

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

Cr.A No. 77-M/2019

(Amir Zeb Khan versus The State and another)

Present:

Mr. Farman Ali, Advocate for the
appellant/convict.

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

Mr. Mehboob-ur-Rehman, Advocate for the
complainant.

Date of hearing: **22.09.2021**

JUDGMENT

ISHTIAQ IBRAHIM, J.- The present appellant Amir Zeb Khan and his two sons/absconding co-accused Sher Rehman and Anwar Zaman were charged in case FIR No. 138 dated 02.03.2017 of P.S Daggar, District Buner registered under sections 302/324/337-F(ii)/337-A(iv)/427/34 PPC on the allegations of committing murder of Sabir Khan and attempting at the life of Ali Rehman through firing. After facing regular trial for the said offences, the trial Court convicted the present appellant for the said offences vide judgment dated 20.02.2019 and sentenced him as follows:

i. u/s 302(b) PPC

Life imprisonment with fine of
Rs.300,000/- payable to LRs of the
deceased as compensation in terms of

section 544-A, Cr.P.C or in default thereof to suffer six months S.I

ii. u/s 324 PPC

07 years R.I with fine of Rs.30,000/- or in default to suffer further 03 months S.I.

iii. u/s 337-F(ii) PPC

03 years R.I with fine of Rs.30,000/- payable as compensation to the injured or in default thereof to suffer further 03 months S.I.

iv. u/s 337-A(iv) PPC

05 years R.I with fine of Rs.60,000/- payable as compensation to the injured or to undergo further 03 months S.I in case of default.

v. u/s 427 PPC

Two years R.I with fine of Rs.10,000/- payable to owner of the car or in default thereof to undergo further 02 months S.I.

All the sentences were ordered to run concurrently. Benefit of section 382-B, Cr.P.C was extended to him.

2. The report was lodged by complainant Redi Gul on 02.03.2007 at 14:30 hours in Sultan General Hospital *Swari* to the effect that on the same day after offering *Juma* prayer, his brother Ali Rehman (PW-11) was going towards *Swari* in the company of Sabir Khan (deceased) in motorcar No. B-4541/PR; the present appellant and his absconding co-accused Sher Rehman and Anwar Zaman, who had waylaid armed with weapons at village *Cheena*, made indiscriminate firing at Ali Rehman and Sabir Khan as result whereof Sabir Khan died on the spot whereas Ali Rehman became injured. The

occurrence was stated to have been witnessed by Kamil Khan etc while the motive behind the occurrence was mentioned as land dispute and previous blood feud with regard to murder of his father.

3. Initially all the appellants remained absconders, therefore, challan u/s 512, Cr.P.C was put in Court. The learned trial Court recorded statements of DFC Waris Khan (SW-1) and DFC Habibi-ur-Rehman (CW-1) and vide order dated 11.07.2007 carried out proceedings u/s 52, Cr.P.C against all the accused by allowing prosecution to lead its evidence in absence of the accused. Prosecution produced Ajmal Khan ASI, Sher Muhammad Khan ASI, complainant Redi Gul, Kamil Khan, Sahib Rahim, Sher Bahadar Khan, Noor Habib Gul, Ali Rehman, Zafar Khan SI and Dr. Madoom Shah as PW-1 to PW-10 respectively. After closure of the evidence, the learned trial Court vide order dated 01.11.2007 declared all the accused as proclaimed offenders and the case was consigned.

4. The present appellant was arrested on 20.02.2018 and post-arrest investigation was conducted in the case whereafter supplementary

challan was submitted before the trial Court. The appellant was formally indicted for the offence to which he did not plead guilty and opted to face the trial. In order to further substantiate the case against the appellant, prosecution produced PWs Dr. Madoon Shah, Amjad Khan S.I, Sher Muhammad Khan S.I, Bahramand DSP, constable Habib Taj No. 724, Sher Bahadar, Sahib Rehman, Sattar Khan S.I, Muhammad Riaz inspector, Zafar Khan DSP and injured Ali Rehman as PW-1 to PW-11 respectively whereas the statements of Waris Khan (SW-1), Noor Habib Gul SI (PW-7) and complainant Redi Gul (PW-3) already recorded during proceedings u/s 512, Cr.P.C were transferred to the trial of the present appellant on application of prosecution u/s Article 47 of the Qanoon-e-Shahdat Order, 1984. After examination of the appellant u/s 342, Cr.P.C, the learned trial Court vide judgment dated 20.02.2019 convicted and sentenced the appellant in the manner already enumerated in detail in the earlier part of this judgment. Hence, this appeal.

5. Arguments heard and record of the case was perused.

7. Perusal of the record would reveal that during the course of recording the prosecution evidence, learned counsel for the complainant as well as learned APP representing the State had abandoned complainant Redi Gul on 29.11.2018 but later on learned counsel for the injured submitted an application before the trial Court on 14.01.2019 with the prayer that statements recorded by complainant Redi Gul, DFC Waris Khan and I.O Noor Habib Gul during proceedings u/s 512, Cr.P.C be transferred to the trial of the present appellant due to their death/non-availability. The learned trial Court allowed the said application on the same date without any notice to the opposite side and statements of the above-named witnesses including the complainant were accordingly transferred to the trial of the present appellant. At the time of final decision of the case, the learned trial Court has considered the said statement of complainant Redi Gul in Para-10 of the impugned judgment without taking notice of the fact that he had already been abandoned by prosecution. Admittedly, prosecution has examined injured Ali Rehman as PW-11, therefore, transposition of the complainant was

illegal. Once a witness is abandoned by prosecution then the Court should have never ordered for transposition of his statement. Since, the learned trial Court, while convicting the present appellant through the impugned judgment, has considered the statement of the said witness which was illegally transferred, therefore, without making any discussion on merits of the case, it has become inevitable in the circumstances to remand the case to trial Court for its decision afresh.

8. In view of the above, this appeal is allowed, the impugned judgment is set aside and the case is remitted back to trial Court with directions to decide the case afresh by excluding the statement of complainant Redi Gul which has illegally been transposed to the trial of the present appellant. The learned trial Court is further directed to re-examine the appellant u/s 342, Cr.P.C by putting all the incriminating evidence to him and thereafter decide the case positively within two months. Needless to mention that the appellant be treated as under trial prisoner during the said period. The office shall send record of the case forthwith to the learned trial Court

and parties are directed to appear before the said
Court on 09.10.2021.

Announced
Dt: 22.09.2021

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