

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

Cr.A.No.666-P/2013

J U D G M E N T

Date of hearing: 27.09.2017

Appellant (by): Mr.Muhammad Saeed Khan,
advocate.

Complainant by Mr.Altaf Khan, advocate.

State by Mr.Muhammad Riaz Khan
Paindakhel, AAG.

LAL JAN KHATTAK, J.- Through this judgment, we shall also decide criminal revision No.08-P of 2014 as both the matters have emanated from same judgment dated 19.12.2013 of the Additional Sessions Judge-XI, Peshawar delivered in case FIR No.642 dated 24.10.2011 u/ss 302/324/34 PPC of Police Station Khan Raziq Shaheed, Peshawar, whereby on conviction, the appellant has been sentenced to imprisonment for life with fine of Rs.5,00,000/- within the meaning of Section 544-A Cr.P.C. payable to the legal heirs of the deceased or in default whereof to undergo six months S.I. He was also convicted u/s 324 PPC and sentenced to imprisonment for seven years. Both the

sentences were directed to run concurrently while benefit u/s 382-b Cr.P.C. was extended to him. The appellant has impugned his conviction through his appeal while the complainant, through his criminal revision, has sought enhancement of the sentence awarded to the appellant from imprisonment of life to the normal penalty of death.

2. Brief facts of the case are that Muhammad Arshid (PW-9) reported to S.I. Muhammad Noor (PW-5) at Lady Reading Hospital, Peshawar to the effect that he and his cousin Ibadullah were on their way to village Chamkani in Suzuki Carry Van bearing registration No.SGF-3795. According to the report (Ex.PA), complainant Muhammad Arshid was driving the Van while his cousin Ibadullah was on front seat and when they reached at the place of occurrence, there, as per FIR, appellant Muhammad Asif and an unknown person were present, who opened firing at them with which they were hit and injured. On the way to hospital, injured Ibadullah succumbed to his injuries. Motive for the crime, as alleged in the FIR, was stated

to be some criminal litigation between the deceased and appellant.

3. On arrest of the appellant and completion of investigation, challan was put in court, which indicted him for the offence to which he pleaded not guilty and claimed trial. Prosecution in order to prove its case examined 13 witnesses 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. It is worth to mention that the unknown person has not yet been arrested.

4. Arguments heard and record gone through.

5. Perusal of the case record would show that in support of his case, complainant appeared before the court as PW-9 and deposed in line with what he had alleged in his report albeit with some improvement. Noticeable aspect of the case is that PW-9 is the solitary eyewitness to the crime, who is also related to the deceased. It is well settled that when there is only a solitary eyewitness in the case, who also

happens to be related to the victim, then the court would appreciate and scrutinize the case evidence with utmost care and caution, so as to determine whether the solitary and related eyewitness has given a true account of the incident and that his testimony is corroborated by the surrounding circumstances of the case. If the deposition furnished by a solitary eyewitness gets ample corroboration from the attending circumstances of the case, then of course conviction can be based on it, otherwise, no credence could be attached to the solitary account of a witness. In the case in hand, no doubt, the complainant bears the stamp of injury on his person but it has been held umpteenth times by the superior courts that mere stamp of injury on the person of a witness would not be enough to hold that whatever he has deposed is nothing but a truth. Strong corroboration to the evidence given by a solitary, related and injured eyewitness is must in order to record conviction of an accused on the basis of such evidence.

6. In the context of the above, if we look at the evidence furnished by the complainant, it would appear that same is

hardly supported by medical and other circumstantial evidence of the case. According to *murasila* (Ex.PA), the occurrence had taken place at about 18.20 hours on 24.10.2011 when at that time it was very difficult for the complainant to properly identify the appellant for want of light, particularly, when the former was driving a Van and that too on a busy road of Peshawar City. The complainant has deposed that he and the deceased had offered their evening prayer before leaving their travel agency situated at Peshawar Saddar, a place situated at a considerable distance from the crime spot. Taking into account the above stated facts of the case, it can safely be held that there was no chance for the complainant to properly identify the appellant as by offering their evening prayers at Saddar and thereafter reaching at the spot, there would have been quite a dark rendering it difficult for the complainant to properly identify the appellant.

7. Another pronounced aspect of the case is that medical examination of the deceased has negated the ocular account of the case. According to the site plan (Ex.PB), the complainant was driving Suzuki Van and

was moving from West to East and the deceased was sitting with him on front seat. As per site plan, the appellant was present at point No.3, which is towards left side of the deceased. The medical evidence furnished by PW-12 shows that the deceased has sustained five wounds on his right side. When the appellant was present on his left side as per site plan and had fired therefrom, then receiving injuries by the deceased on his right side would not be possible. This fact of the case shows that the occurrence had not taken place in the mode and manner in which same was reported and deposed by the complainant. Though complainant in his cross examination has stated that the accused, after firing two shots from his side, turned to the other side of the vehicle and fired at the deceased but that statement clearly seems to be a dishonest improvement with a sole purpose to bring the medical evidence in line with the site plan and ocular account of the case, therefore, no importance could be given to the above clarification and explanation.

8. Furthermore, as per Ex.PW13/X-1, the deceased was brought to the hospital at

18:02:24 hours while according to the case *murasila*, the occurrence had taken place at 18:20 hours. Shifting the deceased prior to lodging the *murasila*, which was scribed in the hospital, has created a dent in the prosecution case as to its accuracy as presence of the deceased in the hospital at 18:02:24 hours has negated the allegations as contained in the initial report.

9. No doubt, the complainant has a stamp of firearm injury on his person but that does not mean that whatever he reported and deposed was a true picture of the incident, therefore, his testimony cannot be accepted despite the fact that he has sustained an injury on his person.

10. Thorough and careful examination of the case record would show that the prosecution has not proved its case against the appellant beyond any reasonable doubt, which is hallmark of criminal jurisprudence. It has been held umpteenth times by the superior courts that in order to convict an accused, the prosecution has to prove its case beyond reasonable doubt and if a single doubt accrues in the prosecution case benefit of that will be given to the accused being a century old principle of law.

It appears to us that the learned trial court has not appreciated the case evidence in its true perspective and in line with the settled principle of criminal law and has fallen in error by convicting the appellant for which the impugned judgment is not sustainable.

11. For what has been discussed above, this appeal is allowed, conviction and sentence of the appellant are set aside and he is acquitted of the charges leveled against him.

12. Above are the reasons of our short order of even date, which is reproduced as under:-

"For the reasons to be recorded later, this appeal is allowed, conviction and sentence recorded by learned Additional Sessions Judge-XI, Peshawar vide impugned judgment dated 19.12.2013 are set aside. The appellant is acquitted of the charges leveled against him and he be set free forthwith, if not required in any other case".

JUDGE

JUDGE

Announced.
27.09.2017.

Sadiq Shah, PS (D.B) (Hon'ble Justice Lal Jan Khattak & Hon'ble Mr. Justice Qalandar Ali Khan)