

IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Shariat Appellate Jurisdiction)

PRESENT:

MR. JUSTICE KHAWAJA M. NASIM
MR. JUSTICE RAZA ALI KHAN

CRIMINAL APPEAL NO. 04 OF 2023

CRIMINAL MISC. No.03 of 2024

(On appeal from the consolidated judgment of the Shariat Appellate Bench of the High Court dated 23.12.2022, passed in Crim. Appeals No. 238/2017, 20/2018 and Reference No. 237/2017).

Mohammed Zubair s/o Mohammed Rafiq caste Gujjar, r/o Rayaam Doongi, Tehsil & District Kotli Azad Kashmir, presently confined in District Jail Kotli Azad Kashmir.

...Convict-Appellant

VERSUS

State through Advocate-General Azad Jammu and Kashmir and 10 others.

...Complainant-Respondents

Mohammed Habib s/o Mohammed Akram & 03 others.

...Proforma-Respondents

Appearances:

For the Appellant:

Mr. Saqib Javid, Advocate.

For the State:

Kh. Muhammad Maqbool War,
Advocate-General.

Date of hearing: 07.02.2024

JUDGMENT:

Raza Ali Khan, J:- The captioned appeal arises out of the consolidated judgment of the Shariat Appellate Bench of the High Court (*hereinafter to be referred as High Court*) dated 23.12.2022, passed in Crim. Appeals No. 238 of 2017, 20 of 2018 and Criminal Reference No. 237 of 2017.

2. The main features of the prosecution's case are that Mohammad Azeem, complainant, presented a written application (Ex.PA) at Khuiratta Police Station on 24.10.2014 stating therein that he is the resident of Riyyam Dongi. He was embroiled in a dispute over land and litigation with Mohammad Rafique and others. Today, Mohammad Ameen, the brother of the complainant, was reaping grass from his owned land when Mohammad Habib, Mohammad Zubair, Mohammad Rafique, Mohammad Nazir and Razia Bibi, caste Gujjar, residents of Riyyam Dongi Tehsil and District Kotli, armed themselves with deadly weapons and sticks/batons trespassed the complainant's land. Mohammad Habib and Mohammad Zubair were armed with 12-bore rifles, while Razia had a pistol, and the other accused were carrying batons. Mohammad Zubair raised a *lalkara* and asked Mohammad Ameen to call his brothers and said that no one will go alive today. Meanwhile, at 01:15 pm, the accused launched an attack upon Mohammad Ameen. Mohammad Habib, accused fired a shot straight at Mohammad Ameen with a 12-bore rifle, with the intention to kill him. The fire hit him at chin and right arm, consequently, he fell to the ground. The accused dragged the body of victim, Muhammad Ameen towards Mohammad Rafique's house. Accused, Razia, had also been making aerial fire with the pistol. Upon hearing the commotion, Mohammad Kabir, the complainant's

brother, arrived at the spot, where Mohammad Zubair with the intention to kill him fired at him with a 12-bore rifle which hit him at lower part of his abdomen and he fell down. The other accused kept beating him with the sticks/batons. On listening hue and cry made by Muhammad Kabir, Wajid Hussain, Mohammad Khalid and other local inhabitants arrived at the spot and witnessed the occurrence. The accused fled away from the scene of occurrence. Mohammad Ameen succumbed to the injuries and died on the spot. The dead body was taken to Rural Health Centre Khuiratta whereas Muhammad Kabir, injured, was taken to DHQ Kotli, for treatment.

3. Upon lodging of FIR No.165/2014 (Ex.PB) at Police Station Khuiratta on 24.10.2014, the investigation was initiated. After completing investigation report under section 173 Cr.PC. was presented in the trial Court on 08.11.2014, for trial of the accused for commission of offences under Sections 302/324, 334, 109, 337H(2), 504 and 34 APC, read with section 13 of Arms Act, 1965. The accused were subjected to charges under Section 265-D Cr.PC. on 28.04.2015, who pleaded innocence. Consequently, the prosecution was directed to provide evidence to substantiate the allegations. Upon completion of the prosecution's evidence, the statements of the accused were recorded under section 342 Cr.P.C, wherein they refuted the prosecution's evidence and claimed their innocence. Certain accused including Mohammad Rafique, Mohammad Zubair, Mohammad Habib, and Mohammad Nazir, opted to record statements under Section 340(2) Cr.PC, wherein, they stated on oath that the prosecution's narrative was false and fabricated, yet they failed to produce supporting evidence. Following the trial's conclusion, the learned trial Court passed a judgment on 04.11.2017. The convict-Muhammad

