

Judgment Sheet

**IN THE PESHAWAR HIGH
COURT, PESHAWAR**

Judicial Department

**Cr.A No. 1109-P/2019
Farman Ali Vs Sani Gul & another**

Date of hearing: 10.10.2019.

Appellant by: Mr. Shabir Hussain Gigyani,
Advocate.

State by: Mr. Mujahid Ali Khan, AAG.

Complainant by: Sani Gul in person.

JUDGMENT

AHMAD ALI, J. Through the instant appeal, the appellant, Farman Ali s/o Wazir Gul, has impugned the judgment of learned Additional Sessions Judge/Judge Model Criminal Trial Court, Mardan, dated 20.08.2019, whereby he was convicted and sentenced to life imprisonment and burdened with payment of Rs.200,000/- as compensation to LRs of the deceased u/s 544-A Cr.P.C or in default thereof to suffer 06 months SI, in case FIR No.513 dated 02.12.2015 u/s 302/34 PPC, Police Station Chooria Mardan, Peshawar.

2. Brief facts of the case are that on the day of occurrence i.e. 02.12.2015, at about 08:10 hrs, Munir Khan ASI, on receipt of information of incident, reached at the spot, where

complainant/Sani Gul reported the matter to him in terms that he alongwith other inmates was present in his house, when he heard some hue and cry upon which he came out of his house and saw that his brother Farman Ali (present accused-appellant), acquitted co-accused (Inam) and absconding co-accused (Muhammad Ali) were quarreling with his other brother Zahid Khan and during such fray the acquitted and absconding co-accused pushed the deceased Zahid Khan inside the house of present accused-appellant, who fired at him with his pistol with the intention to kill him, resultantly, he got hit and died on the spot. The co-accused made their escape good from the spot while present appellant with weapon was overpowered and was handed over to the above mentioned Munir Khan, ASI. Motive was narrated to be dispute over women folk. Consequently, FIR ibid was registered.

2. On completion of investigation, challan was submitted in Court where the accused-appellant was charge-sheeted to which he pleaded not guilty and claimed trial. The prosecution in order to prove its case, produced and examined as many as twelve witnesses whereafter statement of the accused was recorded, wherein, he professed

his innocence. The learned Trial Court, after conclusion of trial, found the appellant guilty of the charge and, while recording his conviction, sentenced him as mentioned above. Feeling aggrieved, the appellant has filed the instant appeal before this Court.

3. Arguments of learned counsel for the appellant and learned AAG (relied upon by the complainant) heard and record gone through with their able assistance.

4. There is hardly any occasion to believe that prosecution has established its case against the present appellant. Perusal of the FIR reveals that IO of the case was already proceeded towards the spot of occurrence in connection with Mad No.7 dated 02.12.2015 which was, admittedly, lodged by the present accused appellant prior to the present occurrence. It is further apparent from the record that the present appellant was already sent to hospital for treatment being in injured condition alongwith constable No.690, namely, Kashif of Police Post Manga. In this regard MLC is also available on file. In the circumstances, it is not appealable to a prudent mind that when the appellant was sent

to the hospital then how he was arrested on the spot alongwith weapon of offence (pistol).

5. So far as arrest and recovery of pistol from the appellant are concerned, statement of PW-6 (Munir Khan ASI) is worth perusal. The relevant portions of his statement is reproduced below for ready reference:-

PW-6

“I arrested the accused and prepared card of arrest of accused Farman which is Ex.PW6/1. I also prepared recovery memo Ex.PW6/2 with respect of recovery of pistol from accused facing trial Farman Ali in presence of marginal witness”.

However, when PW-5/Sartaj FC#3463 appeared before the Court, he has totally negated the story of PW-6 by deposing in his cross examination in the following manner:-

PW-5

“The pistol was produced to the IO. By the complainant in the PS at about 5:00/5:30 pm. Firstly, I had taken the injury sheet to the hospital. I had left the PS for hospital at 9:30 am. I reached to the hospital with 15 to 20 minutes. I do not remember the time for which I had remained in the hospital. The pistol was of black colour. At the time of production of pistol to the IO only me and Asad Ali constable were present. The IO sealed the pistol into parcel produced to him by the complainant who affixed the sealed upon

it. My statement was recorded by the IO u/s 161 Cr.P.C I do not remember that whether I stated in my statement u/s 1621 Cr.P.C that the pistol was sealed into parcel or not. It is wrong to suggest that nothing was produced in my presence to the IO and I have falsely deposed in the Court today”.

6. Be that as it may, suffice it to say that no witness to the recovery memo was examined by the prosecution as PW during the trial. Likewise, the witness mentioned in the FIR, namely, Abdullah, was also abandoned by the prosecution. In the situation, adverse inference under Article 129(g) of Qanun-e-Shahadat Order 1984 can be safely drawn.

