PESHAWAR HIGH COURT ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

JUDGMENT SHEET

Cr.A. No.156-A of 2010

Date of hearing: 28-05-2015

Petitioner Muhammad Nisar Ahmed by Faqir-Ur-Rehman Abbasi, Adv.

Respondents Muhammad Ibraheem, Addl. for State and Mr. Muzaffar Ilahi Barati, Advs. for respdt. No.2.

LAL JAN KHATTAK, J. Appellant Nisar Ahmad has preferred this appeal against the judgment dated 07.09.2010 of the learned Sessions Judge, Mansehra, delivered in case FIR No.119 dated 01.06.2002 under Section 302/109/34 PPC of Police Station Phulra, whereby he has been convicted under Section 302(b) PPC for *qatl-e-amd* of Muhammad Tariq and sentenced to rigorous imprisonment of life with payment of compensation of Rs.50,000/-, payable to the legal heirs of the deceased, in case of default whereof to further undergo simple imprisonment of six months. Benefit under Section 382-B, Cr.P.C. has been given to the appellant.

2- Facts of the case are that on 01.06.2002 Mst. Zulikhan (PW-7) reported to IHC Mumtaz at Police

Post Lassan of Police Station Phulra, District Mansehra, to the effect that on the fateful day her son Muhammad Tariq left his house for duties at Civil Hospital Khamari. She and her daughter-in-law Mst. Haleema accompanied him to see him off. No sooner then they reached in front of the appellant's house, he emerged therefrom and started firing at her son with which he was hit, fell on the ground and died on the spot. Motive given for the occurrence was that Mst. Afshan, sister of the appellant, had eloped for which her son was suspected.

3- After arrest of the accused and completion of investigation, the case was put in Court, which indicted him for commission of the offence to which he pleaded not guilty and claimed trial. Prosecution in order to substantiate its case produced and examined eleven witnesses, whereafter statement of the accused was recorded, wherein he professed innocence. After conclusion of the trial, the learned trial Court found him guilty of the charge and on conviction sentenced him, as mentioned earlier. It is worth to mention that co-accused Sher Afzal, who was subsequently charged for abetment of the offence has already been acquitted by the learned trial Court on 20.11.2003.

4- Learned counsel for the appellant contended that actually the occurrence was unseen one and both the eyewitnesses were planted by the

investigating agency with *mala fide* intention just to augment the prosecution case against the appellant, who has been charged on the basis of suspicion. Further argued that the prosecution evidence is replete with contradictions, which are major in nature, and can't be ignored. It was also argued that the prosecution has not proved motive of the case as set up against the appellant. The learned counsel kept on arguing that medical examination of the deceased has fully negated ocular account of the case. Lastly, it was argued that there was no corroboration to the eye version account and, as such, it would not be safe to punish the appellant on the strength of an uncorroborated ocular account, as furnished by PW-7 and PW-8.

5- As against the above, learned counsel for the complainant submitted that prosecution has successfully proved its case against the appellant by producing worth reliable and confidence inspiring evidence, which has been corroborated by medical and circumstantial evidence as well. It was argued that unexplained long abscondence of the appellant is a corroboratory evidence to his guilt. It was further argued that a single accused has been charged for effective firing at the deceased and there was no reason for the PW-7 and PW-8 to substitute the real culprit for the appellant because substitution is a rear phenomenon. The learned

State counsel adopted the arguments advanced by learned counsel for the complainant.

6- We have heard learned counsel for the parties and gone through the case record.

