JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Crl. Appeal No.111-P/2015

Date of hearing: _____

Appellant (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- This appeal calls in question the legality and propriety of judgment dated 14.01.2015, rendered by learned Additional Sessions Judge-IV, Kohat, whereby he acquitted respondents-accused 1. Rehmat Gul 2. Sahib Gul and 3. Gul Ahmad, in case FIR No.596 dated 02.11.2011, registered under sections 324/457/34 PPC, Police Station Jungle Khel, District Kohat.

2. Brief account of the prosecution case is that on 02.11.2011 at 10.25 hours, complainant Haji Bashir Khan (PW.6), in injured condition reported to local police in KDA hospital Kohat, that on the fateful night hours, he alongwith other inmates was present in his house, when in the meantime at 2145, accused-respondents duly armed, came there, climbed over the wall of his house and opened

firing at them, as a result, he got hit and injured. A monetary dispute has been alleged as motive behind the incident. His report was reduced in to writing by Hamsher Ali ASI (PW.4), in the shape of murasila, on the basis of which FIR, mentioned above was registered.

3. On arrest of the accused/respondents and completion of investigation challan was submitted against them before the learned Trial Court, where they were formally charge sheeted, to which they pleaded not guilty and claimed trial. To bring home their guilt, prosecution examined as many as thirteen witnesses. After closure of the prosecution evidence, statements of the accused were recorded under section 342 Cr.P.C., wherein they denied the prosecution allegations and professed their innocence. They, however, declined to be examined on oath under section 340 (2) Cr.P.C. or to produce evidence in defence. On conclusion of trial, the learned Trial Court, after hearing both the sides, acquitted them, hence, this appeal.

4. Learned counsel for the appellant argued that the impugned judgment of the learned Trial Court is against the law facts and evidence available on record; that prosecution has proved the guilt of the accused through overwhelming ocular evidence corroborated by recovery of blood and crime empties of various bores coupled with

medical evidence; that defence miserably failed to create any dent in the prosecution evidence, therefore, the impugned judgment is liable to be reversed.

5. Conversely, learned counsel for respondents-accused contended that prosecution evidence is suffering from material contradictions and discrepancies creating serious doubts qua the guilt of the accused, benefit of which has rightly been extended to the respondents-accused by the learned Trial Court. He while supporting the impugned judgment sought dismissal of the appeal.

6. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

7. The incident is nocturnal, taken place at 2145 hours on 02.11.2011. No source of light has been disclosed by complainant in his report nor has any such source been noticed or taken into possession by the Investigating Officer during spot inspection, in absence of which, identification of the assailants from a distance of 16 to 19 paces in the dark, by the injured-complainant who was under attack of firing of three assailants, does not appeal to my mind. This sole and material doubt qua identification of the accused would be sufficient to crumble the entire edifice of the prosecution case. Besides, Haji Bashir Khan

complainant (PW.6), in his court statement introduced quite a new story by deposing that at the time of incident he was present in his Hujra when accused Sahib Gul, duly armed with Kalashnikov, Rehmat Gul, armed with repeater and Gul Ahmaed armed with pistol, climbed over the wall, went on the rooftop and opened firing at him. In his report he has disclosed the place of occurrence to be his house and not Hujra and has also charged the accused for firing on other inmates of his house. In his report he has not disclosed about the kind of weapons in possession of each accused, but after recovery of crime empties of 7.62 bore, 12 bore and 30 bore, he came forward with a new version by attributing specific kind of weapon to each accused, which would not advance his case, rather would put him in the category of unreliable witness. This subsequent and after thought version of the complainant, amounts to dishonest improvement just to bring in line his case with the recovery of crime empties.

8. Moreso, the matter has been reported after preliminary investigation. Hasher Ali (PW.4) deposed that after drafting murasila and preparing injury sheet, he referred injured for medical examination. The time of report as mentioned in the murasila is 10.45 p.m, but according to Dr. Abdul Sami the injured was brought by

police and he examined him at 10.10 p.m. i.e. 20 minutes prior to the time of report. This aspect creates further doubt in the prosecution case.

