

**IN THE LAHORE HIGH COURT, RAWALPINDI BENCH,**  
**RAWALPINDI**  
**(JUDICIAL DEPARTMENT)**

**Crl. Appeal No. 430 of 2020**

*Aqil Zaman alias Aqeel VS. The State & another*

**JUDGMENT**

<b>Date of Hearing</b>	22.06.2021
<b>For Appellant</b>	Mr. Muhammad Ilyas Siddiqui Advocate
<b>Complainant by</b>	Malik Jawwad Khalid Advocate
<b>For State</b>	Ms. Maimoona Ehsan-ul-Haq DDPP

**SOHAIL NASIR, J.** Aqil Zaman (*appellant*) had faced trial in case FIR No. 254 (*PH*) recorded on 29.08.2015 under Sections 302/324/34 PPC at Police Station City Rawalpindi on the complaint of Hayat Khan (*Pw-7*) for the allegations of commission of Qatal-e-Amd of Sameen Jan (*brother of complainant*). On conclusion of trial vide judgment dated 19.09.2020 passed by learned Additional Sessions Judge, Rawalpindi he was convicted under Section 302(b) PPC and sentenced to life imprisonment. He was ordered to pay Rs.500000/- (*five lacs*) as compensation in terms of Section 544-A Cr.P.C to the legal heirs of deceased. In default of payment fine he was ordered to further undergo six months SI. Benefit of Section 382-B, Cr.P.C was also extended to him.

2. Feeling aggrieved from the judgment of learned Trial Court appellant has challenged his conviction through this criminal appeal.

3. Facts of the case as evident from complaint (*PM*) are that upon receipt of information of this occurrence Mukhtar Hussain SI (*Pw-14*) arrived at DHQ Hospital, Rawalpindi, where he recorded the statement of Hayat Khan (*Pw-7*). He maintained that he along with his brother Sameen Jan (*deceased*) and Umar Farooq (*Pw-12*) were running their business at National Market Bara Bazaar with the title of '*Hayat Traders*'; on that day (29.08.2015) at about 05:00 pm they were going to Mosque for offering the prayer and when they reached near street No. 3, National Market, close to the shop of Raja Hameed Arslan Traders there emerged Aqeel Zaman (*subsequently*

*his name was declared as Aaqil Zaman*) armed with 30 bore pistol, Adeel Zaman (*his name was corrected later on as Abid Zaman*) armed with iron rod and Rohail Ameen (*later on his name was said as Rooh-ul-Ameen*) armed with 30 bore pistol; Rooh-ul-Ameen raised a lalkara not to spare them, whereupon Aqil Zaman (*appellant*) fired a shot on him/Hayat Khan, which did not hit him; appellant made another fire that hit on the left side of abdomen of Sameen Jan, who being injured fell down on the ground; Adeel Zaman announced that the assignment was complete and then all three accused while making firing escaped from there. The motive alleged was that on 27.08.2015, there was exchange of hot words between Sameen Jan on one side and Aqil Zaman and Rooh-ul-Ameen on the other side.

4. Mukhtar Hussain SI (*Pw-14*) made his endorsement on the complaint and sent it to police station on the basis of which, FIR was recorded by Tahir Mehmood SI (*Pw-3*).

5. On the same day Hayat Khan (*complainant*) made a supplementary statement (*DB*) where he corrected the names of all accused. In addition to the allegations leveled in FIR he through the same supplementary statement added that a fire also made by Rooh-ul-Ameen had hit on the left knee of Sameen Jan.

6. In, earlier round Abid Zaman and Rooh-ul-Ameen had faced trial because appellant was absconder. They were acquitted vide judgment dated 04.10.2017 passed by learned Additional Sessions Judge Rawalpindi, who had disbelieved the supplementary statement of Hayat Khan. Complainant filed criminal appeal (*1040 of 2017*) before this Court, which was dismissed vide a judgment dated 21.10.2019.

7. In second round it was 07.10.2019 when appellant was arrested and faced trial.

8. A charge under Sections 302/324/34 PPC was framed against appellant on 03.12.2019 for which he pleaded not guilty and demanded his trial.

