

Judgment Sheet

IN THE PESHAWAR HIGH COURT,  
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

**Cr.Appeal.No. 52-A/2016.**

**JUDGMENT**

*Date of Hearing* 14.11.2018

*Appellant (Yasir) by* Mr. Shad Muhammad Khan,  
Advocate.

*Respondent (State) by* Sadrar Muhammad Asif,  
Assistant AG.

*Complainant in person*

**SYED MUHAMMAD ATTIQUE SHAH, J:-**

Appellant-convict Yasir S/o Shamraiz has filed instant appeal against the conviction and sentence recorded against him by the learned Sessions Judge, Torghar at Oghi, vide judgment and order dated 05.04.2016 in case FIR No. 111 dated 15.07.2013 under Section 302/114/34 PPC of Police Station Darband, District Mansehra, whereby the appellant-convict was convicted under Section 302-B PPC and sentenced to life imprisonment and to pay compensation amounting to Rs. 100,000/- under Section 544-A Cr.P.C. to the

legal heirs of the deceased. Benefit of Section 382-B Cr.P.C has been extended to him.

2. Brief facts of the case are that Muhammad Nazir S/o Muhammad Faqir (PW-5) reported the matter to Muhammad Zakir SHO (PW-2) in CH Darband that after Aftar time, he was present in his house. His nephew Muhammad Adeel left the house after having Aftar and went towards Janazagah. At about 08:30 PM, on hearing hue and cry, the complainant also rushed towards Jianzagah and saw that Yasir and Shamraiz were quarrelling with Adeel. As soon as complainant reached there, Shamraiz commanded his son Yasir to kill Adeel, as a result of which Yasir inflicted knife blows to him on left side of chest and on his back as a result of which Adeel sustained injuries and fell on ground. Complainant with the help of other persons present at the spot, lifted the injured and was shifting him to hospital through vehicle but he succumbed to injuries in the way. Occurrence was stated to have been witnessed by Iqbal S/o Umer Khan and Suleman S/o Mehmood. Motive was disclosed to be a year back dispute between accused and deceased over parking of vehicle. The

report was recorded by PW-1 in the shape of Murasila (Ex PA/1) which was sent to police station for registration of FIR (Ex PA).

3. Dead body of the deceased was sent for postmortem examination. Autopsy on the dead body of deceased was conducted by Dr. Hilal Hussain (PW-3) who found the following injuries:-

- i. *Incised wound on left lateral wall of the chest of  $\frac{1}{4}$  inch in size.*
- ii. *Incised wound on fourth intercostal space just below the left nipple,  $\frac{1}{2}$  inch x  $\frac{1}{4}$  inch size.*
- iii. *Incised wound on left lateral side of the thigh about midpoint  $\frac{3}{4}$  x  $\frac{1}{2}$  inch in size.*
- iv. *incised wound on upper part of left hip area  $1 \times \frac{1}{2}$  inch in size.*

Investigation of the case was entrusted to Muhammad Asif SI who visited the spot and prepared site plan (Ex PW-6/1) upon pointation of eyewitnesses, arrested both the accused and issued their cards of arrest (Ex PW-6/3) and during interrogation, upon pointation of accused recovered weapon of offence i.e. knife through memo (Ex PW-6/5), sent parcels No. 1 and 2 along with recovered knife to FSL through road certificate No. 157/21 and on receipt of FSL report (Ex PW-6/9), placed in on file. Upon completion of investigation he handed over


case file to SHO for submission of challan against the accused.

4. The prosecution then submitted complete challan against the appellant-convict as well as acquitted co-accused Shamraiz.

5. After supplying copies to the accused in compliance of Section 265-C Cr.P.C. the learned trial Court framed charge against the appellant-convict and acquitted co-accused on 22.10.2013 to which they pleaded not guilty and claimed trial. The prosecution was thus asked to produce its evidence. In order to prove its case against the accused. Prosecution produced and examined 07 PWs and closed its evidence. The learned trial Court recorded statement of the accused under Section 342 Cr.P.C. After hearing arguments of learned counsel for the parties, the learned trial Court convicted the appellant-convict under Section 302-B PPC and sentenced him as mentioned above, while co-accused Shamraiz was acquitted of the charge.

6. Arguments heard and record perused.


7. The prosecution case as set out on the basis of material available on record is that on the




fateful night, an altercation took place between the deceased and the accused. As a result of such altercation, co-accused Shamraiz raised Lalkara whereupon appellant-convict Yasir inflicted knife blows to the deceased as a result of which he sustained injuries and died. The occurrence was stated to have been witnessed by Iqbal and Suelman while motive was a previous dispute over parking of vehicle.

