

**JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
JUDICIAL DEPARTMENT**

Cr. A No.684-P of 2014

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

Date of hearing: 19.09.2017

Appellants (by): M/S Syed Abdul Fayaz and Bashir Ahmad Khan, advocates.

State (by): Mian Arshad Jan, AAG.

Complainant (by): Mr. Muhammad Saeed Khan, advocate.

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**LAL JAN KHATTAK, J.-** This criminal appeal is directed against the judgment dated 10.12.2014 of the learned Additional Sessions Judge, Swabi at Lahor delivered in case FIR No.724 dated 13.05.2012 u/ss 302/324/34 PPC of Police Station Lahor, Swabi, whereby the appellants have been convicted and sentenced u/s 302 (b) of PPC to imprisonment for life. They were ordered to pay compensation of Rs.2,00,000/- each to the legal heirs of the deceased within the meaning of Section 544-A Cr.P.C or in default thereof to further undergo six months S.I. The appellants were also convicted u/s 324 PPC and sentenced to five years R.I. It was also ordered by the learned trial Court that the

sentences shall run concurrently. Benefit u/s 382-b Cr.P.C was extended to the appellants.

2. Brief facts of the case are that on 13.05.2012, Haizar Ali (PW-3), reported to Hanif Khan, ASI of Police Station Jehangira (PW-8), to the effect that he, his brothers Sahib Zar, Manzar and brother-in-law Zafar Jamal were present in the field of one Javed to protect the melon and water melon which they had grown as sharecroppers. In the meanwhile, the appellants came there and started plucking melon who were restrained from doing so on which they got infuriated and left for their home but returned thereafter duly armed and started firing at them. According to FIR, the complainant, his brothers and brother-in-law fled from the field to save their skins but were chased by the appellants and when they reached the place of occurrence, there they were fired at with which their brother-in-law namely, Zafar Jamal was hit and died on the spot while they escaped unhurt.

3. On completion of investigation, the case was put in Court, where the appellants were indicted for the crime to which they

pleaded not guilty and claimed trial. In order to prove its case, prosecution examined 09 witnesses, whereafter statements of the accused were recorded, wherein, they professed their innocence. The learned trial Court, after conclusion of the trial, found the appellants guilty of the charges and while recording their conviction sentenced them as mentioned above, hence the instant appeal.

4. Learned counsel for the appellants argued that the prosecution has miserably failed to prove its case against the appellants through worth reliable and confidence inspiring evidence; that the prosecution case has been negated by medical evidence and site plan of the case. The learned counsel further argued that the prosecution side has suppressed real facts from the Court and presented such a distorted picture of the episode, which runs quite contrary to the circumstantial aspects of the case.

5. As against the above, learned counsel for the complainant assisted by the learned AAG supported the impugned judgment.

6. We have heard learned counsel for the parties and with their assistance gone through the case record.

7. Perusal of the case record would show that the occurrence was originated in the field of melon and culminated at a place situated two kilometers away therefrom. Ibid fact of the case is evident from site plan of the case (Ex.PB). According to the site plan, part-'A', is the place where the appellants had tried to pluck melon and were restrained by the complainant's side from doing so on which, they left the field for their home but came back with arms and started firing at the complainant's side. The complainant Haizar Ali (PW-3) and eyewitness Safdar Ali (PW-4) both have deposed before the Court that on return of the appellants with arms they fled from the field to save themselves but were chased by the appellants while firing at them and when they reached at the place marked part-'B' in the site plan, there with the fire shots of both the appellants, Zafar Jamal was hit and died on the spot. It is worth to mention that, in between the two sites, i.e. part-'A', and part-'B', of the site plan, there is a distance of two kilometers.

