Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR
Judicial Department

Cr.A No. 958-P/2019
Hazrat Bilal Vs the State
With Murder Reference
No.24-P/2019

Date of hearing:	09.10.2019.
Appellant by:	Mr. Hussain Ali, Advocate.
State by:	Mr. Mujahid Ali Khan, AAG.
Complainant by:	Mr. Khizar Hayat Khazana, Advocate.

JUDGMENT

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AHMAD ALI, J. Called in question herein is the judgment of the learned Additional Sessions Judge/Judge Model Criminal Trial Court, Charsadda, dated 30.11.2018, whereby appellant Hazrat Bilal s/o Shams-ul-Islam was convicted and sentenced to death and burdened with payment of compensation amount of Rs.400,000/- to LRs of deceased u/s 544-A(2) Cr.P.C or in default whereof to suffer six months SI, in case FIR No.627 dated 14.11.2013 under section 302 PPC, Police Station, Sardheri (Charsadda).

2. Brief facts of the case, as per prosecution's version, are that the

complainant/Ishfaq Ahmad reported the matter to local police while accompanying the dead body of deceased at the Casualty of DHQ Hospital Charsadda to the effect that on the day of occurrence, he alongwith his cousins i.e. accused (Bilal), Shakil Arshad (deceased) and Abdullah were on the way back to their village after offering a '*Fatiha Khwani'*, in a Suzuki motorcar (Khyber Registration No.B-1464). Accused-appellant (Bilal) was sitting on front seat while deceased (Shakil Arshad) was on driving seat while the complainant alongwith Abdullah were sitting on rear seat of the said vehicle. When reached to the place of occurrence, all of a sudden, accused-appellant put out his pistol from the fold of his trouser and make a fire on deceased (Shakil Arshad). Resultantly, he got seriously injured. The accused-appellant made his escape from the spot. The deceased (then injured) was taken to hospital for treatment but he succumbed to injures on the way. Motive was stated to be money dispute between deceased and accused-appellant. On the basis of murasila Ex.PA/1, FIR ibid was registered against the accused-appellant.

2. On completion of investigation, challan was submitted in Court where the appellant was charge-sheeted to which he pleaded not guilty and claimed trial. The prosecution in order to prove its case, produced and examined as many as seven witnesses whereafter statement of the accused was recorded, wherein, he professed his innocence. The learned Trial Court, after conclusion of trial, found the appellant guilty of the charge and, while recording his conviction, sentenced him as mentioned above. Feeling aggrieved, the appellant has filed the instant appeal before this Court.

3. Arguments heard and record gone through.

4. Perusal of postmortem report suggests that the deceased sustained a single wound injury on his chest. The vehicle plying in Pakistan are right hand driving, so, it is not appealable to a prudent mind to hit a person with fir arm on the chest, who was driving the vehicle and the assailant was sitting in the front seat of the same vehicle, it could only be possible when the assailant is left handed but no such evidence is available on file. For

ready reference the detail of injuries is given below:-

> **Wounds, bruises, position, size & nature:**
> FAI entry wound on left side chest size about 1x1 cm (Frontal chest), its exit size about 2x2 cm on back chest. Charring marks are present.
> **INTERNAL APPEARANCE:**
> **Thorax**: Walls, ribs and cartilages, pleurae, left lung, pericardium and heart and blood vessels are injured.
> **Muscles, bones and Joints**: Muscles of the site of injury are injured.
> **Remarks**
> The deceased died of severe shock and bleeding caused by FAI to vital organs mentioned above.

It is worth to mention here that in postmortem report the word 'charring mark' was seemed to be subsequently added and the hand writing and the pen used for this word is totally different from the other writing/pen used.

5. The postmortem report further suggests that death of the deceased (then injured) was instantaneous while the complainant stated in the FIR that while he was taking the injured to hospital, he succumbed to injures in the way which further falsify the narrations of complainant.

6. The record further suggests that no identifier of the dead body was produced as one of the identifier was also mentioned as eyewitness of the occurrence which was abandoned by the prosecution, so in the circumstances, adverse inference under Article 129(g) of Qanun-e-Shahadat Order 1984 can be safely drawn. In this regard reliance could be safely placed on case law reported in **NLR 2015 SCJ 121.** Even otherwise, in the situation legal inference could also be drawn that if the said witness had entered into the witness box then he would not have supported the prosecution case. Case law refers: **PLD 2016 SC 17.**

7. According to FIR, it was the story of prosecution that the occurrence took place when they were coming back from '***Sarbiland Koroona***' after condolence, but no statement of any such person was recorded to show that there were four persons in the said vehicle when they come to the house of that person for condolence. An important piece of evidence is missing in the instant case.

8. So far as recovery of empty from the vehicle is concerned, same was not proved as

PW-2 who was the witness of four Recovery Memos, when examined in the Court during trial, he recorded his statement only to the extent of one recovery memo, and to the extent of recovery of blood and crime empty, this witness remained mum and it was the IO who simply exhibited the Recovery Memo. However, there is also nothing on record to suggest that as to whether the spent bullet has been recovered from the back of driving seat of the said vehicle or not?

