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REGISTERED  
No. CrI.A.226/2018- SCJ  
SUPREME COURT OF PAKISTAN  
Islamabad, 11 Feb 2019

From The Registrar,  
Supreme Court of Pakistan.  
Islamabad.

To The Registrar,  
Peshawar High Court.  
Peshawar.

Subject: CRIMINAL APPEAL NO. 226 OF 2018

Muhammad Ali s/o Abdur Rahim  
Versus  
Hazrat Ali & another

Peshawar High Court, Peshawar.	
Receipt No	2341
Date	16/2/19
For action	APR
Signature	[Signature]

On appeal from the Judgment/Order of the Peshawar High Court, Peshawar dated 24/01/2018 in Cr.A.279-M/2014 & M.R.11-M/2014. in case FIR No.455/2006 dated 13/12/2006 registered at Police Station Saidu Sharif, Swat

Dear Sir,

In continuation of this Court's letter of even number dated 02.02.2019, I am directed to enclose herewith a certified copy of the detailed Judgment of this Court dated 31/01/2019 in the above cited case for information and further necessary action.

I am further directed to return herewith the original record of the High Court received under the cover of your letter No.1582 dated 11/04/2018.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Detailed Judgment:  
2. O/Record of High Court:

Yours faithfully,

[Signature]

(MUHAMMAD MUJAHID MEHMOOD)  
ASSISTANT REGISTRAR (IMP)  
FOR REGISTRAR

@CFMS



**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

16/18

**PRESENT:**

Mr. Justice Asif Saeed Khan Khosa, CJ  
Mr. Justice Maqbool Baqar  
Mr. Justice Syed Mansoor Ali Shah

(D.J.)

**Criminal Appeal No. 226 of 2018**

(Against the judgment dated 24.01.2018 passed by the Peshawar High Court, Peshawar in Criminal Appeal No. 279-M of 2014 and Murder Reference No. 11-M of 2014)

***Muhammad Ali***

...Appellant

***versus***

***Hazrat Ali & another***

...Respondents

For the appellant:	Mr. Asadullah Khan Chamkani, ASC
For the respondent:	Mr. Zahid Yousaf Qureshi, Additional Advocate-General, Khyber Pakhtunkhwa
For respondent No. 1:	Sahibzada Asad Ullah, ASC a/w R.1.
Date of hearing:	31.01.2019

**JUDGMENT**

**Syed Mansoor Ali Shah, J.** – A scuffle leading to a murderous assault took place between the parties at Continental Plaza, Makan Bagh, Saidu Sharif, Swat. The complainant, Muhammed Ali (PW-5), had gone to deposit his U-fone mobile bill at the office of the cellular company in Continental Plaza, along with six others. After payment of the bill, while still in market, an altercation took place between the complainant and one Javed, son of Karam Ali, guard at the Plaza, leading to a scuffle at 6:30

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pm on 13.12.2006. At this juncture, Hazrat Ali (Respondent No.1) and two others namely; Rahat Ali and Jamshed came over in support of Javed and started firing at the complainant party. As a result Farhad Ali, Gohar Ali and Humayun of the complainant party suffered firearm injuries. This incident was reported to the Police at the Casualty Hospital ("Hospital") and the accused party (including Respondent no.1) was booked in FIR No.2525 at 6:55pm dated 13.12.2006 under section 324 read with section 34 PPC at Police Station Mingora, Swat.

2. The complainant and others brought the injured to Casualty Hospital and while the three injured persons were being treated at the hospital, the rest of the complainant party alongwith Saifullah (PW-9) waited upon them. The accused party once again appeared at the Hospital and staged another murderous firearm attack on them, killing Anwar Ali on the spot and thereafter decamping from the hospital. In this background, Respondent No.1, Rehmat Ali and Jamshed were booked in FIR No.455 under section 302, PPC read with section 34, PPC at Police Station Saidu Sharif, Swat.

3. After a regular trial, the trial court vide judgment dated 25.11.2014, convicted respondent No.1 and sentenced him to death with compensation in the sum of Rs.20,00,000/- payable to the legal heirs of the deceased, while the other two co-accused were acquitted in separate trials. On appeal the High Court acquitted Respondent No.1 vide impugned judgment. Appellant

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(complainant) petitioned before this Court, wherein leave was granted to re-appraise the evidence vide order dated 29.3.2018.

4. We have heard the learned counsel for the opposing sides and with their able assistance have re-appraised the evidence. The prosecution story is that after the first episode, while the injured members of the complainant party were being treated at the hospital, the accused party re-appeared at the hospital with firearms and respondent No.1 shot Anwar Ali to death. Respondent No.1, in his statement under section 342, Cr.P.C stated that as Javed, one of the accused was injured in the assault that took place earlier in the evening at the Continental Plaza, the deceased on seeing Javed at the hospital tried to snatch the gun of the hospital guard to attack Javed, but in the process ended up shooting himself.

