

Judgment Sheet

PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.A No.323-A of 2019

JUDGMENT

Date of hearing.....21.04.2020.....

Appellant...(The State) by Raja Muhammad Zubair, Additional Advocate General

Respondent...(Mir Umar son of Sain Muhammad)

AHMAD ALI, J:- The State through
Advocate General, Khyber Pakhtunkhwa has called in
question the acquittal of accused/respondent, in case
F.I.R No. 182 dated 17.04.2015 under Section 302
PPC of PS Shinkiari, District Mansehra, vide
impugned judgment dated 11.03.2019 of the learned
Additional Sessions Judge-III, Mansehra by filing
instant appeal under section 417 (2-A) Cr.P.C.

2. Brief facts of the case are that the
complainant, Mst. Bibi Fatima wife of Said Khan,
reported the matter to the local police on 17.04.2015
at 15.30 hours, who reached the spot in village Khara
Battangi cum Makra Miana that she alongwith her
father-in-law, Ahmad Ali and sister-in-law Mst. Razia

Bibi was present in her cattle shed, while her daughter, Mst. Sabeela Bibi, Mst. Hussan Bano, sister-in-law of complainant and Mst. Dilshad Bibi alongwith her husband Mir Umar (accused/respondent) residents of Kalas Richari, who visited their home as a guests, were present in the house. She heard fire shot from the side of her house at 11.00 hours and she alongwith Ahmad Ali and Mst. Razia Bibi rushed towards the house; she saw Mir Umar near the gate of her house having pistol in his hand running outside; she entered the house and saw her daughter, Mst. Sabeela Bibi lying dead in the door of the room smeared with blood and blood was oozing from back side of her head and right ear; the ladies and the children present inside the house told that Mir Umar had fired at Mst. Sabeela Bibi, her daughter and ran away from the spot. However, no motive was disclosed by the complainant in her report and she charged the acquitted accused/respondent, Mir Umar for '*Qatl-i-Amd*' of her daughter, Mst. Sabeela Bibi. The report of the complainant was recorded in shape of 'Murasila' (Ex.PW 8/1)) and the instant case was registered against him vide F.I.R (Ex.PA).

3. During investigation, PW-8 Shiraz Ahmad SHO prepared injury sheet (**Ex.PW 8/2**) and inquest report (**Ex.PW 8/3**) of deceased Mst. Sabila Bibi and sent the dead body to the Rural Health Centre, Shinkiari for postmortem. Subsequently, accused was arrested on 30.04.2015 and I.O prepared his Card of arrest (**Ex.PW 8/4**), who was absconding in the case after commission of the alleged offence. During personal search of accused/ respondent the SHO recovered unlicensed 30 bore pistol alongwith magazine containing four live rounds vide recovery memo (**Ex.PW 8/5**) without number from his trouser fold and after completion of investigation, complete challan was submitted by him in the Court of Sessions for trial against acquitted accused/respondent, Mir Umar. Accused/respondent was charged for the offence under section 302 PPC, but he pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined fourteen witnesses and statement of accused/ respondent Mir Umar was also recorded under section 342 Cr.P.C, wherein, he denied the allegations of the prosecution leveled against him in this case. However, he wished

not to appear on Oath as his own witness within the contemplation of section 340 (2) Cr.P.C but he opted to produce Sultan Muhammad son of Ghulam Nabi, School Teacher alongwith Attendance Register for 17.04.2015, as defence witness, who was later on examined in the Court as **DW-1**.

4. The learned trial Court, after hearing the arguments of learned counsel for the parties, acquitted the accused/respondent vide impugned judgment/order dated 11/03/2019. Hence, the present appeal.

5. Arguments of the learned AAG heard. Record perused.

6. Admittedly, the alleged occurrence was stated to have taken place on 17.04.2015 at 11.00 hours in the house of Mst. Bibi Fatima, complainant, situated in village Khara Battani cum Makra Miana. The report of the complainant was recorded by the SHO in the shape of '*Murasila*' (**Ex.PW 8/1**) at 15.30 hours at the spot, situated at a distance of 3/4 kilometers from police station Shinkiari, who reached there, on receipt of information about the occurrence. Of-course, the complainant had not witnessed the occurrence as she at the time of alleged occurrence was present in her



cattle shed alongwith her father in law, Ahmad Ali and sister-in-law, Mst. Razia Bibi. However, in her report she mentioned that her daughter Mst. Sabeela Bibi was present in her house alongwith Mst. Hussan Jan, wife of brother of husband of the complainant alongwith Mir Umar, acquitted accused/respondent and his wife Mst. Dilshad Bibi, who came there as guests. In the report the occurrence was stated to have witnessed by ladies and children present in the house but their names were not disclosed in the F.I.R. During trial, the prosecution examined Mst. Fatima Bibi, complainant as PW-6 and Mst. Sobia, minor daughter of complainant, aged about 10 years as an eyewitness of the occurrence. Admittedly, the name of the sole eyewitness, Mst. Sobia, produced before the trial Court as PW-7 was not mentioned in the F.I.R, however, presence of Mst. Hussan Bano and Dilshad Bibi wife of accused/respondent Mir Umar was disclosed by the complainant in her report. Moreover, the complainant also introduced Mst. Sidra her other daughter as eyewitness of the occurrence in her court statement, however, she was not produced before the Court and abandoned being unnecessary. The



complainant stated that she was informed about the occurrence by her daughters Mst. Sobia (PW-7) and Mst. Sidra, abandoned PW.

