainant, being straight forward and truthful besides corroborated by other PWs and circumstantial evidence, inspires confidence therefore, there is no doubt regarding his presence on the spot at the time of occurrence. His testimony cannot be discarded on the sole ground that he was related to deceased. It was observed by august Supreme Court in the case of Zafar Iqbal and other Vs. The State (2014 SCMR 1227) that:

Mere relationship of prosecution witnesses with deceased cannot render their evidence unreliable unless it is established that they had motive to implicate accused falsely.

9. The other eye witness of the occurrence is Kifayat Ullah (PW-3) who also carries the stamp of injury on his person in the same occurrence. This witness was trying to apprehend the appellant after he had given a dagger blow to the deceased. During the struggle the appellant also hit him with a blow of

dagger causing injury on his forearm. He confirmed in his cross-examination that:

On the eventful day along with Sangeen, Bacha Zarin and Naik Amal Khan (deceased then alive) proceeded to the spot from their own houses whereas I joined them from my house and we all proceeded to the spot..... I, Shah Rawan and Naik Amal Khan were standing side by side at the distance of two feet from each other. The altercation started due to cutting of grass and Shah Rawan told the deceased that why he cut his grass. In response the deceased told the accused that he has cut his own grass.....At the moment of altercation I tried to patch up the matter but no sooner the accused hit the deceased and thereafter stabbed me through churri.



The statement recorded by the injured PW as well as the stamp of injury on his person clearly proves his presence on the spot. Learned counsel for the appellant has objected the testimony of this witness mainly on the ground that he has not lodged the report himself in the hospital, however, we do not tend to agree with the learned counsel on the ground that this witness has no relationship with the deceased nor having any venom against the appellant, therefore, he can be regarded as the most reliable and credible witness. Being injured, the injured witness had gone to Civil hospital *Puran* where the I.O (PW-12) recorded his cursory statement after preparing his injury sheet. In this regard the I.O stated in his cross-examination that:

میں نے مذکورہ گواہ مجروح سے وقوعہ کے بارے میں سرسری بیان لیکر
ضمنی میں اندراج کیا۔ چونکہ SHO صاحب پہلے ہی سے موقع پر چلا
گیا تھا اور برطابق قانون مراسلہ تیار کرنا پرنیشنل سٹاف کا کام ہے نہ کہ
شعبہ تفتیش کی۔ یہ غلط ہے کہ مراسلہ بوقت تین بجے تحریر کیا گیا تھا۔

Since, the S.H.O had already left for the place of occurrence at the time of recording the statement of the injured PW in hospital, therefore, in such like circumstances to discredit the testimony of the injured PW only on the ground that he did not lodge the report, would not be in consonance with principles for appraisal of evidence. It is a case of single accused and the injured eye witness has sustained stab injury at the hand of the present appellant, therefore, substitution of the appellant that's too in the case of stabbing from a short distance was not possible and could be possible only in cases of firearm injuries. His statement being worth credence and reliable can be classified in the first category of the ocular account as mentioned by august Supreme Court of Pakistan in the case of "Muhammad Iqbal and others V/s. Muhammad Akram and another". (1996 SCMR 908) according to which:-

"Ocular evidence may be classified into three categories; firstly, wholly reliable; secondly, wholly unreliable; and thirdly, partly reliable and partly unreliable. In the first category, conviction may safely be sustained on uncorroborated testimony. In the second category, even strongest corroborative evidence may not rehabilitate such evidence. In the third category conviction cannot be recorded unless such evidence is corroborated by oral or circumstantial evidence coming from distinct sources. We are of the view that the testimony of the eye-witness in the present case falls within first category, they are absolutely dependable witnesses and for the safe administration of justice in criminal cases, conviction can safely be recorded on their statements without further corroboration".

8. The prosecution case gets adequate corroboration from medical evidence. According to medical report of the deceased (Ex.PM), Dr. Shaukat (PW-8) found a stab injury with sharp object on the body of deceased which extended deeply to the chest cavity. He mentioned the cause of death as fatal injuries to vital organs in the chest and heavy bleeding from the thoracic vessels. Likewise, the injured witness Kifayat Ullah (PW-3) was examined by Dr. Zia-ud-Din (PW-9) who in his report Ex.PW-9/1 recorded a stab wound of 3 cm on right forearm of the injured PW. Similarly, the contents of initial report are in consonance with the ocular account, medical evidence and site plan.

