

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT, BANNU**  
**BENCH**

(Judicial Department)

Cr.A No.01-B of 2019

*Muhammad Sadiq and Faridullah*  
*Vs*  
*The state etc*

**J U D G M E N T**

Date of hearing \_\_\_\_\_ 10-10-2019 \_\_\_\_\_

Appellant (s) by: Muhammad Rashid Khan Dirma Khel  
advocate.

Respondent/State by Mr. Qudratullah Khan Gandapoor  
Asstt.AG.

Others by Sifat Ali Khan Khattak advocate.

**SAHIBZADA ASADULLAH , J.-** Through this

single judgment, I intend to dispose of instant Criminal  
appeal as well as *Cr. Revision No.23-B of 2019, titled*  
*The State Vs Muhammad Saddiq & Faridullah*, having  
arisen out of one and same judgment dated 19.12.2018.

**2.** Muhammad Saddiq & Faridullah, the  
appellants/convicts through present criminal appeal  
preferred under section 410 Cr.P.C have impugned the  
judgment dated 19.12.2018, passed by the learned

Sessions Judge, Karak, whereby they were convicted and sentenced in case FIR No.548 dated 21/10/2017, under sections 324/34 PPC, registered at Police station Karak, district Karak, the details whereof are as under: -

- i. U/S 324/ 34 PPC, they were convicted and sentenced for an attempt at the life of complainant/ respondent Noorseen Gul for two years rigorous imprisonment each with fine of Rs.2000/- each or to undergo further two months S.I each in default whereof.*
- ii. Appellant / accused namely Muhammad Saddiq was convicted U/Ss 324/34 PPC for an attempt at the life of injured Muhammad Irshad and sentenced to imprisonment for five years Rigorous imprisonment while appellant/ accused Faridullah Khan for two years RI with fine of Rs.5000/- each and in default whereof shall further undergo for two months SI each.*
- iii. Both the accused/appellants named above have been convicted U/S 337-A/34 PPC and sentenced to pay Rs.5000/- each as Daman amount, while U/S 337-F (ii)/34 PPC they have also been convicted and sentenced to pay Rs.5000/- each as Daman amount. In case of default in payment of Daman amount they are also ordered to be dealt in accordance with the provisions of section 337-Y(2) PPC.*

*iv. Benefit of Section 382-B Cr.P.C is also extended to the convict/ appellants.*

**3.** The State through Asst. Advocate General KPK Peshawar has also filed a criminal revision No. 23-B of 2019 against the convict / appellants Muhammad Saddiq and Faridullah, for enhancement of their conviction.

**4.** Concisely the facts as enumerated in the First information Report Ex:PW-A/1, are that on 21.10.2017 complainant Noor Seen Gul brought his son Muhammad Irshad in injured condition to the casualty KDA, Hospital Karak and at 08.20 hours, made a report to the effect that on the eventful day, he along with his son Muhammad Irshad was going on foot from Karak Bazar to District Courts for hearing of a case, that when at 7.40 a.m they reached at Karak Bannu road near Tappi graveyard Karak, appellants/ accused Farid Khan and Muhammad Saddiq, sons of Ameer Gul riding a motor cycle being driven by Farid Khan came from behind; that on the command of accused/appellant Farid Khan, appellant/accused Muhammad Saddiq started firing with

his pistol at them with intent to commit their *qatl-i-amdI*, resultantly his son Muhammad Irshad got injured while complainant luckily escaped unhurt. Motive as disclosed in the FIR is blood feud enmity. Hence FIR (ibid).

**5.** After completion of investigation, complete challan was submitted before the trial court against both the appellants/accused named above and the trial commenced.

**6.** In order to prove its case, prosecution examined as many as (11) witnesses. After closure of the prosecution evidence, statements of appellants/accused Muhammad Saddiq and Faridullah were recorded under section 342 Cr.P.C, wherein they professed their innocence. They neither wished to be examined on oath, as required under section 340 (2)Cr.P.C. nor opted to produce defence evidence. After hearing the prosecutor and defence, learned trial court convicted and sentenced appellants/ accused, as mentioned earlier, hence the instant appeal.

**7.** We have considered the submissions of learned counsel for the parties; AAG for the state and with their valuable assistance, the record was read from cover to cover.

**8.** The complainant with his son while on their way to Sessions Courts Karak were fired upon, which resulted into injuries on the person of Muhammad Irshad, his son who was rushed to KDA hospital Karak, where the report was made. The motive was stated to be blood feud as father of the appellants was murdered and the injured Muhammad Irshad and his uncle Widan Gul were charged, on the day, on the day, injured Muhammad Irshad was facing trial before the court of Additional Sessions Judge at district Karak and the appellants were prosecuting.

