

JUDGMENT SHEET
PESHAWAR HIGH COURT,
MINGORA BENCH
(Judicial Department)

Criminal Appeal No. 382-M/2021

Jehanzeb & 02 others

(Appellants)

v/s

The State & another

(Respondents)

Present:

*M/S Astaghfir Ullah, ASC & Sajjad Anwar,
Advocate, for the accused/appellants.*

Khwaja Salah-ud-Din, Addl: A.G, for the State.

*M/S Hussain Ali & Badi-uz-Zaman Khan,
Advocates, for the respondent/complainant.*

Criminal Revision No. 01-M/2022

Shaukat Ali son of Muhammad Khan

(Petitioner)

v/s

Jehan Zeb Khan & others

(Respondents)

Present:

*M/S Hussain Ali & Badi-uz-Zaman Khan,
Advocates, for the petitioner/complainant.*

*M/S Astaghfir Ullah, ASC & Sajjad Anwar,
Advocate, for the accused/respondents.*

Khwaja Salah-ud-Din, Addl: A.G, for the State.

Dates of hearing: 23.01.2024

JUDGMENT

SHAHID KHAN, J.- Through the subject

single judgment, the Court shall decide the

captioned criminal appeal No. 382-M of 2021

Titled **“Jehan Zeb & 02 others v/s The State**

& another” coupled with the connected

criminal revision No. 01-M/2022 Titled

“Shaukat Ali v/s Jehan Zeb Khan & others”,

as the subject criminal appeal & criminal

revision are by-product of one & the same impugned order/ judgment passed by the learned Additional Sessions Judge-II/Model Criminal Trial Court/ Izafi Zila Qazi, Buner at Daggar, dated 21.12.2021, in respect of case FIR No. 37 dated 04.02.2021, U/Ss 302/ 324/ 337-F(ii)/337-F(iii)/34 PPC, R/W Section 15-AA, P.S, Totalai, District Buner.

2. Reportedly, the injured/ complainant, Shaukat Ali reported the subject event to the local police at emergency room of Civil Hopital Totalai in terms that on the relevant date, day & time, construction work in respect of their house was going on, under his supervision and his sons, Sajjad Ali (deceased), Usama and Muhammad Ali also accompanied him, who seated on their respective cots (چارپائیوں). In the meanwhile, the accused/appellants, Jehan Zeb, Abubakar Zeb & Shakeel, armed with firearms (اسلحہ آتشین) emerged and started firing at the complainant-party. As a result of the firing of the accused, Abubakar Zeb, his son Sajjad Ali got hit & died on the spot, whereas, as a result of firing



of the accused, Jehan Zeb, the complainant sustained severe injuries, however, rest of the complainant-party comprising of his other sons, Usama & Muhammad Ali escaped unhurt. In addition to the injured/complainant, the occurrence has been witnessed by his sons, Usama & Muhammad Ali. Motive for the commission of offence was disclosed to be a dispute over the path/way. In view of the report of the injured/complainant, the 'Murasila' (Ex. PW-3/1) was drafted which culminated into the *ibid* FIR (Ex. PW-6/1) registered against the accused/appellants at P.S concerned.

3. Upon arrest of the accused/appellants followed by completion of investigation, *challan* was drawn and was sent-up for trial to the learned trial Court. Accused/appellants were confronted with the statement of allegations through a formal charge-sheet to which they pleaded not guilty and claimed trial.

4. To substantiate the guilt of the accused/appellants, the prosecution furnished its account consist of the statements of ten (10)

witnesses. The accused were confronted with the evidence so furnished through statements of accused within the meaning of section 342 Cr.P.C.