9. So far as testimony of PW Rasheed Khan (the son of injured-complainant) is concerned, his name, as an eyewitness, does not figure anywhere in the FIR, and has been introduced as such, later on. It has been held by the august Apex Court in case titled, **"Rashid Ahmed Vs Muhammad Nawaz and others" (2006 SCMR 1152),** that testimony of the prosecution witness not mentioned in the FIR, but introduced subsequently, had no evidentiary value. Taking guidance from the judgment (supra), I straight-away exclude the testimony of this witness from consideration.

10. No doubt, in hurt cases, statement of injured witness, supported by medical evidence, is sufficient for recording conviction, provided it rings true and is confidence inspiring, in view of its intrinsic worth. Mere stamp of injuries on the person of a witness would not be a proof of the fact that whatever he deposes would be the truthful account of the events. His veracity is to be tested from the circumstances of the case and his own statement whether it fits in the circumstances of the case or otherwise. It is well settled principle of law that for

recording conviction strong evidence of unimpeachable character is required. It is golden principle of criminal justice that finding of guilt against accused must not be based on probabilities to be inferred from evidence but must rest surely and firmly on tangible and concrete evidence, otherwise, the golden rule of benefit of doubt would be reduced to naught. The Courts by means of proper appraisal of evidence must be vigilant to dig out truth of the matter to ensure that no injustice is caused to either party. It is cardinal principle of administration of criminal justice that prosecution is bound to prove its case beyond any shadow of doubt. If any reasonable doubt arises in the prosecution case, benefit of the same must be extended to the accused not as a matter of grace or concession, but as a matter of right. Likewise, it is also well embedded principle of criminal justice that there is no need of so many doubts in the prosecution case, rather any reasonable doubt arising out of the prosecution evidence, pricking the judicial mind would be sufficient for acquittal of the accused.

11. In the instant case, as discussed above, there are so many circumstances which create serious doubts in the prosecution case, benefit of which has rightly been extended to the respondents-accused by the learned Trial

Court. Besides, this is appeal against acquittal and standards of assessing evidence in appeal against acquittal are quite different from those laid down for appeal against conviction. Marked difference exists between appraisal of evidence in appeal against conviction and in appeal against acquittal. Appraisal of evidence, in appeal against conviction is done strictly and in appeal against acquittal such rigid method of appraisal is not to be applied as there is already finding of acquittal given by the trial Court after proper analysis of evidence on record. Scope of appeal against acquittal of accused is considerably narrow and limited. Unless the judgment of acquittal is perverse, completely illegal and on perusal of evidence, no other decision could be given except that accused is guilty or there has been complete misreading of evidence leading to miscarriage of justice. High Court is always slow in exercise of jurisdiction under section 417 Cr.P.C. unless it finds that gross injustice had been done in administration of criminal justice. It is settled law that the appellate Court while dealing with acquittal order had to exercise jurisdiction cautiously because the acquitted accused enjoys double presumption of innocence, the one available to him before conclusion of the trial and the second after the verdict of acquittal in his favour. While Court sitting in

appeal against acquittal must be slow in reversing the judgment of acquittal, unless it is found to be arbitrary fanciful and capricious on the face of it or is the result of bare misreading or non-reading of any material evidence. In the instant case, no such infirmity has been found in the impugned judgment. The learned trial Court has rightly acquitted the respondents/accused by extending them benefit of doubt, after proper appraisal of evidence to which no exception can be taken.

12. Accordingly, this appeal being without any substance stands dismissed.

Announced
26.10.2015

J U D G E

**M.Siraj Afridi P.S. D*

7. For what has been discussed above, Suo motu notice given to accused Shakir stands withdrawn. He is admitted to bail on already existing bail bonds, on merits. Since this court has already directed expeditious conclusion of trial while dealing with the bail petition of co-accused Farman, therefore, office is directed to send the record to the quarter concerned within two days, positively.

announced:
19.10.2015

J U D G E

*M.Siraj Afridi P.S. D