

JUDGMENT SHEET  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(Judicial Department)

**Cr.A.No.618-P/2012**

Date of hearing: **21.05.2015**

Appellant (s) : **Ajmal by Mr. Jalal ud Din Akbar-e-Azam**  
**Gara, Advocate.**

Respondent(s) : **Akhtar Ali by Mr. Ishtiaq Ibrahim,**  
**Advocate and Mr. Mujahid Ali Khan,**  
**Advocate.**

**JUDGMENT**

**ASSADULLAH KHAN CHAMMKANI, J.-** Appellant

Ajmal aged about 41 years, was tried by learned Additional Sessions Judge-I, Charsadda for committing the Qatl-e-Amd of Baseer Ali deceased and on conclusion of trial, vide impugned judgment dated 19.11.2012, he was convicted under section 302 (b) PPC and sentenced to undergo ***life imprisonment*** as well as to pay Rs.1,00,000/-, as compensation to LRs of deceased, in terms of S.544-A Cr.P.C. or in default thereof to undergo 6 months S.I. further. Similarly, under section 13 of the Arms Ordinance, he was convicted and sentenced to undergo 03 years R.I.

and to pay a fine of Rs.10,000/- or in default thereof to undergo 02 months S.I. further. Benefit of section 382-B Cr.P.C. has been extended to him.

2. Through this appeal and ***Cr.A. No.617-P/2012***, appellant-convict has questioned his conviction and sentences mentioned above. Since, both the appeals are the outcome of judgments of the learned Trial Court dated 19.11.2012, in one and the same FIR No.1602 dated 21.11.2010, registered at Police Station Charsadda under sections 302/324 PPC and section 13 of the Arms Ordinance, therefore, we intend to dispose of the same through this common judgment.

3. The prosecution case as unfolded in First Information Report is that on 21.11.2010 at 1600 hours, Akhtar Ali (PW.7), in company of dead body of his son Baseer Ali deceased, reported to local police in casualty of Charsadda hospital that Ajmal (appellant-convict herein) had caused damage to his sugarcane crop; against which the deceased complainant to appellant, but he started altercation

with the deceased; that after their separation, the appellant rushed to his house, and attracted to the spot duly armed with firearm and opened fire at them with the intention to do them away, resultantly, the deceased got hit and died on the spot, while he luckily remained unscathed. Altercation a while before the incident over causing damage to the sugarcane crop between the deceased and appellant, has been alleged as motive behind the incident. Report of Akhtar Ali complainant was recorded in the shape of muraila Exh.PA/1 by Munir Khan SI (PW.3) on the basis of which FIR mentioned above was registered. He prepared injury sheet and inquest report Exh.PW.3/1 and Exh.PW.3/2 of the deceased and shifted his dead body to the mortuary for post mortem examination.

4. Dr. Jehangir Shah (PW.4) conducted autopsy on the dead body of deceased Baseer on 21.11.2010 and found the following injuries on his person:-

1. Firearm entry wound on left arm, exit not found.

2. Firearm entry wound 1/3 x 1/3 cm on left side chest below axilla exit not found.
3. Firearm entry wound 1/3 x 1/3 cm on left chest, exit not found.
4. Firearm entry wound 1/3 x 1/3 cm on left shoulder, exit not found.
5. Abrasion on left shoulder 1" x 1 cm.

Thorax: Walls, ribs, cartilages, pleurae and left lung damaged.

Abdomen: Healthy.

**Opinion:** In opinion of the medical Officer, deceased died due to shock, heavy blood loss and injury to lungs caused by firearm. X-ray advised which shows multiple pellets inside chest and arm.

5. Rasheed Khan SI (PW.8) proceeded to the spot and prepared site plan Exh.PB at the instance of complainant Akhtar Ali. During spot inspection he recovered 12 bore empty Exh.P.1 and took it into possession vide recovery memo Exh.PW.1/1. Vide recovery

memo Exh.PW.1/2 he took into possession bloodstained last worn garments of the deceased in presence of witness and sent the same to the FSL for chemical analysis, report whereof is Exh.PK. Appellant was arrested by Munir Khan ASI on 21.11.2010 vide arrest card Exh.PW.8/3 and was handed over to PW.8. He obtained physical custody of the accused/appellant, interrogated him, and recovered 12 bore shot gun No.109308 Exh.P.6 on his pointation vide memo Exh.PW.2/1, prepared sketch of the place of recovery Exh.PB/1. He sent the crime empty and recovered shotgun to the FSL for analysis, report whereof is Exh.PK/1. On 24.11.2010, he produced the accused before the learned Judicial Magistrate, where he recorded his confessional statement. On completion of investigation, he handed over the case file to the SHO, who submitted challan against the accused/appellant.