5. On conclusion of the proceedings/ trial, in view of the evidence so recorded and the assistance so rendered by the learned counsel for the accused/appellants and the learned counsel for the complainant/learned State counsel, the learned trial Court arrived at the conclusion that the prosecution has successfully brought home charge against the appellants/accused through cogent & worth reliable evidence, as such, the accused were convicted & sentenced as follows;-

U/S 302 (b) PPC to imprisonment for life each, along with compensation in the sum of Rs. 500,000/- (five hundred thousand) each i.e. Rs. 15,00,000/- as a whole, U/S 544-A Cr.P.C, payable to the legal heirs of the deceased, in default of payment of the compensation, all the three accused shall further undergo six months, simple imprisonment, each. The amount of compensation shall be recoverable as arrears of the land revenue within the meaning of section 544-A (2), Cr.P.C.

U/Ss 324/34 PPC to suffer rigorous imprisonment of five years each, with fine of Rs. 20,000/- (twenty thousand) each, or in default of payment of fine, all the three accused shall further undergo six months, simple imprisonment each, on account of making murderous attempt at the life of injured/ complainant, Shaukat Ali.

U/Ss 324/34 PPC to suffer rigorous imprisonment of five years each, with fine of Rs. 20,000/- (twenty thousand) each, or in default of payment of fine, all the three accused shall further undergo six

months, simple imprisonment each, on account of making murderous attempt at the life of Muhammad Osama, by way of ineffective firing.

U/Ss 324/34 PPC to suffer rigorous imprisonment of five years each, with fine of Rs. 20,000/- (twenty thousand) each, or in default of payment of fine, all the three accused shall further undergo six months, simple imprisonment each, on account of making murderous attempt at the life of Muhammad Ali, by way of ineffective firing.

U/Ss 337-F(ii)/34 each of the appellant shall suffer two years rigorous imprisonment as *Ta'zir* and they shall also be liable to pay the amount of Rs. 10,000/- each, as Daman, payable to the injured/complainant, Shaukat Ali. The accused shall be kept in jail till realization of the amount of Daman.

U/Ss 337-F(iii)/34 each of the appellant shall suffer three years rigorous imprisonment as *Ta'zir* and they shall also be liable to pay the amount of Rs. 15,000/- each, as Daman, payable to the injured/complainant, Shaukat Ali. The accused shall be kept in jail till realization of the amount of Daman.

U/S 15-AA, the accused/appellant, Abubakar Zeb is convicted & sentenced for two years rigorous imprisonment, along with fine of Rs. 10,000/-, or in default of payment of fine, he shall further undergo six months, simple imprisonment.

U/S 15-AA, the accused/appellant, Shakeel Ahmad Zeb is convicted & sentenced for three years rigorous imprisonment, along with fine of Rs. 20,000/-, or in default of payment of fine, he shall further undergo six months, simple imprisonment.

All the sentences were ordered to run concurrently.

The accused/appellants have also been extended the benefit of section 382-B Cr.P.C.

6. It obliged the appellants/accused to approach this Court through the subject criminal appeal, whereas, the petitioner/complainant has also filed the connected criminal revision No. 01-M/2022 for enhancement of the sentences awarded to the accused/respondents.

7. Learned counsel for the parties as well as the learned Addl: A.G for the State have been heard at a length and the record gone through with their valuable assistance.

8. Needless to highlight that in the subject event the law of the land was set in motion when the police contingent, under the command of Bahramand Shah, SHO, P.S, Totalai, (PW-3) reached the emergency ward of Civil Hospital Totalai, pursuant to receipt of a clue about an offence of murder, whereby, the injured/ complainant, Shaukat Ali, PW-7, (father of the deceased, Sajjad Ali) reported them the subject occurrence in terms that on the fateful day, he, in the company of his sons, Sajjad Ali (deceased) and other complainant-party comprising of Usama & Muhammad Ali were present in the venue of crime in connection with supervision of their under constructed house work. In the meanwhile, the accused/ appellants, Jehan Zeb, Abubakar Zeb & Shakeel, while being duly equipped firearms came there and resorted to firing upon the complainant-party.

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As a result of firing of the accused/appellant, Abubakar Zeb, his deceased son, Sajjad Ali got hit and died on the spot, whereas, due to fire shots of accused/appellant, Jehan Zeb, the complainant sustained severe injuries. Rest of the complainant-party i.e. Usama & Muhammad Ali escaped un-hurt. Motive for the commission of offence was disclosed to be a dispute over the path/way.