9. In support of its case prosecution had produced following witnesses: -

**Pw-1 Khurram Shahzad**, prepared scaled site plan.

**Pw-2 Sajjad Ahmad/HC** is a witness to the execution of warrants and proclamation of appellant.

**Pw-3 Tahir Mehmood SI** is the author of FIR.

**Pw-4 Muhammad Zameer Constable** is a witness to recovery of iron rod at the instance of Abid Zaman (since acquitted).

**Pw-5 Sagheer Hussain HC** being Moharrar kept parcels in Malkhana and transmitted to concerned office.

**Pw-6 Zafar Iqbal/HC** is a witness to the arrest of Rooh-ul-Ameen, his personal search and recovery of pistol at his instance

**Pw-7 Hayat Khan** is the complainant and eye-witness.

**Pw-8 Doctor Ghulab Shah** had conducted the postmortem examination of deceased Sameen Jan.

**Pw-9 Sajid Ullah Constable** escorted the dead body for postmortem examination.

**Pw-10 Abid Shah SI** had arrested Abid Zaman.

**Pw-11 Mehrban Shah** had identified the dead body.

**Pw-12 Umar Farooq** is an eye-witness.

**Pw-13 Adnan Mushtaq Constable** is a witness to recovery of pistol at the instance of appellant.

**Pw-14 Mukhtar Hussain SI** is the first investigation officer.

**Pw-15 Shabbir Hussain SI** is the Investigating Officer, who arrested the appellant and made subsequent investigation.

10. Qaim Din, Jahanzaib, Zaheer Khan, Shabbir Ahmad Constable and Munir Ahmad Constable were given up being unnecessary by learned ADPP, who after producing the reports of expert (**PAA and PBB**) had closed prosecutions' evidence.

11. In his examination made under Section 342 Cr.P.C, version of appellant was that the case was based on malafide and false implication and attempt to rope the innocent person in the case

started from registration to FIR through supplementary statement and medical evidence. He opted to produce defence evidence but did not desire to appear in terms of Section 340(2) Cr.P.C. Later on, he simply produced certain documents in his defence which were pertaining to trial of his co-accused.

**12.** Learned counsel for appellant contends that prosecution case is smashed by complainant himself when he made supplementary statement by introducing another fire shot attributing to Rooh-ul-Ameen on the knee of Sameen Jan and that was disbelieved not only by the Trial Court but this Court also; if supplementary statement is considered, prosecutions' case shall remain doubtful and if discarded, even then it is a case of contradiction between medical and ocular account; keeping in view the allegation of firing against Rooh-ul-Ameen, his acquittal has given a legitimate right to appellant seeking his acquittal also because appellant is placed in similar position. He finally maintains that as prosecution has badly failed to prove its case beyond reasonable doubt against appellant, therefore he deserves for acquittal.

**13.** On the other hand, learned DDPP and learned counsel for complainant jointly contend that appellant was an absconder and his said conduct is strong barrier in his way for demanding acquittal; no doubt that two persons were acquitted earlier but the roles assigned to them were different, hence appellant cannot take any benefit of their clearance from this case; it is settled principle of law that statement of a witness can be partially believed, therefore, the learned Trial Court rightly convicted the appellant; medical evidence is in corroboration to the ocular account, which is supported from recovery of pistol and report of PFSA. They finally contend that the learned Trial Court on the basis of well reasoned judgment has rightly declared the appellant as guilty of the crime and there is no occasion for this Court to interfere in the said verdict.

**14. HEARD**

15. This case is quite specific with regard to occurrence because in complaint (**PM**) on the basis of which FIR (**PC/I**) was also recorded, there are the allegations that appellant made a fire that hit on the right side of abdomen of Sameen Jan whereas a fire made by Rooh-ul-Ameen (*since acquitted*) on Hayat Khan did not hit him. It is evident from the statement of Mukhtar Hussain SI (**Pw-14**) that on the same day Hayat Khan made a supplementary statement where he stated that another fire was made by Rooh-ul-Ameen that hit on the knee of the deceased. In earlier trial Rooh-ul-Ameen and Abid Zaman were acquitted vide judgment dated 04.10.2017 passed by learned Additional Sessions Judge, who did not believe the supplementary statement and was of the view that complainant was responsible for improvements in his statement, while assigning the second fire on deceased to Rooh-ul-Ameen. Said acquittal order was not interfered by this Court in appeal filed by complainant and that was dismissed vide judgment dated 21.10.2019. What is the effect of acquittal of two accused that shall be discussed subsequently.