6. On receipt of challan by the learned Trial Court, appellant was charge sheeted to which he pleaded not guilty and claimed trial. To prove its case, prosecution examined

as many nine witnesses. After closure of the prosecution evidence, statement of appellant was recorded under section 342 Cr.P.C. wherein he denied the prosecution allegations and professed his innocence. He, however, declined to be examined on oath under section 340 (2) Cr.P.C. or to produce evidence in defence. On conclusion of trial, learned Trial Court, after hearing both the sides, convicted and sentenced the appellant as mentioned above.

7. Learned counsel for the appellant-convict argued that impugned judgment of the learned Trial Court is the result of misreading and non-reading of evidence available on record; that actually it was complainant Akhtar Ali, who on the day of occurrence, alongwith his deceased son and other relatives first thrashed the appellant and thereafter attempted at his life by firing at him, as a result, but he luckily escaped, however, his wife Mst. Miana Gul sustained injury on her right thigh due to firing of Akhtar Ali complainant of the instant case, which occurrence has been reported by her in the shape of FIR No.1603 of the

even date i.e. 21.11.2010 charging complainant Akhtar Ali under section 324 PPC; that the learned trial Court has erred in law while believing and relying upon the concocted story of the complainant and disbelieving the genuine version of the wife of appellant; that the incident has not taken place in the mode and manner as alleged by complainant Akhtar, but in the manner as alleged by wife of the appellant Mst. Mina Gul in FIR No.1603 as well as by the appellant in his confessional statement; that the learned Trial Court though has taken into consideration the confessional statement of the appellant, but not in its totality; that if the confessional statement of the appellant is taken in its totality, then the case of the appellant squarely falls within the general exception of Section 100 PPC, as it was complainant Akhtar Ali, his deceased son and other relatives who thrashed the appellant, and thereafter Akhtar Ali fired at him, but he luckily remained unscathed, however, his wife sustained injury, whereafter the appellant in his private defence to save his life and life of his wife,

reacted in self defence by making a single fire shot, which resulted the death of the deceased; that the appellant has not exceeded his right of private defence, as he has not repeated the fire shot, but just to expel the assault of the complainant party exercised his right of private defence, in the circumstances, compelling him to do so, therefore, he has not committed any offence and is liable to be acquitted.

8.           Conversely, for the complainant contended that appellant is directly and singularly charged for committing the murder of the deceased in a promptly lodged report; that being daylight incident and parties co-villagers inter-se, question of mistaken identity does not arise; that there exit no previous enmity or ill will between the parties, hence, substitution of the real culprit by implicating the appellant falsely does not arise to a prudent mind; that case FIR registered on the report of wife of the appellant is just a concocted story to counterblast the instant murder case; that ocular account furnished by complainant is straight forward and confidence inspiring and he being father of the



deceased, his presence on the spot was natural; that prosecution has badly failed to create any dent in his testimony; that ocular account is supported and corroborated by medical evidence, positive FSL reports qua crime empty and weapon as well as bloodstained articles. Similarly, the voluntary confessional statement of the appellant is also corroborated by the ocular evidence as well as corroborative pieces of evidence mentioned above. He contended that FIR No.1603 of the even date is just to counterblast the genuine case of the complainant. He while supporting the impugned judgment sought dismissal of the appeals.

9. Learned AAG adopted the arguments of learned counsel for the complainant.

10. We have given our anxious consideration to the respective submissions of either side and perused the record with their able assistance.

