JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(*Judicial Department*)

Cr.A. No.52-D/2018 (Motion).

Qaizar
Vs.
Tariq, etc.

JUDGMENT

Date of hearing: **26.02.2019.**

For Appellant: **Mr. Shaukatullah Betani, Advocate.**

For Respondents: **Nemo.**

****

SHAKEEL AHMAD, J.- This and the connected Cr.A. No.52-D/2018, calls in question the judgment dated 27.6.2018, passed by learned Sessions Judge/Judge Juvenile Court, Tank, whereby he acquitted the accused-respondents in case FIR No.181 dated 11.4.2013, registered under Sections 302/109/34 PPC at police station SMA, District Tank.

2. The prosecution story as disclosed in the FIR, in brief, is that on 11.4.2013 at 1930 hours, appellant-complainant Qaizar Khan (PW-8), made report to Shah Nadir SI, Incharge Reporting Centre, DHQ Hospital, Tank, to the effect that on the day of occurrence, youngsters of the village were busy in playing cricket match and he alongwith his brother Daud Khan (PW-7) had gone there as spectators, where his

son Arsalan was also busy in playing cricket match; that it was about 1745 hours, his son Arsalan exchanged hot words with the accused-respondents Tariq and Aftab and an altercation took place, during course of which they hit son of the complainant on his head with bats at the instigation of co-accused Hussain Ahmed and Said Mehmood Khan; that when they rushed to the spot, the accused had decamped to their houses; that when they attended Arsalan, by then he was dead. On this report, *murasila* Ex. PA/1 was drafted and sent to police station where Muhammad Ayub ASI (PW-3) registered the case against the respondents-accused vide FIR Ex. PA.

3. After completion of the usual investigation, complete challan under Section 173, Cr.P.C. was submitted in the trial Court against the respondents-accused. After compliance of provisions of Section 265-C, Cr.P.C, charge was framed against the accused to which they pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined as many as nine witnesses. After closure of prosecution evidence, the accused were examined under Section 342, Cr.P.C, wherein, they denied the allegations and professed innocence, however, they neither opted to be examined on oath, nor produced evidence. The learned trial Court, after hearing arguments from both the sides, acquitted the accused-respondents of the charges vide impugned

judgment dated 27.6.2018, which has been assailed in Cr.A. No.52-D/2018 & Cr.A.No.53-D/2018.

4. Arguments heard and record gone through.

5. It appears from the FIR that in the present case, the occurrence took place on 11.4.2013 at 1745 hours, whereas the report was lodged on the same date at about 1930 hours. Qaizar Khan (PW-8) is the complainant of present case and he charged the respondents alongwith co-accused Hussain Ahmed and Said Mehmood Khan for committing murder of Arsalan, son of the appellant. On the face of it, there is inordinate delay of one hour and forty-five minutes in lodging the report by the complainant. It is astonishing that when the deceased succumbed to his injuries on the spot, then what prevented the complainant to lodge the report in police station, despite the fact that the distance of police station from the place of occurrence is mentioned as 10/11 kilometers, whereas police station SMA is situated on the way to hospital. It creates serious doubt in the prosecution story that why the report was not lodged at police station. Needless to say that the delay in lodging the report cannot simply be brushed aside, as it has assumed great significance, and it could be attributed to consultations, taking instructions and calculatedly preparing the report keeping in view the names of the assailants opened for involving such persons who

ultimately the prosecution might wished to nominate. In this respect, reliance is placed on case law reported in **(AIR 1983 S.C.-810) titled 'Ranji Suriya and another Vs. The State of Maharashtra', 'Allahyar Vs. The State' (1990 SCMR-1134), 'Mahmood Ahmad and 3 others Vs. The State and another' (1995 SCMR-127), 'Imran Hussain Vs. Amir Arshad and 2 others' (1997 SCMR-438) and 'Muhammad Rafique Vs. The State' (2014 SCMR-1698).**

6. It is the case of prosecution that on the day of occurrence, youngsters of the village were busy in playing cricket match on threshing floor of one Gulbat Khan and complainant Qaizar Khan (PW-8) and his brother Daud Khan (PW-7) were present there as spectators, where his son Arsalan alongwith other boys were playing a cricket match. It was about 1745 hours that his son Arsalan exchanged hot words with the accused-respondents Tariq and Aftab and an altercation took place, during course of which they hit son of the complainant on his head with bats at the instigation of co-accused Hussain Ahmed and Said Mehmood Khan, which resulted into the death of Arsalan son of complainant-appellant. In the present case, the ocular account has been furnished by Daud Khan PW-7 (uncle of the deceased) and Qazar Khan complainant PW-8 (father of the deceased). PW-7 deposed that he reached

to the spot at 5:45 p., which is the time of occurrence as mentioned in the FIR. This version of the PW is improbable and his presence on the spot at the relevant time is highly doubtful. He admitted during cross-examination that accused Aftab was present towards eastern side of the deceased, whereas PW-8 negated the version of PW-7 by stating that accused Aftab was towards southern side of the deceased. PW-7 further stated in cross-examination that besides the complainant, Afsar, Wali Zar and 15/20 other spectators were present at the time of occurrence and after the occurrence PW Wali Zar arranged the datsun from nearby Adda, but said Wali Zar has not been cited as witness or for that matter no one among the spectators was cited as witness of the occurrence. It is quite natural that when minor children are fighting with each, their father or any other blood relative would take all possible rescue steps, but here in the present case despite alleged presence of PW-7 and PW-8, who happened to be uncle and father of the deceased, they remained as silent spectators without any attempt to save their kid (deceased). Moreover, PW-7 further stated in cross-examination that on the following day at about 08:00 a.m, the dead body of the deceased was handed over to them in the hospital, whereafter, they proceeded to their village, but PW-8 negated his testimony by stating in his cross-

