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

Cr.A No. 51-M/2019

Master Ali son of Matlab Khan R/O Chamkot Hayaserai, Tehsil Lal Qilla, District Dir Lower.

Versus

1. The State through A.A.G.
2. Inam Ullah son of Amir Muhammad Khan resident of Darmal Payeen, Maidan, Tehsil Lal Qilla, District Dir Lower.

Present:

**Mr. Rashid Ali Khan, Advocate for the
appellant/convict.**

Mr. Murad Akmal Mirkhel, Advocate for State.

**Barrister Assad-ul-Rehman, Advocate for the
complainant.**

Date of hearing: **26.11.2020**

JUDGMENT

ISHTIAQ IBRAHIM, J.- Appellant/convict Master

Ali, through this appeal, has challenged the judgment dated 12.01.2019 rendered by learned Additional Sessions Judge, Samargan at Camp Court Lal Qilla, District Dir Lower, in case F.I.R No. 188 dated 15.06.2016 u/s 302, 324, 337-F(iii)/34 PPC of P.S Haya Serai, District Dir Lower, whereby he was convicted and sentenced as under:

i) Under section 302(b) P.P.C:

Life imprisonment with fine of Rs.300,000/- payable to LRs of the deceased as compensation u/s 544-A, Cr.P.C. In case of default, the appellant was directed to undergo further six months S.I.

ii) Under section 324 P.P.C:

Five (05) years rigorous imprisonment with fine of Rs.20,000/- or to suffer further three months S.I. in case of default thereof.

iii) **Under section 337-F(iii) P.P.C:**

Daman of Rs.50,000/- payable to injured Rehmani Gul with simple imprisonment for one year.

Benefit u/s 382-B, Cr.P.C was extended to the appellant and all the sentences were ordered to run concurrently.

2. The occurrence was reported to police by complainant Inam Ullah (PW-1) on 15.06.2016 at 17:56 hours in emergency ward of DHQ Hospital Timergara by stating that on the same day he was present in his cloth shop situated in bazaar Haya Serai; at 16:00 hours the acquitted co-accused Taj Munir and Anwar Zeb came to his shop. They purchased a suit from him but refused to pay the price thereof on the ground that they had purchased another suit from him three days ago which was deficient in size. An altercation took place between them on the said issue during which some people of the bazaar gathered there and they reasoned with the accused for non-payment of cloth price as well as their wicked behavior with the complainant. The complainant further narrated in his report that the said co-accused called their other companion namely Master Ali (the present appellant) through a phone call who, on his arrival to bazaar, fired at him from

which he escaped narrowly, however, Muhammad Ibrahim and Rehmani Gul, who were present there for mediation, where hit by bullet shots and became seriously injured whererafter were shifted to Timergara hospital through private conveyance. He stated that the occurrence has been witnessed by him and the above named injured persons as well other people who were present in bazaar of Haya Serai. It is noteworthy that injured Ibrahim later on succumbed to the injuries in LRH Peshawar.

3. Injured Rehmani Gul and deceased then injured Muhammad Ibrahim were examined by Dr. Muhammad Salim (PW-9) on 15.06.2016. The detail of his reports is as follows.

Rehmani Gul (injured)

One entrance firearm injury wound with inverted margins over the left side neck.

One exit firearm injury with everted margins over the left side neck back.

Opinion: Firearm injury.

Muhammad Ibrahim (deceased then injured)

One firearm entrance wound two inch below the left scapula inverted margins.

Three entry firearm wounds over the right side upper arm antero lateral region of these:

-one below the axilla.

-one five inches below the axilla.

-one seven inch below the axilla.

Opinion: Firearm injury.

The deceased then injured was admitted in Surgical Unit "C" and, having traumatic chest, he was operated for By-lateral Chest Intubation by Dr. Muhammad Amin (PW-8) whose report is Ex.PW-8/1. Thereafter he was referred to Cardiothoracic Neuro-Surgery Ward, LRH Peshawar.

