***JUDGMENT SHEET***

***PESHAWAR HIGH COURT***
***MINGORA BENCH***
*(Judicial Department)*

**Cr.A No. 246-M/2023**

**Ali Rahman son of Ezat Rahman.....(Appellant)**
**v/s**
**The State & another.....(Respondents)**

Present: M/S Sher Muhammad Khan, ASC & Mr. Zegar Sher, Advocate, for the accused/ appellant.

Miss Mehnaz, Asst:A.G, for the State.

Mr. Saeed Khan, Advocate, for the respondent/ complainant.

*Dates of hearing:* *18.12.2023*

***JUDGMENT***

**SHAHID KHAN, J.-** Through the subject criminal appeal, the appellant has challenged the order/judgment of his conviction & sentence passed by the learned Additional Sessions Judge-II/Judge Model Criminal Trial Court Dir Upper, dated 26.07.2023, in respect of case FIR No. 85 dated, 16.04.2022, U/Ss 324/337-D PPC, R/W Section 15-AA, P.S, Dir City, District Dir Upper.

**2.** Reportedly, the injured/ complainant, Amir Rahman in the company of other injured, Mst. Subhania Bibi reported the subject event to the local police at emergency ward of Dir hospital in terms that some time ago his nephew, Ali (the accused/appellant

herein) had leveled certain allegations of theft against his children and the said matter was patched up between the parties about six months back due to intervention of the elders of the locality. On the fateful day, date & time, his sons, Noor Jamal & Bacha Muhammad were busy in altercation with each other, in the meanwhile, the accused/appellant, Ali, entered in their house, while being duly armed with pistol and started firing at the complainant-party. Due to firing of the accused/appellant, the complainant got injured on left side of his rib, whereas, her daughter-in-law (بہو), Mst. Subhania sustained injury on left side of her chest. In addition to both the aforesaid injured, the occurrence was claimed to have been witnessed by Bacha Muhammad and Noor Jamal, sons of the complainant. Motive for the commission of offence was stated to be previous *ill-will* between the parties over leveling of allegations of theft. The event was reduced into in writing in the shape of *'Murasila'* (Ex. PW-11/4) followed by the *ibid* FIR (Ex. PW-4/1) registered against the accused/appellant at P.S concerned.

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

**4.** To substantiate the guilt of the accused/appellant, the prosecution furnished its account consist of the statements of fourteen (14) witnesses. The accused was confronted with the evidence so furnished through statement of accused within the meaning of section 342 Cr.P.C.

**5.** On conclusion of proceedings in the trial, in view of the evidence so recorded and the assistance so rendered by the learned counsel for the accused/appellant 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 appellant/accused, Ali Rahman, through cogent

& worth reliable evidence, as such, he was convicted & sentenced as under;-

i. **Convicted U/S 324 PPC and sentenced for seven (07) years rigorous imprisonment for attempting at the life of complainant Amir Rehman with fine of Rs. 50,000/- (fifty thousand).**

ii. **Convicted U/S 324 PPC and sentenced for seven (07) years rigorous imprisonment for attempting at the life of injured Mst. Subhania Bibi with fine of Rs. 50,000/- (fifty thousand).**

iii. **Convicted & sentenced U/S 337-D PPC for five years (R.I) with Arsh equal to 1/3 of Diyat i.e. Rs. 14,20,000/-, payable to the complainant Amir Rahman.**

iv. **Convicted & sentenced U/S 337-D PPC for five years (R.I) with Arsh equal to 1/3 of Diyat i.e. Rs. 14, 20,000/- to the injured Mst. Subhania Bibi.**

v. **It is further held that accused shall pay the Arsh amounts in lump sum to the complainant and injured Mst. Subhania Bibi, in case of failure of accused in this regard, the accuse be kept in jail till realization of total amount mentioned above.**

vi. **All the sentences were ordered to run concurrently.**

vii. **The appellant has also been extended the benefit of section 382-B, Cr.P.C.**

6. It obliged the appellant/accused to approach this Court through the subject criminal appeal.

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

**8.** The record so furnished would divulge that the accused/appellant, Ali Rehman has been facing the allegations of murderous attempt made at the lives of the injured/complainant, Amir Rahman and the other injured Mst. Subhania Bibi. It is also part of the record that the fire shots of the accused/appellant has achieved its target as both the injured have stamp of injuries on different parts of their bodies, however, the only question before the Court for determination would be as to it was the act of the accused/appellant or otherwise which is to be thrashed out in the light of ocular-account furnished by the complainant-party, including the two injured PWs.