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9. There is no second opinion at all that the effective & specific role of firing at the deceased as well as the injured/complainant has been attributed to the accused/appellants, Abubakar Zeb and Jehan Zeb by the complainant in his initial report in the shape of '*Murasila*' followed by the *ibid* FIR, with a specific motive which stated to be a dispute over the path/way. Other than the above, both the parties were known to each other due to existence of the previous motive as well as being co-villagers, as such, there was no chance of mis-identification or false implication on the part of the complainant-party.

10. In order to prove their case, the prosecution has mainly been relying upon the eyewitness-account offered by the two prosecution witnesses, whose statements have been recorded as PW-7 and PW-8, respectively. The injured/complainant of the subject case, Shaukat Ali (who is none else but the real father of the deceased, Sajjad Ali) offered a natural & straight-forward account of the occurrence, as highlighted in the 'Murasila' followed by the *ibid* FIR. He was cross-examined at a substantial length, however, he remained consistent on most of the material particulars of the subject case. With the blessing of learned counsel for the defence in the examination-in-cross of the injured/complainant, the mode & manner of the occurrence, the venue of crime as well as the motive part of the case have been specified & confirmed, in the following words;-

On the day of occurrence four masons and eight laborers were busy in working in my under construction house.

The dispute over thoroughfare arose some two and half months prior to the present occurrence.

It is correct that Police Station Totalai and civil hospital Totalai can be approached from the spot in a vehicle. We remained on the spot for about 25 minutes after the occurrence and then left the same for the hospital. Self-stated that due to non-availability of the vehicle we remained on the spot.

Some 8/10 persons from the locality attracted to the spot of the occurrence among whom I cannot name anyone. I did not narrate the story to anyone of them. I myself boarded the vehicle while the dead body of my deceased son was lifted by the masons, my sons and other persons. I had not disclosed the names of masons as well as laborers to the police either in my report or afterwards during the course of investigation. The witness volunteered that they were not known to me as they hailed from Mardan.

Same was the case with the account of another PW, Muhammad Usama who has given a similar narration of the occurrence in his examination-in-chief while deposing as PW-8. He had also remained consistent in his testimony during the course of his cross-examination. In his examination-in-cross, PW-8 has deposed in alike manner as like his father i.e. the injured/complainant, Shaukat Ali, in terms that he had pointed out various places to the Investigation Officer at the time of his visit to the spot with respect to presence of his deceased brother, Sajjad Ali, his father, Shaukat Ali as well as his other brother, Muhammad Ali. He had also made pointation in respect of presence of the masons & laborers on the spot to the

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Investigation Officer. He was also confronted with his presence on the spot as well as his arrival & departure therefrom. From the above narrations of the star witnesses of the prosecution, it is crystal clear that with the blessing of the learned counsel for the defence not only the presence of the masons as well as the laborers in the under construction house of the injured/complainant has been confirmed & verified but the motive part of the case in hand has also been came to surface. The mode & manner of the occurrence narrated by the aforesaid eyewitnesses of the occurrence is also appealable to a prudent mind in a sense that it is part & parcel of their cross-examinations that after the occurrence their deceased son/brother was lifted from the spot by the masons in the company of other complainant-party comprising of Usama & Muhammad Ali, whereas, the complainant being (in injured condition) himself boarded in the vehicle, therefore, it is an admitted fact floating on the surface of the record that it was the accused-party who could be termed as

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aggressors as they had attracted to the venue of crime i.e. the under construction house of the complainant-party in prosecution of their common object and made murderous assault upon them which resulted death of one person besides causing severe firearm injuries to the other. For the sake of arguments, if the accused-party have not attracted to the venue of crime i.e. the under construction house of the complainant-party then there was no need for the learned counsel for the defence to put questions to these PWs in their cross-examinations about the presence of the masons as well as the laborers on the spot. Likewise, there was no need for the learned counsel for the defence to confront these PWs with their presence on the spot or for that matter their departure from the venue of crime, meaning thereby, that impliedly the learned counsel for the for the defence has admitted the presence of the complainant-party on the spot, otherwise, he would have not confronted them with their presence on

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the spot especially when the complainant himself have stamp of injuries on his body.

