

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR

JUDICIAL DEPARTMENT

Cr.A No. 401-P of 2015.

JUDGMENT

Date of hearing.....27.09.2017.....

Appellant/State: (Bazar Gul): By Mr. Bashir Ahmad Safi, Advocate.

Respondents: (Balqiyas Khan and others): By Mr. Sohail Akhtar
Advocate.....

State:-.....By Syed Sikandar Hayat Shah, AAG.....



QALANDAR ALI KHAN, J:- Since Criminal Appeal No.490-P/2015 by the State through Advocate General, Khyber Pakhtunkhwa, Peshawar, also pertains to the same case, this single judgment/order shall also dispose of the said criminal appeal.

2. The instant appeal as well as the aforesaid connected criminal appeal are directed against the judgment dated 11.06.2015 of the learned Judge, Anti

Terrorism Court, Kohat Division, Kohat, whereby, the respondents/accused in both the appeals namely, Balqiyas Khan, Akhtar Hayat, Arshad Muhammad, Naeem Khan, Zakirullah and Jafer Iqbal were acquitted of the charges leveled against them in case FIR No.395 dated 25.09.2013 under sections 302/148/149 PPC read with section 7-ATA, Police Station, Karak, District Karak.

2. The case was registered on the report of complainant, Bazar Gul, appellant in the instant appeal who reported about the *Qatl-i-amd* of his son, Amir Pervaiz, by the mobile police party, when his son was returning home after easing himself at 06:00 hours on 25.09.2013, and he was present on the roadside. According to the complainant, his son was trying to run away, and he also tried to stop the police officials from firing at his son, but their firing hit his son, and the mobile police party left the spot by leaving his son in injured condition. In his report, the complainant claimed that neither his son was

armed nor involved in any crime, therefore, he charged the mobile police party for causing firearm injuries to his son. The injured Amir Pervaiz later succumbed to the injuries while on his way to Hospital at Peshawar; and section 324 PPC was, therefore, substituted with section 302 PPC read with section 7-ATA and sections 148/149 PPC.

3. The initial medical examination and the subsequent Postmortem examination of the deceased, Amir Pervaiz, revealed one firearm entry wound 1/1 cm posteriorly (L) occipital region-no blackening of wound, with corresponding exit wound and left eye completely destroyed. The spot was also inspected by the I.O, who secured blood from the place assigned in the site plan to the deceased, and nine empty shells of 7.62 bore from one place and thirteen empty shells of 7.62 bore, freshly discharged, from another place. In the site plan, the I.O also noted that the deceased was present at a lower level while the police party was at a height of 50

feet. In the site plan, prepared on the eventful day i.e. 25.09.2013, additions of the places of accused/respondents were made on the pointation of the complainant on 27.09.2013. The Kalashnikovs, allegedly used in the commission of offence, along with chargers and live rounds were also taken into possession by the Investigation Officer. Likewise, record of rescue 15 pertaining to issuance of the official arms and ammunitions was taken into possession by the Investigating Officer. The accused/respondents were arrested in the case. The arms and ammunitions and empties recovered from the spot were sent for examination to the firearms expert, Punjab Forensic Science Agency; and the report furnished by the agency is available on the file as EX.P-2/1. After completion of investigation, complete challan was submitted in the Court, leading to trial in the Court of learned Judge, Anti Terrorism Court, Kohat Division, Kohat.

4. During trial, the prosecution produced as many as 15 PWs, including Doctor Sarfaraz Khan (PW-3), who conducted Postmortem examination of the deceased; Asmatullah (PW-12); Sattar Khan S.I/I.O (PW-13); complainant Bazar Gul (PW-14); and Doctor Muhammad Ali (PW-15).

