

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR.**

**JUDICIAL DEPARTMENT**

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

**Cr. Appeal No. 167-P of 2019.**

Date of hearing: 11.10.2022.

Appellant: (Muhammad Akbar) By Mr.  
Shahid Naseem Khan  
Chamkani, Advocate.

Respondent: (State), By Mr. Niaz Muhammad  
Khan, A.A.G.

Complainant (Mohibullah); By Mr. Jalal-ud-  
Din Akbar Azam, Advocate.

**ISHTIAQ IBRAHIM, J.-** This single

judgment shall dispose of the present Criminal Appeal No.

**167-P/2019** filed by convict/appellant namely Muhammad

Akbar son of Khan Akbar against his conviction and

sentence, Criminal Revision No. **34-P/2019** under section

**439 Cr.P.C** filed by complainant-petitioner Mohib Ullah

against accused-respondent Muhammad Akbar for

enhancement of his sentence awarded to him and Criminal

Appeal No. **189-P of 2019** filed by appellant Mohib Ullah

against acquittal of co-accused Noor Akbar, as both the

criminal appeals and criminal revision are arisen of one and the same impugned judgment dated 21.02.2019 rendered by the learned Additional Sessions Judge-I, Hangu, in case FIR No.23 dated 12.01.2017 under sections-302/324/337-F(ii)/34 PPC registered at Police Station Saddar (Hangu).

2. The succinct facts of the prosecution case, as spelt out in the FIR is that on 12.01.2017, complainant Mohibullah s/o Abdul Hafeez in injured condition reported the matter to the police in Civil Hospital, Hangu to the effect that on the day of occurrence, he along with his brother Abdul Saeed (deceased) after offering Asar prayer, were coming to their house, when reached near the house of Abdul Waheed, situated in Jehazo Maidan Kahi, there Muhammad Akbar and Noor Akbar sons of Khan Akbar of their village were already present near their house, who on seeing them, started knives blows to them with the intention to commit their qatl-e-amd, resultantly his brother Abdul Saeed sustained injuries over ear and abdomen whereby he fell down and died on the spot whereas the complainant also sustained injury over forefinger by the knife blow of Muhammad Akbar. Motive for the

occurrence was disclosed as land dispute between the parties. His report was reduced into writing in the shape of murasila *Ex PW-1/1*, on the basis whereof, FIR *Ex PW-7/1* was registered against the accused.

3. After completion of investigation, challan against the accused was submitted before the trial Court. Formal Charge was framed against them to which they did not plead guilty and claimed trial.

4. The prosecution in order to prove its case, produced as many as nine (09) witnesses. The gist of the important prosecution witnesses are as under:

**Muhibullah complainant (PW-1)** reiterated the same story, which he has mentioned in the murasila (*EX PA/1*) and that the site plan (*EX PB*) was prepared by the I.O at his instance as well as on the pointation of other eye witness Abdul Waheed.

**Abdul Waheed (PW-2)** stated that on 12.01.2017, he along with his brothers namely Abdul Saeed (deceased) and Muhibullah complainant were coming back to their house after offering Asar prayers in the Masjid; that on their way accused were already present duly armed with knives (churri) and when reached there, both the accused attacked his brother Abdul Saeed and Muhibullah, the accused Muhammad Akbar hit Abdul Saeed at his left ear while accused Noor Akbar hit Abdul Saeed with his knife at his abdomen, whereby he got injured and

died on the spot. That accused Muhammad Akbar also hit PW Mohibullah with his knife, whereby he sustained injuries over his right index finger. After the occurrence accused decamped from the spot towards their house, while they picked dead body of deceased from spot and took to civil hospital Hangu.

**Anar Gul ASI (PW-5)** is the marginal witness to the recovery memo *Ex PW 5/1* vide which in his presence the I.O took into possession blood stained clothes of deceased. Similarly, in his presence the I.O recovered weapon of offence i.e two knives (churri) *Ex P-1* and *Ex P-2* at the pointation of accused and thereby seized the same vide recovery memo *Ex PW 5/2* and the I.O prepared pointation memo *Ex PW 5/4* in his presence.

**Fazal Khan S.I (PW-6)** has arrested accused and issued their card of arrest *Ex PW 6/1* and submitted complete challan *Ex PW 6/2* against the accused.

**Dr.Mubarik (PW-8)** stated that on 12.01.2017, the dead body of deceased namely Abdul Saeed s/o Abdul Hafeez aged about 38 years r/o Kahi, Hangu was brought to Civil Hosital Hangu along with he injured namely Mohib Ullah and he examined the injured and the deceased, the detail is as follow:-

The deceased was examined by him at about 05:20 PM and he found the following.