**9.** The injured/complainant, Amir Rahman on his own turn appeared in the witness-box as PW-8. In his examination-in-chief, he almost reiterated the same facts as advanced in the *'Murasila'* followed by the ibid FIR, however, his examination-in-cross is worth perusal. In his examination-in-cross, he deposed as under;-

میں نے نہیں بتا سکتا کہ ملزم نے کتنے فائر کئے تھے۔ میں نہیں بتا سکتا کہ ملزم نے ایک فائر کیا تھا یا زیادہ فائر کئے تھے

In view of the aforesaid admissions of nobody else but the injured/ complainant himself, it is crystal clear that he has shown complete ignorance about the number of shots made by the accused/ appellant at the relevant time. This fact has relevancy in the context of the subject event in terms that it is not a case of single injured rather as per prosecution's case firing of the accused allegedly proved effective qua causing firearm injuries to the two injured, therefore, the complainant must have knowledge about the number of fire shots made by the accused. In the same breath, the complainant also admitted in his cross-examination that he has no idea that how many empties were recovered from the spot as at the time of pointation of spot to the Investigation Officer both the injured were not present on the spot. He also deposed in his cross-examination that at the relevant both of his sons were quarrelling with each other.

Here the question arises that if both the sons of the complainant were busy in altercation with each other and that too inside the premises of their house then why and for what reason a need arises for accused/appellant to indulge in the private matter of two brothers, therefore, the very mode & manner of the occurrence is not appealable to a prudent mind qua the very presence of the accused/ appellant on the spot. This matter further complicated in terms that when the other injured, Mst. Subhania appeared in the Court as PW-9, she also deposed in alike manner that she has no knowledge that how many fire shots have been fired by the accused/appellant, however, she & her father-in-law i.e. the complainant received injuries of their bodies. In response to a specific question put-forward by the learned counsel for the defence, she made the following admissions;-

سوال: وقوعہ کے وقت آپ آگے کھڑی تھی یا آپ کا سسر آگے کھڑا تھا؟

جواب: پہلے میں فائر سے لگی اور پھر میرا سسر فائر سے لگا تھا۔

In view of the above narration of the injured PW, Mst. Subhania the whole case

of the prosecution poles apart in terms that how it is possible that single bullet allegedly hit the injured at first instance and then make its way to the body of the injured/complainant, therefore, this element prima facie not only cast a serious doubt about the mode & manner of the occurrence but it also overshadow the present of the accused/appellant at the venue of crime. The other alleged eyewitness of the occurrence i.e. Noor Jamal, the son of the complainant appeared in the Court as PW-10. In his cross-examination he has also shown complete ignorance about the number of shots fired by the accused/appellant at the relevant time with further addition that he could not say as to whether both the injured sustained injuries as a result of one single bullet shot or otherwise, as at the relevant time he was standing near the gate. He also admitted that at the time of spot inspection the police have only recovered one crime empty. Thus, the presence of the alleged eyewitnesses at the relevant time & place appears to be highly unreasonable and unnatural and thus the

prosecution has not been able to prove the presence of these PWs at the scene of occurrence at the relevant time, hence, their evidence has wrongly been taken into consideration by the learned trial Court for the purpose of conviction of the accused/ appellant. In a situation, akin to the present one, in case titled ***"Sarfaraz & another v/s The State"*** reported as ***2023 SCMR 670***, the Apex Court has held as under;-

**Not a single person from the inmates of the house where occurrence took place or from surrounding inhabitants appeared in support of the prosecution version and the whole prosecution case was silent about this aspect of the matter. Record clearly reflected that the prosecution witnesses were not present at the place of occurrence, rather they managed to appear as witnesses after due consultation and deliberation. Record further showed that the complainant was inimical towards the deceased. In such circumstances, it seemed impossible that deceased would have invited an inimical person for his help before his death. Prosecution had failed to prove its case beyond any reasonable shadow of doubt**

Similarly, in case titled "***Liaqat Ali and another v/s The State and others"*** reported as ***2021 SCMR 780***, the Apex Court has recorded a somewhat similar observations by holding that;-

**All the circumstances highlighted above lead us to a definite conclusion that presence of eye-witnesses at the place of occurrence at the relevant time is not free from doubts and the prosecution has**

**failed to prove its case against the appellant beyond reasonable doubt.**

In case titled ***"Muhammad Arif Vs. The State"*** reported as ***2019 SCMR 631***, the Hon'ble Supreme Court observed regarding the effect of dis-honest improvements by a witness and observed as under:-