5. After prosecution closed its evidence, statements of the accused/respondents were recorded under section 342 Cr.P.C, wherein, they denied allegations of the prosecution against them; but declined to be examined on oath or produce defence evidence; whereafter the learned trial Court/Judge, Anti Terrorism Court, Kohat Division, Kohat, heard arguments of learned PP for the State assisted by learned counsel for the complainant and learned defence counsel, and recorded impugned judgment of acquittal of the accused/respondents dated 11.06.2015; hence the two appeals by the complainant as well as the State.

6. Arguments of learned counsel for the complainant/appellant, learned AAG and learned counsel for the accused/respondents heard; and record perused.

7. In the FIR, neither anyone was mentioned by name or description as accused by the complainant nor motive for the offence was disclosed, which all along remained shrouded in mystery. Even presence of the complainant on the spot at the time of occurrence, which took place early in the morning, is doubtful in view of admission of the complainant that he had no specific work at the spot at the time of occurrence and came out of his house just for nothing. Although, the complainant did not mention the presence of anyone else on the scene of occurrence at the relevant time; but Asmatullah (PW-12) came forward to depose that he rushed to the spot, where the police boarded the vehicle and left the spot towards Karak side and that as he reached the spot, he saw deceased, Amir Pervaiz, lying in

injured condition. He further stated that complainant was present on the spot when he reached there and that one Behram Shehzad was also attracted to the spot. According to the PW, it was Bazar Gul, complainant, who told them that police had injured his son by firing, meaning thereby he was furnished a hearsay account of firing by the police at the son of the complainant. It may be added here that, admittedly, the complainant had other enmities in the village, therefore, absence of motive on the part of the accused/respondents would also make case of the prosecution doubtful.

8. it appears that the accused/respondents were, lateron, charged by the complainant during investigation in his statement under section 161 Cr.P.C, without a proper identification parade as not even their descriptions were given in the FIR. Asmatullah (PW-12) categorically stated that he had not identified the actual accused; and the complainant stated that after perusing the

daily diary he charged the accused facing trial. The arms and ammunitions recovered by the I.O were found in original condition, according to the issuance register, indicating no firing from the official weapons allotted to the accused/respondents. The report of firearms expert also did not support the prosecution case, as the crime empties were not found to have been fired from the places assigned to the accused/respondents in the site plan.

9. In the site plan, the complainant was shown at a distance of 285/300 feet from the deceased; and a hillock of the height of 50 feet above the ground level was also shown intervening in between the complainant and the deceased, thus bringing credibility of the complainant as an eyewitness under serious doubt. The charging of the accused/respondents by the complainant in his supplementary statement under section 161 Cr.P.C on 27.09.2013 after the arrest of the accused/respondents, reflected in the daily diary, which was seen by the

complainant before charging the accused/respondents, would further strengthen the perception that accused/respondents were not charged on the basis of some credible information. In any case, both the material witnesses i.e. the complainant and Asmatullah (PW-12), can at best, be regarded as chance witnesses and their testimony not confidence inspiring.

10. The medical and postmortem examination reports are also not supporting version of the complainant/prosecution, alleging indiscriminate firing by six accused/respondents, while the deceased receiving only one firearm injury, thus giving rise to the question as to whose fire proved effective and shot caused death of the deceased son of the complainant. Moreover, the accused/respondents had been shown standing at a height of 50 feet from the deceased, while the entry wound with corresponding wound shown in both the medical report as well as the postmortem

report would suggest otherwise. In short, there was no evidence to warrant conviction of the accused/respondents, therefore, the impugned judgment of the learned trial Court/Judge, Anti Terrorism Court, Kohat Division, Kohat, dated 11.06.2015, thereby, acquitting the accused/respondents would not call for interference by this Court in its Appellate Jurisdictions. Both the appeals of the complainant as well as that of the State are, accordingly, dismissed being devoid of merit and substance.

Announced.
27.09.2017.

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M.Iqbal

*(D.B) Hon'ble Mr. Justice Lal Jan Khattak.
Hon'ble Mr. Justice Qalandar Ali Khan.*