PESHAWAR HIGH COURT, PESHAWAR.
FORM "A"
FORM OF ORDER SHEET.

Date of Order or Proceeding	Order or other proceedings with Signature of judge
03.09.2019	Cr.A.No.18-P/2017 Present: Mr. Abdul Latif Afridi, Advocate, for the appellant. **** **AHMAD ALI, J.** Through the instant appeal under section 417 Cr.P.C, the appellant has impugned the judgment dated 09.12.2016, whereby the learned Additional Sessions Judge-III, Nowshera, has acquitted the accused-respondents (Akhtar Ali & Niaz Ali) from the charge leveled against them under sections 302/324-PPC, in case FIR No.806 dated 28.10.2013, registered at Police Station Nowshera Kalan. 2. Brief facts of the case, as per FIR, are that it is lodged on the basis of Murasila, wherein the complainant Muhammad Tahir reported the matter to the effect that he alongwith his brother Ibrahim and father Muhammad Akram were going on their motorcycle 100 CC, red in colour, to know the well being of a patient. When they reached to the spot of occurrence, accused-respondents, namely, Akhtar

	Ali & Niaz Ali, were already present there. They stopped the complainant party and fired upon his brother Ibrahim with their weapons which resulted into his death on the spot. The occurrence was witnessed by the complainant besides his father. Motive for the offence was given as previous blood feud enmity. Hence, the FIR ibid was registered against the accused-respondents for the Qatl-e-Amd of deceased Ibrahim. 3. After full dressed trial, the accused-respondents were acquitted by the learned trial Court vide judgment impugned herein whereagainst the appellant has filed the instant appeal. 4. We have given our anxious consideration to the submissions made by the learned counsel for the appellant and scrupulously perused the record with his able assistance. 5. The prosecution case is based on the testimony of PW5/complainant. It is worth to mention here that complainant himself was a seasoned police officer. As the only eyewitness was the complainant/PW5, so this Court has to, first, see that whether complainant was present at the time of occurrence on the spot and second that how the

	complainant was left alive by the accused-respondents while he was also at their mercy. There is a lot of contradictions between Murasila and statement of PW5/complainant recorded before the Court. On one hand, he categorically mentioned that only he alongwith his deceased brother Ibrahim were travelling on his motorcycle, whereas his father was present on the spot when they reached there. The visible departure and improvement by the complainant was never sufficiently explained. In his cross examination he admitted that: *"there is no difference in the Murasila and in my statement recorded before the Court today. It is correct that only I alongwith my deceased brother were coming to Kheshgi Payan on motorcycle as recorded in my examination in chief...the witness volunteered that my father was busy in buying house items in the shop of Gulfam at the spot of occurrence..."* His statement shows that he was very much aware of the fact that there is noticeable difference between the Murasila and his statement as PW5. As mentioned above, the complainant was serving the police department as an Investigation Officer and

	he knows the nitty-gritty of investigation and criminal law and its procedure, but he could not repair the damage done by his statement. The improvement has not been explained with plausible reasons. In criminal law, the FIR is generally considered as document of spontaneous account of the occurrence. In the instant case the complainant had already made serious departure from his earlier account of the occurrence because in the FIR, the complainant reported that he alongwith his brother and father were going at motorcycle and it does not appeal to a prudent mind that when three persons were riding on motorcycle, how the witnesses remained alive. The relevant para of Murasila is reproduced as under: میں بمعہ برادرام ابراھیم و والدمحمد اکرم بسواری موٹرسائکل100 سی سی برنگ سرخ پر بیمار پرسی کیلئے گھر خود سے خویشگی پایاں جا رہے تھے۔ While relevant para of his Court's statement is "*on 28.10.2013 I alongwith my brother Ibrahim now deceased were going on red colour motorcycle 100 CC.....the occurrence was witnessed by me and my father Muhammad Akram. I shifted my brother in vehicle to DHQ, Hospital."* 6. Furthermore, the presence of the complainant

	on the spot of occurrence was also disputed because according to Ex:DW1/1, the Daily Diary of Police Station, Kotwali, Peshawar, being written by complainant himself. Relevant entry is reproduced below: وقت 18:20 مورخہ28.10.2013 اس وقت مجھےگھر سےاطلاع ملی کہ برادر ام محمد ابراھیم کو کسی نے قتل کیا ہے۔ سرپرست بہ امید منظوری رخصت سہ یوم گھر خود روانہ ہوں۔ میرے --- بطور---کام کریگا۔ عدم موجودگی میں محمدریاض which caused serious damage to the prosecution's case. 7. It is also astonishing that, though the complainant himself was a seasoned police officer, but, he has not mentioned in the Murasila the kind of weapon used by the accused-respondents for firing upon his deceased brother despite close proximity with them at the time of occurrence as shown in site plan which was also prepared on the pointation of complainant himself. Although both the parties were having blood feud enmity but surprisingly the accused-respondents only contended to kill the brother of complainant and spare the complainant and his father being at their mercy because in our society a person holding any sway in Government is eliminated by his enemies first. Guidance could be sought from case law

reported **2017 SCMR 596** wherein it has been held by the apex Court---

> "*Unnatural conduct of the accused party and deliberately leaving the complainant and eyewitness alive--- According to the FIR, all the accused persons encircled the complainant, the prosecution witnesses and the two deceased thus, the apparent object was that none should escape alive--- Complainant being father of the two deceased and the head of the family was supposed to be the prime target, but no threats were extended to them, such unbelievable courtesy extended by the accused persons to the complainant and prosecution witnesses, knowing well that they would depose against them created serious doubts in the prosecution case*".