8. Pronounced aspect of the case is that the complainant's side, comprising of four persons, was chased by the appellants for two kilometers with intermittent firing but during this exercise of flee and chase, none from the complainant's side sustained any injury till the victim side reached at part-'B' of the site plan where the deceased was hit. Ibid aspect of the case is not believable in the ordinary course of nature. Record reveals that the occurrence had taken place in the month of May at 12 o'clock. According to the site plan, near to both the spots i.e. point-'A, and point-'B, there are residential houses and agricultural lands and as per the statement of PW-4, number of farmers were present in their respective fields at the time of occurrence. Had there been a continuous flee and chase, by and on behalf of the complainant's side and the appellants respectively, stretching over a distance of 02 kilometers coupled with intermittent firing then certainly, there must have been an attempt on the part of the locals to intervene and come to the rescue of the victims which is not only expected from the village people but they actually do like this. Absence of the above factor has put the prosecution case,

as reported, under heavy doubt. Moreso, while fleeing upto two kilometers, the four fleeing persons could have taken a refuge somewhere for their safety as one can easily hide himself from his assailant when chased upto a considerable long distance.

9. When looked from the above angle, it would appear that the occurrence did not take place, the way same has been reported and it looks that the eyewitnesses have given a distorted account of the occurrence. Another noticeable aspect of the case is that PW-6 has produced before the Court a copy of Roznamcha No.17 dated 13.05.2012 as Ex.PW 6/1, according to which the police had come to know about the cross-firing between the two groups of the instant case. On coming to know about the firing, PW-6 alongwith police personnel rushed to the spot i.e. part- 'B, of the site plan (EX.PB) where he met complainant of the instant case and found dead body of Zafar Jamal. It is worth to mention that PW-6 also found a 30 bore Kalakove like rifle lying with dead body of the deceased which he took into possession. Presence of rifle with dead body of the deceased not only casts serious doubt

on the prosecution story as to its accuracy but it shows that the deceased had died in a manner other than the one reported by the complainant.

10. In addition, according to the case *murasila* (Ex.PW A/1), the occurrence had taken place at 12.00 hours but in cross-examination, PW-3 i.e. the complainant, has stated that the oral altercation forbidding the appellants from plucking melons had taken place at 8.00 a.m. or 10.00 a.m. PW-4 says in his cross-examination that the occurrence might have taken place after a lapse of 5 minutes of the oral altercation. When the initial firing and oral altercation had taken place at 10.05 a.m. as per the statements of both the eyewitnesses then mentioning the time of occurrence as 12.00 hours in the case *murasila* is sufficient to falsify the story narrated by the complainant in his report. Furthermore, it is the prosecution's case that all the four persons i.e. the complainant side were fired at by the appellants but receiving no injury by the three persons shows their non-presence on the spot as when four persons are fired by two persons while chasing from an area stretching over two

kilometers, then the possibility of receiving injuries by all the four would be quite natural. As neither the two eyewitnesses nor the abandoned eyewitness have suffered a single wound on their bodies albeit they were chased for quite a long distance with intermittent firing at them by the appellants, therefore, their presence on the spot as disclosed by them is a fact which has been belied by circumstantial aspect of the case.

11. Thorough and careful examination of the case record would show that presence of eyewitnesses on the spot is not established through reliable and confidence inspiring evidence, hence, their testimony is not acceptable to record conviction of the appellants for the safe administration of justice. The prosecution has failed to prove its case against the appellants beyond any shadow of doubt, which is hall mark of criminal jurisprudence. In our considered opinion, the learned trial Court has not appreciated the case evidence in its true prospective and has fallen in error while convicting the appellants for which its judgment is not sustainable.



12. For what has been discussed above, we accept the instant appeal, set aside the impugned judgment of conviction and resultantly acquit the appellants of the charges leveled against them. They be set free, if not required to be detained in any other case.

13. Above are the reasons of our short order of even date, which reads as under:

“For the reasons to be recorded later, this appeal is allowed, conviction and sentences of the appellants recorded by learned Additional Sessions Judge, Lahor District Swabi vide the impugned judgment dated 10.12.2014 in case FIR No.724 dated 13.05.2012 u/ss 302/324/34 PPC of Police Station Lahor District Swabi, are set aside. The appellants are acquitted of the charges leveled against them and they be set free forthwith, if not required or wanted in any other case”.

**J U D G E**

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Announced  
19.09.2017