8. The prosecution case thus rests on the oral testimony of complainant and eyewitnesses, the recovery of crime weapon, postmortem report of the deceased, motive as well as other incriminating materials.

9. We will first examine the oral evidence of the prosecution. Complainant in his report has stated that at the time of occurrence, he was present in the house and when he heard hue and cry, he rushed to the spot and found that a quarrel had taken place in between deceased and accused. When he reached nearby, acquitted co-accused Shamraiz raised Lalkara whereupon Yasir inflicted knife blows to deceased on his chest as well as back, as a result of which he was injured and fell on the ground. The complainant with



the help of other persons present at the spot, lifted the deceased in injured condition and were shifting him through vehicle to hospital but he succumbed to injuries in the way. On the other hand, while appearing as PW-5, he in his examination-in-chief deposed that he lodged the report in police station and that the accused was apprehended on the spot, which fact negates the version of FIR as well as card of arrest of the accused. Similarly, during his cross examination, he deposed that he lodged the report in police station and then took the dead body to hospital for postmortem examination. He further deposed during his cross examination that the deceased was lifted from the house of Gulab and was being shifted to the police station when he succumbed to injuries. Thus the complainant has contracted his own report in his statement recorded as PW-5. The alleged eyewitnesses of the occurrence namely Iqbal and Suleman were abandoned by the prosecution being won over and except sole testimony of PW-5, the prosecution has not produced any eyewitness of the occurrence, despite the fact that as per complainant, there were many other persons present at the spot at the time of alleged



occurrence. The statement of PW-5 being self contradictory in nature, cannot be solely relied upon to record conviction against the appellant-convict.

**10.** Moreover, the complainant in his report mentioned that appellant-convict inflicted two injuries with knife on the body of deceased, one on left side of his chest and other on his back, while the postmortem report of the deceased (Ex PW-3/1) shows four injuries on the body of deceased, two on left side of chest, one on thigh and one on upper part of left hip area. Thus, the postmortem report also creates serious doubt regarding stance of the complainant that he was eyewitness of the occurrence. The complainant further stated that he was very close to the deceased when the accused attacked upon him, however, he neither tried to rescue the deceased nor caught hold of the accused, which conduct of the complainant makes his presence at the spot doubtful. In a similar situation, in "**Pathan vs. The State (2015 SCMR 315)**" the august Supreme Court of Pakistan while dilating upon the conduct of the witnesses, has held:-

*"Keeping in view the provision of Article 129 of the Qanun-e-Shahadat Order,*

which is to the following effect:--

"S. 129. Court may presume existence of certain facts.---The Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case--"

The presence of witnesses on the crime spot due to their unnatural conduct has become highly doubtful, therefore, no explicit reliance can be placed on their testimony. They had only given photogenic / photographic narration of the occurrence but did nothing nor took a single step to rescue the deceased. The causing of that much of stab wounds on the deceased loudly speaks that if these three witnesses were present on the spot, being close blood relatives including the son, they would have definitely intervened, preventing the accused from causing further damage to the deceased rather strong presumption operates that the deceased was done to death in a merciless manner by the culprit when he was at the mercy of the latter and no one was there for his rescue. In similar circumstances, the



*evidence of such eye-witnesses was disbelieved by this Court in the case of Masood Ahmed and Muhammad Ashraf v. The State (1994 SCMR 6).*

*It was vehemently argued by the learned Advocate Supreme Court for the appellant that on the day of occurrence it was Sunday and being a Gazetted holiday, the appellant was not at all required to attend to his official duty at the school to which he was attached and for that reason the giving company to him by his son and by sheer chance the joining of the other two P.Ws. with them renders the testimony of the P.Ws. absolutely doubtful."*

Despite the fact that it was admitted by the complainant (PW-5) that so many other persons were present at the spot, none from them could be produced as a witness in the case without any plausible explanation, therefore, adverse inference would drawn that had those witnesses been produced, they would have not supported the prosecution case.

