

/ 2015.

Petitioner.

Versus

- Anwar Zeb S/o Khan Badshah R/o Amandara  
 Muhammad Tariq S/o Muhammad Sultan R/o Asraf Abad village Takhtbai  
 Syed ur Rehman S/o Habib ur Rehman R/o Korkaman Banda Dargai  
 4) Altaf Khan S/O Moamber Khan R/O Petao Banda Meherdi  
 5) Nameed Ullah S/o Muhammad Akbar R/o Jari Sakhakot  
 6) Siraj S/o Muhammad Jan R/o Khat Kaley Jari Sakhakot  
 7) Nasar S/o Taj Muhammad R/O Azam Kalay Takhtbai District Mardan

(Respondents / Accused).

Case FIR No.126 Dated 01-09-2012 US 17(2) OAPO-324/451/452/337-A/337-F(i)/506(B)/148/149 PPC/13 AO,  
 Levy Post Sakhakot.

**APPEAL U/S 417(1) CRPC AGAINST THE JUDGEMENT OF THE LEARNED  
 ADDITIONAL SESSIONS JUDGE/ IZAFI ZALLA QAZI MALAKAND AT DARGAI  
 DATED 27/11/14. WHERE BY THE LEARNED TRIAL COURT ACQUITTED THE  
 ACCUSED ON VERY FLIMSY GROUNDS.**

**RESPECTFULLY SHEWETH.**

**BRIEF FACTS:**

This occurrence took place on 01/09/2012 at 2:00 hours which was immediately reported to the Local Police on spot. Complainant Junaid Khan reported that he along with his family were sleeping in his house when at 02:00 hours he heard some voice on which he got up and in the light of torch he noticed two armed persons who on seeing the complainant aim at him. The father of complainant was also a waken and accused Anwar Zeb made firing at father of complainant as a result of which he sustained injury. On their hue and cry the uncle of complainant was also attracted to the spot where complainant and his uncle Azizur Rehman apprehend accused Anwar Zeb along with 30 bore pistol. In the mean while the Levy officials were attracted to the spot to whom the complainant and his uncle produced the apprehended accused Anwar Zeb along with 30 bore Pistol and Juniad made report which was reduced into writing in the shape of Murasilla on which the instant FIR was registered. During investigation the accused also named his co-accused who were also implicated in the instant case. On completion of investigation Challan was submitted in the Court against the accused. Charged was framed against the accused to which they pleaded not guilty and claimed trial. Prosecution produced 10 witnesses in support of its case. When the Prosecution evidence was closed the accused was examined U/S 342 Cr.PC. On hearing arguments the accused were acquitted vide impugned Judgment dated 27/11/2014, hence the instant appeal of the following grounds inter alia:

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**GROUND OFS OF APPEAL:**

1. That Judgment of the Learned Trial Court by acquitting the accused is against law, facts of the case and evidence available on the file and hence not tenable. (Attested copy of Judgment and other relevant documents are attached).
2. That accused Anwar Zeb was arrested on the spot red handed along with 30 bore pistol.
3. That during interrogation accused Anwar Zeb disclosed the names of all the co-accused involved in the commission of offence.

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63

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
MINGORA BENCH (DAR-UL-QAZA), SWAT  
(Judicial Department)**

Cr.A No. 55-M/2015

**JUDGMENT**

Date of hearing: 29.1.2016

Date of announcement: 22.2.2016

Appellant: (State) by Mr. Rafiq Ahmad,  
Assistant Advocate General.

Respondents: (Anwar Zeb and others) by  
Mr. Aziz Muhammad, Advocate.

**HAIDER ALI KHAN, J.-** Through the instant appeal, the State has impugned the judgment dated 27.11.2014 of the learned Additional Sessions Judge/Izafi Zilla Qazi, Malakand at Dargai whereby the respondents were acquitted in case F.I.R No. 126 dated 01.9.2012 under sections 324/451/452/337-A/337-F(i)/506-B/148/149 PPC, 17(2) OAPO, 13 A.O registered at Police Station/ Levy Post Sakha Kot, District Malakand.