Habib was convicted and sentenced to death penalty as “tazir” for the commission of offence under section 302(b) APC whereas, the convict Muhammad Zubair, was convicted and sentenced to seven years’ simple imprisonment along-with fine of Rs.10,000/- under section 324 APC, five years simple imprisonment along-withwith fine of Rs.5000/- under Section 13 of Arms Act, 1965, and seven years simple imprisonment along with compensation of Rs.1890299.82/- as arsh to be paid to the injured under sections 334, 337-Q APC. The rest of the accused were acquitted of the charges. The convict-Muhammad Zubair preferred an appeal before the High Court. The legal heirs of the deceased Mohammad Ameen and complainant also filed a separate appeal before the High Court seeking enhancement of sentence awarded to the and the conviction of accused acquitted by the trial Court. A reference No. 237/2017 was also sent by the trial Court for the confirmation of the death sentence imposed on Muhammad Habib, convict for the murder of Mohammad Ameen. The High Court, vide impugned judgment dated 23.12.2022, dismissed both the appeals field by the complainant and the accused, Muhammad Zubair and answered the reference sent by the trial Court in affirmative.

4. Mr. Muhammad Saqib Javid, the learned Advocate representing the convict-appellant, contended that the judgment rendered by the learned High Court contradicts the law, facts, and the record of the case. He asserted that the lower Courts failed egregiously to assess and evaluate the evidence in its proper perspective. Moreover, the Courts below totally overlooked a crucial fact that the prosecution badly failed to establish a connection between the convict-appellant and the alleged incident. According to him, the evidence produced by the prosecution was insufficient to justify the appellant's conviction. He emphasized that yet the

inconsistencies in the prosecution's narrative, site plan, and evidence cast serious doubts on its credibility, warranting the appellant's acquittal. It was the prosecution's responsibility to prove its case beyond a reasonable doubt. He criticized that the lower Courts for disregarding the contradictions and instead of it providing unfounded justifications, which amounts to violative of the fundamental principles of justice. He opined that the impugned judgments, convictions and sentences are unsustainable. The learned Advocate further contended that both; the learned High Court and the Additional District Criminal Court Kotli failed to consider the glaringly contradictory statements of prosecution witnesses, unproven recoveries, existing animosity amongst the parties, and other pertinent facts established in the case. He argued that the lower Courts seemed to prioritize the quantity rather than the quality of the evidence. Additionally, he pointed out that the appellant's statement recorded under section 340(2) Cr.PC, which was reliable and supported by the record, was not given due consideration, while the prosecution's highly dubious and contradictory evidence formed the basis for the appellant's conviction. Therefore, he asserted that the convict should be acquitted of the alleged charges. The learned Advocate highlighted a crucial point regarding the alleged place of occurrence, making note of significant discrepancy between the initial allegation of "dragging" the deceased as asserted in the FIR and subsequent alterations to this account, raising serious doubts about the alleged sequence of events. Finally, he argued that the acquittal of two nominated accused by the trial Court, which the High Court upheld, further undermines the reliability of the prosecution's story and the justification for the appellant's conviction. In support of his assertions, the learned counsel cited various legal precedents, including the cases such as *Malik Zaffar vs. Rashid Hussain Shah and others* [2022 SCR

1489], *PIR BUX and others vs. The State* [2018 PCr. LJ 742], *Abdul Wahab and others vs. The State and others* [2019 SCMR 516], and an unreported judgment titled *Mst. Nida Begum vs. State and others*, Criminal Appeal No. 09 of 2020, decided on 17.06.2022.

