

**PESHAWAR HIGH COURT, BANNU BENCH**

**FORM OF ORDER SHEET**

Date of Order or proceedings	Order or other proceedings with signature of Judge(s).
(1)	(2)
15.3.2017	<p><b><u>Cr.A.No.62-B/2016.</u></b></p> <p>Present: A.A.G. for State-appellant. ***</p> <p><b><u>MUHAMMAD AYUB KHAN, J.-</u></b></p> <p>Anwar-ul-Haq alias Anwar and Zafar Ali Khan, respondents/accused faced trial before learned Additional Sessions Judge-I, Bannu, in case FIR No.185 dated 26.7.2011, registered under sections 302/324/34 PPC at Police Station Domail, District Bannu and on conclusion of trial, they were acquitted vide judgment dated 08.12.2014, hence, this appeal by State through Advocate General Khyber Pakhtunkhwa, Peshawar.</p> <p>2. On 26.7.2011 at 0930 hours, complainant Gharib Nawaz (PW-6) brought the dead body of his son Noor Wali Shah to Police Station Domail, Bannu</p>

	<p>with the help of co-villagers in a Datsun and reported the matter that on the fateful day he alongwith his son Noor Wali Shah were proceeding to Mangal Mela for purchasing victuals and when reached the lands known as <i>Kharbanay Korona</i> at 0600 hours, accused Afsar Ali, Zafar Ali, Anwar and Gul Azam armed with Kalashnikovs came on motorcycle and started firing on them as result, Noor Wali Shah got hit and died on the spot while luckily the complainant escaped unhurt. Motive for the occurrence is stated to be blood feud between the parties. On the report of complainant above referred FIR got registered.</p> <p><b>3.</b> At first co-accused Afsar Ali and Gul Azad Khan faced trial and were acquitted vide judgment dated 23.6.2012 while perpetual warrants of arrest were issued against the respondents/accused. Thereafter, the respondents/accused were arrested and on completion of investigation supplementary challan was submitted against them. They were formally</p>
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	<p>charged but they claimed trial. In support of its case the prosecution examined eleven (11) witnesses whereafter statements of accused were recorded under Section 342 Cr.PC but they professed their innocence. However, they neither wished to be examined on Oath nor wanted to produce evidence in their defence. On conclusion of trial, the learned Additional Sessions Judge-I, Bannu acquitted the respondents/accused vide impugned judgment dated 08.12.2014.</p> <p>4. We have heard arguments of learned A.A.G for the State-appellant and have gone through the available record.</p> <p>5. This unfortunate incident, wherein Noor Wali Shh, son of complainant lost his life, took place on 26.7.2011 at 06:30 a.m. The matter was reported to the police by complainant Gharib Nawaz (PW-6) on the same day at 09:30 a.m. whereas the distance between place of occurrence and police station was just about 13/14 kilometers. There is no satisfactory</p>
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	<p>explanation for delay of three and half hours in reporting the matter to the police which casts serious doubt regarding the veracity of the prosecution story.</p> <p>6. The complainant charged four accused for making simultaneous firing at him and his deceased son with Kalashnikovs. Postmortem report (Ex.PW-1/1) shows three entry wounds of 1/4" x 1/4" on the body of the deceased. Motive for the occurrence was stated to be blood feud between the parties. The deceased and the complainant were at the mercy of four accused but in incident the complainant did not receive even a single injury. Story of the complainant that he accompanied the deceased were proceeding to Mangal Mela for purchasing daily use items, in our view this story/version has been introduced in order to justify the presence of the complainant at the relevant time. Reliance is placed on case titled, <u><b>“Muhammad Khan and another Vs. The State”</b></u> (1999 SCMR 1220) and case titled, <u><b>“Mir Mat</b></u></p>
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	<p><b><u>Khan alias Matokai Vs. The State</u> (2002 P Cr. L J 1914).</b></p> <p>7. Afsar Ali and Gul Azad Khan co-accused are already acquitted and the role attributed to them was identical to that attributed to the respondents/accused. The record shows that acquittal of co-accused has not been challenged by complainant party or the State before High Court and acceptance of such acquittal on the part of complainant indicates that they were falsely implicated in the case. The law is settled by now that if some eye-witnesses are disbelieved against some accused persons attributed effective roles then the same eye-witnesses cannot be relied upon to the extent of the other accused persons in the absence of any independent corroboration. Reliance is placed on case titled, <b><u>“Shahbaz Vs. The State”</u>, (2016 SCMR 1763).</b></p> <p>8. So far as the abscondence of respondents/accused is concerned, in this part of the country</p>
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	<p>people do abscond not because they are guilty, but because of fear and torture of the police. Even otherwise, absconsion is not substantive piece of evidence, it is a corroborative piece of evidence and in cases where direct evidence fails, corroborative piece of evidence is of no avail, as in the instant case, where the evidence of complainant has been disbelieved. Needless to say that abscondence can neither cure the inherent defect of the ocular account nor by itself is sufficient to sustain conviction. In this respect, reference can be made to cases, <u>“Taj Muhammad Vs. Pesham Khan and others”</u> (1986 SCMR 823) and <u>“Farman Ali and 3 others Vs. The State”</u> (PLD 1980 Supreme Court 201).</p> <p>9. Having examined the prosecution case, we are of the considered view that the prosecution has failed to connect the respondents/accused with the commission of crime beyond shadow of doubt. The learned trial Court, in the impugned judgment, has</p>
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	<p>considered all the legal and factual aspects of the matter and we have not found misreading or non-reading of evidence or anything which may call for interference by this Court. Therefore, this appeal, having no footing to stand with, is dismissed in <i>limine</i>.</p> <p><u>Announced.</u> <u>Dt: 15.3.2017.</u></p> <p><b><u>JUDGE</u></b></p> <p><b><u>JUDGE</u></b></p>
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