7- Perusal of the case record would show that complainant of the case, namely, Mst. Zulekhan appeared before the court as PW-7 and reiterated what she had alleged in her first information report (Ex.PW1/1). To support the complainant, Mst. Bibi Haleema, widow of the deceased, appeared as PW-8. Both the aforesaid witnesses are closely related to the deceased, therefore, their evidence needs careful re-appraisal for safe administration of justice. No doubt, it has been held umpteenth times by the superior Courts that testimony of a closely related witness can't be discarded for his being related to a victim but equally it is well settled that in order to convict an accused on the basis of evidence furnished by a close relative, the Court of law must strive for independent corroboration to such testimony. Corroboratory evidence consists of motive, promptly lodged FIR, recoveries from the spot, site plan, mentioning in the FIR the description of weapon used in the crime, stamp of injury suffered by the complainant in case motive is common and he/she claims presence on the spot, medical evidence of the victim, conduct adopted by the eyewitnesses at the time of occurrence, plausible explanation for presence of the

eyewitnesses on the spot and so on and so forth. In case any one of the above factors is missing or negates the ocular account so furnished by a closely blood related witness then for the sake of safe administration of justice, ocular evidence of such closely related witness will not be taken into account to record conviction of an accused because it is cardinal principle of law that to acquit someone criminal mistakenly is better than to punish someone innocent mistakenly.

8- On the touchstone of the above, on re-appraisal of the case evidence, as furnished by PW-7 and PW-8, it appeared to us that both the witnesses have not furnished any plausible explanation for their presence on the spot, when the occurrence had taken place. According to the prosecution case, the deceased was serving in Civil Hospital, Khamari, who daily used to go for his duties. In the FIR, it has been alleged by the complainant that she and her daughter-in-law had left their house with the deceased in order to see him off. When the deceased on daily basis used to go for his duties then joining him by both the eyewitnesses to see him off does not appeal to prudent mind because the practice to see someone off, who is daily goer and comer is something contrary to the common course of events.

9- Furthermore, PW-7 has admitted in her cross-examination that on the fateful day she and her

daughter-in-law were proceedings to their cattle shed. This admission negates the initial version given by her in the FIR that she and her daughter-in-law had left their house to see the deceased off. Besides, leaving the dead body on the spot, which was riddled with bullets, complainant opted to leave the crime venue for lodging the report without taking the deceased either to her house, to hospital or even to police station. This unnatural conduct of the complainant shows that she was not present on the spot when the occurrence had taken place. Had she been present over there, she would have preferred to take the deceased to one of the places mentioned above. Such unnatural conduct cannot be expected from a mother.

10- From the above, we can safely hold that both the eyewitnesses actually were not present on the spot when the deceased was fired at. Therefore, the evidence furnished by PW-7 and PW-8 can easily be discarded, as same gets no corroboration from any independent sources. It appears that they were introduced in the case subsequently just to strengthen the prosecution case.

11- In addition to the above, it is the prosecution case that the occurrence had taken place at 10.15 A.M. and the report was made by the complainant at 11.45 A.M. but medico-legal report of the deceased (Ex.PW5/1) reveals that dead body of the deceased was

brought to the hospital at 11.30 A.M. According to the contents of the FIR, complainant while making her report had stated therein that the dead body was still lying on the spot. When at the time of lodging of the report i.e. 11.45 A.M., the dead body was lying on the spot then how it was examined by the doctor at 11.30 A.M. Examination of the dead body of the deceased at 11.30 A.M. contradicts the ocular version of the complainant so given by her in her initial report and then in the Court.

12- From thorough and careful examination of the case evidence, we have come to the conclusion that the prosecution has not proved its case against the appellant beyond reasonable doubt, which is a hallmark of criminal justice. Of course, a single accused is charged for commission of the offence but mere charging a single accused would not be enough to record his conviction unless worth reliable and corroboratory evidence is brought by the prosecution to connect him with the offence, which is not the case here. No doubt, the appellant, after the occurrence, had gone into hiding for which he has given no plausible explanation but it is well settled that mere abscondence of an accused would be no ground to convict him because it is a cardinal principle of criminal law that prosecution has to prove its case through its own evidence.

13- The learned trial Court has not properly scrutinized and appreciated the case evidence in its true perspective and has fallen in error to record conviction of the appellant, which is not sustainable.

14- For what has been discussed above, we accept the instant appeal, set aside the impugned judgment of conviction and sentence and acquit the appellant of the charge levelled against him. He be set free forthwith if not required to be detained in some other case.

15- Above are the reasons of our short order of even date.

Announced.
28.05.2015.

Muhammad Rustam,
P/S