11. There has been some minor discrepancies occurring during the course of cross-examinations of these two PWs but the same cannot be taken as having a sweeping effect on their testimonies qua the guilt of the accused/appellants. No doubt, there has been some variation existing in the evidence vis-à-vis, not knowing the names of the masons as well as the laborers working in their under construction house as well as variations in respect of the delayed report of the occurrence to the local police coupled with delayed sending of the weapons of offence as well as crime empties to the FSL. The learned counsel appearing on behalf of the accused/appellants laid much stress on these discrepancies (as highlighted above) and claimed that the same were sufficient for disbelieving the eyewitness-account offered in the case in hand, however, it is important to be noted here that an eyewitness/complainant may not be expected to have given an exact

time of occurrence while lodging his first report thereof. The PWs while appearing in the Court after more than 09 months of the occurrence might not be recollecting the exact time of occurrence from their own memories but they may have been stood guided by the time of occurrence given in the '*Murasila*' /FIR used for refreshing their memories before recording their statements. Substantial time had lapsed between happening of the events and its description by the two witnesses offered during the course of the trial of the accused/appellants. Recollection of events happening before, at the time & after the occurrence with a photographic precision and that also after a lapse of more than 09 months would be unrealistic expectations from these PWs. In such circumstances, the contradictions mentioned above may safely be taken as minor in nature having no bearing on the material aspects of the subject case, in respect of which the evidence of these PWs have mostly remained unshaken, confidence inspiring & worth reliable. In case titled

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"Khadim Hussain v/s The State" reported as PLD 2010 Supreme Court 669, the Apex Court has held that creeping in of minor contradictions in the testimony of PWs, with passage of time, have been natural and the same could be ignored easily. Relevant part of the observation of the august Court is reproduced for ready reference;

We have also adverted to the contention of learned ASC that various contradictions in the statements of the prosecution witnesses have not been taken into consideration causing serious prejudice against the appellant. It has been held time and again by this Court that minor contradictions do creep in with the passage of time and can be ignored safely.

Similarly, in case titled

"Muhammad Ilyas v/s The State" reported as "2011 SCMR 460" the Hon'ble Supreme

Court has also observed as follows;

Contradictions which are not grave in nature can be ignored safely as minor contradictions creep in with passage of time. Merely on the basis of contradictions, statement of a prosecution witness cannot be discarded if corroborated by other incriminating material.

(underline supplied)

Further reliance in this respect

may also be placed on the judgment of Apex

Court rendered in case titled "Zulfiqar Ahmad v/s The State" reported as "2011 SCMR 492".

12. Shaukat Ali, PW-7 the injured/eye-witness has also supported the prosecution case. Since he has sustained firearm injuries on the back side of his neck as well as his right shoulder and was thereafter shifted to the hospital where his injury-sheet was prepared and was further shifted to Civil Hospital, Totalai, Buner for further treatment. Thus, the presence of this injured/PW at the spot is also established. In the circumstance, it cannot be believed that the accused/appellants were substituted for the real culprits. In this regard, reliance is placed on the judgment of august Supreme Court of Pakistan rendered in case titled "Abdul Rauf and others v/s Mehhi Hassan and others" reported as 2006 SCMR 1106, whereby, it has been held:-

"Presence of eye-witnesses who had received fire-arm injuries at the place of occurrence at the relevant time was not open to any doubt. None of the eye-witnesses was shown to have any motive or ill-will to maliciously implicate the accused in the case."

This ratio has further been affirmed by the august Supreme Court of Pakistan in case titled "Muhammad Waris v/s

The State (2008 SCMR 784)”, wherein the

following observations were made;-

“Eye-witness had explained their presence at the place of occurrence at the relevant time and thus, they were natural and independent witnesses of the incident. Medical evidence was not destructive of the ocular testimony.”

