

**JUDGMENT SHEET**

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

**Cr.A. No. 145-M/2014**

**&**

**Cr.R. No. 32-M/2014**

**CONSOLIDATE  
JUDGMENT**

Date of hearing: 07.11.2017.

**Appellant:- (Muhammad Hanif) by Mr. Amir Gulab Khan, Advocate.**

**Respondents:- (the State & 1 another) by Mr. Rahim Shah, Asst: Advocate General and Mr. Adil Khan Tahirkhaili, Advocate.**

**MOHAMMAD IBRAHIM KHAN, J.-** Stemming

of the Criminal Appeal bearing No. 145-M of 2014 preferred by the convict/Appellant

Muhammad Hanif with the prayer for his acquittal and Criminal Revision bearing


No. 32-M/2014 for consideration before us

preferred by the complainant-party for

enhancement of the conviction and sentences

awarded to the accused/Respondent are the

outcome of the same FIR bearing No. 224 dated

 24.08.2013 charged under sections 302 PPC & 13

A.O. registered at Police Station Chuprial District

Swat, therefore, are disposed of through this

singled-out judgment.

2. The First Information Report contents as culminated in the charge-sheet against the accused/Appellant rendered that on 24.08.2013 at *Asar Vela* at a place known as Jungle Mehrab Paty falling within the criminal jurisdiction of Police Station Chuprial he has caused the murder of Alam Sher by firing at him with his Kalashnikov, thereby stood trial under section 302 PPC. Another head was framed that since recovery was effected from his person of the crime weapon Kalashnikov alongwith recovery of the empties 3 in number, thereby committed an offence within the meaning of section 13 A.O.

3. When did not plead guilty by the accused/Appellant, he claimed trial, hence by examining PW-1 Rahim Khan ASI, PW-2 Khan Zada, PW-3 Akbar Aman Contable, PW-4 Amin Khan ASI, PW-5 Laiq Shah Constable, PW-6 Mst. Nusrat Bibi, PW-7 Mst. Shahida Bibi, PW-8 Alim Zada, PW-9 Dr. Shah Kameen Medical Officer Matta, PW-10 Sher Gul SI/CIO and PW-11 Said Bacha DFC, then evidence of prosecution was put to an end under the joint

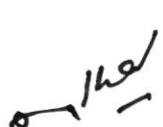
statement recorded by the learned counsel for the complainant and learned Public Prosecutor. Thereafter, the accused facing trial was examined under section 342 of the Code of Criminal Procedure, wherein he negated the prosecution evidence through his respective answers and posed innocence.

4. At the end, in Sessions Case No. 57/7 of the year 2013, the learned Additional Sessions Judge/ Izafi Zila Qazi Matta came up with his judgment dated 05.05.2014, whereby the accused/Appellant Muhammad Hanif was convicted and sentenced in the following manner:-

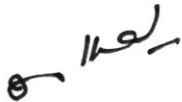
- *U/S 302 (b) PPC to life imprisonment alongwith compensation of Rs. 200,000/- (2 lacs) within the meaning of section 544-A Cr. P.C payable to the LRs of the deceased. In case of non-payment of compensation, the same shall be recovered as arrear of land revenue, in default thereof, the accused shall further suffer six months SI.*
- *U/S 13 A.O. to 3 years imprisonment and to pay fine of Rs. 5,000/- or in default thereof shall further undergo 3 months SI.*

- *Both the sentences shall run concurrently, however, benefit of section 382-B Cr. P.C. was extended to the accused/Appellant.*

5. We have afforded fair opportunity of hearing to the learned counsel for the accused/Appellant, learned counsel for the complainant and learned Asstt: Advocate General for the State, record was delved deep into with their valuable assistance.

6. The prosecution story mainly hinges upon the ocular account of Mst. Nusrat Bibi examined as PW-6, who is said to have witnessed the occurrence hounding after her deceased husband and the accused/Appellant Muhammad Hanif right from her house to the place of occurrence known as Jungle Mehrab Paty Wond Banda. It was on 24.08.2013 when it struck 2 o'clock the accused/Appellant Muhammad Hanif had come to the house of the deceased Alam Sher  duly armed with Kalashnikov and after demand of the borrowed money which became the cause of death of her deceased husband. Thereafter, they left for the place where this murder took place. The deceased had left behind another

widow by the name of Mst. Shahida Bibi examined as PW-7, who supported the complainant Mst. Nusrat Bibi PW-6 with regard to the motive being set that on account of the borrowed money for its return the accused/Appellant Muhammad Hanif became infuriated who took her husband outside their house while Mst. Nusrat Bibi (PW-6) charged them and at *Asar Vela* she was informed that her husband has been killed by the said accused/Appellant Muhammad Hanif. These important prosecution witnesses if are believed to be truthful witnesses being of ocular account it would bring the accused/Appellant's case not only for the punishment awarded by the learned Sessions Court but also criminal revision preferred by the complainant for enhancement

 would be worth for its consideration. The conduct of these witnesses who are widows would be rational particularly when Mst. Nusrat Bibi had run down her husband and the accused/Appellant to the place which is a densely forest. To believe her, PW-6 Mst. Nusrat Bibi at

the time of lodging of the First Information Report has not mentioned about carrying the Kalashnikov when accused/Appellant Muhammad Hanif had all alone came to their house while in the examination-in-chief at the very opening Para she has improved her statement by stating that the accused/Appellant Hanif had come to their house alongwith Kalashnikov. She has been confronted when replied that:-