4. The appellant/convict and his co-accused were arrested on 26.06.2016. After completion of investigation, challan against them was put in Court. Formal charge was framed against them to which they did not plead guilty and opted to face the trial. Prosecution produced and examined as many as thirteen out of seventeen PWs mentioned in the calendar of witnesses and closed the evidence. When examined u/s 342, Cr.P.C, the accused denied the allegations of prosecution, however, they neither recorded their own statements on oath nor opted to examine any witness in their defence. On conclusion of trial, the learned trial Court acquitted co-accused Taj Munir and Anwar Zeb while convicted and sentenced the present appellant vide judgment dated 12.01.2019, which is impugned before this Court in the instant appeal.

5. We have heard the arguments of learned counsel for the parties including the learned counsel representing the State and perused the record with their able assistance.

6. The prosecution has based its case mainly on ocular account furnished by complainant Inam Ullah (PW-1) and injured Rehmani Gul (PW-2), medical evidence and incriminating recoveries. According to the F.I.R and statement of the complainant before the trial Court, prior to the occurrence an altercation took place between him and acquitted co-accused Taj Munir and Anwar Zeb over non-payment of purchase price of cloth. The said altercation turned into a fight between them during which the co-accused called the present appellant through a phone call; the appellant, on his arrival to the spot, fired at the complainant who escaped from the firing, however, Ibrahim and Rehmani Gul (PW-2) who had approached to the spot during the fight, sustained injuries on their persons. Complainant Inam Ullah, being the main party to the present controversy, is natural witness of the occurrence as the initial fight had taken place between him and the acquitted co-accused. The occurrence has taken place in front of his cloth shop

situated at Haya Serai bazaar. The facts that the present appellant had approached to the place of occurrence on the phone call of the co-accused as well as presence of the deceased and injured on the spot get confirmation from his cross-examination. In response to a question by defence counsel, the complainant stated that the appellant was telephonically contacted by co-accused Taj Munir and the appellant had arrived to the spot within ten minutes. He further confirmed in his cross-examination that the appellant was having a pistol in his hand and soon after his arrival to the spot he opened firing at him due to which Rehmani Gul was injured and thereafter deceased Ibrahim was wounded as a result of the said firing. Although, it was brought from the mouth of the complainant during cross-examination that about 20/30 persons were present between him and the appellant at the time of firing, however, he has explained the position by stating that at the time of firing he alongwith the deceased and injured were standing on the podium of his shop. Moreso, according to medical evidence of the deceased and injured, both of them have sustained firearm injuries on the upper parts of their bodies, therefore, escape of the people

though standing in the line of firing, stands to reason in the mentioned circumstances.

7. The other eye witness namely Rehmani Gul appeared in the witness box as PW-2. He is resident of bazaar Haya Serai and his house is at a distance of 100 yards from the place of occurrence besides his sons are running three shops in the same vicinity. He has also sustained firearm injury on his person, therefore, his presence on the spot cannot be doubted. He has supported the complainant on material particulars of the occurrence and verified the report lodged by complainant at DHQ Hospital, Timergara. He had no enmity with the appellant to charge him in a false case, hence, there is no convincing reason before us to disbelieve this witness. Reliance is placed on Abdul Aziz and another Vs. The State (1993 SCMR 544) wherein it was held that:

The presence of Abdul Aziz P.W. on the spot cannot be doubted at all because of the stamp of injury on his person. He is, no doubt, the sister's son of the deceased but it is highly improbable that he would falsely implicate innocent persons for his injury as well as that of Muhammad Ramzan deceased and allow the real culprits to go spot free whom he must have identified in the daylight.

