JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, BANNU BENCH.
(*Judicial Department*)

Cr.A No. 116-B/2019

State through Advocate General, Khyber Pakhtunkhwa, Peshawar.....(Appellant)

Versus

Hidayat Ullah.....(Respondent)

For State: Mr. Umer Qayum Khan, Asstt:A.G.

For Respondent: Nemo **(in motion).**

Date of hearing: 04.05.2023

JUDGMENT

Dr. KHURSHID IQBAL, J.-

This appeal is directed against the judgment dated 14.12.2018 of the Additional Sessions Judge-III, Bannu, whereby he acquitted the respondent-accused, namely, Hidayat Ullah, from the charges leveled against him. The respondent-accused was tried u/ss. 302/324/34, PPC, having been charged in a case registered vide FIR No. 02 dated 01.01.2004, at Police Station Saddar, District, Bannu.

2. Facts shortly are that on 01.01.2004, the complainant Tahir Ali Khan son of Azmar Ali Khan present with the dead body of his deceased brother Safdar Ali Khan reported the matter to the local police in the Civil Hospital District Bannu, that on the day of incident at 15:15 hours he along with his son Murad Ali and brother Safdar Ali were

coming back to home from village Mandori. At about 15:45 hours on reaching the place of incident accused Hidayatullah (respondent) and Rehmat Ullah (acquitted), armed with Kalashnikovs, on seeing them fired at complainant party with intention to kill. Resultantly, with the firing of accused/respondent the brother of complainant got hit and died there and then. However, complainant and his son luckily escaped unhurt. Motive behind the occurrence was stated that the deceased was suspected for the murder of the brother of accused.

3. After completion of the investigation, complete challan was submitted against them before the learned trial Court. Accused were absconding, therefore, proceedings u/s. 512, Cr. P.C were initiated against them and they were declared proclaimed offenders on 05.08.2005. Accused Rehmat Ullah was arrested on 15.09.2014. He faced the trial and acquitted. The present accused/respondent was arrested on 02.03.2017. Copies were supplied to him in compliance with section 265-C, Cr. PC. Charge was framed against him, to which he pleaded not guilty and claimed trial.

4. The prosecution examined as many as ten (10) PWs. As the Medical Officer was abroad, his previously recorded statement u/s 512 Cr.P.C was transposed. Statement of the respondent/accused u/s. 342, Cr. P.C, was recorded, in which he was afforded an opportunity of evidence in defence and/or statement on oath, but he did not

avail it. After hearing the arguments, the respondent-accused was acquitted from the charges leveled against him by the learned trial Court vide the impugned judgment dated 14.12.2018.

5. We have heard arguments of learned AAG for the State/appellant and perused the record.

6. To begin with, **firstly**, the report was lodged with a delay of two hours and fifteen minutes. The occurrence was reported to have taken place on 01.01.2004 at 15:45 hours. The report was lodged at 18:00 hours, the same day. The report is silent on explanation of the delay.

7. **Secondly**, in his statement recorded as PW-5, the complainant tried to explain the delay in making the report, stating that he sent a message to his village about the occurrence. After the arrival of people from his village, he shifted the dead body of the deceased to the hospital. The complainant could not mention the name of the person through whom he sent the information to his village. Rather he deposed that the man was a passerby. This indicates dishonest improvements to fill the lacuna.

8. **Thirdly**, the complainant in his report stated that the accused persons opened fire at him and his companions on seeing them. In his deposition before at the trial, he stated that when he and his companions were past the accused party a few paces, the latter then fired at them.

This is a material contradiction inasmuch as it negates the FIR story.

9. **Fourthly**, the medical evidence creats further contradiction as the post-mortem report shows that injuries were caused on the front of the dead body of the deceased. It follows that while the post-mortem report and the F.I.R support each other, the complainant's statement contradicts both of them.

10. **Fifthly**, the complainant stated nothing about the purpose of his visit to village Mandori. While this may not be considered as necessary, he himself made by introducing different version in his statements recorded in proceedings u/s 512 Cr.PC and the trial. In the earlier proceedings, he explained that he and his companions had gone to village Mandori to offer "*Fateha*" on the death of some one. In his statement recorded at the trial, he deposed that he and his companions had gone to village Mandori for doing their daily laboring job.

11. **Sixthly**, the complainant stated that he and his companions were going from East to West on the place of occurrence. But the site-plan, which was prepared at his behest, reflects that he and his companions were proceedings from North to South. This contradiction sinks deeper when it is seen in juxtaposition with the statement of the

investigating officer (PW-6), who stated that there is no path from East to South on the place of the occurrence.

