

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

Cr. A No.77-B of 2013

Muhammad Ameer alias Merry

VS

Qadeem Gul etc

JUDGMENT

Date of hearing 14.05.2015 . . .

Appellant-Petitioner: **Petitioner by Noor Zada**
Khan Ahmad Zai, Advocate.

Respondent: **Respondent by Shaukat Ali Khan,**
Advocate,
State by Saifur Rehman Khattak,
Addl:A.G.

MUHAMMAD YOUNIS THAHEEM, J.- Through

the instant Criminal appeal, the appellant/accused

Muhammad Ameer alias Meery has challenged the

conviction and sentence awarded to him through

impugned judgment dated 16.04.2013 passed by

learned Additional Sessions Judge, Banda Daud Shah

Karak in case vide FIR No.63 dated 19.5.2010 U/Ss

302/324/34 PPC Police station Terry district Karak,

detail of which is given below:-

- i) Under section 302 (b)PPC, the appellant is convicted and sentenced to imprisonment for life, with compensation of Rs.50,000/-- payable to the legal heirs of the deceased under section 544-A Cr.P.C which shall be recoverable as arrears of Land revenue or in default thereof further to undergo three months SI;
- ii) U/S 324 PPC, the appellant is convicted and sentenced to five years RI and fine of Rs.20,000/- in default of payment of fine, he shall further to undergo two months SI;
- iii) U/S 337-F (ii) PPC, he is convicted and sentenced to two years RI with payment of Rs.30,000/- as Daman to injured complainant;
- iv) Benefit of section 382-B Cr.P.C has also been extended to the appellant. All the sentences are ordered to be run concurrently.

2. Complainant Qadeem Gul through separate *Criminal Revision petition No.24-B of 2013 titled" Qademe Gul Vs the State* , seeks enhancement of the sentence from life imprisonment to death. Since the instant Cr.Appeal and connected Cr. Revision are the outcome of one and the same occurrence/ F.I.R , therefore, these are being disposed of by way of this single judgment.

3. The story of prosecution as disclosed in the F.I.R (Ex: PA) which has been registered on the basis of *murasila* (Ex: PA/1) may briefly be narrated as follows:-

On 19.04.2010 at 1115 hours, Qadeem Gul, the complainant (PW-8) made a report to Yousaf Khan Muharrir of Police station Teri (PW-5) at Civil Hospital Terri to the effect that on the day of occurrence in the morning, women folk of his house had gone to the fields in order to harvest the wheat crop but they came back and told male members that

appellant/accused Muhammad Ameer alias Meery, absconding accused Abdul Aziz and Chamin Khan, sons of Muhammad Amin, who were armed, prevented them (women folk) from harvesting the wheat crop and also complained for abusing them, on this, complainant Qadeem Gul alongwith his brothers Zaman Khan and Azam Khan proceeded to their fields situated at "Gowraky" with intend to cut wheat crops; that when they reached their fields, the accused named above who were already present there duly armed started firing at them with the intention to kill them, resultantly, complainant Qadeem Gul and his brother Zaman Khan received fatal injuries while his brother Azam Khan luckily escaped; that lateron deceased then injured Zaman Khan had succumbed to the injuries while reaching to the hospital. Motive behind the offence as stated by the complainant is a dispute over the landed property. The occurrence in addition to the complainant Qadeem Gul is stated to have been witnessed by PW Azam Khan. He has charged the appellant along with his co-accused Mir Nawaz and Abid Shah for commission of the offence.

4. Above is the narration of complainant Qadeem Gul in the shape of *Murasila*, (Ex:PA/1), which was recorded by Yousaf Khan Moharrir (PW-5) in the emergency room of Civil hospital Teri. He also obtained thumb impressions of injured complainant and his brother Azam Khan as a token of its correctness, and sent it to Police station Teri through one Eid Nawaz No.262, where-after, he prepared injury sheet of injured complainant as well as injury sheet and inquest report in respect of the body of the deceased Zaman Khan and handed over to the Medical officer, through constable Javed Iqbal.

5. PW-4, Shoukat Aman 448 , on receipt of *murasila*, has incorporated its contents in shape of FIR Ex.PA , copy whereof was sent to Falak Nawaz , then SI/KBI at Police station Teri, (PW-11) who proceeded to the crime spot, where he prepared site plan Ex.PB at the instance of PW Azam Khan eye witness, took into possession blood stained earth from the place of deceased, blood stained pebbles from place of injured Qadeem Gul, vide recovery memo Ex.PW 6/2. Vide recovery memo ExPW 6/1,

he also took into possession 2 empties of 303 bore from the place of appellant/accused Muhammad Ameer, 3 empties of 7.62 bore from place of absconding accused Abdul Aziz and 4 empties of same bore from the place of absconding accused Chamin Khan in presence of marginal witnesses, were packed and sealed into parcels by him on the spot. Vide recovery memo Ex.PW 5/4, he also took into possession blood stained garments of deceased Zaman Khan and that of injured Qadeem Gul complainant. He also recorded statements of marginal witnesses, identifiers and eye witness U/S 161 Cr.P.C and lateron initiated abscondance proceedings against all the accused U/S 204 and 87 Cr.P.C. Thereafter he sent blood stained earth, pebbles, and garments as well as empties to the FSL for analysis, the results whereof are placed on file as Ex.PW 11/3 and Ex.PW 11/4.