2. Precise and relevant facts of the case are that on 01.9.2012 at 02:20 hours the complainant

69

Junaid Khan son of Abdur Rahim handed over the accused Anwar Zeb alongwith a 30 bore pistol to the local police and reported to the effect that on the previous night he alongwith other inmates of his house were asleep; upon hearing a sound he woke up at 02:00 hours, turned on the torch and saw two accused in the veranda of his house who threatened the complainant and other inmates of the house with his gun; in the meanwhile, father of the complainant tried to overpower him but was fired at by accused Anwar Zeb and caused him firearm injury; on raising hue and cry, uncle of the complainant namely Aziz-ur-Rehman came to the spot; in the meanwhile one of the accused fled from the scene whereas the complainant, his mother and uncle overpowered the accused Anwar Zeb who during the scuffle caused a blow to the complainant with his pistol with which he got injured on his face while his left palm was burnt with the barrel of the pistol

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65

when he was snatching it from the accused Anwar Zeb; the mentioned accused was later on locked in a room of the house; uncle of the complainant also sustained slight injuries during that scuffle; the other accused present on the rooftop also made aerial firing; the injured Abdur Rahim was shifted to Dargai hospital whereas the local police reached on the spot on hearing the firing to whom the above report was made by the complainant.

The local police took the accused Anwar Zeb and the pistol in custody. Report of the complainant was recorded vide Murasila, Ex.PA on the basis whereof the above referred FIR was registered against the accused.

3. During investigation of the case, co-accused Muhammad Tariq, Saeed-ur-Rehman, Altaf Khan, Hamidullah, Siraj and Nasar Khan were also arrested in the case and after completion of the investigation, challan was submitted in the Court for

trial of the accused who were formally charged for the offences but they pleaded not guilty and claimed the trial. The prosecution produced and examined as many as ten witnesses in support of its case and consequent thereupon statements of the accused were recorded under section 342, Cr.P.C, however, they neither opted to record their statements on oath nor they wished to produce evidence in their defence. At the conclusion of the trial, the learned trial Court found the accused innocent and acquitted them vide judgment dated 27.11.2014. Hence, the instant appeal.

4. The learned A.A.G. appearing on behalf of the State argued that the respondent/accused Anwar Zeb was arrested on the spot alongwith 30 bore pistol who disclosed the names of other co-accused but the learned trial Court did not consider this crucial aspect and delivered the impugned judgment of acquittal which is against the law and

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facts on the record. He further contended that the prosecution version is duly supported by the medical as well as other circumstantial evidence besides, the testimony of the prosecution witnesses has not been shattered by the defence but despite the same reliable and trustworthy evidence of the prosecution, the respondents/accused were acquitted outrightly without any legal justification. The learned A.A.G. concluded that the prosecution has proved the case against the respondents/accused beyond any doubt, therefore, the impugned judgment is liable to be set aside and the respondents/accused by convicted and sentenced in accordance with law.

5. Learned counsel for the respondents/accused on his turn vehemently defended the impugned judgment and contended that there are serious doubts and dents in the prosecution case besides there are glaring contradictions in the statements of the prosecution witnesses, therefore,

68

the respondents/accused cannot be legally convicted on the basis thereof. He added that the impugned order of the trial Court is according to law and facts on the record, therefore, the same calls for no interference by this Court.

6. I have heard the arguments of the learned A.A.G. as well as of the learned counsel for the respondents/accused and have gone through the record in light of their valuable assistance.

7. As per prosecution version, the respondent/accused Anwar Zeb was arrested red-handed on the spot alongwith pistol, locked inside a room and was handed over to the local police at the time of report. Whether or not the above stance of the prosecution gets any support from the evidence, is a question which needs to be determined in the light of statements recorded by PWs and other circumstantial evidence. Record shows that the respondent/accused Anwar Zeb had sustained

69

injuries during the scuffle who was brought by the levy officials for medical treatment to Dargai hospital where he was examined by Dr. Akbar Hussain (PW-1) and his report in this regard is available on the record as Ex.PW-1/3. According to this report the respondent/accused Anwar Zeb had sustained three types of injuries detail whereof has been mentioned in the medical report. It is noteworthy that the complainant himself as well as his father had also sustained injuries in the occurrence who were also medically examined by the same doctor PW-1 nearly at the same time. The only difference that appears is that of time as the complainant and his father were examined by the doctor at 3:00 a.m and 2:45 a.m respectively whereas the respondents/accused was brought to hospital at 4:00 a.m by the levy officials. The above mentioned difference of time is neither fatal to the prosecution case nor was it necessary that all the



70

injured should have been brought to the hospital at the same time. Moreso, the complainant had no concern with the injuries of the respondent/accused and his examination by the doctor was at the disposal of the levy officials, therefore, the above referred time difference has no adverse effect on the prosecution case. Record also shows that father of the complainant sustained firearm injury which was caused by the respondent/accused Anwar Zeb. This contention of the complainant also gets support from the medical report Ex.PW-1/1 as well as statement of the doctor (PW-1) even the injured was referred to LRH being in serious condition. The concerned doctor, while discussing the wound at Serial No.3 of the report, has also mentioned that "a cut with loss of skin with gunpowder wound seen on dorsum of penis" which is of much importance as the same suggests that the firing was caused to the injured Abdur Rahim from a close distance which is also the