Although he has contradicted the complainant regarding the mode of fight between the

co-accused and complainant as well as with regard to arrival of the appellant to the spot but the same contradictions are not forceful enough to negate the entire case of prosecution. It is evident from the record that the occurrence took place on 15.06.2016 and the eye witnesses were produced before the Court on 14.09.2017 after fifteen months of the occurrence. A witness cannot be expected to record photographic narration of the occurrence after such long time. Though the complainant is educated till intermediate level but the injured witness is an illiterate and rustic person having no axe of his own to grind. They have been subjected to lengthy cross-examination extending over hours, therefore, emergence of negligible contradictions in their statements as a result of such taxing cross-examination cannot be excluded. In such situation, in order to reach at a fair and just conclusion, the Court has to look into the salient features on which the PWs agree in their statements. Thus, the contradictions in the statements of the two eye witnesses in the instant case would not damage their credibility. Reliance is placed on the judgment of the august Supreme Court of Pakistan in the case of

Roshan and 4 others Vs. The State (PLD 1977 S.C)

557) wherein it was observed that:

"Some counsel devote all their energies to create contradictions, and to this end lengthy cross-examination is conducted for hours and days which is intended to confuse, even an intelligent person, and is not calculated to elicit any useful information. This exercise is undertaken because Courts give undue importance to contradictions found in the statements of the prosecution witnesses. The primary consideration in appraising the evidence given by a witness is to determine, firstly, why has he offered to testify ? Has he seen the occurrence ? If so, has the Witness a motive to implicate a person who was not among the culprits or to exaggerate the part played by any of them ? If a witness satisfies these two tests, then the Court should watch the general demeanour of the witness in order to judge the quality of his perception and his faculty to recall the past incidents: A witness may make contradictory statements on some of the details of the incident in respect of which he is deposing in Court. The variation may be due to mere lapse of memory or the confusion caused in his mind by a relentless cross-examiner. Very often a witness gives an incorrect statement because he must answer every question regardless of the fact whether he knows the answer to it or not. It is not uncommon that the cross-examiner puts words in the mouth of witnesses and the presiding officer is not vigilant enough to check it. It is also common experience that, without any particular intent, even educated people exaggerate when describing an event. Some witnesses may be prone to it more than others. Mere contradictions, therefore, do not lead to the result that whatever the witness has said on the salient features of the case and which conforms to the other evidence on the record is to be thrown over-board. ".

The benefit of slight variations between the statements of the eye witnesses has already been given to the appellant in the matter of quantum of sentence and no revision has been filed by complainant.

8. The record further shows that complainant Inam Ullah, deceased Muhammad Ibrahim and injured Rehmani Gul are residents of different villages and there is no relationship between them. The witnesses have got no common motive to depose against the accused and same is the position of LRs of deceased Muhammad Ibrahim. If they had any reason for false implication of the accused they could have charged all of the accused for effective firing at the deceased in view of the multiple firearm injuries on his body, however, they have charged only the present appellant for firing by narrating the occurrence in its true merits and perspective which shows honesty and straightforwardness of the PWs. The occurrence took place in a bazaar, therefore, assemblage of the deceased and injured in front of the complainant's shop at that particular event was a normal behavior exhibited by them in view of the grave situation.

Keeping in mind the afore-mentioned aspects of

the case coupled with the fact that the occurrence had taken place at spur of the moment, any pre-meditation, counseling or consultation between the eye witnesses for concocting a false case against the appellant is altogether ruled out. Even otherwise, such consensus or cooperation cannot be expected from the people involved in business in busy markets or bazaars as it generally happens in rural areas. In addition to above, the occurrence took place in broad daylight, thus, there was no possibility of misidentification of the assailant or his substitution with the real culprit. Both the eye witnesses have been subjected to lengthy cross-examination, but except bringing contradictions of minor nature from them, their credibility could not be impeached on important aspects of the case, therefore, their testimony is worth reliance for conviction of the appellant.