6. Initially all the accused were absconding, however, lateron after about two years, present accused/ appellant was arrested in another case FIR No.19 dated 6.02.2012 U/Ss 324/ 353/ 216/ 427/

148/149 PPC, PS Gurguri, so PW-2 Rast Ali Khan SI PS Terri district Karak submitted application before the Judicial Magistrate Banda Daud Shah for arrest of appellant/accused in the instant case. After allowing said application, accused was summoned through Zamima Bey by said Judicial Magistrate on 30.6.2012 on which date he was also arrested in the instant case and after fulfillment of codel formalities, supplementary challan was submitted in the Court of learned Additional Sessions Judge Banda Daud Shah Karak. Appellant/accused was summoned, copies were delivered to him, formal charge was framed against him, to which he pleaded not guilty and claimed trial. During trial the prosecution to prove its case, produced as many as (11) witnesses including ocular account. On conclusion of trial, statement of accused/ appellant Muhammad Ameer alias Meery was recorded U/S 342 Cr.P.C, wherein neither he wished to produce defence evidence nor opted to be examined on oath U/S 340(2) Cr.P.C. After hearing arguments of learned counsel for the parties and having gone through the record, the learned trial

court convicted and sentenced the appellant, vide judgment impugned herein.

7. Learned counsel for appellant vehemently argued that the impugned judgment of the trial court is the result of misreading and non-reading of evidence; that the testimony of the PWs are full of contradictions and discrepancies while ocular account is belied by medical evidence as well as circumstantial evidence and the site plan; that the learned trial court has not uttered a single word with regard to the harvesting wheat crops and women folk in its judgment, who were also neither examined by the IO nor as PWs in the court and that the learned trial court has erred in law while convicting the appellant, hence the impugned judgment is liable to reversal.

8. On the other hand, learned AAG, assisted by counsel for the complainant have strongly opposed the arguments, advanced by the learned counsel for the appellant by saying that the Appellant alongwith

absconding accused are directly charged for murder of Zaman Khan and attempted murder of complainant Qadeem Gul and Azam Khan, committed in a broad day light having common intention which has been proved through cogent, coherent and confidence inspiring ocular evidence supported by circumstantial evidence in the shape of various recoveries from the crime venue as well as through medical evidence, thus, he has rightly been convicted by the trial Court. They further argued that FSL report of blood stained earth and pebbles recovered from the place of deceased and injured/ complainant as well as Fire-arm expert report of recovered empties are in line with the prosecution case, hence, the case against the accused/ appellant is fully established. In support of criminal revision, learned counsel contended that prosecution has proved the guilt of the appellant upto to the hilt and in the circumstances, the punishment of

accused/respondent may be enhanced by awarding him death penalty.

9. We have heard and considered the submissions of learned counsel for the parties and learned Additional AG for the State and gone through the record.

10. We are quite conscious of the factual and legal position that it is the ocular (direct) evidence which matters in all criminal cases, “it *is not the medical evidence but ocular account which is to be considered at first to determine guilt or innocence*”. Keeping in view the said proposition of law, we would like to examine as to what the prosecution has brought on the record to prove the charge through ocular evidence. Examination of the available material; reveals that prosecution examined complainant/injured Qadeem Gul as PW-8, while Azam Khan as PW-9 to prove its case.

11. It is manifest from the available record that ocular account of both witnesses , i.e injured/complainant Qadeem Gul (PW-8) and Azam Khan (PW-9) have fully

supported each other in respect of date and time of incident, place of occurrence and the narration of incident and even have categorically stated that Appellant/accused Muhammad Ameer alias Meery, alongwith other absconding co-accused have been charged directly for committing qatle-amd of Zaman Khan, causing injuries to complainant Qadeem Gul (PW-8) and in-effectively firing at Azam Khan (PW-9); their presence at the time and place of occurrence cannot be doubted. In this respect reliance can be made upon case titled as ***“Shamshad Ali.... Vs....The State (2011 SCMR 1394).***

There is also no allegation of any incorrect identification of the accused, including the appellant as parties are known to each other; the appellant could not succeed in causing a grave dent in the prosecution case with regard to his innocence despite lengthy and taxing cross examination. Therefore, sufficient evidence was available against appellant, thus the learned trial court has not

committed any illegality in believing the ocular account.

