Judgment Sheet

PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.A No.392-A of 2019

JUDGMENT

Date of hearing……07.05.2020……

Appellant…(Muhammad Shiraz) by Mr. Ghulam Mustafa Khan Swati, Advocate….

Respondent…(The State etc) ……

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AHMAD ALI, J:- This appeal is directed under section 417(2-A) Cr.PC against the judgment dated 10.10.2019 passed by learned Sessions Judge, Torghar at Oghi, whereby, the accused / respondents were acquitted of the charges leveled against them in case FIR No. 154 dated 27.08.2011 under sections 324/148/149 PPC Police Station Darband.

2. Brief facts leading to the instant appeal are that on 27.08.2011 at 14:55 hours, complainant Muhammad Shiraz, in injured condition lodged a report to the local police at Emergency Ward Civil Hospital, Darband, to the effect that he came out of the '*Masjid*' after offering '*Namaz-e-Zohar*', when he reached near a damaged house of Abdul Hameed,

where Abdul Latif son of Samundar, Muhammad Ayub son of Samundar, Tanveer son of Khan Bahadur, Afzal son of Muhammad Yousaf, Dost Muhammad son of Samundar and Azhar son of Abdul Latif duly armed with firearms emerged one after the other and started firing at him, as a result of firing of Abdul Latif he was hit on his right buttock and sustained injury, while with the firing of Azhar son of Abdul Latif, Ayub, Dost Muhammad sons of Samundar, he sustained injury on his left buttock. The offence was stated to have witnessed by Haider Zaman son of Ghulam Qadir, Fida Muhammad son of Muhammad Yaqoob and Majid son of Khan Muhammad, who also rescued him. The motive for the offence was previous criminal litigation. The case was registered against the said accused in police station Darband.

3. After completion of investigation, challan was submitted in the Court of learned Sessions Judge, Torghar at Oghi for trial. Charge was framed against the accused/respondents, to which they pleaded not guilty and claimed trial. After completion of trial, the learned trial Court vide judgment dated 28.11.2015,

accused Abdul Latif was convicted and sentenced to seven years R.I under section 324 PPC, while under section 337-F(ii) PPC, he was convicted and sentenced to two years R.I. The remaining accused/respondents were acquitted of the charges leveled against them. In Cr. Appeal No.136-A/2016 filed by Abdul Latif, accused/respondent, the said judgment was set aside by this Court and the case was remanded to the learned trial Court for denovo trial vide judgment dated 15.02.2017.

4. In denovo trial, accused/respondents when formally charged for the offences under sections 148/149/324/337-F(ii) PPC, pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined as many as twelve witnesses. The accused/respondents were examined under section 342 Cr.P.C, wherein, they pleaded innocence and false implication. However, they have not produced evidence in their defence and also have not opted to appear as their own witness on Oath as envisaged under section 340(2) Cr.P.C. The learned trial Court, after hearing the arguments of learned counsel for the parties, acquitted all the accused/

respondents including Abdul Latif vide impugned judgment dated 10.10.2019. Hence, the present appeal.

5. Arguments of the learned counsel for the appellant heard and record perused.

6. Perusal of record would reveal that injured complainant/appellant, Muhammad Shiraz, appeared before the Court as (**PW-6**) and furnished ocular account of the occurrence by reiterating the contents of his report (**Ex.PW 6/1**). Similarly, Majid Khan, appeared as (**PW-7**), who also furnished his testimony before the trial Court as an eyewitness of the alleged occurrence. It has clearly been mentioned by the complainant in his report that all the acquitted accused/respondents came to the spot one after the other and started firing. In the next sentence of his report, he differentiated the role of the accused/ respondents and attributed the role of first fire to accused/respondent Abdul Latif, which hit him on his right buttock, while the subsequent firing, as a result of which, he sustained injury on his left buttock, was attributed to accused/respondents Azhar son of Abdul Latif and Ayub, Dost Muhammad sons of Samundar.

As per medical evidence furnished by Dr. Shafqat Younas (**PW-1**), three entry wounds 1 x 1 CM were found on left hip, while since entry wound of 3 x 1.5 CM was found in upper aspect of right hip. During cross-examination, the said witness admitted that he has not given the duration of the injuries in his report. He also admitted that no exit wound was found against all the four entry wounds and no spent bullet was extracted from the wounds. The benefit of omission of such material facts from the medical report would definitely extends to the defence and no reliance could be placed on such report in such circumstances.