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71

stance of the complainant in his initial report. Similarly, according to the initial report the complainant also sustained injuries on his cheek and left hand which fact has been confirmed by the doctor in his report vide Ex.PW-1/2. The above facts regarding examination of the injured almost at the same time alongwith the respondent/accused Anwar Zeb show that all the injured including the respondent/accused sustained injuries in the same incident. The learned trial Court has held that recognition of the respondent/accused Anwar Zeb in darkness is doubtful and that he was known to the complainant beforehand besides, he had not told the physical features of the said accused to the local police. Although, according to the statement of the complainant, the respondent/accused disclosed his name after his apprehension and the same fact has been confirmed by the defence counsel by asking a question in this regard from PW-4 Aziz-ur-Rehman

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who has also stated that the accused had disclosed his name prior to the arrival of the police, however, the above points taken notice of by the learned trial Court would certainly have value in case the accused had decamped from the spot but in my view, the above points have no significance at all when he was already apprehended inside the house and locked up in a room.

8. Another important thing that connects the respondent/accused with the commission of the offence is the recovery of 30 bore pistol effected from the respondent Anwar Zeb on the spot which has been taken into possession as Ex.PW-10/1. Similarly, the I.O has collected three crime empties of the same caliber from the veranda of the house and took into possession the same through recovery memo Ex.PW-2/3. According to the F.S.L report, one empty shell out of three has been fired from the pistol which was snatched by the complainant from

the respondent/accused Anwar Zeb. The above fact further supports the prosecution version from which the presence of the accused Anwar Zeb on the spot is also well established. Similarly, the blood stained clothes of the injured Abdur Rahim alongwith a blood-stained piece of bed linen used by the injured have also been chemically examined which report is also in positive. This report also confirms that the occurrence took place inside the house. Astonishingly, the learned trial Court has not uttered a single word regarding the above mentioned important evidence, therefore, the impugned judgment is the result of non-reading and non-appreciation of the evidence on the record.

9. In addition to the above, the statements of the eye-witnesses are in harmony on material points and the contradictions referred to by learned counsel for the respondents/accused are minor in nature. The accumulative effect of the prosecution is

that the respondent/accused Anwar Zeb is involved in the commission of the offence and his presence inside the house on the night of occurrence is well established from the direct as well as circumstantial evidence. While applying the principle of separating grain from the chaff, the role of the respondent/accused Anwar Zeb has become very clear and there is no serious dent in the prosecution case benefit whereof could be extended to him. Therefore, it is held that the learned trial Court has not properly appreciated the evidence on the record, hence, the impugned judgment to the extent of respondent Anwar Zeb is not sustainable.

10. In light of the above discussion, the prosecution has proved its case against the respondent/accused Anwar Zeb beyond any doubt, therefore, this appeal is partially allowed, the impugned judgment dated 27.11.2014 of the learned Additional Sessions Judge/Izafi Zilla Qazi,

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75

Malakand at Dargai, delivered in case FIR No.126 dated 01.9.2012, under sections 324/451/452/337-A/337-F(i)/506-B/148/ 149 PPC, 17(2) OAPO, 13 A.O registered at Police Station/Levy Post Sakhakot, District Malakand is partially set aside. Resultantly the respondent-accused Anwar Zeb son of Khan Badshah is convicted under section 324 PPC and sentenced to rigorous imprisonment for five years with fine of Rs:50,000/- as compensation payable to injured Abdur Rahim or in default thereof to undergo further two months S.I. Similarly, he is also convicted under section 337-F(v) and sentenced to three years rigorous imprisonment with payment of Rs.50,000/- as Dhaman payable to the injured Abdur Rahim or in default thereof the same shall be recovered as arrears of the land revenue. He is also convicted under section 13 A.O and sentenced to one year S.I with fine of Rs.10,000/- or in default thereof he will further undergo one month S.I. The

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26

sentences shall run concurrently and benefit of section 382-B Cr.P.C. is extended to him. The period for which the respondent/convict remained in jail during pendency of this appeal shall also be counted towards the above mentioned punishment of imprisonment. The respondent-convict present in Court is directed to be formally taken into custody with regard to his conviction and be dealt with in accordance with law. The instant appeal to the extent of the remaining respondents/accused is dismissed and the impugned judgment to their extent is maintained.

Above are the reasons of my short order of the even date announced in the open Court.

Announced.  
Dt: 22.2.2016

Sd. Hazrat Ali

2

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