12. **Seventhly**, the statement of the complainant shows that while shifting the dead body of his deceased brother from the spot, he did not touch the dead body. His statement further shows that his co-villagers reached to the spot 45 minutes after the occurrence. This conduct of the complainant appears to be unnatural, as such, unbelievable.

13. **Eighthly**, the motive setup in the initial report was blood feud between the parties. However, no evidence whatever was brought on the record to prove the motive. Legally, though motive is not relevant, it must be proved if it is alleged in the report.

14. In view of the above, we have reached to the conclusion that from the evidence reappraised above, the prosecution has failed to bring home the charge against the respondents-accused. It is a settled principle of law that the prosecution is duty bound to prove the charge against an accused person beyond shadow of a reasonable doubt. Any single infirmity in the prosecution case capable of creating a reasonable doubt in a prudent mind must be considered and the benefit thereof must be given to an accused person. Reliance is placed on the case titled ***Ahmad Ali & another Vs The State (2023 SCMR 781)***, it was held that:-

> **12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found**

> **reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).**

In the list of cases referred to in paragraph, above, reference may be made to ***Ghulam Qadir and 2 others v. The State*** **(2008 SCMR 1221)**, a relatively other case, in which it was observed:

> **"It needs no reiteration that for the purpose of given benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge, makes the whole case doubtful."**

15. We find that the trial Court has properly appreciated the evidence on the record and arrived at correct

conclusion while recording acquittal. It is worth observing that an accused person, as a matter of right, is presumed to be innocent before the trial Court unless the charge is proved against him/her. Acquittal at the trial gives rise to double presumption of innocence for an accused. An appellate Court needs to be cautious while considering the evidence and should avoid reversal of an acquittal, unless it finds that the acquittal is perverse, conjectural, arbitrary, jurisdictionally defective and prompted by mis-reading or non-reading of evidence. Even if a contrary view is formed on re-appraisal of evidence, it should not be used to disturb an acquittal, provided convincing evidence is available on the record to reverse acquittal. In this respect, reference may be made to the judgment of the Apex Court rendered in the case of **Jehangir vs. Aminullah & others** reported as **2010 SCMR 491**, wherein it was held:

> **"It is well-settled by now that there are certain limitations on the power of the Appellate Court to convert acquittal into a conviction. It is well-settled that Appellate Court would not interfere with acquittal merely because on reappraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused, provided both the conclusions are reasonably possible. If, however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusive and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualized in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the forgoing searching light, should be found wholly as artificial, shocking and ridiculous. The view taken by this Court in Ghulam Sikandar v. Mamaraz Khan PLD 1985 SC 11 is well-known that "in**

an appeal against acquittal this Court would not, on principle, ordinarily interfere and instead would give due weight and consideration to the findings of Court acquitting the accused. This approach is slightly different from that in an appeal against conviction when leave is granted only for the re-appraisement of evidence which then is undertaken so as to see that benefit of every reasonable doubt should be extended to the accused. This difference of approach is mainly conditioned by the fact that the acquittal carries with it the two well-accepted presumptions: one initial, that, till found guilty, the accused is innocent; and two that again after the trial a Court below confirmed the assumption of innocence. This will not carry the second presumption and will also thus lose the first one if on points having conclusive effect on the end result the Court below: (a) disregarded material evidence; (b) misread such evidence; (c) received such evidence illegally". This principle was also followed in Muhammad Iqbal v. Sanaullah PLD 1997 SC 569, State v. Farman Hussain PLD 1995 SC' 1, Ghulam Sikandar v. Mamaraz Khan PLD 1985 SC 11, Ahmad v. Crown PLD 1951 FC 107, Abdul Majid v. Superintendent of Legal Affairs, Government of Pakistan PLD 1964 SC 426, State v. Bashir PLD 1997 SC 408, Muhammad Sharif v. Muhammad Javed PLD 1976 SC 452, Shahzado v. State PLD 1977 SC 413; Farmanullah v. Qadeem Khan 2001 SCMR 1474 and Khadim Hussain v. Manzoor Hussain Shah 2002 SCMR 261."

16. Moreover, accused Rehmat Ullah whose role is the same with the present accused/respondent, has already been acquitted. In the light of the above reappraisal of the evidence, we have reached to the conclusion that the prosecution has failed to bring home the charge against the

accused. Resultantly, while upholding the acquittal, we dismissed the instant appeal in ***limine***.

Announced
Dt:04.05.2023

JUDGE

JUDGE

16/5/23

6 MAY 2023