5. Both the versions placed before us by the opposing parties appear to be incomplete and not the true story. We are unable to apprehend that after the first murderous assault, where the accused injured the members of the complainant party, why would the accused party follow the injured/complainant party to the hospital and carry out a murderous attack when they could have settled the score then. Equally improbable is the defence put up by Respondent No.1 that the deceased while snatching a firearm from an officer of the hospital, shot himself. The tale of both the parties appears to be improbable and untruthful. This does not deter the Court from discovering the true version, by drawing inferences that flow from the evidence, in order to properly

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determine the nature of the offence. "It is not only legally possible but also legal necessity to act on the third highly probable version, which is shorn of the embroidery and falsehood introduced by both the interested parties. The law of evidence also permitted the Court 'after considering the matter before it' to act on genuine probability and adopt the said course."<sup>1</sup> Reference *Ali Bepari v. Nibaran Mollah* (PLD 1962 SC 502) and *Zahid Pervaiz v. State* (PLD 1991 SC 558). In order to resolve the incompleteness of the story, we have examined the evidence and have drawn inferences that flow from it to arrive at a more probable tale of events. Evidence reveals that Javed, a member of the accused party, was injured in the earlier episode and brought to the same hospital at around the same time when the injured members of the complainant party were already undergoing treatment at the hospital while the rest of the complainant party was in the hospital. It is highly probable that re-encounter of the parties at the hospital, so soon after the first bloody assault, must have reignited and inflamed them to have another go at each other resulting in the fire shot that killed Anwar Ali. From the inference drawn, it is reasonable to conclude that the accused party did not re-appear or come after the complainant party after the first incident but happened to be available in the hospital at the same time and their coming across each other led to an unfortunate encounter which resulted in the death of Anwar Ali.

6. Examining the impugned judgment of the High Court in this background we notice that improbability of the prosecution story weighed heavily with the High Court in acquitting

<sup>1</sup> See PLD 1991 SC 558.

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Respondent No.1 and no effort was made to arrive at a more probable tale of events by seeking guidance from *Ali Bepari's case (supra)*. Findings of the High Court that the complainant went unhurt in both the incidents and that firearm injuries (medical evidence) do not show that the deceased and the accused were in a standing position are at best conjectural and suppositional. Reliance on the understated portion of the statement of PW8 is a result of serious misreading of the original record. The Statement relied upon by the High Court is as follows:

"--- ڈاکٹر زاور نرسنگ سٹاف اس وقت کیمرہ لٹی میں ہمراہ دیگر عملہ موجود تھے۔ مذکورہ شدہ افراد میں سے کسی کا بیان میں نے مقدمہ ہذا میں قلمبند نہیں کیا تھا۔ از خود کہا کہ وہ بیان دینا نہیں چاہتے تھے کہ وہ اصل حقائق سے ہٹ کر مستفیث کی غلط رپورٹ کی تائید میں بیان دینے کو تیار نہ تھے۔"

While the statement borne out from the original record is:

"--- اس وقت کیمرہ لٹی میں ڈاکٹر زاور نرسنگ سٹاف اور دیگر عملہ موجود تھے۔ میں نے ان ذکر شدہ افراد میں سے کسی کا بیان مقدمہ ہذا میں قلمبند نہیں کیا تھا از خود کہا کہ وہ بیان دینا نہیں چاہتے تھے۔ مجھے علم نہ ہے کہ مذکورہ افراد اس وجہ سے بیان نہیں دینا چاہتے تھے کہ وہ اصل حقائق سے ہٹ کر مستفیث کی غلط رپورٹ کی تائید میں بیان دینے کو تیار نہ تھے۔"

7. We have also observed that the ocular account of PW5 and PW8 is corroborated by the medical evidence and the statement of PW4. The incident could not have gone unwitnessed having taken place in a crowded public hospital, which is understandably well-lit and maintains the presence of police officers and a large number of hospital staff and patients. We find the conclusion arrived at by the High Court to be perverse based largely on conjectures and suppositions besides misreading of evidence.

8. We also note that the occurrence was not premeditated, planned and deliberate but was unanticipated and

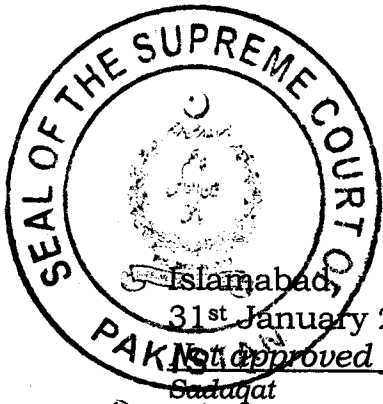
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sudden. The version as stated in the crime report has not been found probable besides the motive is uncertain. For all the above reasons, this appeal was allowed in terms of the following short order dated 31.1.2019:

"For the reasons to be recorded later this appeal is allowed, the impugned judgment passed by the Peshawar High Court, Peshawar on 24.01.2018 is set aside, the conviction of respondent No. 1 for the offence under section 302(b), PPC recorded by the trial court is restored and for the said offence he is sentenced to imprisonment for life and to pay a sum of Rs. 5,00,000/- (Rupees five hundred thousand only) to the heirs of Anwar Ali deceased by way of compensation under section 544-A, Cr.P.C. or in default of payment thereof to undergo simple imprisonment for six months. The benefit under section 382-B, Cr.P.C. shall be extended to him. Respondent No. 1 shall be taken into custody and be lodged in a prison so as to serve the remaining part of his sentence."



9/2/19

Sd/- HcJ  
Sd/- J  
Sd/- J

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