7. It is settled law that ocular account in such cases plays a decisive and vital role and once its intrinsic worth is accepted and believed then the rest of the evidence, both circumstantial and corroboratory in nature, would be required as a matter of caution. Conversely, once the ocular account is disbelieved then no other evidence, even of a high degree and value, would be sufficient for recording conviction on a capital charge, as such, the probative value of the ocular account in light of the facts and circumstances of the case would be seen. In the light of the above mentioned facts, this Court has to appraise the evidence on record of the case. Firstly, the delay of about four and a half hours in lodging the report could not be explained satisfactorily by the prosecution during evidence and what would be the significance of such delay in the circumstances of the case. In the report, nothing was mentioned about the said delay, however, the complainant PW-7 in her statement attempted to justify the delay by stating that her father

in law went to the police station to inform the police about the occurrence, who consumed three hours and when police came to the spot she lodged the report. Anyhow, the explanation furnished for such delay is not plausible because the police station is situated just at a distance of 3/4 kilometers from the spot. Moreover, it is not explained by the complainant that why her father-in-law had not lodged the report to the police when he went to the police station to inform them about the occurrence. The facts narrated by the complainant in her report at the spot could be disclosed by her father-in-law to the police in the police station. Delay of four and a half hours in lodging the F.I.R. in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report and that too without mentioning the names of the eyewitnesses therein. Non-explanation of the delay in making the report to the police coupled with the improvements and contradictions made by the eyewitnesses in their statements had rendered their testimony doubtful and unreliable which did not inspire confidence.



Secondly, the very presence of the alleged eyewitness, Mst. Sobia on the spot at the relevant time was not established because as per evidence of DW-1, Sultan Ahmad, Head Master GPS Makra Miana produced by the accused/respondent in his defence, both Mst. Sobia Bibi (PW-7) as well as Mst. Sidra Bibi, abandoned PW, were present in school on the eventful day i.e. 17.04.2015. Thus, in such circumstances, the learned trial Court has rightly held that neither Mst. Sobia Bibi (PW-7) alleged eyewitness of the occurrence was present at the spot nor she witnessed the occurrence. Thirdly, the prosecution has failed to produce other major female inmates/women folks i.e. Mst. Hussan Bano etc of the house, who were stated to have present at the relevant time, and they were abandoned being won over. However, the obvious inference which could be drawn in the peculiar facts and circumstances of the case is that the occurrence was an unseen occurrence, as such, other female inmates of the house refused to stand as a witness to depose falsely against the accused/respondent.



8. It is the settled principle of justice that on acquittal an accused person earns twofold innocence.


Moreover, the standard and principle of appreciation of evidence is entirely different from that in a case of conviction. The findings of the trial Court could only be reversed by this Court in its appellate jurisdiction, when the same are found perverse, fanciful, arbitrary or based on misreading and non-reading of material evidence causing miscarriage of justice. The minute analysis of the entire evidence on record, suggests that the occurrence had not taken place in the mode and manner as alleged by the prosecution and the presence of the eyewitness could not be establish from any independent source, therefore, her deposition could not be relied upon for safe administration of justice. Reliance can be placed on 1995 SCMR 127, 2015 SCMR 1142, 2017 SCMR 2002, 2017 SCMR 2007, and 2017 SCMR 1710.

9. In view of above discussions, it is crystal clear that the case of the prosecution is full of doubts and the statements of the complainant and eyewitness are contradictory, which create serious doubts about the mode and manner of the occurrence and veracity of the testimony furnished by the alleged eyewitness. As such, the learned trial court has rightly acquitted the

accused/ respondent and its judgment does not need to be interfered with by this Court in its Appellate jurisdiction, particularly, when no appeal has been preferred by the complainant party.



10. It is well settled law that even a single doubt, if found reasonable, would entitle the accused person to acquittal and not a combination of several doubts. Reliance is placed on case titled Ghulam Qadir Vs. The State (2008 SCMR 1221), wherein, it has held that:

"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of charge-makers the whole case doubtful. Merely because the burden is on accused to prove his innocence it does not absolve the prosecution to prove its case against the accused beyond any shadow of doubt in this duty does not change or vary in the case."



Reliance is also placed on case law reported as 1992 SCMR 366, 1995 SCMR 1345, 1995 SCMR 1730, 2004 SCMR 215, 2004 SCMR 140, 2009 SCMR 230, 2013 SCMR 192, 2016 SCMR 2073, 2016 PSC (Criminal) 612, 2017 PSC (Criminal) 14, 2017 S C M R 986 and 2019 P.Cr.L.J. 337.

11. Accordingly, for the reasons stated hereinabove, this Court is of the considered view that the prosecution has failed to prove its case beyond any reasonable doubt against the accused/respondent, hence, the instant appeal being devoid of substance is hereby dismissed in *limine*.


JUDGE

JUDGE

Announced.
Dt.21.04.2020.

/*M.Saleem*/

(DB) Mr. Justice Shakeel Ahmad and Mr. Justice Ahmad Ali