**External appearance.**

1. No ligature mark
2. Fresh body was received.

**Wounds:-**

1. Sharp cutting wound at left ear region.
2. Bleeding from nose ear and mouth.
3. Sharp cutting wound at right iliac fossa about 6 cm, only abdominal wall.

**Cranium and spinal cord:-**

Scalp, skull and vertebra

NAD, Membranes and brain at the base of skull is injured.

**Thorax:**

NAD

**Abdomen:**

NAD but earlier mentioned that only wall injury was there without any other organs damaged.

**Muscles bones and joints**

NAD

**Remarks:**

In his opinion death has occurred due to injury to the base of brain by sharp cutting weapon passed through the left ear region and excessive bleeding.

**Probable time that elapsed:**

(a) Between injury and death.....about half an hour.

(b) Between death and postmortem.....about one hour.

He also examined the injured and found the following:

Wound on right index finger by sharp cutting weapon.

NBL

The nature of the injury given by him is simple and the kind of weapon used is given by him is sharp cutting weapon.

**Naimatullah Khan SI (PW-9)** on receipt of FIR and murasila, he rushed to the spot where he prepared the site plan *Ex PB* at the instance of complainant and eye witness. During spot inspection he recovered and took into possession blood stained earth P-1 from the place of deceased vide recovery memo *Ex PW-9/1*. Vide recovery memo *Ex PW-5/1* he took into possession the last worn clothes of the deceased consisting of P-2, shalwar P-3, banyan P-4. On

13.01.2017 he produced both the accused before the competent court for obtaining their police custody vide application *Ex PW-9/2* and two days police custody was granted. He interrogated the accused. On the pointation of accused, he recovered the knives/daggers i.e weapon of offence *Ex P-5* and *Ex P-6* and in this respect he prepared the sketch of recovery *Ex PW-9/4*. He annexed list of the legal heirs of the deceased *Ex PW-9/7*. He placed on file FSL report *Ex PZ*. He recorded statements of the PWs u/s 161 Cr.P.C and after completion of investigation he handed over the case file to SHO for onward submission of challan.

**Muhammad Rahim S.I (PW-10)** on 12.01.2017, upon receiving information from Civil Hospital Hangu, he rushed there where in emergency room dead body of deceased Abdul Saeed s/o Abdul Hafeez was lying and injured Muhibullah s/o Abdul Hafeez was present. Injured Muhibullah reported the matter to him regarding the occurrence, which he reduced into writing in the shape of murasila *Ex PW-1/1*. He prepared the injury sheet of injured complainant Muhibullah *Ex PW-10/1* as well as injury sheet of deceased Abdul Saeed *Ex PW 10/2*. He prepared the inquest report of the deceased *Ex PW-10/3* and sent the murasila through constable Shafi ur Rehman No.782 to PS Saddar for registration of the case.

5. On closure of prosecution evidence, the accused were examined under Section 342 Cr.P.C, wherein they denied the allegations and professed their innocence. They did not wish to be examined on oath within the meaning of

section 340(2) Cr.PC, however, they opted to produce the CD of the press conference *Ex DX*, available on the file.

6. On conclusion of trial, after hearing the learned counsel for the parties and appraisal of evidence available on the file, the learned trial Court vide impugned judgment dated 21.02.2019 convicted and sentenced the appellant Muhammad Akbar, as described in the opening paragraph of the judgment whereas acquitted the respondent/accused Noor Akbar from the charges leveled against him.

7. Feeling aggrieved from his conviction and sentence, the appellant Muhammad Akbar has approached this Court by filing Criminal instant appeal No. *167-P/2019* with the prayer that the impugned judgment may be set aside and he may be acquitted from the charges leveled against him. Muhib Ullah complainant being not satisfied from the impugned judgment, also filed Criminal Revision No. *34-P/2019* for enhancement of sentence awarded to the appellant and Criminal Appeal No. *189-P of 2019* filed by appellant Muhib Ullah against acquittal of co-accused Noor Akbar.

8. We have heard arguments of the learned counsel for the parties and perused the record carefully with their valuable assistance.

9. Perusal of the record reveal that the occurrence has taken place at 16:15 hours while the matter was reported at 17:15 hours at Civil Hospital, Hangi. The distance between the place of occurrence and the police station has been mentioned as 8/9 kilometers. Admittedly the complainant Muhib Ullah (*PW-1*) has reported the matter in injured condition and keeping in view the distance and the time intervening between the occurrence and report it can be safely held that a prompt report in the circumstances of the case has been made which ruled out the possibility of consultation and deliberation.


