JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Cr.A No: 32 of 2009.

JUDGMENT

Date of hearing 28.09.2017.

Appellant/Petitioner (Abdul Razaq) by Mr. Ghulam Mustafa Khan Swati, Advocate.

Respondent (s) (State) by Raja Muhammad Zubari, A.A.G.

Respondents/accused No.1 to 3 by Mr. Bilal Khan, Advocate.

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SYED ARSHAD ALI, J:- Appellant/Complainant Abdul Razzaq filed the present appeal under Section 417 Cr.P.C against the judgment and order dated 25.04.2009, passed by learned Additional Sessions Judge-III, Mansehra, whereby respondents No. 1 to 3 namely Waris Khan, Rehan Shah and Gul Khan were acquitted in case FIR No.544 dated 07.12.2006 under Sections 324/337-A(i)/34 PPC, Police Station, Saddar District Mansehra.

2. The brief and essential facts leading to the present appeal are that Abdul Razzaq, the present appellant/complainant on 07.12.2006 at 1700 hours, in injured condition reported the matter to the police that on the eventful day, he alongwith his brother Muhammad

Nawaz, Rohan Shah and Gul Khan were present in Choora ground Bherkund and were playing cricket. In the meantime, altercation took place between the complainant and Rohan Shah. Accused Gul Khan caught hold of the brother of complainant Muhammad Nawaz and Rohan Shah gave him a stick blow, whereas accused Wasif Khan who was armed with pistol came to the spot and starting firing at the complainant, as result of which, the complainant got injured, hence the ibid case FIR was chalked out.

3. After the completion of investigation, the case was referred to the trial Court who after the conclusion of the trial acquitted the accused vide judgment and order dated 25.09.2009 on the ground that prosecution has failed to established its case against the accused-respondents through direct and circumstantial evidence.

4. Feeling aggrieved, appellant/complainant filed the present appeal and assailed the impugned judgment and order on different grounds inter alia that it is based on non-reading and misreading of evidence; accused are directly charged in the promptly lodged FIR; the trial Court did not appreciate the evidence of the prosecution properly and ignored the evidence which was against the accused/respondents; the charge of the prosecution is fully supported by injured witness and other

circumstantial evidence in the shape of recoveries and medical report; it is a day light occurrence and there was no question of mistaken identity and specific role has been attributed to each accused.

5. These arguments were rebutted by learned defence counsel and after taking me through the evidence on record, contended with vehemence that there is nothing on record to connect the accused with the crime; the accused had no motive to kill the deceased as there was no blood feud enmity between the parties; though the place of occurrence was surrounded residential area but no independent witness from general public came forward to depose against the accused; the report was made after consultation, deliberation and preliminary investigation; the learned trial Court after discussing all the material on record had rightly acquitted the accused. After acquittal, the respondents earn double presumption of innocence and there is a heavy onus on the prosecution to rebut the said presumption but it failed.

6. It needs no reiteration that there is a marked difference between appraisal of evidence in the appeal against conviction and in the appeal against acquittal. In appeal against acquittal, interference is made by the Appellate Court only when it appears that there has been gross misreading and non-reading of evidence which

amounts to miscarriage of justice. While considering the scope of Section 417 Cr.PC it is held that in an appeal against acquittal, this Court would not in principle, ordinarily interferes and instead would give due weight and consideration to the findings of the Court acquitting the accused. It is equally true that the finding of acquittal is not sacrosanct, if the reason given by the trial Court are found speculative or of artificial in nature or the findings are based on no evidence or is the result of misreading or misinterpretation of evidence or the conclusion drawn as to the innocence of accused person, are perverse, resulting of miscarriage of justice. Same can be interfered with in appropriate cases in the light of principle laid down by the apex Court in case ***1992 SCMR 96*** regarding appreciation of evidence.

7. Now keeping in view the above principle in mind it is to be seen whether the judgment of the trial Court is perverse, illegal and is based on non-perusal of evidence and no other decision can be given except that the accused is guilty and there has been complete misreading of evidence leading to miscarriage of justice or that the accused has rightly been acquitted on the basis of available record.

