Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR

Judicial Department

Cr.A No. 198-P/2016
Riwayat Khan & another Vs State & another

Date of hearing:	17.10.2019.
Appellant by:	M/s Hussain Ali and Jalal-ud-Din Akbar Azam Khan Garah, Advocates.
State by:	Mr. Rab Nawaz Khan, AAG.
Complainant by:	Syed Abdul Fayaz, Advocate.

JUDGMENT

***

AHMAD ALI, J. Through this common judgment we would propose to decide the connected Cr.R No.66-P/2016 & Cr.A No.260-P/2016 which are the outcome of one and the same judgment dated 12.03.2016 of the learned Additional Sessions Judge-II, Peshawar, whereby the appellants Riwayat Khan s/o Mirza Khan & Tariq alias Sariq s/o Abdul Kabir, were convicted and sentenced to life imprisonment with payment of compensation amount of Rs.200,000/- each to the LRs of deceased u/s 544-A Cr.P.C or in default thereof to suffer 6 months SI each, in case FIR No.680 dated 19.12.2012 under sections

302/324/34 PPC, Police Station, Sarband (Peshawar).

2. Brief facts of the case are that complainant/Abizar, while accompanying the dead body of his brother Sultan Room, reported the matter to local police to the effect that on 19.12.2012, he along with his brother Sultan Roam deceased (then injured) was present in front of their house in the fields, in the meanwhile, Riwayat Khan & Tariq alias Sariq (accused-appellants) along with Wahid Ali (absconding co-accused/PO) appeared there, duly armed with firearms and started firing at them, he remained unhurt but as a result of firing his said brother was hit and injured. Deceased (then injured) was shifted to hospital with the help of co-villagers but succumbed to injuries on the way. Motive for the occurrence was stated to be previous altercation. Besides, the complainant the occurrence was also stated to have been witnessed by one Hamid Ali and others. Accordingly, FIR against the above named accused was registered.

2. On completion of investigation, challan was submitted in Court where the accused-appellants were charge-sheeted to which they

pleaded not guilty and claimed trial. The prosecution in order to prove its case, produced and examined as many as thirteen witnesses whereafter statement of the accused were recorded, wherein, they professed their innocence. The learned Trial Court, after conclusion of trial, found the appellants guilty of the charge and, while recording their conviction, sentenced them as mentioned above. Feeling aggrieved, the appellants have jointly filed the instant appeal before this Court.

3. Arguments heard and record gone through.

4. It was the case of prosecution that the said occurrence was witnessed by complainant (brother of the deceased) and one Hamid Ali (nephew of the deceased) and certain other people of the locality who came out from their house after hearing the fire shots.

5. First we have to see that whether complainant could prove his presence on the spot of occurrence at the relevant time or not. It has been stated by the complainant in his statement recorded as PW-8 that he is a computer technician in Sheikh Zayed Islamic Centre University of Peshawar. Further stated that he was on leave on the day of occurrence as

his brother was scheduled to fly abroad on the following day i.e. the day next to the day of occurrence. It is further stated by complainant that he has not shown any document to the IO regarding his leave on the day of occurrence. The complainant negated the suggestion that he was informed regarding the death of his brother at the place of his duty and later on rushed to the Khyber Teaching Hospital. He further deposed that they were close to the hospital when his deceased brother succumbed to the injuries. Complainant also narrated that the altercation which he has disclosed as motive behind the incident took place, a month prior to the occurrence. He also deposed in his examination that the '*cot*' was brought by the inmates of the house who attracted to the spot on the report of fire shots, after the firing at deceased, inmates of his house came out and saw the accused. Complainant further disclosed that his wife, sister-in-law (widow of deceased) and daughter-in-law of the deceased came out of the house on the report of fire shots and they all had seen the accused.

