

Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

Cr.M No.866-P/2019 in Cr.A.No.224-P/2019.**J U D G M E N T**

Date of hearing ----- 20.09.2022.

Appellants by --- M/s Mr.Shabbir Hussain Gigyani & Syed  
Waqar Ali Shah, Advocates.

State by --- Mr.Muhammad Inam Yousfzai, A.A.G.

Complainant by --- M/s Altaf Khan & Fahim Khan,  
Advocates.

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**S M ATTIQUE SHAH, J:-** Through

instant Cr.M, petitioner/appellant seeks

condonation of delay, which was occurred

in filing the appeal in hand. The

application of the petitioner/appellant is

supported by a duly sworn affidavit and

the learned counsel representing the

complainant has shown his no objection

qua acceptance of the instant Cr.M. In

view thereof and in the larger interest of

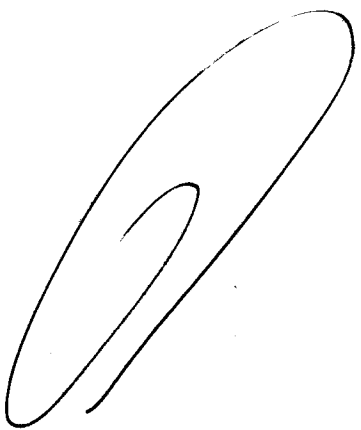
justice, the instant Cr.M is allowed and

the delay so occurred in filing the appeal

in hand is condoned accordingly.

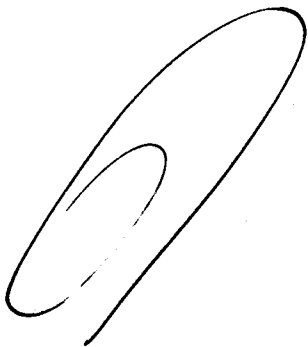
Cr.A.No.224-P/2019.

**S M ATTIQUE SHAH, J:-** Through this judgment, we shall also decide Cr.R.No.120-P/2018 titled "Abdul Akbar Vs. Hamid etc." as both the cases have emanated from same judgment dated 25.09.2018 of the learned Additional Sessions Judge-I, Swabi delivered in case FIR No.1209 dated 19.11.2016 registered under sections 302/324 PPC read with section 15 of Khyber Pakhtunkhwa Arms Act, 2013 at police station Swabi, District Swabi whereby the appellant has been convicted under sections 302 (b) PPC and sentenced to imprisonment for life as *Tazir*. He has also been directed to pay compensation of Rs.300,000/- to the legal heirs of the deceased in terms of section 544-A Cr.P.C or in default whereof to further suffer simple imprisonment for six months. The learned trial court also convicted the appellant under section 15 of the Khyber Pakhtunkhwa Arms Act, 2013 and sentenced him to undergo one



year RI with fine of Rs.5,000/-. In default of such payment, he shall further undergo one month SI. However, benefit of section 382-B Cr.P.C was extended to the appellant. Both the sentences were ordered to run concurrently.

2. According to the prosecution's case, on 19.11.2016 complainant Abdul Akbar (P.W.6) brought the dead body of his son Tauqeer Ahmad (deceased) to the DHQ Hospital, Swabi and reported the matter to the local police in the Casualty to the effect that on the night of occurrence he along with his deceased son Tauqeer was proceeding to their house from Mosque and when they reached to the place of occurrence, the accused-appellant, armed with pistol, was standing in front of his shop. On seeing them, he started firing at them with his pistol with the intention to kill them, as a result whereof his son Tauqeer Ahmed got hit and died on the spot while he escaped unhurt. Motive for the occurrence was stated to be altercation between his deceased son and the

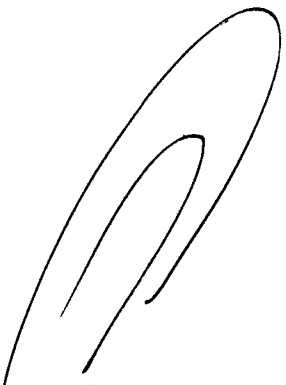


accused-appellant having taken place in the morning. On the report of complainant, present case was registered against the accused-appellant.

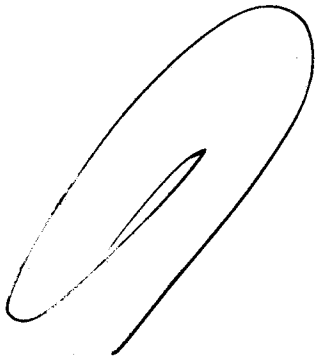
3. After arrest of the accused-appellant and completion of investigation, challan against the appellant was submitted before the learned trial Court, which indicted him for the offence to which he pleaded not guilty. In order to prove its case, prosecution examined 09 witnesses, whereafter statement of the accused was recorded wherein he professed his innocence. After conclusion of trial, the learned trial court while appreciating the evidence in its wisdom had found the appellant guilty of the charge and; whilst recording his conviction sentenced him as mentioned above, whereagainst he has filed the instant appeal.