5. On the contrary, Kh. Muhammad Maqbool War, the learned Advocate-General representing the State, asserted that both the impugned judgments of the learned High Court as well as the Additional District Court of Criminal Jurisdiction Kotli align perfectly with law, the facts, and the record of the case. He contended that this case presents direct evidence, with all eyewitnesses fully corroborating the account outlined in the FIR. He emphasized that the convict-appellant, with premeditation, launched an attack on the complainant, resulting into the murder of Muhammad Ameen and the injury of Muhammad Kabir. He argued that the convict-appellant should be held accountable under section 34, APC and deserves punishment for the murder of Muhammad Ameen (deceased), thus warranting the upholding of the conviction awarded by the Additional District Court of Criminal Jurisdiction Kotli and upheld by the High Court. Additionally, he pointed out that the place of occurrence was over-grown grass and bushes, allowing the convict-appellant to quickly drag the deceased to the house of Muhammad Rafique after shooting him thus preventing the recovery of bloodstains. He asserted that the appellant's involvement in the murder is firmly established. The prosecution, according to him, successfully substantiated its case beyond any reasonable doubt through the presentation of eyewitness, circumstantial and corroboratory evidence, while the defense failed to undermine the prosecution's narrative. He sacked the appellant's purported grounds for suspending the sentence as purely

speculative and irrelevant to the facts of the case, arguing that such grounds should not be considered. Furthermore, he contended that the lower Courts thoroughly examined all crucial aspects of the case and that the appellant failed to identify any legal irregularities in the impugned judgments, rendering the appeal untenable. He reiterated the well-established legal principle that in murder cases, the normal sentence is death, particularly when it is evident from the evidence that the convict harbored a common intention to commit the crime. He finally prayed that the prosecution has effectively proved its case against the convict-appellant, warranting the dismissal of the appeal as such.

6. After hearing arguments from both sides and meticulously reviewing the case record along-with the impugned judgments, we found that according to the prosecution's narrative outlined in the FIR, Mohammad Ameen was engaged in cutting grass on his own land when the convict-appellant, along with others armed with lethal weapons and batons, launched an attack. The convict-appellant, Mohammad Habib, fired a direct shot with a 12-bore rifle, resulting in the death of Mohammad Ameen. As the cases of the other convicts are not before us, thus, we confine our attention to the appeal filed by the convict-appellant, Muhammad Zubair. The role attributed to Muhammad Zubair is that upon hearing the commotion, Mohammad Kabir, the complainant's brother, arrived at the crime scene, Muhammad Zubair fired at him with a 12-bore rifle, causing severe injury. Mohammad Azeem, Mohammad Kabir, Wajid Hussain, and Mohammad Khalid are listed in the calendar of challan as eyewitnesses of the incident, and their statements were recorded before the trial Court. To better understand the evidence provided by these eyewitnesses, we will briefly summarize the relevant portions

of their statements. Muhammad Azeem, the prosecution witness who is also the complainant in the case, stated in his examination-in-chief that: -

"مورخہ 24-10-2014 کا واقعہ ہے کہ مظہر اپنے گھر سے ڈوگی بازار جا رہا تھا جس وقت مظہر محل کے مکان کے سامنے گیا تو ایوب کے مکان کی طرف سے گال گلوچ کی آواز آرہی تھی مظہر اسی طرف دوڑ پڑا جس وقت رفیق کے مکان کے سامنے گیا زبیر، حبیب، نذیر، رضیہ دیکھے زبیر کے پاس اور حبیب کے پاس 12 بور بندوقیں تھیں اور رضیہ کے پاس پستول تھا۔ نذیر کے پاس ڈنڈا تھا۔ زبیر نے لکارتے ہوئے کہا کہ دوسرے بھائیوں کو بھی بلا لو امین کو کہا۔ آج تم سب کو زندہ نہیں چھوڑیں گے۔ محمد امین اپنے رقبہ میں گھاس کاٹ رہا تھا سب نے اسے گھیر لیا وقت تقریباً 01:15 بجے کا تھا۔ ملزمان نے گھیر لیا۔ مظہر نے شور کیا کہ نہ مارنا۔ حبیب نے 12 بور بندوق سیدھی کر کے فائر امین پر کیا جو اس کے دائیں بازو اور گردن پر ٹھوڑی کے نیچے لگا موقع پر واجد اور خالق بھی پہنچ آئے۔ فائر کرنے کے بعد انہوں نے 12 بور بندوق کندھوں کے ساتھ لگائی حبیب نے سر کی طرف سے مقتول امین کو اٹھایا جبکہ زبیر نے ٹانگوں کی جانب سے اٹھایا اور رفیق کے گھر لے گئے۔ مقتول کی خالی قمیض کا پچھلا حصہ نیچے زمین پر لگ رہا تھا۔ رضیہ ہوائی فائرنگ کرتی رہی۔ اس کے بعد کبیر ڈوگی تھا وہ بھی آگیا اس نے سوچا کہ محمد امین کو ملزمان اندر لے کر چلے گئے۔ جو نہی وہ صحن میں پہنچا تو زبیر نے فائر کیا جو پیٹ کے نیچے نازک حصہ پر لگا۔ زبیر جب کبیر گرا ہوا تھا اس کو سوٹیاں مارتا رہا۔ رضیہ نے کبیر کے سینہ پر تین فائر کیے کبیر پیچھے ہٹ گیا جس سے وہ بچ گیا۔ کبیر کو بھی رضیہ قتل کرنا چاہتی تھی۔ اس کے بعد رائفلس بازو کے ساتھ لگا کر موقع سے چلے گئے کہ دونوں مضر وہاں فوت ہو گئے۔ ہیں۔ اس واقعہ کو مظہر کے علاوہ واجد، خالق نے، گاؤں کے بہت سے لوگوں نے دیکھا۔ ملزمان نے وقوعہ زمین کے تنازعہ کی وجہ سے کیا۔"

