

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

1) Cr.A No. 35-M/2017

Zafarullah alias Zafrol son of Sher Zaman resident of Awarai, Arai Manzai, Nehagdar, Wari, District Dir Upper.

Versus

The State through A.A.G. and 04 others.

Present:

Mr. Rashid Ali Khan, Advocate for the appellant.

Mr. Sohail Sultan, Assistant A.G. for State.

Sohran Khan, son of the deceased, in person.

2) Cr.A No. 50-M/2017

The State

Versus

Zafrullah alias Zafrul s/o Sher Zameen r/o Awarai, Arai Manzai Nehagdar, Wari, District Dir Upper.

Present:

Mr. Sohail Sultan, Assistant A.G. for State.

Mr. Rashid Ali Khan, Advocate for respondent/convict.

Date of hearing: **08.09.2020**

JUDGMENT

ISHTIAQ IBRAHIM, J.- Appellant Zafrullah, through this appeal, has challenged the judgment dated 07.02.2017 of the learned Special Judge, Anti-Terrorism Court-III, Swat at Timergara, Dir Lower in case F.I.R No. 171 dated 27.12.2014 u/s 302/324/337-F(i)/337-F(ii)/337-D/186/353 P.P.C, 15 A.A read with 7 ATA, registered at Police Station Jagaam, District Dir Upper, whereby he was convicted and sentenced as under:

i) **u/s 7 (a) ATA**

Life imprisonment with fine of Rs.5000/-or to undergo further one month S.I. in default thereof.

ii) **u/s 7 (c) ATA**

10 years R.I on two counts with fine of Rs.2000/-or to undergo further 15 days S.I. in in case of non-payment of fine.

He was also directed to pay Rs.300,000/- as compensation to legal heirs of the deceased and Rs.20/20 thousand to injured Khan Zada and Ismail within the meaning of Section 544-A, Cr.P.C.

iii) **u/s 337-F(ii) P.P.C.**

Rs. 2000/- as Daman

iv) **u/s 337-D P.P.C.**

Three years R.I with 1/3rd of Diyat

v) **u/s 337-F(v) P.P.C.**

Rs. 5000/- as Daman with two years imprisonment.

vi) **u/s u/s 7h(n) ATA**

Five years R.I with fine of Rs.1000/- or to suffer further 7 days S.I.

vii) **u/s 15 A.A**

One year R.I.

His property was forfeited to Government/ State. The substantive sentences were ordered to run concurrently and benefit of section 382-B, Cr.P.C was extended to the convict.

The State has preferred the connected Cr.A No. 35-M/2017 against the same judgment for enhancement of the convict's sentence which is decided alongwith this appeal through this single judgment.

2. According to contents of *Murasil* F.I.R lodged at the instance of complainant Salahuddin ASI (PW-3) on 27.12.2014 at 06:30

hours, he in the company of S.H.O Khan Zada Khan (PW-2), Muhammad Siraj Khan S.I (deceased) and other police contingents raided the house of the present appellant/convict, who was proclaimed offender and required to police in Case F.I.R No. 101 dated 08.06.2002 u/s 324 P.P.C, F.I.R No. 58/2007 u/s 324/429/337-F(iii) P.P.C P.S Wari and F.I.R No. 24 dated 18.03.2012 u/s 13 A.O of P.S Jagaam. They surrounded the house of appellant/convict and warned him to come out, however, he started firing on police officials with his pistol thereby causing serious injuries to SHO Khan Zada, Muhammad Siraj Khan S.I, Bahrul Mulk ASI and constables Muhammad Ismail No. 327 and Mubarak Zeb No. 5689. The police also fired in their defence as result of which the present appellant was hit and he was arrested in injured condition. Injured Muhammad Siraj Khan S.I later on succumbed to his injuries.

3. After completion of investigation, complete challan was put in Court and formal charge was framed against the appellant but he did not plead guilty and opted to face the trial. Prosecution

produced and examined nine PWs in support of its case and closed its evidence. After examination of the appellant u/s 342, Cr.P.C, the learned trial Court vide impugned judgment convicted and sentenced him as mentioned above, hence, these appeals.

4. After hearing learned counsel for the appellant and learned Assistant A.G on behalf of State, it transpired that the present appellant/convict had filed an application u/s 22-A, Cr.P.C before the learned Justice of Peace, Dir Upper at Camp Court Wari which was allowed vide order dated 13.04.2015, resultantly, cross case vide F.I.R No. 55 dated 16.04.2015 was registered at P.S Jagaam wherein he charged the injured PWs namely Khan Zada S.H.O, Bahrul Mulk ASI and constables Muhammad Ismail and Mubarak Zeb u/s 324, 337-F(ii)/34 P.P.C for attempting at his life by causing him firearm injuries in the same occurrence. The record shows that only medical report of the injured appellant/convict was exhibited as Ex.PW-7/10 in support of which Dr. Jehanzeb was examined as PW-7 who in his statement has referred to the aforesaid medico-legal report alongwith other

reports of the injured police officials examined by him on the same day. However, neither the remaining important documents of the cross case were exhibited in the present case nor the respective witnesses were examined. It was the duty of the defence to have brought on the record the relevant documents of the other file to the file of the present case. Even at the same time the trial Court as well as the prosecution were supposed to bring on the record the real facts of the case and all the available material which, in our view, have not been done. Reliance is placed on an unreported judgment dated 09.08.2011 in the case titled Munawar Bacha V/s. The State (Cr.A No. 884/2010) by holding that:

“As in the absence of such evidence/documents, we are unable to decide the case according to the settled principles of law and justice otherwise, we have to endorse the judgment given in vacuum by the trial Court thus, for doing substantial justice remand of the case has become essential”.

5. In absence of the important evidence/documents of the cross case, we are unable to adjudge the matter according to the settled principles of criminal justice. Thus, without discussing merits of the case lest it prejudice the case of either side and for doing substantial

justice in the matter, remand of the case has become imperative. Therefore, this appeal is partially allowed, the impugned judgment is set aside and the case is remanded to the trial Court with directions to examine or re-examine all essential witnesses of the alleged cross-case (F.I.R No.55) as Court witnesses who authored the report, site plan, recovery memos and other relevant documents which in the opinion of the trial Court are essential for the just decision of the case and bring the same on the file of the present case through the authors of those documents in accordance with law. The learned trial Court shall look into the matter and may summon any other witness relevant to the facts and circumstances of the case by affording fair opportunity of cross-examining of the witnesses to both the parties. Thereafter the learned trial Court shall examine the accused under Section 342, Cr.P.C and decide the case after hearing the parties. Needless to mention that the appellant shall be treated as under trial prisoner and he shall be provided all the privileges available to other under trial prisoners under the law. The learned trial Court shall procure record of the cross case from the concerned quarter and conclude the proceedings positively within two months after receipt of copy of this judgment. The connected Cr.A No. 50-M/ 2017, being

infructuous for the time being, is accordingly dismissed. The parties are directed to appear before the trial Court on 23.09.2020. Office is directed to send record of the case forthwith to the trial Court.

Announced.

Dt: 08.09.2020


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