11. It appears from the impugned judgment that the learned Trial Court has believed and relied upon the ocular

account of complainant Akhtar Ali (PW.7) as well as confessional statement of the appellant coupled with corroborative pieces of circumstantial evidence. Record divulges the place of incident to be an open plot near railway track of village Malak Abad. In the site plan Exh.PB prepared at the instant of complainant, the deceased has been shown at point No.1 and complainant at point No.2. The inter-se distance of these two points, is 3 paces. The appellant has been shown at point No.3-A at a distance of 56 paces from deceased and complainant. PW Akhtar Ali at point No.2 in close proximity of the deceased at point No.1, does fall in fire line of the appellant at Point No.3-A, but he has not received a single scratch, much less any firearm injury, despite that the appellant has been assigned 12 bore shot gun, pellets of which spreads more in case of a long distance like the one in the instant case i.e. 56 paces. Receipt of four entrance wounds on different parts of body of the deceased, as a result of single shot, is proof of the fact that the pellets had been spread. A cartridge of 12 bore

shotgun contains 9 pellets. If four pellets hit the deceased, the remaining 5 pellets would have definitely hit the complainant, had he been present with the deceased at a distance of 3 paces as the deceased has not received pellets injuries in shape of bunch, which means that the pellets of the fire shot had been spread. This aspect of the case creates serious doubt about the fairness and credibility of the complainant that he has not come forward with truthful account of the incident. Rather, he tried his level best to suppress the real facts and the actual mode and manner of the incident as well as concealed his own role in the incident, therefore, the learned Trial Court has wrongly believed and relied upon his testimony. He being untrustworthy and incredible, we, therefore, straightaway discard his testimony from consideration.

12. Now we are left with the confessional statement of the appellant recorded by learned Judicial Magistrate, recovery of 12 bore shot gun on his pointation, positive FSL report about the crime empty and shotgun as

well as medical evidence in the shape of autopsy report of the deceased. We have observed that the learned Trial court has not taken into consideration the confessional statement of the appellant in its entirety which is against the principle laid down by the apex court in **Bahadur Khan's case (PLD 1995 Supreme Court 336)**, wherein it has been held by the Hon'ble Supreme Court that **"Confession has to be read as a whole and not by relying only on the inculpatory part of the statement"**. Same view has been reiterated by the Hon'ble Supreme Court in **"Allah Nawaz's case (2009 SCMR 736)**, that confession of an accused is to be rejected or accepted as a whole.

13. Before dilating the voluntariness and evidentiary value of the confessional statement of the appellant, we would like to first reproduce the same in translated form of English:-

**"Stated that on the day of occurrence my son  
had gone to the field of complainant so as to  
bring grass for the cattle and when he returned,**

complainant came to me and complained against the act of my son; on which I satisfied him that my son will not repeat such like act; that on the same day after “Assar prayer time” Akhtar Ali complainant, his son, accompanied by their relatives having sticks started thrashing me. When I inquired about the reasons, they replied as to why I have cut the grass from their field; that complainant Akhtar Ali was armed with gun, who called his son to remain away from me so that he hit me with fire; on which I run towards my house, but Akhtar Ali opened fire at me, from which I escaped but my wife got hit and injured. I infuriated so in order to save my life and respect I picked my gun and fired one shot, with which Baseer deceased got hit and died. I myself then went to Police Station and offered my arrest. I was compelled for doing the above act because of compulsion of my private defence and respect”.

The record of case FIR No.1603 dated 21.11.2010 registered under section 324 PPC at Police Station Charsadda is also before us in connection with connected ***Cr.A. No.619-P/2012, titled, “Mst. Mina Gul Vs Akhtar Gul”*** also fixed for today. The version of Mst. Mian Gul complainant in the aforesaid case corroborates the confessional statement of the appellant. The date, time and parties of both the cases are one and the same, while the site plans of the two cases slightly varies from each other. According to report of complainant Mst. Mian Gul on the fateful day her husband (the appellant), entered the house; he was being chased by Akhtar Ali (complainant of the instant case) duly armed with firearm; that Akhtar Ali opened fire at him, but he luckily remained unscathed, however, she got hit and sustained injury on her right thigh. She further disclosed that her husband was beaten by accused Akhtar Ali, his son and other relatives as a result he was feeling pain in his body and had injury on his head. The medico legal report of injured Mst. Mina Gul and