16. I have gone through the statement of Hayat Khan (**Pw-7**) and astonished to see that during this trial he has negated any supplementary statement and what case of him was that: -

*“I stated before police two fires hit the deceased but police recorded one fire”*

17. In his examination-in-chief he never said that he made any supplementary statement in this case, therefore, question before the Court is that after a long time to say that there was an omission on the part of Investigating Officer is a correct story or not? For this purpose, I have gone through the statement of Mukhtar Hussain SI (**Pw-14**) who arrived in hospital and recorded the statement (**PM**) of complainant. In his examination-in-chief he categorically stated as under: -

*“I recorded supplementary statement of complainant”*

18. The complaint which is well drafted and a detailed document makes it clear that after it was recorded, the same was read over to the complainant by the Investigating Officer, he/complainant accepted the contents thereof as correct without any reservation and then he signed the same.

19. The conduct of complainant is a strong barrier in his way, for granting him a stamp of truth. If Court finds that he made a supplementary statement, how it can be ignored that said portion of allegation has already been disbelieved. If, I consider that there was no supplementary statement at all and the complaint was correctly recorded because it was read over to the complainant before he signed it, then the question arises that how deceased received second fire arm injury on his knee? In this situation, it will be a case of serious contradiction in medical and ocular account beside improvements made by complaint during trial to bring his testimony in line with medical evidence and when it is so, on this ground alone his statement is liable to be rejected. On the effect of material improvements by a witness the honorable Supreme Court of Pakistan in “Sardar Bibi & another vs. Munir Ahmad & others 2017 SCMR 344” was pleased to hold as under: -

*“As doctor, while conducting postmortem examination, declared that the deceased persons received bullet injuries hence for the first time during trial, Falak Sher and Sikandar were shown to be armed with 30 bore pistol and Munir being armed with 7mm rifle. This willful and dishonest improvement was made by both the witnesses in order to bring the prosecution case in line with the medical evidence. In the FIR the complainant alleged that fire shot of Falak Sher hit Zafar Iqbal deceased on his chest and the fire shot of Sultan Ahmed accused also hit on the chest of deceased Zafar Iqbal. According to doctor, there was only one fire-arm entry wound on the chest of the deceased Zafar Iqbal. In order to meet this situation, witnesses for the first time, during trial made omission and did not allege that the fire shot of Sultan hit at the*

*chest of Zafar Iqbal, deceased. So the improvements and omissions were made by the witnesses in order to bring the case of prosecution in line with the medical evidence. Such dishonest and deliberate improvement and omission made them unreliable and they are not trustworthy witnesses.”*

20. In “Syed Saeed Muhammad Shah & another vs. The State 1993 SCMR 550” it was ruled that: -

*“Secondly, statements of the witnesses in the Court in which improvements are made to strengthen the case of the prosecution are not worthy of reliance. It is held in the case of Amir Zaman v. Mehboob and others (1985 SCMR 685) that testimony of witnesses containing material improvements are not believable. Reference can also be made to the cases of Haji Bakhsh v. The State (PLD 1963 Kar. 805), Qaim Din and others v. The State (1971 P Cr. LJ 229) and Fazla and another v. The State (PLD 1960 Lah. 373)”*

21. Same view finds support from “Muhammad Arif vs. The State 2019 SCMR 631”.

22. It is this case Rooh-ul-Amin was assigned the same role of fire on deceased that is also attributed to appellant that he too made a fire on deceased. Appellant is therefore placed in similar position where Rooh-ul-Ameen was. When to his extent both the eye-witnesses have already been disbelieved, how they can be believed qua appellant. Having the similar role, it cannot be said that Rooh-ul-Amin was acquitted on the principle of ‘*sifting the grain from chaff*’ which too is no more applicable in Courts of Pakistan on the strength of PLD 2019 SC 527 where it was declared that “*Rule falsus in uno, falsus in omnibus*” shall henceforth be an integral part of our jurisprudence in criminal cases. The concluding paragraph of the precedent is as under: -

