

PLD ③

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**MINGORA BENCH (DAR-UL-QAZA), SWAT**  
(Judicial Department)

Cr.A No. 281-M/2014

**JUDGMENT**

Date of hearing: 04.11.2015

Appellant: (State) by

Mr. Sabir Shah A.A.C.

Respondents: (Muhammad Rahman) by

Mr. Mujahid Farooq Advocate

**HAIDER ALI KHAN, J.-** Impugned herein is the

judgment dated 23.7.2014 of the learned Sessions

Judge/Zilla Qazi Buner whereby the

respondent/accused was acquitted in case FIR

No. 102 dated 23.2.2013 under sections 302 PPC, 13

A.O registered at Police Station Jowar, District

Buner.

2. Precise and relevant facts of the case as

are that complainant of the case namely Bawar Khan

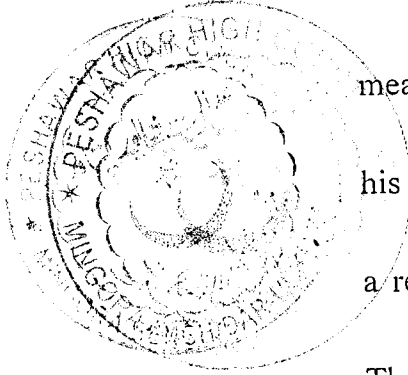
reported to Nazir Rehman S.I of Police Station

Jowar on 13.2.2013 at 13:00 hours to the effect that



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on the day of occurrence he alongwith his brothers and sisters were present in his home when verbal altercation between his parents took place and in the meanwhile his father Muhammad Rehman fired with his pistol at his wife (mother of the complainant) as a result whereof she was hit and died on the spot.



The incident was mentioned to have been witnessed by the complainant and his sister Shamim Akhtar and motive behind the offence was described as tense family relations.

On the strength of the above report of the complainant, Murasila Ex.PA/1 was drafted on the basis whereof FIR Ex.PA was chalked out against the accused Muhammad Rehman, the respondent herein.

3. The accused was arrested and investigation was completed against him whereafter complete challan was submitted by the local police in the Court for trial of the accused. The trial Court

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framed formal charge against the accused which was denied by him instead he opted to face the trial. The prosecution produced and examined eleven witnesses and closed its evidence whereafter statement of the accused under section 342, Cr.P.C was recorded wherein he once again pleaded innocence, however, neither he recorded any evidence in his defence nor opted to be examined on oath in terms of section 340 (2), Cr.P.C. After hearing the arguments, the learned trial Court acquitted the accused of the charge by extending him the benefit of doubt vide judgment dated 23.7.2014. Hence the appeal in hand preferred by the State.

4. The learned A.A.G appearing on behalf of the State argued that the impugned judgment of the trial Court is against the law, facts and material on the record. He further contended that the respondent/accused has directly been charged in the



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FIR and there is no contradiction in statements of the PWs. It was further argued that the occurrence took place in a broad daylight and recovery of weapon of the offence has been effected on the pointation of the respondent/accused. The learned A.A.G concluded that the prosecution has proved its case against the respondent/accused beyond reasonable shadow of doubt, hence, he was not entitled to be acquitted outrightly.



5. As against the above, learned counsel for the respondent/accused argued that statements of the prosecution witnesses are suffering from glaring contradictions. He further argued that there is an unexplained delay of five hours in lodging the FIR and the medical report does not support the prosecution version. The learned counsel concluded that judgment of the learned trial Court is well reasoned, hence, warrants no interference by this Court.

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6. We have heard the arguments of learned counsel for the parties and perused the record.

