

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Mazhar Alam Khan Miankhel  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No.103-P/2011**

*(Against the judgment dated 21.9.2011 of the Peshawar High Court  
Peshawar passed in Cr.A. No.621/2010)*

***Nazir Jan***

*...Petitioner(s)*

**Versus**

***Sail Khan and another***

*...Respondent(s)*

For the Petitioner(s): Mr. Astaghfirullah, ASC (with permission)

For the Respondent(s): N.R.

Date of hearing: 28.6.2021

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** Sial Khan, respondent, is in the array of the accused, in a case of homicide wherein Noora Jan deceased 55/56 was shot dead at 7:00 p.m. on 9.9.1989 within the precincts of Police Station Doaba; the deceased received two fire shots on his chest, attributed to the respondent alongside Pirat Khan, since convicted; the latter came up with a botched cross-version, registered vide separate First Information Report of even date. The learned trial Judge held Pirat Khan responsible for both shots to the deceased and proceeded to acquit three co-accused including the respondent vide judgment dated 28.09.1992, set aside by the Peshawar High Court vide judgment dated 20.12.1993 whereby the case was remanded for decision afresh after affording opportunity of hearing to the both sides. Pirat Khan's conviction was maintained, however, he was sentenced to imprisonment for life; the co-accused barring the respondent were again acquitted from the charge and in view of respondent's absence, he was declared proclaimed offender vide judgment dated 26.06.1994; upon his arrest, he was tried and ultimately acquitted by the trial Court vide judgment dated 19.06.2010, upheld by the High Court vide impugned judgment dated 21.09.2011, *vires* whereof, are being assailed primarily on the ground that his case being at par with the convicted co-accused

Pirat Khan, there was no occasion for the courts below to draw any distinction so as to let him off the hook.

2. Heard. Record perused.

3. The respondent was first acquitted by the trial Court way back on 28.09.1992; notwithstanding the fact that the State did not opt to challenge his acquittal, the High Court remanded the entire case while taking the respondent as well as the convicted co-accused on board in the absence of any appeal pending before it. Statute provided appeal against acquittal to the complainant or an aggrieved person by amending the Code of Criminal Procedure, 1898 through the Act XX of 1994 Code of Criminal Procedure (Second Amendment) Act, 1994, notified on 14<sup>th</sup> November, 1994 and, thus, there was no statutory basis for respondent's subsequent prosecution, though resulting into his acquittal. The error has duly been noticed by the High Court in the impugned judgment. Even otherwise, trial court's analysis whereunder the respondent was acquitted from the charge presents a possible view that does not call for interference. Petition fails. Leave declined.

**Judge**

**Judge**

Peshawar, the  
28<sup>th</sup> June, 2021  
Not approved for reporting  
Azmat/-