*“We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury.” (Emphasized)*

23. The postmortem was conducted by Dr. Ghulab Shah (**Pw-8**), which is not required to be referred as a whole except that he observed fire arm injury No. 1 on the left nipple and fire arm injury No. 3 on the left knee joint. According to him, dead body was brought before him at 05:00 pm in the hospital and he conducted the postmortem examination. I have examined the postmortem report (**PQ**) where the time of postmortem examination is recorded as 10:00 pm. If the dead body was in hospital at 05:00 pm why the postmortem was conducted after five hours? There is no explanation in this regard by the prosecution. In “**Khalid alias Khalidi & 2 others vs. The State 2012 SCMR 327**” the apex Court was pleased to observe that:

*“The incident in the instant case took place at 2-00 a.m., F.I.R was recorded at 4/5 am, Dr. Muhammad Pervaiz medically*



*examined the injured persons at 4-00 a.m. but conducted the post mortem examination of the deceased at 3-00 p.m. i.e. after about ten hours which fact clearly shows that the F.I.R. was not lodged at the given time”*

24. In “**Irshad Ahmed vs. the State 2011 SCMR 1190** on delayed postmortem it was again observed that: -

*“We have further observed that the post-mortem examination of the dead body of Shehzad Ahmed deceased had been conducted with a noticeable delay and such delay is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye witnesses and in cooking up a story for the prosecution before preparing police papers necessary for getting a postmortem examination of the dead body conducted”*

25. This is wrong to say that it is a case of prompt FIR and there are multiple reasons for holding so. FIR shows that it was registered at 05:30 pm with regard to the occurrence, which took place at 05:00 pm. Statement of Sajid Ullah Constable (**Pw-9**) is very important. He is the one who had taken the dead body for postmortem examination. According to him he received dead body along with papers at 10:00 pm. If it was so then how Doctor Ghulab Shah could claim that he received the dead body at 05:00 pm. The complaint (**PM**) indicates that it was completed at 05:30 pm and before its completion Mukhtar Hussain SI (**Pw-14**) had prepared all the documents those include injuries statement and inquest report which he handed over to Sajid Ullah Constable for postmortem examination. So this Court finds no difficulty to hold that complaint was recorded not at 05:30 pm but much later to that, say near to 10:00 pm.

26. Appellant was arrested on 07.10.2019. It was 10.10.2019 when at his instance from his house a pistol 30 bore was recovered and taken into possession vide a recovery memo (**PE**). Prosecution could not prove exclusive passion of appellant or his exclusive

knowledge with regard to place of recovery that was a house. Pistol was lying in crockery box. It was not the case of prosecution even by imagination that either the house or room or the crockery box was under key and lock. Even otherwise when ocular account has been disbelieved, the recovery and the expert report however strong may be cannot be a base for recording conviction.

27. The prosecution cannot deviate from the duty to prove its case beyond shadow of doubt. The evidence produced in this case is infirm, self contradictory, shaky, untrustworthy and of no reliance at all. In “Abdul Majeed vs. the State 2011 SCMR 941” it was ruled as under: -

*“The basic principle of criminal law is that it is the burden of the prosecution to prove its case against the accused beyond reasonable doubt. This burden remains throughout and does not shift to the accused, who is only burdened to prove a defence plea, if he takes one”*

28. In “Nasrullah alias Nasro vs. The State 2017 SCMR 724” the apex Court was again pleased to hold that: -

*“It has already been clarified by this Court in the case of Abdul Majeed v. The State (2011 SCMR 941) that the prosecution is bound to prove its case against an accused person beyond reasonable doubt at all stages of a criminal case”*

29. Resultantly, this Criminal Appeal is **allowed**. Impugned judgment dated 19.09.2020 is **set aside**. Appellant is acquitted from the charge. He is in custody. He shall be released forthwith if not required in any other case.

**SOHAIL NASIR  
JUDGE**

**APPROVED FOR REPORTING**

**JUDGE**