

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT

Cr.A No. 537-P of 2013.

JUDGMENT

Date of hearing.....12.10.2017.....

Appellant/State: (Abid Khan alias Abiduddin/Abido) By Muhammad Ijaz Sabi, Advocate.

Respondent/State:(Asghar Ali complainant) By Mian Arshad Jan, AAG.



QALANDAR ALI KHAN, J:- This Criminal Appeal under section 410 Cr.P.C by Abid Khan, convict/appellant, is directed against the judgment dated 26.06.2013 of learned Sessions Judge, Charsadda, whereby, the appellant was convicted under section 302 (b) PPC and sentenced to life imprisonment and also held liable to pay Rs:50,000/- as compensation to the legal heirs of the deceased and in default thereof to further six

months S.I, while extending him benefit of 382-B Cr.P.C.

2. The case/FIR was registered on the report of Asghar Ali, complainant made to Abdur Rashid Khan SHO Police Station, Prang, at 14:25 hours on 26.03.2012, in the casualty of Charsadda Hospital, where he had brought the dead body of his father, Meraj-ud-Din, and reported to the effect that the appellant/accused, to whom Mst. Sidra daughter of their cousin Israr-ud-Din was married, had altercation with their father in the morning in his presence as well as in the presence of his brothers Arshad Ali and Amjad Ali and other family members, in their house, where the appellant/accused was also residing and that at 14:05 hours the appellant/accused again had altercation with their father and went out of the house, followed by their father, where he was suddenly fired at by the appellant/accused, with which his father was hit and died on the spot, and the appellant/accused managed to

flee from the scene of occurrence. The *murasila* signed by the complainant was endorsed by his brother Arshad Ali who also signed the same as a token of its verification. On the basis of *murasila*, case/FIR was registered in Police Station, Prang, Charsadda, vide FIR No.280 dated 26.03.2012 under sections 302/427 PPC.

3. The deceased, Meraj-ud-Din, was subjected to Postmortem examination, and the Medical Officer found one firearm entry wound about 1/4 X 1/4 inch in diameter on anterior-mid right shoulder with mild bleeding, and corresponding exit wound about 1/3x 1/3 inch in diameter, with bleeding, on left side chest below left axilla, in auxiliary line. The Investigating Officer also prepared site plan on the pointation of the complainant and eyewitnesses, and could secure blood from the place assigned to the deceased in the site plan, and also recorded notes with regard to the transformer installed in a Trolley having received damage due to firing of the

appellant/accused, and also two bullet marks on the wall 4/5 feet above the ground level. The blood stained cotton and blood stained garments of the deceased were sent to the FSL, and after chemical analysis the chemical examiner furnished positive report about blood stained cotton and blood stained garments of the deceased, except *Shalwar* (Trousers). The appellant/accused remained at large, therefore, was proceeded against under sections 204 and 87/88 Cr.P.C; and after his arrest on 29.05.2012; and completion of investigation, complete challan was submitted against him to the learned trial Court/Sessions Judge, Charsadda. It may be added here that during investigation, an application/complaint was also received from SDO Pesco Rural Sub Division, Charsadda, showing damage caused to the Trolley transformer during clash/firing between the parties on 26.03.2012.

4. On the receipt of complete challan in the Court, learned Sessions Judge, Charsadda, framed formal charge against the

appellant/accused under sections 302/427 PPC, to which the accused/appellant pleaded not guilty and claimed trial. In order to prove its case against the appellant/accused, the prosecution produced the following nine PWs;

- Ajmal Constable No.592 (PW-1), escorted dead body of deceased Meraj-ud-Din from casualty to the mortuary and also handed over clothes of the deceased to the I.O which were handed over to him by the Medical Officer after P.M examination;
- Kiramat Shah DFC (PW-2), had executed warrant of arrest under section 204 Cr.P.C and also proclamation under section 87 Cr.P.C;
- Doctor Abdur Rashid (PW-3), conducted autopsy on the dead body of deceased Meraj-ud-Din and furnished P.M report (EX.PM);
- Asghar Ali (PW-4), the complainant;
- Amjid Ali (PW-5), the eyewitness;

- Momin Khan HC No.110 (PW-6), marginal witness to the pointation memo (EX.PW6/1);
- Masood Khan ASI (PW-7), Investigating Officer in the case;
- Alamgir Khan ASI (PW-8), registered FIR (EX.PA) on the receipt of *murasila*; and
- Abdur Rashid Khan Inspector/SHO (PW-9), scribe of the *murasila*; and the injury sheet (EX.PW9/1) as well as inquest report (EX.PW9/2);

5. After prosecution closed its evidence, the appellant/accused was examined under section 342 Cr.P.C, wherein, he refuted allegations of the prosecution levelled against him but declined to be examined on oath or produce defence evidence. Following arguments on behalf of both the parties, the learned trial Court/Sessions Judge, Charsadda, rendered the impugned judgment dated 26.06.2013, whereby the appellant/accused was convicted and

sentenced, as mentioned hereinabove; hence the instant appeal.