Similarly, the other prosecution witness Muhammad Azeem s/o Sahab Dad, stated that: -

"مورخہ 24.10.2014 کا بوقت 01:15 بجے بروز جمعہ دن کا واقعہ ہے کہ مظہر ڈوگی سے اپنے گھر جا رہا تھا کہ جب رفیق کے مکان کے سامنے پہنچا تو فائر کی آواز آئی اس پر مظہر بھاگ کر رفیق کے گھر کی طرف چلا گیا۔ شور کی آواز آئی رفیق کے مکان کے سامنے پہنچا تو دیکھا کہ ملزمان حبیب، زبیر، نذیر اور رضیہ بیگم نے امین کو اٹھایا ہوا تھا۔ ملزم حبیب نے سر کی طرف سے پکڑا ہوا تھا جبکہ زبیر اور نذیر نے ٹانگوں کی طرف سے پکڑا ہوا تھا اور رفیق کے صحن میں لاکر اس کو پھینکا۔ ملزمان زبیر اور حبیب نے اپنے کندھوں کے ساتھ 12 بور بندوقیں لگائی ہوئی تھیں اور ملزم رضیہ کے پاس پستول تھا جس سے وہ ہوائی فائرنگ کر رہی تھی جب مظہر رفیق کے صحن میں پہنچا تو زبیر نے بہ نیت قتل مظہر پر 12 بور بندوق کا فائر کیا جو مظہر کی ٹانگوں کے درمیان نازک حصہ پر لگا اس سے مظہر کی مردانہ طاقت ختم ہو گئی۔ مظہر گر گیا ملزم نذیر نے مظہر کو تین ڈنڈے مارے یہ سارا وقوعہ ملزم رفیق کے کہنے پر ہوا۔ وجہ عناد تنازعہ اراضی ہے۔"

Wajid Hussain s/o Noor Dad, another witness also witnessed the crime scene who deposed during his Court statement in the following manner: -

"گواہ بیان کرتا ہے کہ ملزمان حاضر عدالت کو جانتا ہوں مورخہ 24-10-2014 کا واقعہ ہے مظہر اور بھائی خالد ایوب کے گھر موجود تھے بھائی ایوب کا گھر ملزم رفیق کے گھر کے قریب ہے۔ دن ایک بجے کا واقعہ ہے ملزم رفیق کے گھر کے پیچھے گالم گلوچ اور شور کی آواز سنی۔ مظہر اور بھائی خالد اسی طرف چل پڑے جب وہاں پہنچے تو دیکھا کہ امین اور عظیم وہاں موجود ہیں ملزمان حبیب، زبیر، نذیر اور رضیہ بی بی نے امین کو گھیرے