FIR میں کلاشنکوف کا ذکر نہ ہے لیکن میں نے اپنے شوہر پر کلاشنکوف سے  
فائرنگ کا ذکر کیا ہے

Being the sole witness to the occurrence if she would have been there at the relevant time and the place where the deceased was put to death the accused/Appellant should have also resorted to kill her, but this fact has utterly been denied in the following manner:-

سعدی

حنیف ملزم اگرچہ میرے قریب تھا مگر وہ مجھے قتل نہیں کر سکتا تھا کیونکہ اسکا  
میرے ساتھ کوئی عناد نہیں تھا۔ میرے ملزم کے ساتھ کوئی پیار محبت نہ تھی کہ  
اس نے مجھے قتل کئے بغیر گواہی کیلئے چھوڑ دی اور میرے شوہر کو قتل کر کے  
بھاگ گیا۔

7. The other witness Mst. Shahida Bibi examined as PW-7 even if had come to the place of occurrence was quite late when this occurrence had already been taken place. In this respect

under an admission PW-6 deposed in her cross-examination:-

مسماتہ شاہدہ بھی ساڑھے چھ بجے وقوعہ پر آئی تھی اور ملزم وقوعہ سے بھاگ چکا تھا۔ مسماتہ شاہدہ وقوعہ کا چشم دید نہیں ہے اور بعد میں وقوعہ پر آئی تھی۔

The statement of PW-7 would also be not believable for the reason that in the cross-examination she has stated that:-

بوقت فاہرنگ میں آپنے مقتول شوہر سے کافی فاصلے پر دور سے کھڑی تھی البتہ مسماتہ نصرت اُن کے نزدیک تھی جب وہ میرے شوہر پر فاہرنگ کر رہا تھا اور میں دیکھ رہی تھی۔

8. While these extracts from cross-examinations of these important prosecution witnesses who are widows of the deceased particularly when PW-6 Mst. Nusrat Bibi has stated that she had followed her husband and the accused/Appellant to the place where the murder has taken place which is densely forest. Even while making report after long 5 hours it would sufficient to observe with certainty that the conduct of both these widows/prosecution witnesses is quite unnatural and this occurrence seems to be un-witnessed by anyone amongst these widows.

9. It has been held in 2003 SCMR 1466  
"Mst. Shamim and 2 others vs the State and  
another" as under:

*"prosecution story being foundation on which edifice of the prosecution case was raised occupied a pivotal position in a case, it should, therefore, stand to reason and must be natural, convincing and free from any inherent improbability and it was neither safe to believe a prosecution story which did not meet said requirements nor a prosecution case based on improbable story could sustain conviction."*

In another wisdom reported in 1999 SCMR 1220 "Muhammad Khan and another vs The State". On appraisal of the evidence, the presence of the eyewitnesses at the spot at the relevant time and accompanied the deceased to the place of occurrence if create doubts it would be given worth as "conviction must be based on unimpeachable evidence and certainty and any doubt arising in the prosecution case must be resolved in favour of the accused".

A similar occurrence was reported in 2002 YLR 593 (Lahore) "Mst. Safia vs The State", where conduct of the eyewitnesses at the



time of occurrence was unnatural and unbelievable benefit of doubt was extended to an accused and was acquitted accordingly. The Judgment of the Hon'ble Peshawar High Court Peshawar reported in 2002 P Cr. LJ 1914 (Peshawar) "Mir Mat Khan alias Matokai vs The State" was also delivered in similar like circumstances, where appreciation of evidence would require thorough scrutiny particularly when interested evidence like here, the deceased widows statements are to be taken with great care and caution and these statements are to be scrutinized for its reliability.

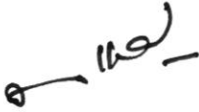
Searching altogether similar type of case cited as 2002 P Cr. LJ 384 (Lahore) "Altaf and 4 others vs The State" is also considered where conduct of eyewitness is shown unnatural and the story had been concocted in order to falsely implicate the accused in the case. Occurrence has not occasioned as stated by the eye-witnesses. Ocular testimony was contradictory on material points. Medical evidence did not corroborate. Investigation in the

case was not thoroughly made. Benefit of doubt was extended to the accused. In this case too, the occurrence seems to be un-witnessed as Mst. Nusrat Bibi has cited herself to be present at the spot where her husband was put to death while watching the fire shots attributed by the accused/Appellant which killed Alam Sher.