6. Arguments of learned counsel for the convict/appellant and learned AAG heard. The complainant, though present in the Court, yet expressed his inability to engage counsel and stated that he would be relying on the arguments of learned AAG. Record perused.

7. No doubt, the appellant/accused was charged as a single accused in the report of the complainant lodged within 20 minutes of the occurrence; but other facts of the case, emerging from the evidence of the prosecution, would make case of the prosecution against the appellant/accused replete with doubts.

8. One wonders when P.S Prang was situated at a distance of about two furlong from the spot, while the hospital was at a distance of 2/3 kilometers, and the deceased had died on the spot after receiving firearm injury, also confirmed by the Medical Officer (PW-3) declaring the death instantaneous,

then what prompted the complainant to take the dead body to the hospital and lodge report there, which was reduced into writing in the shape of *murasila* by the SHO, Police Station, Prang, who reportedly reached there on receiving information about the occurrence; thus casting shadow of doubt on the authenticity of FIR.

9. The site plan shows the scene of occurrence surrounded by residential houses of other people, besides the joint house of the complainant and the appellant/accused; but, apart from this fact that none of the inhabitants of the nearby houses were examined as PWs in the case, the places assigned to the deceased, the appellant/accused and the eyewitnesses raised so many questions not only about the mode and manner of the occurrence but also about presence of the complainant and so-called eyewitnesses on the spot at the time of occurrence, especially when neither the

complainant nor the so-called eyewitnesses received a single firearm injury.

10. The occurrence, according to the FIR, took place at 14:05 hours i.e. 02:05 PM and the report was lodged in the casualty of Charsadda Hospital at 14:25 hours i.e. 02:25 PM and thereafter the inquest report was forwarded to the CMO for P.M examination; but the Medical Officer (PW-3) not only recorded 02:00 PM as the time on which the dead body was brought to the hospital but also confirmed in his statement before the Court the time as about 02:00 PM on 26.03.2012 i.e. five minutes before the time of occurrence mentioned in the FIR. It is note worthy that there is overwriting on the time mentioned regarding examination of the dead body, which would create further doubt about the exact time when the dead body was brought to the hospital and was, then, subjected to Postmortem examination. The Postmortem report also led to another anomaly, as the missile (bullet) was shown to

have travelled from the entry wound downwards, indicating firing on the deceased from upper level, which was inconsistent with the site plan showing both the appellant/accused and the deceased at the same level.

11. A Trolley Transformer was shown intervening between the appellant/accused and the deceased, which also reportedly was damaged during firing between the parties, indicating cross firing between the parties according to the application/complaint dated 26.03.2012 of the SDO Pesco Rural Sub Division, Charsadda; but neither anyone from Pesco appeared in support of the application/complaint nor anything was brought on the record by the prosecution to show bullet marks either on one or both sides of the Transformer so as to resolve the issue of cross firing and also clear doubt about cross firing, resulting in the death of the deceased. Although charge of offence under section 427 PPC was also framed; but in the

absence of evidence; and, apparently, charge also not pressed by the prosecution against the appellant/accused; the learned trial Court did not record judgment/order of either acquittal or conviction, hence amounting to 'implied acquittal' of the appellant/accused. The prosecution, having not moved appeal against such 'implied acquittal', seems to have abandoned the charge against the appellant/accused, thus bringing the important pieces of evidence like the site plan and application of the SDO Pesco under serious doubt.

12. The learned trial Court/Sessions Judge, Charsadda, while rendering the impugned judgment thereby convicting the appellant/accused under section 302 (b) PPC and awarding him life imprisonment also overlooked this vital aspect of the case that except altercation between the appellant/accused and the deceased in the morning and again immediately before the occurrence, no other motive was disclosed

which could lead to the commission of the offence of *qatl-i-amd* of the deceased by the appellant/accused, who were residing jointly in the same house, and the deceased and the so-called eyewitness were shown to have followed the appellant/accused after he had left the house. Needless to say that though the *murasila* was signed by the brother of complainant, namely, Arshad Ali, but he was not produced and another brother of the complainant Amjid Ali was produced as an eyewitness (PW-5), while Arshad Ali was abandoned by the prosecution.

13. The citing of Azam Jan and Sangeen Shah as identifier of the dead body in the inquest report as well as in the P.M report, but not produced by the prosecution as PWs; and the time of occurrence shown in the FIR, when the complainant and the so-called eyewitnesses were supposed to be busy with their jobs/business, would also make their presence on the spot at the time of occurrence unlikely, and make their

depositions about their presence on the spot at the time of occurrence and witnessing the occurrence with their own eyes doubtful.

14. As such, there were so many doubts and discrepancies in the case of prosecution, which should have led to the acquittal of the appellant/accused, instead of calling for his conviction and award of life imprisonment to him. Therefore, the appeal is accepted, and the impugned judgment dated 26.06.2013 together with conviction of the appellant/accused and sentences awarded to him are set aside. The appellant is acquitted of the charge leveled against him, and be set free, forthwith, if not required in any other case.

Announced.
12.10.2017.

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M.Iqbal

(D.B) *Hon'ble Mr. Justice Lal Jan Khattak.*
Hon'ble Mr. Justice Qalandar Ali Khan.