Likewise, it was also held in case titled *“The State v/s Waheed Iqbal & others”* reported as *2005 P Cr. LJ 1384* that presence of complainant on the spot could not be denied as he had sustained injuries during the occurrence.

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13. Apart from the above, the credibility of the ocular-account cannot be doubted in the case in hand on the ground that no question has been put to the eyewitnesses with respect to any obstacle or hurdle existed between their visibility range vis-à-vis the accused-party, in particular, the accused/appellants, Abubakar Zeb & Jehan Zeb, who have been assigned a specific role firing at the deceased as well as the injured/complainant. The prosecution has also been able to prove the place of occurrence i.e. the under construction house of the complainant, wherefrom, the Investigating Officer has also collected

substantial materials in the shape of blood stained earth from the places of the deceased as well as the injured/complainant, crime empties of 30 bore pistol, vide different recovery memos. The place of occurrence has not at all been seriously disputed by the defence side during the course of cross-examinations of these PWs. The prosecution has also been able to sufficiently explain the presence of the PWs at the spot. When their presence stood established on the record, they were found truthful in their narrations being natural and confidence inspiring, then their testimonies may be made the basis of conviction even in absence of any independent corroboration. In this respect, reliance is placed on the judgment of Hon'ble Supreme Court of Pakistan rendered in case titled "Muhammad Waris v/s The State" reported as "2008 SCMR 784", whereby, it has been held:-

"The explanation offered by the said two eye-witnesses regarding their presence at the place of occurrence at the relevant time had been accepted by the two learned Courts and no reason exists which could persuade us to hold otherwise. Both these P.Ws. were thus, natural and independent witnesses of the occurrence who had been rightly delivered by the two learned Courts. Corroboration is only rule of caution and not a rule of law and if the eye-

witness account is found reliable and trustworthy then there is hardly any need to look for any corroboration.”

14. The medical evidence so furnished in the subject case is also inconsonance with the story of the prosecution. The dead body of the deceased, Sajjad Ali, has been examined by Dr. Abdul Ghafoor, PW-5. Likewise, he also examined the injured/complainant, Shaukat Ali. His reports Ex. PW-5/1 & Ex. PW-5/2, speak loud & clear about the nature of the firearm injuries received by the deceased and that too on the vital organ of his body i.e. head. The injured/complainant, Shaukat Ali also received firearm injury on vital parts of his body i.e. on the back of his neck as well as on his right shoulder. He was put to lengthy & searching cross-examination by the defence but nothing beneficial could be extracted from his mouth qua the innocence of the accused/appellants.

15. We are also conscious of the fact that the two eyewitnesses of the occurrence are the real father & brother of the deceased but in absence of any deep rooted enmity except the one highlighted in the FIR which was stated to be a dispute over the path/way, these PWs are

not expected to substitute the actual culprits for the present accused/appellants. We do not agree with the learned counsel for the accused/appellants that they are interested witness, because interested witness is a person who had a motive to falsely implicate the other person and mere their relationship with the deceased cannot be made a base to discard their testimony, on all counts. In this regard, we are fortified to place reliance on the cases of Apex Court cited as 'Niaz vs the State PLD 1960 Supreme Court 387', Sharafat Ali vs the State 1999 SCMR 329', 'Abdur Rauf vs the State, 2003 SCMR 522', 'Dilawar Hussain vs the State, PLD 2008 S.C. 131'.

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In Sharafat Ali's case *Supra*, the august Supreme Court of Pakistan while considering the testimony of the witnesses, one of whom was the husband of the sister of the deceased and the other was his brother has held that:-

"Considering the testimony of these two eye-witnesses on the touchstone of the aforesaid criteria, we do not find that their testimony is tainted or they had any motive to falsely implicate the appellant nor any enmity worth the name has

been brought on record to show that they were implicating the appellant in this case falsely.”

