JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT

Cr.A.No.564-P/2014

JUDGMENT

Date of hearing: 10.10.2017

Appellant (by): Mr.Muhammad Saleem Mardan, advocate.

State by Mian Arshad Jan, AAG

Mr.Yousaf Shah Mohmand, Advocate for the complainant.

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LAL JAN KHATTAK, J.- Through this judgment, we shall also decide Cr.R.No. 126-P of 2014 as both the matters are the outcome of same judgment dated 25.09.2014 of the learned Additional Sessions Judge-III, Mardan, delivered in case FIR No.125 dated 15.02.2011 registered u/s 302 PPC at Police Station Shahbaz Garhi, Mardan, whereby the appellant has been convicted for the *qatl-i-amd* of Karim Khan and sentenced to imprisonment for life with payment of Rs.5,00,000/- as compensation payable to the legal heirs of the deceased or in default whereof to further suffer simple imprisonment of six months. Benefit u/s 382-b Cr.P.C. was given to him.

2. Brief facts of the case are that on 15.02.2011, deceased Karim Khan, the then injured, reported to ASI Zahir Shah (PW-9) in the casualty of Civil Hospital, Mardan to the effect that he was busy in cutting grass in the fields of Khaista Mir when in the meanwhile, appellant fired at him with pistol with which he was hit and got injured. Motive for the crime was stated to be previous ill-will. The injured was taken to the hospital where he lodged the report whereafter he was referred to LRH, Peshawar for further treatment but he could not survive and succumbed to his injuries on 20.02.2011 in the hospital.

3. After arrest of the accused and completion of investigation, the appellant was indicted for the offence by the learned trial court to which he pleaded not guilty and claimed trial. Prosecution in order to prove its case produced 16 witnesses in all whereafter statement of the accused was recorded, wherein, he professed his innocence. The learned trial court, after conclusion of the trial, found the appellant guilty of the charge and while recording his

conviction sentenced him as mentioned above, hence the instant appeal.

4. Arguments heard and record gone through.

5. Perusal of the record would show that there is no eyewitness to the occurrence and the one, who was the complainant, died subsequent to lodging the report. Prosecution has relied upon the First Information Report (Ex.PA/1) by treating it as a dying declaration of the deceased but it is well settled that dying declaration has always been considered and treated as a weak type of evidence because it is not tested by cross examination. It has been held umpteenth times by the superior courts that a dying declaration can be made a base for conviction provided that same is corroborated by strong independent circumstantial evidence, otherwise, no credence could be attached to it. In the case in hand surrounding circumstances hardly support the FIR-cum-dying declaration of the deceased and in this respect worth perusal is the site plan of the case (Ex.PB), which has been prepared by the Investigating Officer (PW-15) on his own.

When neither the deceased accompanied the Investigating Officer to the spot nor anyone else pointed out the crime spot to him, then the question would arise that how the Investigating Officer reached the spot and prepared the site plan citing therein various points qua presence of the deceased and the crime empties. Besides, from the crime spot, neither any cut grass was recovered nor any sickle was found. Likewise, the Investigating Officer has not cited any place wherefrom the grass was cut by the deceased or was in the process of cutting, hence the site plan does not support the dying declaration so made by the deceased.

6. Another important aspect of the case is that the deceased had died after 5 days of the occurrence. The sole injury sustained by him was on posterior lateral side of his left thigh, which is a non-vital part of human body. At the time of making the report, he was conscious and oriented. Question would arise that when the declarant was conscious and oriented at the time of lodging the report, then what was the need to give a Certificate by the doctor on the *murasila* regarding his

consciousness. Ibid aspect of the case shows some overactiveness on the part of the Investigating Officer and it appears that when the deceased passed away after five days, then the Investigating Officer obtained the Certificate regarding consciousness of the deceased on *murasila*. Besides, the dying declaration gets no corroboration from independent circumstantial aspects of the case, therefore, for safe administration of justice, it cannot form a base for conviction of the appellant.

7. No doubt, the prosecution has sought corroboration from the positive report of FSL, whereby the crime weapon recovered from the appellant was used in the commission of offence but as the pistol was recovered on 24.09.2011 and was received at the laboratory on 08.10.2011, i.e. after a delay of 14 days of its recovery, therefore, no legal worth could be given to the recoveries and the positive report of FSL (Ex.P-Z).

8. Furthermore, there is no postmortem report of the deceased in absence of which it cannot be ascertained with certainty that what was the cause of his death. True that there is Death Certificate (Ex.PW 14/1) of

the deceased but in the ibid Certificate the cause of death of the deceased has been given as “F.A.I Causing multi-organ failure”, which is a very vague term, hence the cause given by the doctor qua the death of the deceased is not reliable and when the cause of death is not clearly known, then the statement of an injured can hardly be considered as a dying declaration. Moreso, the prosecution has not produced the treatment chart of the deceased on the basis of which the Death Certificate was issued, hence on this score too the ibid Certificate has no legal worth.

9. Thorough and careful examination of the case record would show that neither medical evidence nor site plan of the case supports the prosecution’s case qua involvement of the appellant in the crime. The prosecution has failed to bring home guilt to the appellant-accused through any reliable and confidence inspiring evidence. It is well settled that in order to record conviction of an accused, the prosecution has to prove its case beyond all reasonable doubts, which is hallmark of criminal jurisprudence. Furthermore, it is also a

century old principle of criminal law that a slightest doubt arising in the prosecution case is sufficient for acquittal of the accused, which principle fully applies to the instant case in respect of the appellant. The learned trial court has not appreciated the case evidence in its true perspective and has fallen in error to record conviction of the appellant for which its judgment is not sustainable.

10. For what has been discussed above, this appeal is allowed, the impugned judgment is set aside and the appellant is acquitted of the charge leveled against him. He be set free forthwith, if not required to be detained in any other case.

11. As we have accepted the appeal against conviction, therefore, the connected Cr.R.No.126-P of 2014 has become infructuous, which is accordingly dismissed.

12. Above are the reasons of our short order of even date, which reads as under:-

> "For the reasons to be recorded later, this appeal is allowed, conviction and sentence passed by learned Additional Sessions Judge-III, Mardan vide impugned judgment dated 25.9.2014 delivered in case FIR No.125 dated 15.2.2011 u/s 302 PPC of Police Station Shahbaz Garhi, Mardan, are set aside. The appellant is acquitted

fo the charge leveled against him and he be set free forthwith, if not required to be detained in any other case".

JUDGE

JUDGE

Announced
10.10.2017.

Sadiq Shah, PS (DB) (Hon'ble Mr.Justice Lal Jan Khattak and Hon'ble Mr.Justice Qalandar Ali Khan)