**It is well established by now that when a witness improves his statement and moment it is observed that the said improvement was made dishonestly to strengthen the prosecution, such portion of his statement is to be discarded out of consideration. Having observed the improvements in the statements of both the witnesses of ocular account, we hold that it is not safe to rely on their testimony to maintain conviction and sentence of Muhammad Arif (appellant) on a capital charge.**

Even if the accounts of these material witnesses are put in juxtaposition with their improvements, as referred to above, then the same make case of prosecution a case of no evidence. In this respect, reliance is placed on the judgment of Hon'ble Federal Shariat Court rendered in case titled ***"Nadeem and others v/s The State and others"*** reported as ***2014 P Cr. LJ 374*** wherein it has been held;-

**"Thus it is clear from the above that there are two versions made by the P.Ws. themselves and both these versions are self-contradictory. Obviously two contradictory statements about the same occurrence cannot be considered truthful. Therefore, a genuine doubt has arisen about these P.Ws., who blew hot and cold in the same breath and showed least respect for telling the truth and, by being capable of changing their versions as and**

**when it suited them, proved that they are worthy of no credence even if they are natural witnesses of the occurrence. If a witness deposes falsely under threat and that too on oath inside a court, on one occasion, how can he or she be relied upon and believed as truthful on another occasion. This mercurial behavior reflected from their conflicting depositions lends, in a way, support to the defence plea that Inayat complainant and Mst. Fouzia who had been residing at Agriculture Farm of Arif Badrana for the last so many years had implicated all the accused at his instance."**

**10.** It is part of the record that the other alleged eyewitness of the occurrence, Bacha Muhammad was not produced by the prosecution in support of their case and was abandoned, as such, he, being an important witness of the prosecution would have been in a better position to clearly identify with perfection the accused/appellant, but he was abandoned and thus the prosecution in all eventualities has withheld the best available evidence, therefore, under Article 129 (g), *the Qanun-e-Shahadat Order, 1984* an adverse inference has to be drawn that had the said PW been produced he would have not supported the case of prosecution. The Apex Court in case titled ***"Lal Khan v/s State"*** reported as ***2006 SCMR 1846*** has held that;-

**A material witness of occurrence would create an impression that had such witness been brought into witness-box, he might not have supported the**

**prosecution and in such eventuality the prosecution must not be in a position to avoid consequence.**

Similarly, in case titled ***"Mandoos Khan v/s The State"*** reported as ***2003 SCMR 884*** it was observed by the Apex Court that;-

**Prosecution must produce best kind of evidence to establish accusation against accused facing trial but simultaneously it has no obligation to produce a good number of witnesses because it has an option to produce as many as witnesses which in its consideration are sufficient to bring home guilt against the accused, following the principle of law that to establish accusation, indeed it is not the quantity but quality of the evidence, which gets preference.**

**11.** The prosecution has not been able to bring on record any confidence inspiring ocular evidence which could connect the accused/appellant with the alleged attempt made at the lives of the complainant-party nor there is any sort of circumstantial evidence against the accused in the field except the recovery of weapon of offence i.e. a 30 bore pistol, allegedly recovered on the pointation of the accused/appellant vide recovery memo, Ex. PW-2/2. The marginal witness to the aforesaid recovery memo, Shaukat Ali, constable , PW-02 has stated in his examination-in-cross that the alleged place of recovery i.e. house was comprising of six rooms, however, the alleged

recovery of weapon of offence has been made from the Baitak/Guest House, therefore, in all eventualities, the place of recovery is not an abandoned place rather comprising of residential rooms, as such, this element alone makes the very recovery of weapon of offence doubtful, therefore, the alleged recovery of weapon of offence qua the guilt of the accused/appellant has wrongly been believed by the learned trial Court through the impugned order/judgment qua conviction of the accused/ appellant. Even otherwise, when substantive evidence fails to connect the accused person with the commission of offence or is disbelieved, corroborative evidence is of no help to the prosecution as the corroborative evidence cannot by itself prove the prosecution's case. Hon'ble Supreme Court of Pakistan while giving its judgment in case titled ***"Muhammad Afzal alias Abdullah and others vs. The State and others"*** reported as ***2009 SCMR 639*** has also expressed almost a similar view in para-12 of its judgment, which is reproduced hereunder for ready reference;

**"After taking out from consideration the ocular evidence, the evidence of identification and the medical evidence, we are left with the evidence of recoveries only, which being purely corroboratory in nature, in our view, alone is not capable to bring home charge against the appellant in the absence of any direct evidence because it is well-settled that unless direct or substantive evidence is available conviction cannot be recorded on the basis of any other type of evidence howsoever, convincing it may be."**

Hon'ble Supreme Court of Pakistan in its judgment rendered in case titled ***"Imran Ashraf & 7 others v/s The State"*** reported as ***2001 SCMR 424***, has also observed;

**"Recovery of incriminating articles is used for the purpose of providing corroboration to the ocular testimony. Ocular evidence and recoveries, therefore, are to be considered simultaneously in order to reach for a just conclusion."**

In support of same ratio, further reliance may also be placed on the judgment reported as ***2007 SCMR 1427***.