**9.** The complainant was examined as PW-9, who stated that after deboarding from the passenger vehicle, they were on foot and when reached to the spot from behind, the appellants came on motorcycle where accused Fareedullah, the younger brother commanded

Muhammad Sadeeq, his elder brother to kill. The learned Defence counsel at the very outset challenged the presence of the complainant on the spot at the relevant time. This is on record that father of the appellant was killed by the injured Muhammad Irshad and that the accused had come to take revenge then both the complainant and the injured were at their mercy why father was not fired at to do away with, for two reasons to eradicate evidence against them and to quench their thirst.

**10.** The spot is situated near District Court Karak, the Civil Hospital Karak is one kilo meter from the place of occurrence with police station Karak just behind the police is present round the clock in front of Courts but no one attracted to the spot despite the fact complainant said that injured was lying on the ground for 9/10 minutes. The conduct of the complainant attracts our attention as he acted and behaved in a way which a father would not have if in fact was present on the spot, blood was oozing, the injured was in pain and semi conscious but the complainant was not in a hurry

to rush him to the hospital for treatment, he selected to sit in a passenger pick up, deboarded in Karak Bazar, then hired a taxi and reached to K.D.A Hospital Karak, had the complainant present he would have chosen the quickest means of transportation instead of travelling to the hospital in intervals. His presence is again doubtful as admittedly the police station Karak was just at the back of the spot and so was the Civil Hospital Karak, what precluded him to take the injured there for quick treatment and why not to police station Karak despite the fact that to reach K.D.A Hospital Karak from spot, one has to pass both Civil Hospital Karak and Police station, so it suggests nothing but that the complainant was not present on the spot and that the injured was taken to the hospital by the passersby.

**11.** The witnesses are inconsistent on the point of arrival of police to the spot. The complainant stated that the police did not reach to the spot and that it was he alone who took the injured to the hospital. Naseem Khan a police official, was examined as PW-8 who in his court statement went opposite and stated that

he with SHO came to the spot where the injured was present, who was picked up and escorted to K.D.A Karak, he stated that no one from the police reached to the spot prior to their arrival, he further stated that the SHO met injured on the spot. The witnesses remained inconsistent regarding the manner in which the report was made to the police at KDA hospital Karak. The complainant when cross-examined on this particular aspect of the case, he came forward with a strange reply that at the time, when he reached to the hospital, none from the police was present and it was after some time that the police officials from the Police station Karak reached. This explanation of the complainant leads us nowhere but to hold that in fact the complainant was not present at the time of occurrence and later on he was procured to lodge a report. The coming of the complainant to the spot from the hospital for spot pointation, is another factor which tells otherwise regarding the conduct and veracity of this witness, as he stated that he went with a constable from hospital to the police station and the investigating officer was present



in the P.S and he in his company came to the spot, whereas the Investigating officer, who has been examined as PW-11 stated that while present at the spot he contacted the complainant on his cell phone and so his attendance was secured from the hospital. Another aspect which brings the testimony of these witnesses at stake is the conscious attempt on part of the SHO, investigating officer and one Raufullah constable to bring themselves in harmony but unfortunately they could not and every one came forward with a different and totally contradicting stance.

**12-** The manner in which the accused/appellants were arrested, is surprising, as the incident happened at 7.40 a.m and the FIR U/Ss 324/34 PPC was registered at 9.10 a.m in KDA hospital Karak but the appellants were arrested at 9.35 a.m when the SHO had laid a barricade at Jama Chowk. The very stance of the SHO does not appeal to a prudent mind as the main incident took place at 7.40 a.m and the accused/appellants were shown riding a motor cycle then why from 7.40 to 9.45 a.m, the accused remained

near and around the spot knowing the fact that the police of the area were in hot pursuit. Another thing which disturbs the mind of this Court that when the accused/appellants were arrested and FIR No.549 U/S 15 AA was registered then how the SHO came to know that FIR 548 U/Ss 324/34 PPC has already been registered at Police Station Karak when yet he had neither the knowledge of the incident nor he was in possession of the FIR, so that he could pen down the particulars and details of the injuries caused and the case registered. In the circumstance, we can gather nothing but to hold that the accused was arrested as the accused/appellants were in the sessions Court, district Karak, admittedly pursuing the murder trial of their father where injured Muhammad Irshad and his uncle Widan Gul were charged. The appellants were specific that owing to their enmity with the respondents they had come to the Courts and the pistol allegedly recovered belonged to and in the name of their father, was placed in safe custody of the Manager of the nearby hotel. This factor is further substantiated that the SHO

