



Criminal Appeal No:- 451-P /2014.

Abdul Sammad alias Sammad son of Misal Muhammad resident
of Village Mayar District Mardan.....Accused/Appellant.

VERSUS

- 1)- The State.
- 2)- Saifullah son of Nabiullah resident of Mayar District
Mardan.....Respondents.

GROUNDS OF APPEAL.

- 1)- That the conviction and sentence of the appellant
are contrary to law and facts on the record.
- 2)- That there are serious contradictions in the
statements of prosecution witnesses.
- 3)- That the prosecution evidence does not inspire
confidence and nor the occurrence has taken place
in a manner as given in the FIR.
- 4)- That the medical evidence and site plan do not
corroborate the ocular testimony.
- 5)- That the prosecution has failed to prove its
case against accused/appellant beyond doubts.

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29 DEC 2016

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**
(Judicial Department)

Cr.A No. 451-P/2014.

Abdul Samad alias Samad Vs The State.

JUDGMENT

Date of hearing. 18.11.2015

Appellant by: Barrister M. Zahoorul Haq, for appellant.

Complainant by: Syed Abdul Fayaz Advocate.

State by: Mian Arshad Jan AAG.

MUHAMMAD YOUNIS THAHEEM, J:- Through

instant Criminal Appeal u/s 410 Cr.PC, Abdul Samad alias Samad has called in question the judgment dated 10.7.2014, handed down by learned Additional Sessions Judge-II, Mardan, whereby the appellant involved in case FIR No.507 dated 23.6.2012 under Sections 302/324/34 PPC, of P.S. Hoti (Mardan) was convicted and sentenced as under:-

U/s 302-B PPC for the murder of deceased Nabi Ullah sentenced to death with direction to pay Rs.300,000/- as compensation u/s 544-A Cr.PC, which shall be paid to the legal heirs of deceased Nabi Ullah and recoverable as arrear of land revenue or in default thereof to suffer Six months SI further.

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U/s 302-B PPC for the murder of deceased Mst.Siraj sentenced to death with direction to pay Rs.300,000/- as compensation u/s 544-A Cr.PC, which shall be paid to the legal heirs of deceased Mst. Siraj and recoverable as arrear of land revenue or in default thereof to suffer Six months SI further.

U/s 324 PPC, to undergo imprisonment for 5 years RI with a fine of Rs.10,000/- or in default to suffer two months SI.

U/s 337-F(iii) PPC to undergo six months RI with fine of Rs.10,000/- as Tazeer. Benefit of Section 382-B Cr.PC was extended in favour of the appellant."

2. The appellant has filed this appeal against his conviction and sentence whereas the learned trial Court has sent a Reference under section 374 Cr.P.C bearing No.10/14, for confirmation or otherwise of the death sentence passed against the appellant Abdul Samad alias Samad. We propose to decide both the matters together through this single judgment.

3. According to prosecution case, complainant Saif Ullah was present near his house when in the meanwhile, appellant/convict alongwith absconding co-accused Shakeel duly armed with firearms came there and started altercation with him and after hearing the same,

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when the parents of complainant came out of their house, both the accused started firing at the complainant party as a result of which parents of complainant got hit and died on the spot whereas complainant sustained injuries on his body. The occurrence was also witnessed by PW.Mst.Saba Gul(sister of complainant) who had come out on altercation. Motive behind the occurrence was stated to be previous ill-will. Consequently a case vide FIR mentioned above was registered against the accused.

4. After completion of investigation, initially challan u/s 512 Cr.PC was submitted against both the accused, however, after arrest of appellant/convict, supplementary challan was submitted against him in the trial Court where after framing of formal charge against the appellant, the prosecution in order to prove its case, examined the following 10 witnesses:-

PW.1 Bacha Khan SI registered the case vide FIR

Ex.PA on receipt of murasila; **Bakht Shed Khan(Pw.2)** scribed the murasila Ex.PA/1, prepared injury sheet of complainant, injury sheets of both the deceased as well as