9. Learned counsel for the appellant during his arguments attacked the investigation by

stating that the investigation conducted in the present case is against the law and relevant procedure. Mistakes on the part of Investigating Officer, no doubt, cannot be excluded, however, the rule laid down in this regard by superior Courts is that it must be proved that any irregular act or omission of the investigating agency has caused miscarriage of justice to accused. In the present case no fault of conspicuous nature could be found in the entire investigation proceedings to have prejudiced the present appellant in any manner, therefore, the objection of learned counsel for the appellant is repelled. Reliance is placed on Muhammad Ashraf Khan Tareen Vs. The State (1995 PCr.LJ 313

Peshawar) wherein it was ruled down that:

We went through the judgment cited by either side and found in almost all of them a common feature that any defect, irregularity or even illegality in the investigation would not vitiate the trial unless it is shown that it has prejudiced the accused in any manner and similarly no objection regarding any flaw in the investigation or trial can prevail at appellate or revisional stage unless it is proved that it has brought about a miscarriage of justice or it has occasioned failure of justice.

10. Learned counsel for the appellant also objected the time of death in view of medical

evidence and the time of lodging the report. According to prosecution version, the occurrence took place on 25.09.2013 at 12:30 hours and the deceased was examined in hospital at *Puran* on the same date at 06:00 P.M. The doctor has mentioned the duration as 2-6 hours which is in line with the time of occurrence as mentioned in *Murasila*. Even otherwise, the time mentioned by doctor in medico-legal report was speculative and was based on his personal observations, therefore, such error being not conclusive cannot impeach the ocular account. Reliance is placed on *Haji and 4 others Vs. The State* (1972 PCr.LJ 465 Karachi). It was held in he said judgment that:

But we are not impressed with this argument as the time of death given by the doctor is only conjectural and where can be possibility of a greater error as such we are of the opinion that the time given by the doctor would not be conclusive on this point. For these reasons then we find that the ocular testimony is reliable and worthy of credence.

II. Regarding the delay in lodging the report, no doubt, the report was lodged with delay of 2 ½ hours, however, the record shows that the crime scene is situated in mountainous area at a distance of 24/25 kilometres from the police station. It is also in the statements of the eye witnesses that the dead

body was first brought from the spot to the house of deceased in one hour whereafter the police came to the house of deceased and the said journey of 24/25 kilometres must have consumed time, therefore, the delay is well explained in view of the aforementioned facts and circumstances of the case.

12. The complainant, while disclosing the motive, stated in his report that the occurrence had taken place due to land dispute. According to the report and statements of the eye witnesses, the present appellant on his arrival to the spot first inquired the deceased that why he had cut his grass and thereafter he stabbed him during the altercation which had developed between the parties on the same issue. In response to a question by defence counsel, the injured eye witness (PW-3) stated in his cross-examination that:

It is correct that there was a dispute between accused Shah Rawan and deceased Naik Amal on the boundaries of landed property.

Thus, the motive set up in the present case has also been established in the present case.

13. In addition, the appellant also remained fugitive from law for almost three years and he has offered no plausible explanation in this regard. Thus,

the said conduct of the appellant further corroborates the ocular account and can be considered as corroborative factor of other convincing evidence available on record against the appellant. Reliance is placed on Qaisar Khan and others Vs. The State and others (2009 SCMR 471) wherein it was held that:

No doubt abscondence by itself is not sufficient to convict an accused person but is strong piece of corroborative evidence of the other direct and circumstantial evidence in the case. When an accused persons remains fugitive from the law for long time without any plausible and reasonable explanation, then his conduct after the occurrence becomes indicative of his guilt when it is considered in conjunction with the ocular and circumstantial evidence

14. In light of the foregoing discussion, the prosecution has proved its case against the appellant through trustworthy and reliable evidence, therefore, his conviction and sentence by the learned trial Court does not call for any interference. As regards the quantum of sentence as agitated in the connected revision petition, though there was a land dispute between the appellant and deceased, however, the facts and circumstances of the case suggests sudden fight between the parties over the issue of cutting of grass during which the appellant caused single stab injuries to deceased and injured. Thus, the award of

life imprisonment to appellant by trial Court is proper and just in the circumstances of the case. Resultantly, this appeal as well as the connected Cr.R No. 48-M/2018, being devoid of merits, are accordingly dismissed.

Announced.

Dt: 14.10.2020

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