In Abdur Rauf 's case *Supra*, it was held by the august Supreme Court of Pakistan:-

We may observe that relationship itself is no ground to discard and discredit the testimony of eye-witnesses unless it is shown that they are partisan and interested witnesses. The eye-witnesses in the present case undoubtedly are related to the deceased but they have been found entirely independent and truthful, therefore, their testimony without looking for any other corroborative evidence, would alone be sufficient to establish the charge. The evidence of related witnesses who are not found inimical and are confidence-inspiring would hardly need any corroboration. However, in the present case as discussed above, the ocular account is seeking ample support from the motive, the medical evidence and the attending circumstances.”



In Dilawar Hussain's case *Supra* regarding the relationship of the witnesses, the august Supreme Court of Pakistan has held as under:-

“The parties as well as the witnesses were closely related inter se and also have good relations except that appellant was annoyed with the deceased for his purchase of land from his father and thus in absence of any enmity or ill-will, mere relationship is not a valid ground to discard the evidence of a person and similarly a witness non-resident of locality, is not as such unnatural witness, therefore the evidence of such witness cannot be excluded from consideration for mere reason that he was related to the deceased or was not resident of the area in which crime was committed.”

Therefore, the learned trial Court for all valid reasons has relied upon their testimonies qua the guilt of the accused/

appellants, irrespective of their *inter-se* relationship with the deceased.

16. The other circumstantial evidence brought on the record by the prosecution do support their case to a large extent, which includes the pointation of the place of occurrence by the accused/appellants, after their arrest, recovery of blood stained earth and crime empties of 30 bore pistol from the spot as well as blood stained garments of the deceased as well as the injured/complainant coupled with its positive FSL reports, therefore, in view of the aforesaid corroboratory evidence too, the accused/appellants have rightly been found guilty of the commission of offence by the learned trial Court.

17. Last but not the least whether the accused/appellant, Shakeel Ahmad Zeb can also be held responsible for the commission of murder and causing firearm injuries by his co-accomplices, i.e. the accused/appellants, Abubakar Zeb & Jehan Zeb. The concept to award similar sentence in addition to the principal accused who had the common

intention of killing the deceased has been embodied in sections 34 and 149 of the Pakistan Penal Code ("*Code*"). The role of co-accused who were either present at the spot or had taken some decisive steps in commission of the offence along with the principal accused remained subject-matter before the superior Courts for awarding conviction to the said co-accused. In case titled "*Muhammad Riaz alias Riasti and another vs the State*" reported as 1987 SCMR 177, the Apex Court has made the following the observations with respect to the applicability of section 34 PPC to the extent of co-accomplice;-

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"In the above case, one appellant inflicted dagger blow while the other appellant threw brickbat on the face of the fallen victim. It was urged before this Court that the accused who threw brickbat, did not know that the other co-accused was carrying knife or that he would stab deceased in abdomen and thus did not share common intention to murder. The above contention was repelled and it was held that from his throwing brickbat on the face of the deceased after he had been stabbed in the abdomen, it was evident that he shared intention with the co-accused on spot to murder the deceased. The appeal was dismissed and the judgments of the two Courts below were maintained."

This view has earlier been expounded by the Division Bench of the Lahore High Court in case titled "*Gheba &*

others vs the Crown" reported as PLD 1949

Lahore 453, in the following words:-

"Common intention within the meaning of section 34 implies a prearranged plan. To convict the accused of an offence applying section 34 it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. It is no doubt difficult if not impossible to procure direct evidence to prove the intention of an individual; it has to be inferred from his act or conduct or other relevant circumstances of the case. Care must be taken not to confuse same or similar intention with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice. The inference of common intention within the meaning of the term in section 34 should never be reached unless it is a necessary inference deducible from the circumstances of the case."