9. It is also a very important aspect of the case, that as per FIR the eyewitness/complainant after the deceased (then injured) when got injured was removed from the driving seat and shifted to the rear seat, and complainant occupied the driving seat so in that case the clothes and the hands of the complainant must have been smeared with the blood of the injured (now dead) but neither his clothes were taken into possession nor sent to the FSL for comparison. PW-4, who scribed the Murasila (Ex.PA/1), stated that he did not remember that whether the hands and clothes of the complainant were smeared with the blood or not, so in such

situation when the case of prosecution was that injured (deceased) has got injures when he was on driving seat, and the complainant said that he was in the said motorcar and also occupied the driving seat by shifting the deceased (then injured) to rear seat, then it was incumbent upon the complainant to produce his blood stained clothes to the IO and the IO was also duty bound to take the clothes of complainant and send the same to FSL with the garments of deceased for grouping which could prove the presence of complainant in the vehicle at the time of occurrence, but in absence of such evidence, the presence of complainant at the time of occurrence could not be proved.

10. Moreover, as per FIR four persons (cousins inter-se) were present in the vehicle but other two witnesses were not produced, here too, the adverse inference under Article 129(g) of Qanun-e-Shahadat Order 1984 can be safely drawn which phenomenon has been well explained in **NLR 2015 SCJ 121** and **PLD 2016 SC 17.**

11. It is the case of prosecution that complainant brought deceased (then injured) to

hospital in the same vehicle, so the vehicle is question was required to be available in the hospital but PW-6/IO of the case stated in his court statement that when he visited the spot at about 3:30 PM the vehicle was present on the spot. Record is totally silent that how the vehicle was found by the IO on the spot and that who took the vehicle to the spot.

12. The eye witness is closely related to the deceased, who showed extraordinary strange conduct after having seen brother-in-law murdered and tried his level best to suppress certain facts proving that it was an unwitnessed occurrence and he had seen just the deceased (then injured) and not the occurrence in action. Exclusion of the said witness from consideration would result that no evidence was left on record to connect the accused with the crime because the rest of the evidence is corroborative piece of evidence. Reference can be made to case law reported in **1984 SCMR 42, PLD 1981 SC 472, 1972 SCMR 578, 2007 SCMR 1825, 1990 SCMR 158 & 2011 SCMR 474.** Even, otherwise, testimony of close related witnesses is required to be strongly supported by unimpeachable and

worth reliance corroborative evidence as per the law laid down in **2015 P.Cr.L.J 81**.

13. So far as motive behind the occurrence is concerned, same has not been proved. Once the motive is set up by the prosecution then the burden of proof is shifted to its shoulder. The complainant had put forth in the initial report that there was a money dispute between the deceased and accused-appellant. The prosecution has not brought on record even an iota of evidence in black and white in shape of any affidavit in respect of alleged money dispute between deceased and accused-appellant except a receipt of loan. But to our utter surprise, no witness thereof, has been produced for substantiating the said version of the complainant.

14. In the given circumstances, the complainant has proved himself to be a chance witness, therefore, his ocular account is totally disbelieved and it is held that the occurrence had not taken place in the mode and manner as alleged by the complainant. Wisdom could be safely sought from the case law reported in **2019 P.Cr.L.J 401 & NLR 2015 Cr.C 186.**

15. The above discussion has led this Court to believe that the learned trial court has erred in appreciating the case evidence in its true perspective. It has been held, time and again by the superior courts, that a slightest doubt occurs in the prosecution case is sufficient to grant acquittal to an accused. For giving the benefit of doubt, it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in the prudent mind about the guilt of accused makes him entitled to its benefit, not a matter of grace in concession, but as a matter of right, as per law laid down in **2009 SCMR 230, 2011 SCMR 664, 2011 SCMR 646, 1984 PLD SC 433, 2012 MLD 1358, 2007 SCMR 1825, 2008 P.Cr.L.J 376, 1994 PLD Peshawar 114, 2012 PLD Peshawar 01, 1999 P.Cr.L.J 1087, 1997 SCMR 449, 2011 SCMR 820 & 2006 P.Cr.L.J SC 1002**. The conclusions drawn by the learned trial Court are not borne out of the case evidence, therefore, the impugned judgment is not sustainable.

7. For what has been discussed above and while extending benefit of doubt to the

appellant, this appeal is allowed, the impugned judgment is set aside and the appellant is acquitted of the charge levelled against him. He be set at liberty forthwith, if not required to be detained in any other case.

8. Above are the reasons of short order of even date.

Murder Reference No.24 of 2019

As we have allowed the instant appeal by acquitting the appellant, therefore, the murder reference is answered in the ***negative***.

J U D G E

J U D G E

Announced on;
09.10.2019

Amjad PS DB Hon'ble Mr. Justice Rooh-ul-Amin & Hon'ble Mr. Justice Ahmad Ali