6. The other eye witness, namely, Hamid Ali (nephew of the deceased) was produced by the

prosecution as PW-9 who stated in his court statement;

> **"I have not noticed any body attracting to the spot on hearing the fire shots from the house of complainant/my paternal uncle Abizar"**

7. IO of the case appeared before the learned Trial Court as PW-11, who deposed that;

> **"It is correct that in the instant case while going through the report of the complainant, he i.e. complainant has not shown a specific reason for being present on the spot……I have not shown the distance between the complainant and accused facing trial Riwayat i.e. between points No.2 & 4……it is not in my knowledge being the IO of the case and investigating the whole case that whether complainant of the case namely, Abizar is a Computer Technician at Sheikh Zaid Islamic Centre, Peshawar……..…it is correct that the complainant of the case has not shown me any passport or any ticket showing the deceased scheduled for leaving abroad the next day of the occurrence. I have not recorded the statements of Mst. Pashmina, widow of deceased, Mst. Nageena, wife of the complainant and Mst. Hina, wife of Izhar and daughter-in-law of the deceased, that they had come out of their house after hearing the firing and had seen the accused on the spot."**

The assertion in respect of leaving abroad of the deceased is taken into consideration, for the reason, that it was the stance of complainant that he was on leave because the deceased was proceeding abroad. But, the IO did not bother to bring anything on record in support of said version of the complainant.

8. Contrarily, the defence produce DW-I, Professor Dr. Muhammad Khan, Director,

Sheikh Zayed Islamic Centre University of Peshawar, who brought the leave Register and categorically stated that;

> **"Today I am present with the Casual Leave Register wherein Mr. Abizar, Junior Computer Technician is shown to have availed casual leave for the last time on 20.12.2012 and the previous one was on 05.12.2012. Between these two dates there is no casual leave on behalf of Mr. Abizar according to my record. Copy of relevant page is Ex.DW1/1 (original seen and returned)"**

In cross examination this witness deposed that;

> **"It is correct that the application Ex.DX/3 is for the short leave of the complainant Abizar which is dated 19.12.2012. He has asked for leave from 8:15 till 10:15 AM on 19.12.2012. (STO: by defence counsel: that the same is photocopy and attested hence inadmissible in evidence). I allowed the said application as per rule. The witness volunteered that this application was given to me by Abizar on 24.12.2012, however, the aid application for short leave was written on 19.12.2012 while submitted the same on 24.12.2012"**

This witness i.e. DW-1 was re-examined on 16.05.2015 and in his re-examination, he narrated very important facts by deposing that;

> **"The Establishment Assistant came to me and informed that the relevant page of attendance of dated 19.12.2012 is missing from the register, whereby a fake page containing signatures and attendance of the officials of the department was prepared and placed on the register by the present complainant Abizar, the copy of which is Ex.DW1/3, but the original of the same was also later on removed from the said register"**

He further stated that;

> **"I called the official whose signatures were affixed on the Ex.DW1/3 to verify regarding the same from them, they all denied their said signatures and in this respect the verification of signatures of the officials in writing is Ex.DW1/4 (original seen and returned)"**

In his cross-examination, he once again clarified the fact by saying that;

> ***"I have signed the shot leave application of the complainant on 24.12.2012 the day when the same was presented to me. Short leave application was for a short leave of dated 19.12.2012. Witness volunteered that the said date 19.12.2012 was written by the complainant and not me. Prior to allowing the said short leave application I have gone through the same, generally we look at the subject in the application and then sign it. Although the short leave register had already been disposed of, however, application of the complainant regarding short leave was placed on his personal file maintained by the Establishment Assistant. It is correct that in EX.DX/3 bears my signature but does not bear the date i.e. 24.12.2012. It is incorrect to suggest that I have subsequently mentioned the date 24.12.2012."***

9. The most important piece of evidence in the instant case was the short leave application of the complainant which are two in number; one is Ex.DX/3 which was produced by the complainant. Same is reproduced below for ready reference:-

بخدمت جناب ڈایریکٹر صاحب شیخ زاید اسلامک سنٹر، پشاور یونیورسٹی

عنوان:شارٹ لیو

جناب عالی!
گزارش ھے کہ مجھے گھر سے ٹیلیفون موصول ھوا ھے کہ میرا بچہ زخمی ھوگیا ھے اور اس کوڈاکٹر کےپاس لےجانے کی ضرورت ھے۔ لہذا آپ صاحبان مہربانی فرما کر مجھے 8:15 تا 10:15 تک کی شارٹ لیو عنایت فرمایئں۔
نوازش ھوگی۔

مخلصکم
Sd
ابی ذر
جونیرکمپیوٹرٹیکنیشن
مورخہ 19/12/2012

Allowed as per rule.
sd
Without date

In the above mentioned application the date beneath the signature of the competent authority was erased by the complainant while the other application was Ex DW1/2, which was produced by the DW-1 being original application in which beneath the signature of the competent authority is visible as 24.12.2012. Same is also reproduced.