11. The IO while appearing as PW-6, deposed that he could not recover any blood from the spot, while complainant also stated in his cross examination that the dead body of the deceased was

lifted from the house of Gulab which is situated nearby the Jinazagah. This aspect of the case creates doubt in the scene of occurrence. Moreover, admittedly it was a night occurrence, which had taken place on the night of 5<sup>th</sup> of Ramazan. The complainant while appearing as PW-5 stated that he identified the accused in moon light. Whether it was possible for the complainant or not to identify the culprits in the light of moon on 5<sup>th</sup> of Ramzan, is shrouded in mystery, because the entire investigation is silent about the source of light.

**12.** Now moving on to the recovery of knife, the alleged crime weapon at the pointation of appellant-convict. According to the prosecution, the appellant-convict was arrested in the instant case on 16.07.2013 who on 17.07.2013 lead the police party to the place of occurrence and got recovered the crime knife from the bushes nearby the house of Gulab. The alleged occurrence took place on 15.07.2013 while the recovery was shown to have been effected on 17.07.2013 from bushes, which place admittedly was accessible to everyone. The investigating officer of the case (PW-6) during cross examination admitted that

no bushes were shown in the site plan nearby house of Gulab or near the Jinazagah. He also admitted that the recovered knife was an ordinary knife easily available in every house and report of FSL does not suggest that the blood found on the knife was that of deceased. Moreover, the alleged knife was recovered in presence of Ali Muhammad and Suleman. Both these witnesses were never produced by the prosecution to strengthen the recovery of knife upon pointatoin of accused, therefore, the said piece of evidence also lost its credence.

**13.** The complainant disclosed that the occurrence was the result of previous dispute between the accused and deceased over parking of vehicle whereupon a quarrel had taken place a year back. In order to support the motive, no evidence whatsoever was brought on record, thus the motive also remained unproved.

**14.** Coming to the Postmortem report of the deceased. Though it suggests that the deceased had sustained incised wounds on his body, however, the complainant in his report as well as in his court statement has himself contracted the mode and manner

of the occurrence, therefore, even if it is presumed that the death of the deceased was result of injuries caused to him through knife, it would not be sufficient to record conviction against the appellant-convict.

15. The sifting of evidence and record suggests that the prosecution case is full of dents and doubts. The statement of lone prosecution eyewitness i.e. complainant (PW-5) is self-contradictory, the marginal witnesses to the recovery memo Ex PW-6/5 were never produced before the court. The most important prosecution witnesses were abandoned by the prosecution. The statements of persons residing nearby the alleged scene of occurrence including Gulab and Anwar were not recorded. The alleged crime knife was sent to FSL, however, the report of FSL does not suggest that the blood found on the knife was that of deceased. No blood could be recovered from the spot and there are serious doubts regarding the place, time, mode and manner of the occurrence. The eyewitnesses of the occurrence were never produced to go through the test of cross examination. The motive as alleged by the complainant, also remained unproved. It is well settled law that even a

single doubt, if found reasonable, would entitle the accused person to acquittal and not a combination of several doubts. Reliance is placed on case titled 'Ghulam Qadir Vs. The State' (2008 SCMR 1221), wherein, it has held that:

*"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of charge-makers the whole case doubtful. Merely because the burden is on accused to prove his innocence it does not absolve the prosecution to prove its case against the accused beyond any shadow of doubt in this duty does not change or vary in the case."*

Reliance is also placed on case law reported as 2009 SCMR 230, 1995 SCMR 1345, 2017 SCMR 596 and 2017 SCMR 709.

16. In view of the above, we hold that the prosecution has miserably failed to prove its charge against the appellant-convict, beyond any shadow of doubt, therefore, while accepting this appeal, we set aside the impugned conviction and sentence passed against the appellant/convict and acquit him from the

charge leveled against him. He is in jail, he be set free forthwith, if not required in any other case/crime.

**17.** These are the reasons for our short order of the even date.

**Announced.**  
**Dt. 14.11.2018**

  
**JUDGE**

  
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Date of hearing: 14.11.2018.

Appellant (Yasir) by: Mr. Shad Muhammad Khan,  
Advocate.

State by: Sardar Muhammad Asif,  
AAG.

Complainant By: Nemo.

**SYED MUHAMMAD ATTIQUE SHAH, J:-** For the reasons to be recorded later on, this appeal is allowed. Impugned judgment and order passed by the learned trial court dated 05.04.2016 is set aside and the appellant-convict Yasir S/o Shamraiz stands acquitted of the charge in case FIR No. 111 dated 15.07.2013 under Section 302/114/34 PPC of Police Station Darband, District Mansehra. He be set free forthwith, if not required in any other case.

**Announced.**  
14.11.2018

  
JUDGE

  
JUDGE