میں لیا ہوا ہے اور عظیم شور کر رہا ہے کہ نہ مارواتے میں حبیب نے قریب سے قتل کی نیت سے محمد امین پر رائفل 12 بور کا فائر کیا جو امین کی ٹھوڑی کے نیچے اور دائیں بازو پر لگا۔ امین زمین پر گر گیا ملزمان نذیر اور زبیر نے امین کو پاؤں کی طرف سے جب کہ حبیب نے سر کی طرف سے اٹھایا اور رفیق ملزم کے گھر لے گئے اور برآمدہ میں چھینک دیا۔ جب امین کو لے کر جا رہے تھے تو قبض کا پچھلا حصہ زمین کے ساتھ لگ رہا تھا۔ اس اثناء میں کبیر بھی رفیق کے گھر کے سامنے پہنچا تقریباً سو ایک بجے کا وقت تھا کبیر جب رفیق کے گھر کے صحن میں پہنچا ملزمان حبیب اور زبیر برآمدہ میں کھڑے تھے۔ زبیر نے بہ نیت قتل کبیر پر 12 بور رائفل کا فائر کیا جو اس کے پیٹ کے نیچے نازک حصہ میں لگا اور وہ زمین پر گر گیا۔ ملزم نذیر گرے ہوئے کبیر کو ڈنڈوں سے مار رہا تھا رضیہ بی بی پستول سے ہوائی فائر کر رہی تھی۔ یہ سارا واقعہ ملزمان نے ملزم رفیق کے مشورہ سے کیا۔"

Another eye-witness of the occurrence, Muhammad Khalid s/o Noor Dad, stated that: -

"مورخہ 24-10-2014 کا واقعہ ہے۔ مظہر اپنے برادر صغیر واجد کے ہمراہ ایوب برادر م کے گھر بیٹھا ہوا تھا۔ تقریباً ایک بجے کا واقعہ ہے کہ ملزم رفیق کے گھر کے پیچھے اور اونچی جگہ جو ہے وہاں شور کی آواز آئی مظہر واجد شور والی جگہ کی طرف گئے وہاں پر امین کھڑا تھا اور امین کے ارد گرد زبیر، حبیب اور رضیہ عظیم کھڑے تھے۔ رضیہ ہوائی فائرنگ بڑی بے پستول کر رہی تھی حبیب اور زبیر کے ہاتھوں میں بارہ بور رائفلیں تھیں نذیر کے ہاتھ میں ڈنڈا تھا۔ زبیر کہہ رہا تھا کہ آج اپنے جملہ برادران اور رشتہ داروں کو بلا لو آج زمین کا معاملہ ادھر ختم کریں گے امین گھاس کاٹ کر اپنی جگہ میں کھڑا تھا۔ حبیب نے نزدیک ہو کر بارہ بور رائفلن سے امین کو فائر مارا جو کہ امین کی ٹھوڑی اور دائیں بازو پر لگا امین فائر لگنے سے گر گیا پھر حبیب نے سر کی جانب سے پکڑا اور نذیر اور زبیر نے ناگلوں کی جانب سے امین کو پکڑا اور اٹھا کر رفیق کے گھر لے گئے۔ وقت پورا ایک بجے دن تھا۔ پھر کبیر آگیا جو اپنے بھائی کی طرف جا رہا تھا تو زبیر نے قتل کی نیت سے اس پر بارہ بور سے فائر کیا جو کہ اس کے نازک حصہ پیٹ سے نیچے لگا۔ کبیر گر گیا نذیر نے اسے ڈنڈے مارنے شروع کر دیئے۔ ہم نے شور واویلا کیا گاؤں کے لوگ بھی آنا شروع ہو گئے تو ملزمان بھاگ کر جنگل کی طرف چلے گئے۔"

7. Upon reviewing the relevant portions of the statements of the eyewitnesses (supra), it becomes evident that all witnesses have almost reiterated the same narrative as outlined in the FIR. They have unanimously asserted that the incident took place in their presence and fully endorse the prosecution's account. Their testimony remained credible, particularly towards the convict-appellant, Muhammad Zubair, who was directly implicated for shooting at Kabir, causing injury to a sensitive part of his body. Furthermore, the eyewitness accounts find support from the recoveries made by the investigating agency at the residence where the incident allegedly occurred. The recovery evidence such as Ex-PH, denotes the recovery of an empty cartridge from the courtyard of Mohammad Rafique's house, and Ex-PI, detailing the discovery of an empty of 12-bore rifle from

the same location, reinforcing the prosecution's version of events. Additionally, a live cartridge of 12-bore rifle was recovered by the police on the day of the occurrence from Mohammad Rafique's house lends further credence to the prosecution's narrative. Moreover, Ex-PN indicates the recovery of 12-bore rifle from Lal's house at the instance of convict-Zubair. Muhammad Yasir, Rafique and Khadim Hussain, the recovery witnesses of the weapons of offense got recorded their statements in the Court, solidified the integrity of the recovery process while lending additional support to the testimony of eyewitness.