4. Heard. Record perused.

5. Perusal of record reveals that accused-appellant has directly been charged by complainant (P.W-6) in the promptly lodged FIR (Ex.PA) for



committing *Qatl-e-Amd* of his son Tauqeer Ahmad. Prosecution in support of its case produced its star witness complainant of the case as (P.W-6) who deposed before the court quite in line with what he stated in his report/*Murasila* (Ex.PA/1). According to the complainant, at the relevant time and date he along with his deceased son Tauqeer Ahmad after performing of *Isha* prayer were proceeding to their home when in the meanwhile, the accused-appellant, standing in front of his shop armed with pistol, fired at them resultantly, his son sustained firearm injuries and died on the spot whereas he escaped unhurt. He further stated that he had recognized the accused-appellant in the light of a bulb lit outside the shop of the accused-appellant. This P.W was cross-examined at length, however, nothing beneficial could be extracted from his mouth to support the case of the accused-appellant. The evidence furnished by the complainant gets ample corroboration from medical evidence, which shows that

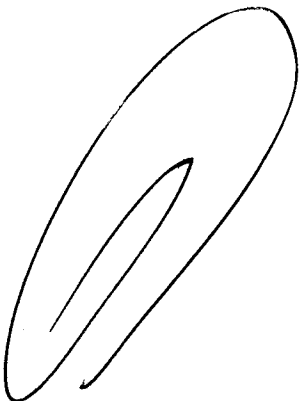


the deceased had received two firearm wounds. Record reflects that the I.O of the case Sajjad Khan, SI (P.W-8) has secured from the spot 02 empties of .30 bore pistol (Ex.P-01), emitting fresh smell of discharge, which were sealed into a parcel vide memo (Ex.P.W.3/1). He also secured blood from the spot and sealed it into parcel vide memo (Ex.P.W.3/2). He also received blood-stained clothes of the deceased consisting of *Qameez* (Ex.P-2), *Shalwar* (Ex.P-3), *Banyan* (Ex.P-4), waistcoat (Ex.P-5) having 03 bullet marks through FC Saadat and the same were sealed in parcel vide memo (Ex.P.W.3/3). He also recovered and; secured one energy saver bulb (Ex.P-05) from the front of the shop of the accused facing trial installed above the door of shop vide memo (Ex.P.W.3/4), which was lit at the time of the occurrence. He has also placed on file postmortem report (Ex.P.M) of the deceased after its receipt. It is worth mentioning that the accused-appellant was arrested on even date i.e. 19.11.2016 and; crime weapon was also

recovered upon his pointation i.e. .03 bore pistol from his residential house by the I.O vide recovery memo (Ex.P.W.8/7) who has also prepared sketch of the place of recovery (Ex.P.W.8/8). The case of the prosecution is also supported by medical evidence in shape of postmortem report (Ex.PM) and in support of the same prosecution recorded the statement of (P.W-2) Dr.Siraj Hussain who has affirmed the firearm wounds on the person of the deceased. The cause of death of the deceased has been shown as injury to heart leading to heart failure. It is worth mentioning that the occurrence has been shown taken place at 19:50 hours whereas the report has been lodged by the complainant at 20:10 hours within 20 minutes of the occurrence at hospital, which can be well regarded as a promptly lodged report which was reduced into *Murasila* (Ex.PA) thereby ruling out the element of consultation and; deliberation being a genuine document free from manipulation. No doubt, the occurrence is of nocturnal, albeit, not only

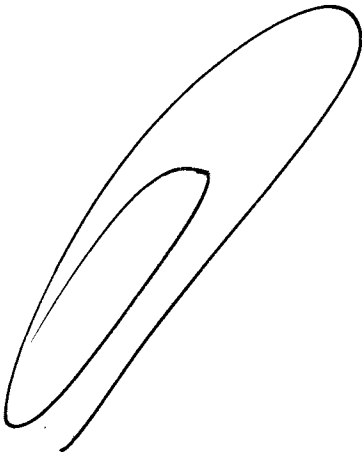
the complainant (P.W-6) has stated in the Murasila Ex.PA/1 that he recognized the accused-appellant in the light of bulb lit in the front of his shop at the time of occurrence, but the I.O (P.W-8) also secured the said bulb through recovery memo (Ex.P.W.3/4), therefore, question of misidentification does not arise in the attending circumstances of the case. Besides, in the occurrence a single accused has been nominated for commission of offence, therefore, possibility of his substitution is also out of consideration in view of settled proposition that substitution in case of a single accused is a rare phenomenon. ***Arshad Beg Vs. The State (2017 SCMR 1727).***