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their inquest reports; **PW.3 Inam Ullah** is identifier of the dead bodies of both the deceased before the police as well as before the doctors at the time of examination. This witness was re-examined as marginal witness to recovery memos Ex.PW.3/1, Ex.PW.3/2, Ex.PW.3/3, vide which blood stained earth from the places of deceased, seven empties of 7.62 bore recovered from the spot, last worn clothes of both the deceased were taken into possession by the I.O; **PW.4 Muhammad Zuber No.1348** executed warrants u/s 204 Cr.PC as well as proclamation notices u/s 87 Cr.PC, issued against the appellant and absconding co-accused and submitted his reports; **Dr.Syed Akbar Shah (PW.5) & Lady Dr.Saima Saeed (PW.6)** conducted autopsy on the dead bodies of deceased Nabi Ullah and Mst.Siraja respectively and injured/complainant was also examined by PW.5; the ocular account is furnished by complainant **Saif Ullah (PW.7) & Mst.Saba Gul (PW.8)** who narrated the whole story regarding the occurrence. **PW.9 Ali Zar Shah Khan SI**, has conducted investigation in the instant case and after completion of investigation

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handed over the case file to the SHO for submission of challan against the accused; **Amjad Khan SHO(PW.10)** has submitted challan u/s 512 Cr.PC against both the accused and after arrest of appellant, he prepared his card of arrest.

5. On conclusion of prosecution evidence, statement of appellant u/s 342 Cr.PC was recorded wherein he denied the allegation levelled against him and professed his innocence and did not opt to be examined on oath or to produce defence evidence. After hearing arguments of learned counsel for the parties, the learned trial Court convicted and sentenced the appellant vide impugned judgment, hence the instant Criminal Appeal filed by the appellant/convict.

6. Arguments heard and record perused.

7. Perusal of the record reveals that the appellant/convict has directly been charged by the complainant (PW.7) in his report in the shape of murasila Ex.PA/1, which is duly supported by the eye witness Mst.Saba Gul(PW.8), who was also present on the spot at

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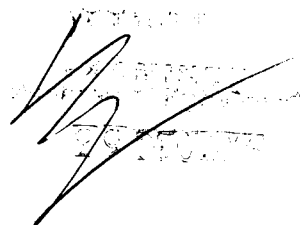
relevant time. PW.7 during his examination before the learned trial Court has reiterated the same facts and leveled the same allegations against the appellant in a mode and manner as he had mentioned in his report Ex.PA/1 before the police on the basis whereof FIR Ex.PA was chalked out. The other eye witness Mst.Saba Gul (P.W.8) had also supported the stance taken by the complainant in the FIR as well as in his statement recorded before the learned trial Court as P.W.7. Both the PWs being eye-witnesses of the occurrence have made consistent statements regarding commission of offence by the appellant in the present case alongwith absconding co-accused. It has been established on record that on the day of occurrence, Saif Ullah complainant (P.W.7) was present near his house when in the meanwhile, appellant/convict alongwith absconding co-accused came there, started altercation with him and after coming out of parents of complainant from their house, the accused started firing at the complainant party due to which parents of complainant got hit and died on the spot while PW.7 also sustained injuries in the result of said firing.

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Both the parties being co-villagers and relatives inter se were known to each other and after altercation of accused with the complainant, the question of their misidentification is ruled out though as per version of complainant the accused had lit the torch towards the house of complainant who went towards them. The occurrence had not taken place suddenly as firstly altercation took place and on hearing the same, both the deceased and PW.8 came out of their houses so presence of both the witnesses at the spot at the time of occurrence was quite natural and under the given circumstances, the testimony of eye-witnesses cannot be discarded merely on the ground that there was no light at the time of occurrence. Admittedly, this is not a case of hit and run rather the occurrence lasted for some time, which gave sufficient time to P.W.7 and other eye-witness to identify the appellant and the role played by them at the spot and both the eye-witnesses have given plausible explanation for their presence at the spot. They have made consistent statements regarding presence of the appellant alongwith absconding co-accused and the manner in which