7. In light of the valuable assistance of the learned counsel for the parties, perusal of the record would reveal that motive behind the occurrence has been mentioned in the FIR as strained family relations. In this regard the complainant (PW-5) and the eye witness (PW-6) have described different reasons in their respective statements. Reportedly, there was a verbal altercation between the respondent/accused and his wife before the occurrence as per initial report of the complainant but there is no detail of the tense relations in the FIR. The statements of the complainant and the eye witness Shamim Akhtar (PW-6) recorded later on during the prosecution evidence do not support each other. Since, both the witnesses are the children of the deceased and the respondent/accused, hence, they should have better knowledge about the reasons



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behind the strained relations between their parents, therefore, their different versions in this respect are not understandable. Thus, it is held that the prosecution has failed to establish the motive alleged in the report.



8. It is also observed that Lady Doctor Shah Bano (PW-7) has medically examined the deceased and found entry and exit wounds caused by one bullet and also found a lacerated wound on left side of cheek caused by a sharp weapon. Astonishingly, there is no mention of the use of sharp weapon by the respondent/accused at the time of occurrence neither in the FIR nor in the statements of the complainant and eye witness PW-6. There is no space in the entire prosecution story wherein the fact of wound sustained by the deceased on her left cheek reported by the medical report could be fitted. Thus, the medical report too does not support the prosecution version.

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9. So far recovery of the crime weapon is concerned, the complainant reported in his initial report recorded vide Ex.PA/1 that the respondent/accused fled from the spot soon after the occurrence alongwith the pistol in his hand but on the other hand the pistol has been recovered after 42/43 days after the occurrence and that too from the residential room of the accused where the occurrence took place. This fact alone is sufficient for recording acquittal of the respondent/accused. The prosecution has also failed to produce any evidence to the effect that the respondent/accused had come back to his house after the occurrence for placing the pistol in the relevant tin box. Similarly, the investigating officer (PW-10) has also failed to give a satisfactory account in this regard. Therefore, the recovery of the crime weapon through Ex.PW-2/1 is highly doubtful.



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10. In addition to the above, there is delay of five hours in lodging the FIR which is apparent on the face of the record whereas this delay further extends to a period of about 22/24 hours when the fact of developed rigor mortis on the dead body is considered as mentioned by the lady doctor (PW-7) in her report. She also stated in her cross-examination that rigor mortis usually develops after about 24 hours depending on the climate. What made the complainant to wait for five hours in reporting the matter to local police? This question has not been explained by the prosecution and as such consultation and deliberation of the complainant in the circumstances cannot be ruled out.

11. It appears from the analysis of the record that there are glaring contradictions in the statements of the PWs on material points which have caused serious dent in the prosecution case. Moreso,



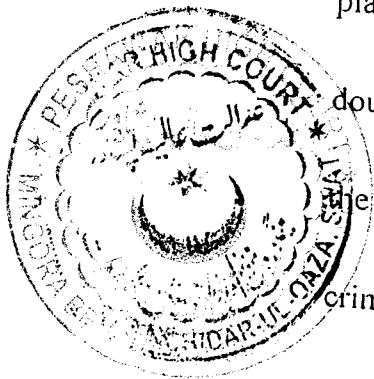
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EXHIBIT

Exhibit 1  
Exhibit 2  
Exhibit 3  
Exhibit 4  
Exhibit 5  
Exhibit 6  
Exhibit 7  
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Exhibit 100



there are also procedural irregularities in the investigation conducted by the I.O besides the statements of the prosecution witnesses and the site plan also do not agree which create a reasonable doubt in a prudent mind benefit of which must go to the respondent/accused being cardinal principle of criminal law.



12. In view of what has been discussed above, the learned trial Court has properly appreciated the prosecution evidence and the impugned judgment, whereby the respondent/accused has been acquitted, is based on sound reasons hence warrants no interference by this Court. Resultantly, the instant appeal preferred by the State is hereby dismissed being meritless.

Announced.  
Dt: 04.11.2015.

*Sd, Muhammad A Daud Khan*  
*Sd, Muhammad Daud Khan*  
*Sd, Haider Ali Khan*

Certified to be true copy

*[Signature]*  
Peshawar High Court, Mungera Dar-ul-Qaza, Swat  
Authorized Under Article 27 of Q.A. 1974 of Swat

23/11/15