8. Perusal of record reveals that Lajeel and Barkat Jamil sons of Habibullah were cited as eyewitnesses of

the occurrence in the first information report but they were not produced before the learned trial Court for recording their evidence in support of the prosecution story as narrated by the complainant in the first information report. However, eyewitness Barkat Jamil, who is also witness to the recovery memo Ex:PW5/2 recorded his statement as PW-5 but he in his entire statement does not say anything about the manner and mode of occurrence and his statement was restricted only in support of the recovery of empty.

9. Dr. Tariq Jadoon, who was examined by the trial Court as PW-7 has stated that:-

> *"During the days of occurrence I was posted as C.M.O at DHQ Hospital Mansehra. I, on 07.12.2006 at 06.15 p.m. examined Nawaz Khan son of Najeem resident of Beherkund caste Kohistan brought by Muhammad Rafique constable No.679 P.S Saddar Manserha and found the following:*
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> 1. *Since bruise at right ankle region. No abnormality other then this detected. X-rays of right ankle has been advised. Today I have seen the MLC No.1031, which is correct and correctly bears my signature. I also examined Abdur Razaq son of Najeem caste Kohistani aged about 23/24 years resident of Beherkund vide MLC No.1030/06 dated 07.12.2006 at 06.10 p.m. and found the following.*
>
> 1. *Entry wound on left ankle anterior medially and anteriorly.*
> 2. *Exit wound same side posterialy above both exit and entry wound communicate to each other.*
>
> *X-rays left ankle advised.*
> *Nature of weapon. F.A.I. Today I have seen the medico legal report which is Ex:PW7/2, while the report of Nawaz Khan is Ex:PW71."*

> *XX:- It is correct that on medico legal report No.1030/06 Ex:PW7/2 does not bear the word wound. It is correct that I have not mentioned the dimention of injury in my report. It is also correct that I have not mentioned in my medical report of injured Abdur Razaq about the mentioning fresh bleeding. It is correct that I have no mentioned in my reports time between duration of injury and examination of injured persons. It is correct that I have not mentioned the nature of injures in my reports. It is correct to suggest that it was an old injury.*

However, despite the fact that there is anterior wound on left ankle caused by firearm weapon having entry as well exit wounds but the prosecution has failed to place on record X-Ray or other evidence establishing the fracture of ankle wound or other surgery conducted by any doctor. The other aspect of the medical report Ex:PW7/2 is that doctor has failed to mention the dimention of the injury, whether any fresh blood was present around the wound and also failed to mention the duration of injury and examining the injured persons. Hence, these reports are materially deficient in its contents and do not qualify to be a material evidence in support of the prosecution case. Even investigation officer has not taken into possession shalwar or shoes of the injured to establish that blood was absorbed as no blood was recovered from the spot.

10. Normally in hurt cases statement of injured supported by medical evidence is considered sufficient towards conviction. In the present case although the complainant as well as other injured Muhammad Nawaz have directly charged the present accused-respondents, however, withholding of ocular account and medical report if closely perused creates doubt in the manner and mode of occurrence.

11. It is settled law that the prosecution is duty bound to prove its case beyond any shadow of reasonable doubt against an accused person and it is also settled principle of law that multiple doubts in the prosecution case are not required to record judgment of acquittal but a single reasonable doubt is sufficient to extend benefit of the same to the accused as matter of right. In this regard, reliance is placed on the esteemed judgment passed in case titled ***"Mst. Shamshad Vs The State" 1998 SCMR 854, "Waqar Ahmed Vs Shaukat Ali and others" reported as 2006 SCMR 1139, case titled "Akhtar Ali and others Vs The State" reported as 2008 SCMR 6 and case titled "Sher Bahadur and others Vs The State" reported as 1997 SCMR 651***.

12. On the touch stone of the criteria as mentioned hereinabove this case has been examined in detail and I feel that it is neither a case of misreading of evidence and

non-reading of evidence but on the contrary the evidence has been appreciated in its true perspective and in accordance with the principle laid down by the apex Court qua the appreciation of evidence. No illegality or infirmity could be pointed out warranting interference in the judgment impugned.

13. In the light of what has been discussed above, the appeal being devoid of merit is dismissed.

Announced:
28.09.2017. **J U D G E**

Aftab P.S/* Justice Syed Arshad Ali.