Lastly, the august Supreme Court of Pakistan in its celebrated judgment rendered in case titled "Muhammad Akbar & 2 others vs The State reported as PLD 1991 S.C

923 has made the following observations with respect to the *matter-in-issue*:-

"From the above-referred cases, it is evident that a joint action by a number of persons is not necessarily an action performed with a common object, but it may be performed on the spur of the moment as a reaction to some incident and such a case would fall within the ambit of section 34, P.P.C. However, it may be pointed out that section 34, P.P.C. contemplates an act in furtherance of common intention and not the common intention simpliciter and that there is a marked distinction between similar intention and common intention and between knowledge and common intention. It may also be observed that mere presence of an accused at the place of incident with a co-accused who commits offence may not be sufficient to visit the former with the vicarious liability, but there should be some Wong circumstance manifesting a common intention. Generally common intention inter alia precedes by some or all of the following elements, namely, common motive, pre-planned

preparation and concert pursuant to such plan. However, common intention may develop even at the spur of moment or during the commission of offence as pointed out hereinabove. Conversely common intention may undergo change during the commission of offence”.

Now reverting back to the case in hand, the mode and manner of the occurrence narrated by the prosecution witnesses, in particular the injured/complainant, Shaukat Ali, the accused-party comprising of the principal accused, Abubakar Zeb & Jehan Zeb would not be able to achieve their prime target with such a ease & comfort if the accused/appellant, Shakeel Ahmad Zeb has not supported them while being duly armed with firearm and thus the peculiar facts & circumstances of the subject event clearly indicates that the accused/appellant Shakeel Ahmad Zeb was also sharing common intention with his co-accomplices qua the murder of the deceased as well as causing firearm injuries to the injured/complainant.

18. The learned counsel for the accused/appellants also laid much stress on the point that in the case in hand the weapons of offences i.e. 30 bore pistol & rifle were

recovered on the pointation of the accused/appellants, Abubakar Zeb and Shakeel Ahmad Zeb vide recovery memo, Ex. PW-3/7 dated 04.02.2021. Likewise, the crime empties were also shown recovered from the spot vide recovery memo, Ex. PW-2/1 on the same day i.e. 04.02.2021, however, the FSL report, Ex. PW-9/12 shows that the aforesaid weapons of offences and crime empties were sent to the FSL on 08.02.2021 with a delay of 03/04 days, therefore, the positive FSL report is of no use for the prosecution qua the guilt of the accused/appellants. Suffice it to say, that this aspect of the case has elaborately been clarified by the Investigation Officer of the subject case, Bakhti Rawan Khan, in his cross-examination, while appearing in Court as PW-9, in the following words;-

I have not sent two empties of 30 bore and three empties of 30 bore to the FSL for comparison whether fired from one weapon or other. Self-stated that due to public holidays i.e. Kashmir Day, Saturday and Sunday the same were not sent to the FSL.

Therefore, in view of the above clarification the delayed sending of the recovered items in the form of weapons of offence as well as crime empties on the part of

the prosecution was not so fatal or intentional, therefore, the same would have no bearing effect qua the guilt of the accused/appellants, in the subject event, as such, this objection of the learned counsel for the accused/appellants hold no water, hence, discarded.

19. Prosecution have also been able to successfully prove the motive part of the case in hand which was stated to be a dispute over the path/way. Such a motive has not been seriously questioned by the defence side during the course of cross-examinations of PWs and it stood proved in circumstances of the case. But even otherwise weakness or absence of motive or failure to prove the same would hardly make any difference in awarding death sentence, as held by Hon'ble Supreme Court of Pakistan in its judgment rendered in case titled "Waris Khan v/s The State" reported as 2001 SCMR 387.

20. In light of the above re-appraisal of the evidence of prosecution coupled with the legal principles on the subject, the conviction & sentence recorded by the learned Additional Sessions Judge-II/ Izafi Zila Qazi, Buner at

Daggar, through the impugned order/judgment dated, 21.12.2021, is upheld & maintained and consequently, the subject appeal stands dismissed.

21. The learned trial Court vide the impugned order/judgment has rightly convicted & sentenced the accused/appellants to life imprisonment each after re-appraisal of the entire evidence, therefore, no case for enhancement of the sentence awarded to the accused/respondents could be made out, as such, the subject criminal revision filed by the petitioner/complainant, being bereft of any merits, is hereby dismissed.

Date of announcement
Dt. 23.01.2024



JUDGE



JUDGE

Office
31/01/2024
W/R