examination that after receiving the dead body from the hospital, they reached to their village at 08:00 a.m. Moreover, PW-7 also admitted that he had not signed the report as rider of the same. It creates serious doubt regarding his presence on the spot at the time of occurrence. Similarly, PW-8 deposed that no blood stained earth was recovered from the spot. He further deposed that the Investigating Officer only prepared the site plan on the spot. He stated that while shifting the dead body, they straightaway proceeded to DHQ Hospital via Chasan Katch road via Tank-Wana Road and bypassed PS SMA, Tank. PW-8 stated that the police party came to their village on the following day at about 09:00/10:00 a.m. PW-9 Mazmir Khan SI belied his statement by stating that the complainant PW-8 came to the spot at 07:45 a.m. PW-9 admitted during cross examination that bat was not recovered from the accused. In view of above glaring infirmities surfacing in the prosecution story, particularly in the statement of alleged eyewitnesses, their presence on the spot at the time of occurrence was highly doubtful, therefore, it was rightly disbelieved by the learned trial Court.

7. There is no two opinion about the fact that the cardinal principle of justice always laid emphasis on the quality of evidence which must be of first degree and sufficient enough to dispel the apprehension of the Court

with regard to the implication of innocent persons alongwith guilty one by the prosecution, otherwise, the golden principle of justice would come into play that even a single doubt if found reasonable would be sufficient to acquit the accused, giving him/them benefit of doubt because bundle of doubts are not required to extend the legal benefit to the accused. In this regard, reliance is placed on a view held by the Hon'ble Supreme Court in the case of "**Riaz Masih alias Mithoo Vs. State (NLR 1995 Cr.SC 694)**.

8. In the case reported as **Bagh Ali Vs. State (PLD 1973 S.C. 321)**, it was observed that the appraisement of the evidence of eyewitnesses has to be based upon a full consideration and evaluation of all the circumstances appearing in the case where there is fatal absence of physical circumstances to connect the accused person with the crime and there is a motive and in such a situation, the ocular evidence must, in order to carry conviction on a capital charge, come from un-impeachable source and if such source is not available, then it must be supported by some strong circumstance which would enable the court to overcome the inherent doubt which such evidence must necessarily create.

9. Regarding the golden principle of benefit of doubt, reference can be made to the celebrated judgment of the apex Court title "**Muhammad Luqman**

Vs. The State (1970 PLD S.C.-10), where the Hon'ble Bench have observed that:-

> "It may be said that a finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as regards his guilt should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. If a case where to be decided merely on high probabilities regarding the existence of non-existence of a fact to prove the guilt of a person, the golden rule of "benefit of doubt" to an accused person, which has been a dominant feature of the administration of criminal justice in this country with the consistent approval of the superior Courts, will be reduced to a naught".

The dicta laid down in the above precedent has been re-enforced by the august Supreme Court in the cases of **Tariq Parvez Vs. The State (1995 SCMR-1345), Muhammad Khan and another Vs. The State (1999 SCMR-1220) and Muhammad Akram Vs. The State (2009 SCMR-230)**.

10. In the case of "**Mst. Jallan Vs. Muhammad Riaz and other" (P L D 2003 S.C.-644)**, it was observed by the august Supreme Court that:-

> "Once an accused had earned acquittal in his favour, he enjoyed double presumption of innocence and the Court while examining the case of such accused must be very careful and cautious in interfering with the acquittal order and normally should not set aside the same merely for the reason that some other view was also possible---

> interference, however, could be made in exercise of powers conferred upon the Court under S.417, Cr.P.C., if it was proved that the Court whose judgment was under scrutiny had misread such evidence".

Reference can also be made to the recent case law reported in **2017 SCMR-1639 'Muhammad Zafar and another Vs. Rustam Ali and others' and 2017 SCMR 1710 'Mst. Anwar Begum Vs. Akhtar Hussain alias Kaka and 2 others'**, wherein similar view was expressed.

11. It is now settled that standard of assessing evidence in appeal against acquittal are quite different from those laid down from appeal against conviction. There is a marked difference between appraisement of evidence in the appeal against conviction and in the appeal against acquittal. In the appeal against conviction, appraisal of evidence is done strictly and in appeal against acquittal, the same rigid method of appraisement is not to be applied as there is already finding of acquittal given by the trial Court after proper analysis of evidence on record. In the appeal against acquittal, interference is made only when it appears that there has been gross misreading of evidence which amounts to miscarriage of justice. The ordinary scope of appeal against acquittal of accused-respondents is considered narrow and limited, as held by the august Supreme Court of Pakistan, in a chain of consistent judgments. In this

behalf, reference may be made to the cases, reported as **Muhammad Usman and 2 others Vs. The State (1992 SCMR 498) and The State Vs. Muhammad Sharif and others (1995 SCMR 635)**.

12. For what has been discussed above, we are of the firm view that the trial Court has rightly extended the benefit of doubt to the accused on valid and cogent reasons by correctly appreciating the evidence on record and acquittal of the accused-respondents does not call for any interference by this Court, therefore, the judgment dated 27.6.2018, passed by learned Sessions Judge/Judge Juvenile Court, Tank, is upheld. Consequently, both the appeals, being devoid of merits, are hereby dismissed in *limine*.

Announced.
Dt: 26.02.2019.
Kifayat/*

JUDGE

JUDGE

(D.B)
Hon'ble Justice SM. Attique Shah
Hon'ble Justice Shakeel Ahmad