when recovered the pistol did not mention in the recovery memo that the pistol was giving a smell of fresh discharge. We are further surprised that when the weapon was recovered along with ammunitions and allegedly it was handed over to the Muharrir of the PS Karak at 12.00 hours for safe custody, then how the seals were affixed bearing monogram of GM, as the Investigating officer when examined he laid open that after recovery of the empties from the spot, those were sealed into parcel and monogram in the name of GM, was affixed. Now when the SHO had not met the Investigating officer on the spot, then how the monogram GM came into his possession at the time of the arrest and recovery of the 9 MM pistol from possession of the accused. All these suggest that in fact the accused were arrested, as he stated and the pistol was taken from the hotel where it was placed and it was in the Police station when the Investigating officer came back, the pistol and the cartridges were sealed into the parcel. So the prosecution miserably failed to prove the presence of the appellants on the spot and the

commission of offence and we can say that the witnesses are interested and chance witnesses as is held by the apex court.

In case titled **Muhammad Asghar Vs State (SCMR 2010 1706)** wherein it is held:-

*"18. After scrutinizing the evidence available on record we are of the considered view that the ocular evidence is insufficient to convict the appellants. We also find that the investigation has not been conducted honestly, false improvements have been made in order to involve the accused and with the particular object the evidence was manipulated so as to strengthen the prosecution case. Therefore, we are not convinced with the evidence of recovery of weapons from the possession of the appellants."*

It was also held in a case titled **Noor Muhammad Vs the State (2010 SCMR 97)**:-

*".....even otherwise the recovery of crime empty or riffle with matching report of F.S.L. is a corroborated piece of evidence, which by itself is not sufficient to convict the accused in absence of substantive evidence."*

13- The medical evidence when taken into consideration with the ocular account and the places given to the parties in the site plan so the seat of injuries on person of the deceased run in counter and in fact the ocular account is in conflict with the medical evidence. One aspect of the case still disturbs the judicial mind of this court that why the Investigating officer did not record the 161 statement of the injured Muhammad Irshad and that why the site plan was not confirmed from the said witness despite the fact that the injured got discharged from the hospital after three days of the occurrence. The injured went in such a high exaggeration that he stated that his statement could not be recorded as he remained unconscious for long time and that he is not specific as to whether said consciousness remained for days or months.

In case titled **Rahat Ali Vs the State**

**(2010 SCMR 584)** it was held:-

***".....It has also been observed by this court that delay in recording the statements without furnishing any plausible explanation is***

*also fatal to the prosecution case and the statement of such witness was not relied upon in case of Syed Muhammad Shah Vs. State (1993 SCMR 550). Therefore, the evidence of PW-2 is coming within the scope of above rules laid-down by this Court. Hence, his statement cannot be safely relied upon in the particular facts and circumstances of the present case"*

14- The Investigating officer when allegedly recovered the two empties of 30 bore of 9 MM from the spot, he in the recovery memo clearly mentioned that the empties so recovered were deshaped, as heavy traffic ply on the road. Not only this but it also aids to our anxiety as to how for sufficient long time the empties were not disturbed despite the fact that no police officials were deputed to preserve the spot, in this eventuality, the FSL report loses its sanctity as to how the deshaped empties were put to comparison.

15- The motive alleged by the prosecution remained far from proving as the presence of the complainant and the injured on the spot is not established, had this been so then the prime target of the accused/appellants would have been the father and the

son, as no reasonable person would allow a witness against him. The complainant admitted in his court statement that the appellants have a house closed to his house in the village and also another house in village Samandri, had this been the situation, then instead of running the risk to accomplish their plan in the vicinity which is heavily surrounded by the law enforcing agencies, it was easy to achieve the goal at the village or on the way.

In case titled **Muhammad Ashraf Alias Acchu Vs The State (2019 SCMR 652)** wherein it is held:-

*"The motive is always a double-edged weapon. The complainant Sultan Ahmad (PW-9) has admitted murder enmity between the parties and has also given details of the same in his statement recorded before the trial court. No doubt, previous enmity can be a reason for the appellant to commit the alleged crime but it can equally be a reason for the complainant side to falsely implicate the appellant in this case for previous grouse."*

16- After thoroughly evaluating the evidence available on file, this Court reaches to the conclusion that the prosecution has miserly failed to prove its case against the appellants. Resultantly, this appeal is, therefore, allowed. The conviction and sentence of the appellants recorded by the learned trial court is set aside and they are acquitted of the charge by extending them the benefit of doubt. They shall be released forthwith from Jail, if not required to be detained in connection with any other case.

17- The connected **Cr. Revision No. 23-B of 2018**, filed by the State, against the appellants is dismissed.

18- These are the detailed reasons of my short order of even date.

**Announced.**  
10-10-2019

J U D G E

*(Hon'able)*

*A/A      \*(SB) Mr. Justice Sahibzada Asadullah\**