بخدمت جناب ڈایریکٹر صاحب شیخ زاید اسلامک سنٹر
، پشاور یونیورسٹی

عنوان:شارٹ لیو

جناب عالی١
گزارش ھے کہ مجھے گھر سے ٹیلیفون موصول ھوا ھے کہ میرا بچہ زخمی ھوگیا ھے اور اس کوڈاکٹر کےپاس لےجانے کی ضرورت ھے۔ لہذا آپ صاحبان مہربانی فرما کر مجھے 8:15 تا 10:15 تک کی شارٹ لیو عنایت فرمایئں۔
نوازش ھوگی۔

مخلصکم
Sd
ابی ذر
جونیرکمپیوٹرٹیکنیشن
مورخہ 19/12/2012

Allowed as per rules.
sd
24.12.2012

Which means that the complainant was actually present in his office on the day of occurrence and he was informed by someone about the occurrence. He left the office without obtaining short leave, later on it was 24.12.2012 when the complainant rejoin his office and submitted his short leave application by mentioning the date as

19.12.2012, but the competent authority i.e. DW-I signed the same and mentioned the date as 24.12.2012.

2. It is also important to note that the complainant stated in the FIR that he was on leave on the day of occurrence as his brother (deceased) was going back to abroad but in his application for short leave he mentioned that his son was ill that is why he want short leave, but as lie has no legs to stand upon. So, complainant tried his level best to prove his presence on the spot on the day of occurrence but in vain. The maxim '***falsus in unu, falsus in omnibus***' is applicable with full force. It has been held in recent ceremonial judgment of the apex Court reported in **PLJ 2019 SC (Criminal Cases) 265**, which reads as under:-

> **"The rule falsus in uno, falsus in omnibus--- Latin phrase---meaning thereby "false in one thing, false in everything"...Held: 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. As the complainant is disbelieved, so, the evidence of other eyewitness, namely, Hamid Ali/PW-9 is also not worth reliable, hence discarded, as he has also stated that complainant was an eyewitness, but the record proved that complainant was not, at all, present at the spot of occurrence. Case law refers: **NLR 2015 Cr.C 186.**

11. The Recovery Memo Ex.PW6/2 reveals that 41 fresh discharged empties of 7.62 bore were recovered from the spot, but to our utter surprise, the same were sent to FSL on 19.03.2013, after a considerable delay of about three months. There is also nothing on record that in whose custody the crime empties were remained during the intervening period. In the circumstances, the aspect of manipulation/ tampering with the crime empties could not be ruled out. Even, otherwise, keeping in view the number of accused charged in the FIR, the FSL report does not suggest that whether the firing was made from one, two or three weapons because in the FSL report, the word "***different weapons***" is used, without specifying the number of weapons used in the commission of offence, which creates doubts in the prosecution case qua number of accused in the instant case.

12. Apart from the above, the female inmates of the house of complainant who were stated to have seen the accused at the time of occurrence, being material witnesses, were not produced. So, in the situation, not only adverse inference under Article 129(g) of Qanun-e-Shahadat Order 1984 can be safely drawn, but the legal inference

could also be drawn that if the said witnesses had entered into the witness box then they would not have supported the prosecution case. In this regard wisdom can be safely derived from case law reported in **NLR 2015 SCJ 121 & PLD 2016 SC 17.**

13. Similarly, the driver of the Suzuki in which the deceased (then injured) was shifted to the hospital was also not examined. He was also an important witness who could bring the real facts that who accompanied him to the hospital and whether complainant was with him or not. We are forfeited to seek guidance from the case law reported in **NLR 2015 SCJ 121 & 2018 SCMR 153.**

14. Apart from the above, the complainant is the brother of deceased, who showed extraordinary strange conduct after having seen his brother murdered and tried his level best to suppress certain facts proving that it was an unwitnessed occurrence and he had seen just the deceased (then injured) and not the occurrence in action. Exclusion of the said witness from consideration would result that no evidence was left on record to connect the accused with the crime because the rest of the evidence is

corroborative piece of evidence. Reference can be made to case law reported in **1984 SCMR 42, PLD 1981 SC 472, 1972 SCMR 578, 2007 SCMR 1825, 1990 SCMR 158 & 2011 SCMR 474.** Even, otherwise, testimony of close related witnesses is required to be scrutinized with great care and caution, especially when the witness is interested and inimical and is, thus, likely to falsely implicate the accused. It is essential to seek independent corroboration which is lacking in the instant case. Moreover, while appreciating the evidence, court had to take into consideration, omission, improvements, embellishments etc, had been of such magnitude that they might materially affect the trail, and where there are doubts about the testimony, the Court would insist on corroboration. Guidance could be safely sought from the case law laid down in **2015 P.Cr.L.J 81**.