9. The ocular account gets ample corroboration from medical evidence and other circumstantial evidence on record. According to medical report (Ex.PW-9/1) of the deceased, he sustained multiple firearm injuries on his body. Similarly, injured Rehmani Gul sustained one entry wound below his left scapula with exit on the right

side back of his neck. Thus, medical evidence is in conformity with statements of the eye witnesses and site plan. The I.O has also recovered the crime weapon 30 bore pistol on pointation of the present appellant regarding which another case vide F.I.R No. 200 dated 27.06.2016 was registered against him u/s 15 A.A. in the same police station. The said weapon has matched with the two crime empties of 30 bore lifted from the spot by I.O as is evident from F.S.L report Ex.PW-12/10. Likewise, the report of serologist Ex.PW-12/9 is also positive for human blood regarding the blood-stained shirts of the deceased and injured. Prosecution has examined constable Hamid Ullah (PW-5) in support of recovery memo Ex.PW-5/1 regarding recovery of the two empties from the spot. Akhtar Said MHC (PW-7) was examined as marginal witness of recovery memo Ex.PW-12/24 and Ex.PW-12/25 regarding pistol and Datsun/Pickup through which the accused had decamped from the spot after the occurrence. He also verified the pointation memo Ex.PW-12/23. Constable Shah Raza appeared before the Court as PW-10 and supported the recovery of blood stained shirts of the deceased and injured vide recovery memos Ex.PW-12/3 and Ex.PW-12/4. The

testimony of the above said marginal witnesses of various recovery memos was not shattered during their cross-examination.

10. Learned counsel for the appellant vehemently contended that there is delay of about two hours in lodging the report though the police station is hardly at a distance of 1/2 kilometer from the place of occurrence. The record shows that the occurrence took place on 15.06.2016 at 16:00 hours which was reported to police by complainant at DHQ hospital Timerghara situated at a distance of 10/11 kilometers according to the I.O which can be covered in 40/45 minutes. According to statement of Habib-ur-Rehman ASI, author of Murasila (Ex.PW-1/1), he followed the injured persons to DHQ Hospital Timerghara after receiving information about the occurrence and recorded the report of complainant. Obviously, the author of *Murasila* must have consumed some time while proceeding to the hospital. The record also transpires that the appellant was an employee of Police Department and was posted in the same police station as constable. It appears that recording of the matter was purposely delayed by police either to get permission from their high ups or help their colleague. In such

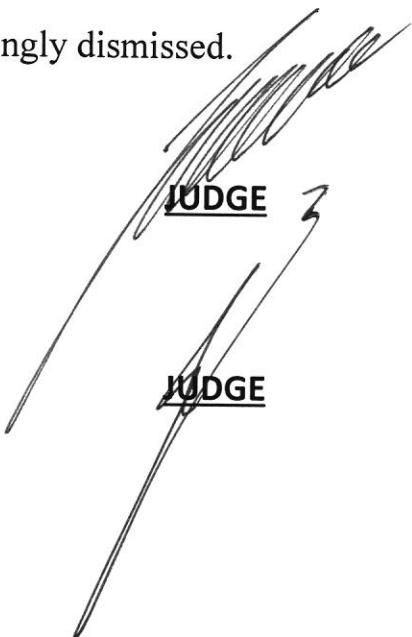
circumstances, the delay, if any, in lodging the report would not harm the prosecution case.

11. The record further shows that the occurrence had taken place all of a sudden without pre-meditation or consultation on behalf of the accused, besides there are contradictions of minor nature in the statements of eye witnesses, therefore, the appellant was rightly awarded the sentence of life imprisonment. Moreso, the complainant and injured Rehmani Gul have attributed the role of firing only to the present appellant, hence, acquittal of his co-accused Taj Munir and Anwar Zeb by learned trial Court is not open to any exception.

12. Upshot of the above discussion is that prosecution has proved the guilt of the present appellant through convincing direct as well as circumstantial evidence, therefore, his involvement in the occurrence could not be doubted. Additionally, the appellant went into hiding soon after the occurrence and surrendered before the local police after eleven days of the occurrence which further corroborates the ocular account and other evidence regarding his involvement in commission of the offences.

13. In light of the above discussion, the impugned judgment, being well-reasoned and based on correct appreciation of evidence on record, does not call for any interference. Resultantly, this appeal, being, devoid of merits, is accordingly dismissed.

Announced.
Dt: 26.11.2020


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