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they had brutally murdered two innocent persons and injured the complainant. In spite of the fact that they had been subjected to lengthy cross-examination, but the defence had failed to shatter their credibility qua the involvement of appellant in this case. Although some minor contradictions in the statements of the eye-witnesses during the cross-examination were found but those contradictions do not cause any damage in the prosecution case as the eye-witnesses have made consistent statements regarding commission of offence by the appellant and role played by them in this case, hence, we do not find any reason to discard the testimony of the eye-witnesses. They had corroborated each other on all material aspects of the case and their evidence is not only straightforward, but the same also inspired our confidence. Even otherwise, law does not permit us to choose few sentences from the evidence and base our decision in favour of defence while reading only those sentences in isolation to the remaining evidence available on the record. In this respect reliance is placed in a case title, "Zaka Ullah & others Vs The State" (2015

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YLR 1977), the principle enunciated in the cited judgment

is reproduced as under:-

“Even otherwise, law does not permit us to choose few sentence from the evidence and base our decision in favour of defence while reading those sentences in isolation to the remaining evidence available on record.”

8. The medical evidence of the prosecution furnished by Dr. Syed Akbar Shah (P.W.5) and Lady Dr.Saima Saeed (P.W.6) had fully supported the ocular account furnished by the prosecution, thus, after taking into consideration the whole prosecution evidence, we have come to the conclusion that ocular account of the prosecution is in line with the medical evidence.

9. So far as vehement arguments of learned counsel for the appellant that the deceased had enmities with other people, is not sufficient to discard the testimony of such natural witnesses on the basis of enmity, in this respect wisdom is derived from the judgment of august Supreme Court of Pakistan in case titled as “Taj Vs The State “(2012 SCMR 43), the principle enunciated in the cited judgment is reproduced below:-

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"The injured witnesses had also received numerous injuries during the occurrence and the doctor Muhammad Ashraf (PW.16) supported the factum of injuries. Thus, their presence at the spot was established. The eye witnesses were subjected to cross examination but nothing had come to doubt their credibility. Thus, their presence was natural as they sustained injuries alongwith deceased at the time of incident."

10. The other contention regarding mentioning of time in respect of receiving information regarding occurrence as 8.00 PM by the PW.3 is also of no help to the defence as admittedly the said witness was not the eye witness of the occurrence nor any contradiction is pointed out by defence in statements of eye witnesses regarding time of occurrence, which is in line with the report, so such a minor discrepancy may be the result of slip of tongue, which cannot be made a ground for shattering the testimony of PW.7 & PW.8, when otherwise, the case is duly supported by other evidence. The recoveries of blood stained earth alongwith 7 empties of 7.62 bore from the spot coupled with medical evidence, FSL report, site plan suggests that the deceased were done to death whereas

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PW.7 sustained injuries during the said incidence as alleged by him. Besides, appellant has remained absconder for sufficient long time and proceedings u/s 204 & 87 Cr.PC were initiated against him which abscondance can be taken as a corroborative piece of evidence in presence of ocular account and other evidence available on file.

11. Now adverting to the evidence of motive, which as per FIR (Ex.PA) was previous ill-will and in support of the same, FIR No.445 registered on the report of deceased Nabi Ullah against absconding co-accused (brother of appellant) is available on file which support the stance of PW.7 regarding motive about the occurrence.

12. After having considered the facts and circumstances of the case from all angles, we have come to a definite view that the prosecution has successfully proved its case by producing confidence inspiring and reliable evidence against the appellant, who alongwith co-accused had done to death two innocent persons and caused injuries to the complainant (P.W.7) as such the judgment recorded by the learned trial Court to the extent of conviction of the

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appellants does not call for any interference by this Court,
hence while maintaining the conviction of the appellant, the
instant Criminal Appeal is dismissed.

Murder Reference (M.R. No.10 of 2014) is
answered in the affirmative and death sentence of Abdul

Samad alias Samad is confirmed.

Announced: *At Muzee Yusif*
18.11.2015.

At Muzee Yusif
JUDGE

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Authorized Under Article 87 of
The Qanun-e-Shahadat Order 1984

At Muzee Yusif
29 DEC 2016

"A. Qayum"

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May 20/1