10. Admittedly the complainant sustained injuries in the occurrence. It has never been suggested to the doctor or other PWs that the injuries were self-inflicted or he got injured some-where else and not at the place of occurrence. His presence is duly corroborated by the recovery of blood from the place of deceased and his testimony is also supported by another witness Abdul Waheed (*PW-2*). The



narration of the witnesses is that after offering Asar prayer they were proceeding to their house, the accused were present there, they waylaid the complainant party and the present occurrence took place. It is in matter of evidence that the place of occurrence is at a distance of 25/30 paces from the house of the complainant and deceased. They being brothers inter-se are residing in one and the same house. Their deposition is quite natural and not open to any exception or any other interpretation with regard to the mode and manner of the occurrence. In fact and circumstances of the case, we feel no hesitation to believe their testimony by holding that the PWs have given the straightforward and natural narration of the occurrence and there is no doubt that they were present at the time of occurrence and most particularly the complainant who is having the stamp of injuries on his person. Furthermore, the blood stained garments of the deceased were sent to FSL for analysis, the report whereof Ex PZ is in positive wherein it has been opined that it was human blood and of the same group.

11. The learned counsel referred to CD of press conference which has been exhibited as *Ex DX* wherein one uncle of the complainant namely Dr.Ahsan Ullah has given the true picture of the occurrence in the press conference who was accompanied with complainant as well as injured eye witness in the said press conference. He has charged Ain Ullah, Hashim Baz and Bismillah police officials for the murder of his nephew Abdul Saeed and that too in the police custody on an altercation of cutting of tree. However, there is no expert report on the record which could justify the genuineness of the said press conference and thus has lost its evidentiary value. Otherwise the press clippings and media reports are inadmissible for fixing the guilt of the accused and cannot be taken into consideration while deciding the fate of a criminal case until and unless the same has been duly brought on record. In this regard reliance is placed upon the judgment rendered by the Hon'ble Supreme Court in case titled "**MUHAMMAD ASHRAF KHAN TAREEN AND ANOTHER VERSUS THE STATE and another**" reported in (1996 S C M R 1747) wherein it is held that:-

“Learned counsel for the appellant wanted this Court to consider certain newspaper cuttings about the incident. The newspaper cuttings have not been properly proved in the way required by law of evidence. Particularly in a criminal case such cuttings cannot be used either in favour of the prosecution or in favour of the defence, unless author of the same is examined in Court as a witness. The case of Ghulam Muhammad v. The State (1985 SCMR 1442) cited on behalf of the appellant has no relevance.



Summing up, it may be mentioned that besides ocular evidence of Taus Khan, there is evidence of dying declaration brought on record through Mst. Yasmin and S.S.P. Faiz Khan and there is evidence of recovery. In his statement Exh. No.47, the appellant denied the incident but did not give his explanation about the circumstances appearing against him. In his statement the appellant did not even refer to the newspaper reports. Overwhelming prosecution evidence cannot be brushed aside simply on the basis of denial of the allegations by the appellant. In our view the appellant was rightly found guilty of the offences alleged against him and he was rightly convicted”.

12. The doctor, who examined the injured as well as conducted autopsy on the dead body of deceased, observed

sharp cutting wound at left ear region of deceased. He also observed bleeding from nose, ear and mouth of deceased, He also observed sharp cutting wound at right iliac fossa about 6 cm and that abdominal wall, membranes and brain at the base of skull were found injured; he opined that death of the deceased was occurred due to injury to the base of brain by sharp cutting weapon passed through the left ear region and excessive bleeding, which as per the report of the complainant were caused to the deceased by appellant Muhammad Akbar.

13. By considering the overall facts and circumstances of the case, by believing the eye witnesses, the arrest of the appellant, the medical evidence and motive, the prosecution has proved the guilt of the appellant Muhammad Akbar through cogent and confidence inspiring ocular/direct evidence. The PWs withstood the test of cross-examination and nothing material could be extracted from their mouth which could discard the prosecution story to the extent of appellant Muhammad Akbar.