7. Obviously, in the event of indiscriminate firing by six persons simultaneously, it is absolutely impossible for a victim to note with exactitude that whose fire hits him on a particular part of his body. Surprisingly, it is the complainant who has performed such miracle by differentiating roles of accused/respondents in the commission of offence and that too when he received injuries on his hips. As per medical evidence, the injured complainant was fired at from back side in view of the locale of injuries. In

such circumstances, surely no one can take notice of firing being made from behind him. The story narrated by the complainant in his report suggests that the occurrence has not taken place in the mode and manner as alleged by him. There is something which was suppressed by the complainant in order to rope in falsely various persons of the same family by ascribing them different roles in the commission of the offence. Thus, the statement of the injured complainant in the circumstances of the case does not ring truth. Mere stamp of injuries on the person of a witness would not be a proof of the fact that whatever he deposes would be the truthful account of the events. His veracity is to be tested from the circumstances of the case and his own statement whether it fits in the circumstances of the case or otherwise. Reliance in this regard is placed on '***Haji Bashir Khan Vs. Rehmat Gul and others***' (**2016 P.Cr.L.J 568**).

8. The other eyewitness Majid improved his statement by narrating the fact of altercation between Azhar son of Abdul Latif and Muhammad Shiraz complainant one day prior to the occurrence. He

further improved his statement by saying that Abdul Latif told abandoned PW Haider Zaman either he should come front or go behind and as soon as Haider Zaman returned back, accused/respondents starting firing. This witness has not only changed the motive but has also narrated different facts before alleged firing was started deliberately and dishonestly to justify the roles of the accused/respondents in the commission of the offence. The testimony of such witness could not be relied upon due to his undoubted credibility and reliability.

> ***"It is also a settled maxim when a witness improves his version to strengthen the prosecution case, his improved statement subsequently made cannot be relied upon as the witness had improved his statement dishonestly, therefore, his credibility becomes doubtful on the well-known principle of criminal jurisprudence that improvements once found deliberate and dishonest cast serious doubt on the veracity of such witnesses."***

9. Admittedly, the injured was shifted to hospital in a vehicle but neither registration number of the vehicle nor the name of driver was disclosed by the complainant, which creates doubts regarding shifting of injured in the manner as alleged in the statements of witnesses. In this regard, reliance can be placed on

case titled '***Nadeem alias Kala vs. The State and others***' (**2018 SCMR 153**).

10. The appellant/complainant has not produced a single independent person in support of his case. Despite availability, non-production of independent witnesses by the prosecution also castes serious doubts regarding genuineness of the prosecution story. Material witnesses Haider Zaman and Fida were abandoned by the prosecution being unnecessary. Moreover, the two 30 bore pistols allegedly recovered from the accused were sent to the Arms Expert alongwith alleged empties of 30 bore recovered from the spot but report in this regard is negative, which also made a dent in the prosecution case.

11. In view of above discussions, it is crystal clear that the occurrence as narrated in the FIR has not taken place in the mode and manner as advanced by the prosecution. The report was lodged after preliminary investigation and examination of the injured complainant, which suggests that consultation and deliberation were made prior to registration of case. Furthermore, the case of the prosecution and the statements of PWs. are full of doubts, contradictions

and improvements. As such, the findings of the learned trial court were based on proper appreciation of evidence on record, which are maintained.

12. It is well settled law that even a single doubt, if found reasonable, would entitle the accused person to acquittal and not a combination of several doubts. Reliance is placed on case titled **Ghulam Qadir Vs. The State** (**2008 SCMR 1221**), wherein, it has held that:

> ***"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity crating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of charge-makers the whole case doubtful. Merely because the burden is on accused to prove his innocence it does not absolve the prosecution to prove its case against the accused beyond any shadow of doubt in this duty does not change or vary in the case."***

The Apex Court in case titled '***Farman Ahmad Vs. Muhammad Inayat and others***' (**2007 SCMR 1825**) has held that:-

> ***"It is also a settled law that there are different parameters/ principles prescribed by this Court with regard to decide the criminal petitions against conviction and criminal petitions against acquittal. The impugned judgment with regard to acquittal should be either perverse, arbitrary or without any sustainable reason as law laid down by this Court."***

Similarly, the Honourable Apex Court in ***Zaheer Sadiq's case*** (**2017 SCMR 2007**) has mentioned the golden principle of administration of criminal justice in the following manner:

> ***"Even otherwise, it is well settled by now that in criminal cases every accused is innocent unless proven guilty and upon acquittal by a court of competent jurisdiction such presumption doubles. Very strong and cogent reasons are required to dislodge such presumption."***

Reliance is also placed on case law reported as 2017 SCMR 1710, 2017 SCMR 1639, 2009 SCMR 230 and **1995 SCMR 1345**.

13. Accordingly, for the reasons stated hereinabove, this Court is of the considered view that the prosecution has failed to bring home charge against the accused/respondents and order of their acquittal by the learned trial Court being unexceptionable needs no interference by this Court in its Appellate jurisdiction. Hence, the instant appeal being devoid of substance is hereby dismissed in *limine*.

Announced.
Dt.07.05.2020.

J U D G E

/*M.Saleem*/