

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
JUDICIAL DEPARTMENT**

**Cr. A No.495-P of 2014**

**JUDGMENT**

Date of hearing: 25.10.2017

M/s Shahid Naseem Khan Chamkani and  
Syed Abdul Faya, advocates for the  
appellant.

Mian Arshad Jan, AAG for the State.

Mr.Imran Khan, advocate for the  
complainant.

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**LAL JAN KHATTAK, J.-** This criminal  
appeal is directed against the judgment  
dated 26.07.2014 of the learned Sessions  
Judge, Hangu delivered in case FIR No.77  
dated 14.07.2013 u/ss 302/34 PPC of  
Police Station Balyamina, Hangu, whereby  
the appellant has been convicted and  
sentenced to imprisonment for life with  
payment of Rs.2,00,000/- as compensation  
payable to the legal heirs of the deceased or  
in default whereof to further undergo six  
months SI. Benefit u/s 382-B Cr.P.C.  
has been extended to him.

2. Brief facts of the case are that on  
14.07.2013, Muhammad Rehman (PW-2)  
reported to SHO Sher Bahadar Khan (PW-1)

at Ghalmina Check Post to the effect that he and his brother Babar Khan were present in their house when accused Haq Nawaz, Sher Nawaz and Sardar came duly armed out of whom accused Haq Nawaz called his brother to come out. No sooner did they come out of house, all the accused started firing at his brother with which he was hit and died on the spot. Motive for the occurrence was stated to be infuriation of the accused when they were reprimanded by the deceased on their wrong doings.

3. On arrest of the accused i.e. the present appellant, complete challan was put in court, which indicted him for the commission of offence to which he pleaded not guilty and claimed trial. Prosecution in order to prove its case examined 8 witnesses in all whereafter statement of the accused was recorded, wherein, he professed his innocence. The learned trial court, after conclusion of the trial, found the appellant guilty of the charge and while recording his conviction sentenced him as mentioned above, hence the instant appeal.

4. Arguments heard and record gone through.

5. Perusal of the case record would show that complainant of the case appeared before the court as PW-2 while one Sajid testified as PW-3. Both the witnesses though have deposed against the accused in line with the allegations contained in the case FIR (Ex.PA/1) but pronounced aspect of the case is that the appellant is father of the two absconding accused and is an old man of 70 years. It is worth to note that PW-3 has stated in his cross-examination that after firing the accused fled away towards northern mountain. As the appellant is a septuagenarian i.e. 70 years old, therefore, his fleeing towards the mountain for hiding after the occurrence is a fact, which cannot be believed keeping in view his infirmness as by then he had orbited around the sun for 70 times. Record reflects that the job of firing at the deceased is not that of the three persons as has been alleged in the FIR and deposed by the prosecution's witnesses. It appears that the complainant side has leveled an exaggerated charge so as to enrope therein the appellant for his being

father of the two absconding accused, which practice is very much common in the country.

6. In addition, presence of the appellant on the spot at the time of occurrence has not been proved as per site plan (Ex.PB) wherefrom no empty of shot gun has been recovered, which weapon the appellant, as per the prosecution's witness, was holding at the time of occurrence. Moreso, in the site plan, appellant has been shown at point No.5 while the complainant at point No.1. Keeping in view both the localities mentioned above, it was not possible for the complainant to see the appellant as in between the points there is a hindrance of a room.

7. Thorough and careful examination of the case record and keeping in view the age factor of the appellant, it can safely be ruled that the prosecution has not proved its case against the appellant beyond any reasonable doubt. It has been held umpteenth times by the superior courts that in order to record conviction of an accused, the prosecution must prove its case through worth reliable and confidence inspiring

evidence, which is not the case in hand. The learned trial court has not properly appreciated the case evidence in its true perspective and has fallen in legal error to record conviction of the appellant for which its judgment is not sustainable.

8. For what has been discussed, this appeal is allowed, conviction and sentence of the appellant are set aside. He is acquitted of the charge leveled against him and be set at liberty forthwith if not required to be detained in any other case.

9. Above are the reasons of our short order of even date, which reads as under:-

"For the reasons to be recorded later, this appeal is allowed, conviction and sentence of the appellant recorded by the learned Sessions Judge, Hangu vide impugned judgment dated 26.07.2014 delivered in case FIR No.77 dated 14.07.2013 u/ss 302/34 PPC of Police Station Balyamina, Hangu are set aside. He is acquitted of the charge leveled against him and be set free forthwith if not required to be detained in any other case".

**JUDGE**

**JUDGE**

Announced  
25.10.2017