6. Admittedly, the prosecution has relied upon the sole testimony of P.W-6 (complainant) qua oral account, however, in criminal cases as per the settled principle of law it is the quality of the evidence not quantity which is determining factor qua the guilt of the accused-appellant when such testimony





is found confidence inspiring, is sufficient to sustain conviction. Superior courts have consistently held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. Indeed there is no legal impediment in convicting a person on sole testimony of a single witness. In fact, it is not the number, the quantity, but the quality of the evidence adduced by the prosecution that is material. It is the long established and; time honoured principle that evidence has to be weighed and not counted. ***Ijaz Ahmed Vs. The State (2022 SCMR 1577), Niaz-ud-Din Vs. The State (2011 SCMR 725) and Ehsan Vs. The State (2006 SCMR 1857).*** When tested upon the ibid principle this court found the testimony of P.W-6 consistent, coherent, confidence inspiring, reliable, free from improvements and contradictions and; thus has a ring of truth, therefore, the same is sufficient for maintaining conviction of the accused-appellant.



7. Coming to the contention of the learned defence counsel that the empties were not sent to the FSL after its recovery, rather the same were sent after the recovery of crime pistol on the pointation of the accused-appellant and; therefore, its positive report is of no support to the case of prosecution. Given that the same has not been sent separately, however, suffice it to state that the same would not effect the case of the prosecution as of now it is well settled that if the prosecution remained successful in proving its case through ocular account of unimpeachable character, then circumstantial evidence, if not proved, would not effect the case of the prosecution. In the case in hand, the prosecution remained successful in proving its case beyond reasonable doubt through evidence of unimpeachable character, therefore, the accused-appellant was rightly convicted by the learned trial court.

8. Moving towards the contention of the learned counsel representing the

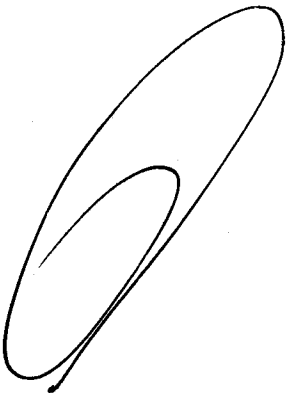
appellant that though motive was alleged by the prosecution, however, same could not be proved by it by forwarding evidence in this respect. It is settled that existence or non-existence of motive, its proving or non-proving by the prosecution is not fatal to the prosecution case when the case is otherwise proved from ocular and; medical evidence. **Waras Khan Vs. The State (2011 SCMR 387)**. Therefore, the contention of the learned counsel representing the appellant is unfounded. Indeed, it is well settled that whenever the prosecution successfully establishes its case through ocular account, which is duly supported by the medical evidence to the extent of nature of injuries or cause of death with reference to the time of incident, the other corroborative piece of evidence loses its significance, substance and value for prosecution to prove the guilt of accused.

9. Judged from each and every angle after reappraisal of the evidence and; material available on record of the case, we arrived at a conclusion that the

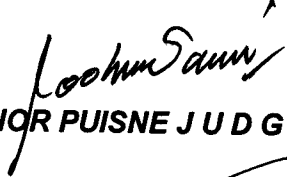
prosecution remained successful in proving its case against the appellant through cogent, reliable and confidence inspiring evidence of unimpeachable character, therefore, the learned trial court while convicting and; sentencing the appellant has arrived to a just conclusion, which findings require no interference by this court in its jurisdiction under section 410 Cr.P.C.

10. In view of what has been discussed above, this appeal being devoid of any merit, is dismissed and; consequently the impugned judgment of learned trial Court dated 25.09.2018 qua conviction and sentence of the appellant, is maintained.

11. So far as the criminal revision for enhancement of the sentence is concerned, suffice it to state that while awarding the sentence of life to the accused-appellant, the learned trial court has rightly exercised its discretion in the attending circumstances of the case to which no exception could be taken,



hence, the criminal revision too is  
dismissed.

  
SENIOR PUISNE J U D G E

**Announced.**  
**Dt. 20/09/2022.**

  
J U D G E

HON'BLE MR.JUSTICE ROOH-UL-AMIN KHAN &  
HON'BLE MR.JUSTICE S. M. ATTIQUE SHAH.

(A-K-KHAN Court Secretary)