7. Moreover, the most important witness i.e. complainant/PW-11, also did not offer anything in respect of arrest of the accused-appellant and recovery of weapon at the spot. For ready reference, the relevant portion of his statement is reproduced below:-

PW-11

“On the day of occurrence at 7:30 am I was inside my house when I heard noise, when I came out I saw the accused facing trail and the absconding accused, they pushed the deceased inside their house and accused Farman Ali started firing upon him with which Zahid got hit and expired there and then two of the accused

Muhammad Ali and Inam ran away from the spot while we caught Farman Ali. We shifted the dead body to the mortuary. I made the report at the spot at about 8:10 am. Motive for the occurrence was women dispute. After making the report the was read over to me and I thumb impressed it while on e Abdullah also thumb impressed my report as a token of its correctness. The IO also prepared site plan at my instance. My report written in shape of murasila which is Ex.PA/1. I charge the accused for the commission of offence.

This witness himself disputed and contradicted his own statement by deposing in his cross examination that;

“the report was made in the hujra of Sohrab.....I had not gone with the deceased o the hospital while Ajab, Muslim, Srtaj had gone with the dad body to the hospital.....Blood had not oozed out from the body of the deceased and my hand and clothes were not smeared with it.....it is correct that the site plan, recovery memos etc were prepared in the hujra of Sohrab”

8. PW-4(Illaqa Nazim) is an independent witness in the episode. He appeared before the Court and deposed as under:-

PW-4

XX.....“I am Nazim of the Union Council concerned. I was present in my house early in morning on hue and cry I attracted to the house of complainant Sani Gul when I reached, the dead body

was lying in the house of complainant Sani Gul, where women folk around the dead body were present along with other neighbours. I along with co-villagers boarded the dead body in a Suzuki pick up and escorted to the PP Manga. Then we proceeded to DHQ Hospital Mardan.”

His, above deposition, totally negates the stance of complainant/Sani Gul taken in the FIR that *“during quarrel the acquitted and absconding co-accused pushed the deceased Zahid Khan inside the house of appellant, who fired at him (deceased) with his pistol with the intention to kill him, resultantly, he got hit and died on the spot”*. PW-4 has not only contradicted the place of occurrence but also hinted at the non presence of the complainant at the spot, as when this witness was accompanying the dead body of deceased to the DHQ, Hospital, Mardan, no one from the complainant side was accompanied.

9. As alleged by the prosecution, the occurrence took place inside a house, so the female inmates living therein were natural witnesses, but neither their statements under section 161 was recorded nor they were produced before the Court during trial. In this manner, the prosecution withheld the best

evidence available, as such, under Article 129(g) of Qanun-e-Shahadat Order 1984, legal inference could be drawn that if the said witnesses had entered into the witness box then they would not have supported the prosecution case. Case law refers: **PLD 2016 SC 17**.

10. Besides, no blood was recovered from the spot of occurrence, which makes the venue of the occurrence to be highly doubtful.

11. Another glaring tincture in the prosecution case is that the IO/PW-12 stated before the Court during trial that FIR and murasila was handed over to him at the spot by Munir Khan ASI/PW-6. Murasila in fact is a first information report and such practice is against the fundamental principles of criminal justice which gives a license to police officials to maneuver the FIR in any manner. Reference is made to case law laid down in **1992 P.Cr.L.J 158**.

2. From perusal of the record, one could easily find that the prosecution evidence is completely silent about the acquitted co-accused. Such attitude of complainant as well the other PWs except PW-4, pose themselves to the rule '*falsus in uno, falsus in omnibus*' meaning thereby "false in one thing, false in everything,

coupled with the fact that no appeal against acquittal has been filed by the complainant.

3. The crux of afore-mentioned discussion is that either the prosecution witnesses were not present on the spot or they are not telling the truth. Prosecution failed to build any nexus of the accused-appellant with the commission of the offence. Reliance could be safely placed on case law reported in **PLJ 2019 SC (Criminal Cases) 265.**

12. The above discussion has led this Court to believe that the learned trial court has erred in appreciating the case evidence in its true perspective. It has been held, time and again by the superior courts, that a slightest doubt occurs in the prosecution case is sufficient to grant acquittal to an accused. The conclusions drawn by the learned trial Court are not borne out of the case evidence, therefore, the impugned judgment is not sustainable.

7. For what has been discussed above, this appeal is allowed, the impugned judgment is set aside and the appellant is acquitted of the charge levelled against him. He be set at liberty

forthwith, if not required to be detained in any other case.

8. Above are the reasons of short order of even date.

J U D G E

J U D G E

Announced
10.10.2019

Amjad PS

DB

Hon'ble Mr. Justice Rooh-ul-Amin Khan & Hon'ble Mr. Justice Ahmad Ali