Such behavior on the part of the accused persons ran counter to natural human conduct which is well explained in the provisions of Article 129 of the Qanun-e-Shahadat Order, 1984.

8. Although, father of the complainant was mentioned as eyewitness in the Murasila but he was not produced as witness by the prosecution without any plausible reason, so Article 129(g) of Qanun-e-Shahadat Order 1984 is applicable here. Reliance could be also placed on **2017 SCMR 486** wherein it has been held that;

> "*In this way, the best evidence, independent in nature, was withheld from the court for obvious reasons. This fact by itself is sufficient to discard the*

	evidence…..”. 9. Furthermore, as disclosed by the complainant, the vehicle in which the deceased was shifted to hospital was neither produced, nor statement of the driver was recorded by the IO of the case despite the fact that he was also an important witness in the instant case for substantiating the place of occurrence. It has time and again held by the apex court that the person who shifts the deceased to the hospital is much more important witness to be examined. For Guidance **2018 SCMR 153** is referred to. As stated above the witnesses produced by the prosecution were not telling the truth rather trying to suppress the actual truth before the court, therefore, the testimony cannot be relied upon. It has been held in recent judgment of the apex Court reported in **PLJ 2019 SC (Criminal Cases) 265**, authored by Hon’ble the Chief Justice of Pakistan, which reads as under:- *“*A witness who lied about any material fact must be disbelieved as to all facts-- ‘*Falsus in uno, falsus in omnibus*’ is a Latin phrase meaning “false in one thing, false in everything”…The rule held that a witness who lied about any material fact must be disbelieved as to all facts because of the reason that the “presumption that the witness will declare the truth ceases as soon as it manifestly appears that he is capable of perjury” and that “Faith in a witness’s testimony cannot be partial or factional…The

	rule was first held not o apply to cases in Pakistan in case of *Ghulam Muhammad and others Vs Crown* (PLD 1951 Lahore 66) and judgment was authored by Muhammad Munir, CJ--This view stems from notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that said witness will declare truth about any other aspect of case---Maxim has not been accepted by superior Courts in Pakistan--Supreme Court of Pakistan has dealt with rule in different cases till date--Job of a judge was to discover truth earlier rule *falsus in uno, falsus in omnibus* is inapplicable in this country practically encourages commission of perjury which is a serious offence in this country---A Court of law cannot permit something which law expressly forbids---With all due respect, we feel that such an approach, which involves extraneous and practical considerations, is arbitrary besides, being subjective and same can have drastic consequences for rule of law and dispensation of justice in criminal matters---when a witness has been found false with regard to implication of one accused about whose participation he had deposed on oath credibility of such witness regarding involvement of other accused in same occurrence would be irretrievably shaken---A-fore-discussed main rule shall suffer serious change if an when it is examined in light of Islamic Principles---The Holy Qur'an deals with matter---It can be seen that giving testimony its due importance and weight is an obligatory duty and those who stands firm in their testimonies are among people of righteousness and faith---According to corpus of traditions of Holy Prophet (PBUH), false testimony is one of greatest sins---Offence of *Qazf*, which has been defined---It can be seen that Holy Qur'an puts a great emphasis upon need to meet requisite standard of evidence, so much so, that for a person leveling allegation of *Zina* but not meeting given standard, it not only provides for a penal punishment, but also for withdrawal of such a person's civic right to give evidence in all matters of his life---A court of law cannot grant a license to a witness to till lies or to mix truth with falsehood and then take it upon itself to sift grain from chaff when law of land makes perjury are testifying falsely a culpable offence--- A Court also has no jurisdiction to lay down a principle of law when even Parliament is expressly forbidden by Constitution for enacting such a principle as

	law---Inapplicability of this rule in Pakistan was introduced by Chief Justice Muhammad Munir in the year, 1951, when Article 227 of Constitution was not in field but after introduction of said constitutional prohibition enunciation of law by his lordship in this field, like infamous doctrine of necessity introduced by his lordship in constitutional field, may not hold its ground now--- A judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct---Truth is foundation of justice and justice is core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fare and civilized society---Our judicial system has suffered a lot as a consequence of above mentioned permissible deviation from truth and it is about time that such a colossal wrong may be rectified in all earnestness---Therefore, in light of discussion made above, we declare that rule *falsus in uno, falsus in omnibus* shall henceforth be an integral part of our jurisprudence in criminal cases and same shall be given effect to, followed and applied by all courts in country in its letter and spirit---It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury". 10. So in the light of above mentioned judgment of the apex Court, the testimony of complainant could not be relied upon and uncalled-for. It is settled principle of criminal justice that ocular evidence in order to carry conviction on capital charge must come from unimpeachable source or must be supported by some strong circumstances. 11. The learned Trial Court has fully appreciated the case evidence both, ocular and circumstantial, in its true perspective and, while keeping in view,

contradictions in the statements of the PWs on certain material points including non presence of the complainant at the place of occurrence, has rightly drawn conclusion qua acquittal of the respondents from the charge leveled against them. On re-appraisal of case evidence, there is no room for this Court to interfere in the impugned judgment.

12. In addition, before us is an appeal against acquittal where standard for appreciation of evidence is different than the one in appeal against conviction, as once an accused is acquitted, then he earns double presumption of his innocence, which cannot be taken away from him unless it is shown that the judgment of acquittal is based on surmises or presumptions, which is not the case here.

13. In view of the above discussion, this appeal, being bereft of any merit, is hereby dismissed in limine.

Announced;
03.09.2019

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