**12.** As far as the medical evidence is concerned, needless to highlight that the medical evidence may confirm the direct or ocular account, if any, with regard to the set of injuries, kind of weapon allegedly used in the commission of offence and at least the nature of injuries, however, in the subject case when the occurrence is not confidence inspiring then evidentiary value of medical evidence qua the guilt of the accused/appellant as a sole piece of corroboratory evidence cannot be

given much weight. Reliance in this regard is placed on the case titled ***"Abdul Rashid v/s The State"*** reported as ***2019 P Cr. LJ 1456***, whereby it has been held that;-

> **"The medical evidence in this case has been furnished by PW-4 Dr. Nasreen Ahmad Tareen, Medical Officer, who has confirmed the unnatural death of deceased. However, the fact remain that medical evidence is only used for confirmation of ocular evidence regarding seat of injury, time of occurrence and weapon of offence used, etc. but medical evidence itself does not constitute any corroboration qua the identity of accused person to prove their culpability. Reliance in this regard can be placed on the case of *"Muhammad Sharif & another v/s The State" (1997 SCMR 866).***

In context of the case in hand, the medical evidence has been furnished by Dr. Rafi Ullah, he appeared in the witness-box as PW-12. In his examination-in-cross, he stated that he has not mentioned the specific time of examination of the injured in his report. He also stated that he examined the injured on 19:20 hours, however, prepared his reports on 20.05.2022 after receipt of the discharge summaries therefore, the medical evidence being not confidence inspiring has wrongly been given weightage by the learned trial Court.

**13.** In view of the above, when neither any direct nor any circumstantial

evidence is available on the face of the record, as such, the case of prosecution is full of doubt all-around; therefore, the accused/appellant has to be extended its benefit.

**14.** It is well settled, it is not essential at all to place reliance on multiple doubts coupled with multiple grounds to extend the benefit of doubt to an accused, even a single worth reliable doubt is sufficient enough to extend its benefit to an accused person as it is the cardinal principle of criminal administration of justice that let hundred guilty persons be acquitted but one innocent person should not be convicted. In the case of ***"Tariq Pervaiz v/s The State"*** reported as ***1995 SCMR 1345*** , the Apex Court has held as under;-

**That the concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.**

Further reliance is placed on the case law cited as ***"Daniel boyd (Muslim name Saifullah) vs the State"*** reported as ***1992 SCMR 196***", where the following

observations were recorded by the Apex Court;-

**Nobody is to be punished unless proved guilty on the basis of reliable or true evidence. Benefit of every reasonable doubt is to go to the accused.**

This view also reflects in the judgment of the apex Court titled as ***"Ghulam Qadir and 2 others vs the State"*** reported as ***2008 SCMR 1221***, wherein it was observed that:-

**"Benefit of doubt. Principle of applicability. For the purpose of benefit of doubt to an accused, more than one infirmity is not required. Single infirmity creates reasonable doubt in the mind of a reasonable and prudent person regarding the truth of charge, makes the whole case doubtful. "**

In support of the same rational, further reliance is placed on the judgment of the august Supreme Court of Pakistan cited as ***"Muhammad Zaman vs. the State" (2014 SCMR 749)***, wherein it was held that;-

**Even a single doubt if found reasonable, was enough to warrant acquittal of the accused.**

**15.** For what has been discussed above, this Court is of the firm view that the prosecution has failed to prove its case against the accused/ appellant, Ali Rahman beyond

reasonable doubt, as such, his conviction cannot be maintained. Resultantly, while extending him the benefit of the doubt the subject criminal appeal is allowed and the impugned order/judgment of conviction and sentence dated 26.07.2023 recorded by the learned trial Court is set aside and consequently the appellant named above is acquitted of the charges leveled against him. He be released forthwith from the Jail, if not required in any other case.

**16.** These are reasons for my short order of even date.

*Date of announcement*
*Dt. 18.12.2023*

JUDGE

Office 17/01/2024 SJR

Nawab (S.B) Hon'ble Mr. Justice Shahid Khan