accused/appellant in the above-mentioned case, corroborates the confessional statement of the appellant. Same motive as alleged by the appellant, has been alleged by her in report. It is borne out from the record that after the incident, the appellant did not abscond rather he himself went to Police Station alongwith his injured wife and offered his arrest. Positive FSL report about single empty of 12 bore shot gun and shotgun recovered on the pointation of the appellant, further corroborates the version of appellant qua single shot made by him. None recovery of blood from the spot as alleged by the complainant of the instant case, supplements the confessional statement of the appellant that the occurrence has not taken place at the place as alleged by complainant rather at the place as shown by the appellant. While scrutinizing the entire record of both the incidents, one thing is clear then crystal that both the parties have tried their best to suppress and concealed their acts because Mst. Mina Gul in her report has not described the role of her husband after she

sustained injury and similarly, complainant of the instant case Akhtar Ali also did not bother to disclose his role played in cross case. However, in his confessional statement, the appellant has furnished the true account of the incident without minimizing his role and maximizing the role of the other complainant party which squarely brings the case in hand within the ambit of right of self defence, which plea though has not been specifically taken by the appellant in his statement under section 342 Cr.P.C., but spelt out from the peculiar facts and circumstances of the case, particularly, from his confessional statement.

14. In light of the principles laid down by the apex court in the judgment (supra), if we rely on the confessional statement of the appellant, then the same would be taken in its totality. True that appellant has not specifically taken defence plea, but plea of self-defence is clearly spelt out from his confessional statement, which has also to be given weight as per the dictum of the



Hon'ble Supreme Court laid down in case titled, **“Muhammad Zaman Vs Dost Muhammad and others” (1988 SCMR 388)**, that plea of self-defence is to be accepted, though not raised specifically in statement recorded under section 342 Cr.P.C. It has been further held by the apex court that where from circumstances of case right of self-defence can reasonably be spelled out for accused, it cannot be denied to him. In case titled, **“Muhammad Ishaq and another Vs the State” (PLD 1964 Peshawar 143)**, it has been observed by this Court that plea of private defence, although not raised by accused, receiving support from circumstances proved by prosecution, accused shall be entitled to benefit of self defence. There is nothing on the record to prove the confessional statement of the appellant to be the result of torture, coercion, inducement etc. Rather, from the statement of learned Judicial Magistrate, it is established that it was recorded in accordance with law after fulfilling all the legal formalities, therefore, mere retraction of the

appellant from it in his statement under section 342 Cr.P.C., would not diminish its sanctity.

15. Under Section 97 PPC, every person has a right subject to the restrictions contained in section 99 PPC to defend his own body and the body of any other person against any offence affecting the human body. Right of self defence is recognized by law, but it is to be exercised if circumstances so warrant. Every citizen is entitled to resist attack and defend himself and his property when he or his property is faced with danger and when immediately State machinery is not readily available. Section 100 PPC provides right of private defence where the assault could either reasonable cause the apprehension of death, grievous hurt, rape, gratification of unnatural lust, kidnapping or abduction or wrongful confinement. Principles are that conduct of the accused during the whole transaction and his presence at the spot should be bona fide, faultless and devoid of elements of mens rea or actus reus, that there

should be a danger to the life of the accused or of grievous bodily harm or a genuine apprehension to that effect that the situation should be such that the accused is left with no option of a safe exit.

16. Keeping in view the peculiar facts and circumstances of the instant case discussed above, we are firm in our view to hold the appellant was compelled to exercise the right of self defence being in a state of panic, keeping in view the assault of the complainant party, his confrontation with his injured wife and strong danger and apprehension to his life as well as the life of his wife. He has not exceeded the limits while exercising the right of self defence as nothing is on the record to prove second shot on his part rather just to repel the attack of the complainant party, he made a single shot, which unfortunately, resulted in death of the deceased. The appellant has not exceeded right of self defence, therefore,

his act does not fall within the ambit of any offence under section 100 PPC.

17. Consequently, we while allowing both the appeals, set aside the conviction and sentences of the appellant recorded and awarded by the learned Trial Court vide impugned judgments dated 19.11.2012, and hereby acquit him of the charges leveled against him. He be set at liberty forthwith, if not required in any other case.

18. These are reasons of our short order of even date.

Announced.

21.05.2015

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