In identical situation, the Hon'ble Supreme Court has held in case titled as *“Pervaiz Ahmad alias Peeja Vs The State” (2010 SCMR 1733)*, wherein it is stated that :-

“Since there is sufficient evidence to bring home guilt to the accused in the form of ocular version and the complainant party is having no blood feud enmity to furnish a ground for creating a doubt in the statement of the eye witnesses or for false implication. However, motive for taking such steps by the petitioner is available”

12. Further, complainant Qadem Gul and PW Azam Khan are real brothers of the deceased, therefore, it cannot be believed that blood relations will direct their finger at innocents, leaving the actual culprits because such is a rare phenomenon and in normal circumstances this theory of substitution by blood relations at the cost of real culprit is ruled out. As regards the plea of witnesses,

being related interse; it would suffice to say that mere relationship is no ground at all, to disbelieve the evidence unless and until it is established by defence that those witnesses have such enmity or other consideration which could justify the witnesses to be not of truth. The reference, if any, can well be given to case-law of Hon'ble Supreme Court, reported in case titled “Zahoor Ahmad Vs The State” (2007 SCMR 1519) wherein it is held that :-

“The petitioner and the complainant party are undisputedly closely related to each other. The petitioner is a maternal cousin of the deceased, as also the first cousin of the deceased through paternal line of relationship and thus, in the light of the entire evidence it has correctly been concluded by the learned High Court that the blood relation would not spare the real culprit and instead would involve an innocent person in the case”

13. As regards the plea of contradictions we also do not find any substance therein because the defence counsel failed to pin-point as to what was the material dent in prosecution case which was sufficient to bring the principle of benefit of doubt into operation regarding the case of appellant. The contradictions, not grave in nature, can be ignored safely as minor contradictions do creep in with passage of time. In the instant case both witnesses of ocular account are in confirmatory with each other in respect of place of incident, its time, narration of incident and even allegations against the present appellant. In this respect reliance can be placed on case titled as ***“Muhammad Ilyas and others .. Vs....The State (2011 SCMR 460)***

14. It is further matter of record that medical evidence fully supports the ocular account with regard to death of deceased as a result of fire shots injuries and since the allegations against the appellant is also that of

causing fire shots injuries to the deceased, and also to the complainant, therefore it is quite safe to say that ocular account was fully supported the medical evidence and despite lengthy cross-examination to Medical officer by the defence counsel, could not create any doubt, which could have favour him or least could have led to an inference that medical evidence is not in corroboration to the ocular account, so furnished by the prosecution.

15. As per version of the complainant, motive is stated to be a dispute over landed property, due to which the appellant alongwith other accused were not permitting the complainant party to harvest wheat crops and this fact was not only agitated in FIR, but also in their statements before the Court, hence the motive is proved by the prosecution. Further the complainant mentioned in his FIR that firstly the accused have forbidden the women folk from harvesting the wheat crops and thereby on complaint to Male members, they

arrived at the spot and were shot fired by the accused, this leads to the interference that the report has been lodged by giving natural facts of the occurrence. The contention of convict/appellant that from the women folk, no one has been produced before the court to confirm the such facts, suffice it to say that particularly in the society of Pakhtun belt, the people avoid to indulge the women folk in such like litigations and further two of the eye witnesses have been produced, hence non production of women folk would cast no harm to the case of prosecution .

16. So far as the abscondence of applicant/ convict is concerned, admittedly the occurrence took place on 19.04.2010, wherein the accused absconded, where after he was arrested in another case vide FIR No.19 dated 6.02.2012 under sections 324/353/216/427/148/149 PPC P.S Gurguri, on 30.6.2012 after sufficient abscondence of more than two

years for which the learned defence counsel could not furnish any plausible explanation. When the accused absconds after the commission of offence an adverse inference can be drawn against him because he has committed an offence and absconded himself to hamper the process of investigation of the case but thereafter during absconding, he again committed an offence, mentioned above. Abscondence of the appellant/accused soon after the occurrence for more than two years is another significant incriminating piece of evidence against him. Reliance is placed on **PLJ 2008 SC 641**.

17. So far as quantum of sentence is concerned, the case against the appellant has been proved for committing “*qatl-e-amd*” of deceased Zaman Khan, causing injury to complainant Qadeem Gul and ineffective firing at Azam Khan beyond any shadow of doubt. The appellant /convict is aged about 27/28 years and role of firing has also been attributed to him

alongwith other absconding accused, having common object, for which the learned counsel for the appellant/convict could not brought on record that how many shots caused fatal to deceased as well as injured apart from the absconding accused. Further, admittedly it is not a case of preplanned murder, rather the occurrence took place at the spur of moment after forbidding the women folk from harvesting wheat crops, hence, the mitigating circumstances do exist, due to which normal penalty of death is not awarded, rather sentence of life imprisonment, as awarded to the appellant by the learned trial court would be sufficient in the interest of justice which is in accordance with law and no exception can be taken from it.

18. For what has been discussed above, the learned trial court has rightly appreciated the evidence in its true perspective. We find no illegality or irregularity, which may warrant interference in the well reasoned

findings of trial court. Thus instant appeal stands dismissed and consequently the Criminal revision No.24-B of 2013 filed by complainant Qadeem Gul for enhancement of sentence has become infructuous, hence dismissed.

Announced.
14.05.2015

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