15. Moreover, the accused-appellant is the ex-husband of sister of complainant, who was divorced by the appellant, therefore, the circumstances of the case suggest that the complainant might have dragged the present appellant in the instant case for that very reason and proved himself by his conduct to be an

interested witness. Wisdom is derived from the dicta reported in **NLR 2015 UC 128 & 2019 P.Cr.L.J 401.**

16. The learned trial while acquitting the accused from the charge under section 324 PPC has also affixed a stamp of affirmation on the non presence of complainant and has, thus, proved him to be telling lie in respect of firing upon him. Principle of ***'falsus in uno, falsus in omnibus"*** is fully applicable here. Believing such assailable evidence by the Court of law would be definitely against the administration of criminal justice resulting into judicial death of an innocent accused.

17. The crux of afore-mentioned discussion is that either the prosecution witnesses were not present on the spot or they are not telling the truth. Prosecution has miserably failed to build any nexus of the accused-appellants with the commission of the offence. We are forfeited by the case law laid down in **PLJ 2019 SC (Criminal Cases) 265.**

18. **Bia pake add shve de… namuna da ……While trying a criminal case, it is the duty of the Court to appraise evidence strictly according to the**

legal requirements, described by law without being swayed away emotionally for any other extraneous reasons, which fall outside the pale of legal jurisdiction of appraisement of evidence. In the criminal jurisprudence which is followed, it is invariably the duty of the prosecution to prove the ease against accused beyond doubt and the accused is presumed to be innocent until the case fully proved against him and in that process not only if there is room for doubt, benefit thereof is to go to the accused but if any legal provision, which to be retied upon in the appraisement of evidence and is open to two interpretations, the one beneficial to the accused, is to be adopted. The Court is to administer the laws as are operative in the

country and if such laws fail to achieve the desired results, then it is the duty of the legislature to amend them suitably to make them effective. Court is not permitted to deviate from the principles and guidelines laid in the law for appraisement of evidence. To bring home guilt to the accused, legal evidence is required to be of incriminating nature to connect accused with the commission of crime beyond the shadow of reasonable doubt. Reliance could be safely placed on case law reported in PLD 1995 SC 1.

19. The above discussion has led this Court to believe that the learned trial court has erred in appreciating the case evidence in its true perspective. It has been held, time and again by the superior courts, that a slightest doubt occurs in the prosecution case is sufficient to grant acquittal to an accused. For giving the benefit of

doubt, it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in the prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace in concession, but as a matter of right. Reliance could be placed on **2009 SCMR 230, 2011 SCMR 664, 2011 SCMR 646, 1984 PLD SC 433, 2012 MLD 1358, 2007 SCMR 1825, 2008 P.Cr.L.J 376, 1994 PLD Peshawar 114, 2012 PLD Peshawar 01, 1999 P.Cr.L.J 1087, 1997 SCMR 449, 2011 SCMR 820 & 2006 P.Cr.L.J SC 1002**. The conclusions drawn by the learned trial Court are not borne out of the case evidence, therefore, the impugned judgment is not sustainable.

7. For what has been discussed above and while extending benefit of doubt to the appellants, this appeal is allowed, the impugned judgment is set aside and the appellants are acquitted of the charge levelled against them. They be set at liberty forthwith, if not required to be detained in any other case.

8. As the judgment of the learned Trial Court is set aside, therefore, the connected Criminal

Revision No.66-P/2016 has become infructuous and is dismissed accordingly. Resultantly, the connected appeal against acquittal i.e. Cr.A No.260-P/2016, being meritless, also stands dismissed.

9. Above are the reasons of short order of even date.

J U D G E

J U D G E

Announced on;
17.10.2019

Amjad PS DB Hon'ble Mr. Justice Ikramullah Khan & Hon'ble Mr. Justice Ahmad Ali