10. Where the medical evidence contradict these statements altogether, PW-9 Dr. Shah Kameen Khan Medical Officer has suggested entry wound on right side scalp and a large size exist wound on right side scalp. There is entry wound on right side chest. Exist on right side front of chest While 3rd entry wound on left side chest back. Exist on front of left side chest, therefore, there is also contradictory statement of PW-7 Mst. Shahida stating watching fire shots 20 in number from such close range and it will bring this case under the shadow of doubt on this score too.

11. The site plan has shown panoramic view where the deceased has been put to death in a place which is densely forest surrounded by tall

trees, there is zigzag path and the sole eyewitness i.e. PW-6 Mst. Nusrat Bibi widow of deceased has been shown at such a distance from that angle, it is almost impossible to watch the occurrence, thereby it also becomes a ground that this occurrence has been un-witnessed and un-seen.

12. Now coming to the recovery of Kalashnikov alongwith live rounds allegedly recovered from accused/Appellant on 24.08.2013 upon his arrest and taken into possession vide recovery memo Ex. PW-5/1, suffice it to say, that bare perusal of the recovery memo by itself would reveal that how could the accused/Appellant has appeared so casually in front of the police officials duly armed with Kalashnikov which as per version of prosecution  has been used as weapon of offence in respect of murder of deceased. Even for the sake of arguments if the accused/Appellant may have committed the murder of deceased he would have definitely avoid the police party in such circumstances. Moreover, as per version of the

sole eyewitness of the occurrence PW-6 Mst. Nusrat Bibi the accused/Appellant was arrested by the police from his house, whereas as per statements of the recovery witnesses the alleged recovery was effected from path known as 'Gham Said'. Though the FSL report has been furnished in positive but during cross-examination PW-3 Akbar Aman Constable (recovery witness) did not specifically mention the source of identification via which the accused/Appellant was apprehended duly armed with Kalashnikov during dark hours of the night. Thus, the mode and manner of the alleged recovery of Kalashnikov by all means is doubtful.

8-12-21

It is settled by now that the recovery of empties etc are always considered to be corroborative piece of evidence and such kind of evidence by itself is not sufficient to bring home the charges against the accused especially when the other material put-forward by the prosecution in respect of guilt of the accused/Appellant has already been disbelieved.

It has been affirmed by the Hon'ble Supreme Court of Pakistan in case cited as 2001 SCMR 424 " Imran Ashraf and 7 others vs the State" in the following manner:-

*"Recovery of incriminating articles is used for the purpose of providing corroboration to the ocular testimony. Ocular evidence and recoveries, therefore, are to be considered simultaneously in order to reach for a just conclusion."*

Likewise, if any other judgment is needed on the same analogy, reference can be placed on 2007 SCMR 1427 " Dr. Israr-ul-Haq vs Muhammad Fayyaz and another", wherein the relevant citation (c) enunciates:

*"Direct evidence having failed, corroborative evidence was of no help. When ocular evidence is disbelieved in a criminal case then the recovery of an incriminating article in the nature of weapon of offence does not by itself prove the prosecution case."*

13. The gist of the whole discussion is that the prosecution case against the accused/Appellant is pregnant with doubts. It is settled principle of law that in case of doubt, the benefit thereof must accrue in favour of the

accused as a matter of right and not of grace. It was observed by the apex Court in the case of **"Tariq Pervez v. The State 1995 SCMR 1345"** *"that for giving the benefit of doubt it was not necessary that there should be many circumstances creating doubts". If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.*

Similar citation of judgment **2008 SCMR 1221 "Ghulam Qadir and 2 others vs the State"** Supra enunciates:-

*"Benefit of doubt. Principle of applicability. For the purpose of benefit of doubt to an accused, more than one infirmity is not required. Single infirmity creating reasonable doubt in the mind of a reasonable and prudent person regarding the truth of charge, makes the whole case doubtful. "*

14. In view of the above discussion, we are of the absolute view that the prosecution failed to

prove its case against the accused/Appellant beyond any shadow of doubt; therefore, his conviction cannot be maintained, ergo, while extending the benefit of doubt, we accept this appeal by setting aside his conviction and sentences recorded by the learned trial Court through the impugned judgment dated 05.05.2014 and acquit him of the charges leveled against him. He be set free forthwith, if not required in any other case.

15. Similarly connected Criminal Revision bearing No. 32-M of 2014 filed for enhancement of the sentence by the complainant-party is also dismissed having become infructuous.

16. These are the detailed reasons for our short order of even date.

Announced.  
Dt: 07.11.2017

  
JUDGE

  
JUDGE

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