14. Coming to the appeal against acquittal bearing No.Cr.A No.189-P of 2019 filed by the complainant against acquittal of respondent/accused Noor Akbar, suffice it to say that the injury attributed to the present respondent/accused is caused on the abdomen of the deceased and that too superficial in nature in another words the fatal injury has been attributed to the convicted co-accused namely Muhammad Akbar. The cause of death is also due to the injury caused to the brain/head of the deceased. The learned trial court has rightly appreciated the evidence and has given the benefit of doubt to the accused/respondent. In this regard reliance is placed upon the judgment rendered by the Hon'ble Supreme Court in case titled **"TAWAIB KHAN AND ANOTHER Versus THE STATE"** reported in (P L D 1970 Supreme Court 13) wherein it is held that:-


**"In the present case, judging he dying declarations of the deceased and the statement of Mst.Meraj Dana, in the light of the physical circumstances of the case, I have formed the opinion that whereas the charge against Khwaja Muhammad who had fired twice at the deceased, is clearly proved, the charge against the other**

appellant, namely, Tawaib Khan, is not at all free from doubt. The injuries suffered by the deceased in relation to the roles which he has ascribed to his assailants, furnish the best test to find out as to what is the truth, or at least to discover what is doubtful. According to him, he was fired at by Khawaja Muhammad first in the back. He says that after this he fired his own rifle at Khawaja Muhammad ineffectively, but the later simultaneously fired another shot at him hitting him in the abdomen. It seems obvious to me that when he first saw Khawaja Muhammad firing at him, he must have turned his back to avoid a frontal shot. It was thus that he received an injury on the back and a grazing wound (injury No.4) which had a direction from backwards towards the front. Then, he turned to fire at Khawaja Muhammad with his own rifle without striking him and just then he received the second shot from him which hit him in the front. The second shot, to my mind, caused the two front injuries which the deceased had sustained, one in the abdomen and the other on his right forearm. According to the site plan, the firing by Khawaja Muhammad was done from a distance of 40 paces. Therefore, the dispersal of the pellets was quite large to account for the distance in the injuries".

Therefore, the testimony of the PW-1 in the light of supra case, has been rightly believed by the learned trial court to the extent of appellant Muhammad Akbar and has been disbelieved to the extent of respondent/accused Noor Akbar.

15. The prosecution has successfully proved its case against appellant Muhammad Akbar through the testimony of injured witness. It is noteworthy to highlight here that factors in the case favoring respondent/accused Noor Akbar could create no suspicion in establishing the presence of the eye witnesses on the spot at the relevant time and their credibility has not been shattered, however, the same would only show a reasonable possibility in our mind that participation of accused/respondent Noor Akbar has not been duly proved by the prosecution to the hilt, as such, for safe administration of justice he is entitled to get benefit of doubt. At times, court extends benefit of doubt to some of accused as an abundant caution that will not certainly signify that the witnesses were not truthful. As such this court holds that the learned trial court has properly evaluated the prosecution evidence brought on

record by extending benefit of doubt to respondent/accused Noor Akbar and rightly convicted and sentenced the appellant Muhammad Akbar. The acquittal of respondent Noor Akbar will not entitle the appellant Muhammad Akbar to outright acquittal.



16. So far as the Criminal Revision No.34/2019 filed by the complainant for enhancement of sentence awarded to the appellant is concerned, the reason given by the trial court for awarding lesser sentence to the appellant Muhammad Akbar is that motive has not been duly proved by the prosecution and in addition to that solitary stab wound on the deceased is attributed to the appellant Muhammad Akbar. More so, it is on record that certain altercation has also taken place between the parties. In view of the above the quantum of sentence awarded to the appellant Muhammad Akbar needs no interference.

17. For what has been discussed above, Criminal Appeal No.167-P/2019 filed by the appellant Muhammad Akbar against his conviction and sentences awarded to him vide impugned judgment dated 21.09.2019 passed by learned Additional Sessions Judge-I, Hangu in case FIR No.23



dated **12.01.2017** under sections **302/324/337-F(ii)/34** PPC registered at Police Station, Saddar Hangu, is dismissed and the impugned judgment of the learned trial court is maintained. Needless to mention here that all the substantive sentences awarded to the appellant shall run concurrently and benefit of section 382-B Cr.P.C is extended to the appellant. Whereas the Criminal Revision No.**34/2019** for enhancement of sentences awarded to appellant Muhammad Akbar (accused/respondent) and Criminal Appeal No.**189-P/2019** against acquittal of accused/respondent Noor Akbar are also dismissed.

**Announced:**  
**Dated.11.10.2022.**

  
**JUDGE**

  
**JUDGE**

(D.B)  
Hon'ble Mr. Justice Rooh-ul-Amin Khan,  
Hon'ble Mr. Justice Ishtiaq Ibrahim,  
(Asif Jan Sr.S.S)