8. The medical evidence supports the prosecution's narrative. As per the Medico-legal Report, Ex-PR, the injuries sustained by Muhammad Kabir were inflicted with a firearm from a distance of approximately more than 4 to 6 feet. According to the Doctor's opinion, the nature of the injury is classified as "*Atlaf-i-udw*." For clarity, the relevant excerpt from the report is provided below: -

“Mazroob named Muhammad Kabir s/o Sahab Dad age 32 year old male, Gujjar by caste r/o DOUNGI Tehsil Khairatta District Kotli AJK reported to me in DHQ Hospital Kotli on 24.10.2014 at 03:00 pm being following injury by fire arm.

- A. Multiple wounds in penial, penile and scrotum area, profusely bleeding, ASD of debridement done and more than 15 pellets recovered by G. Surgeon in DHQ Hospital kotli, case was referred to PIMS Islamabad for further surgical management, where he remained admitted in hospital for 03 weeks. Surgically amputation of penis was done and bladder repairment of at PIMS Islamabad. XRAY No. 11325 done at PIMS Islamabad show multiple pellets in penile and scrotum areas.
Opinion = The injury described in A is “*Atlaf-i-Udw*” in nature and is caused by Firearm.

As there was no blacknage of burning of margin of wound, the fire distance is approximately more than 4-6 feets.”

9. According to the Medico-legal Report, the patient suffered from multiple wounds in the penis, penile and scrotal (scrotum) area, bleeding profusely. The medical team conducted the procedure of debridement to clean and remove any damaged tissue. During this procedure, the surgeon also discovered more than 15 pallets from the wounds. The patient was initially treated at DHQ Hospital Kotli but later on ws referred to PIMS Islamabad for further surgical care. At PIMS Islamabad, the patient underwent a three-week hospital stay during which many surgical procedures were performed to address the injuries. The surgeries made included the partial amputation of the penis and repairing of damage caused to the bladder. An X-ray conducted at PIMS Islamabad revealed the presence of multiple foreign objects in the penis and scrotal areas. However, at the end, the Doctor opined that based on the nature of the injury described in section A, it is consistent with injuries caused by a firearm which is “*Atlaf-i-Udw*”, which further strengthes the prosecution case.

10. During the course of arguments, the learned counsel for the convict-appellant contended that the complainant side launched an attack on the convict's house and Muhammad Zubair, in his statement recorded under section 340(2) Cr.PC, claimed that he was present at home when the occurrence took place and he hide himself in a room, locking the door when the complainant side launched the attack. However, this argument lacks merit for several reasons. Firstly, the convict-Zubair's own statement admits his presence at the scene of occurrence when the complainant party allegedly launched the attack, thus undermining his claim of non-involvement. Secondly, if the

complainant party indeed attacked with firearms, as claimed, and continued firing, it raises suspicion as to why none of the accused/convicts sustained any injury or even a scratch. The absence of injuries upon the body of accused suggests that the accused attempted to cast doubt on the prosecution's version to lack credibility and failed to substantiate a defense. The Court must assess what is plausible and the assertion by the convict that the complainant side attacked them without resulting any injuries appears more akin to a fabricated story than a natural occurrence. It is a fundamental principle of criminal jurisprudence that burden of proof in a criminal case always lies with the prosecution, and even in the absence of a successful defense plea, the prosecution must establish its case independently, however, when an accused in a criminal trial presents a specific plea, the burden of proof shifts upon him. In such cases, the accused is required to provide evidence supporting his plea or at the very least, demonstrate that his plea is plausible based on the surrounding circumstances. Simply advancing an unsupported defense is insufficient. The apex Court of Pakistan in a case reported as *Manzoor Hussain vs. Nadeem alias Billa and others*¹, observed that the accused are not required to establish their defense plea beyond a reasonable doubt; rather, they only need to demonstrate that their version is plausible. For clarity, the relevant excerpt is provided below.

“In a criminal case, the accused are not required to prove the defence plea beyond reasonable doubt but they have merely to show the version put up by them was reasonably possible.”

11. In our assessment, crucial elements that are necessary to establish the “right to private defense” should establish the circumstances to the satisfaction of the Court

¹ [2004 Cr.LJ 66]

that the person asserting and availing 'private defence' actually acted so? which means there was a situation where; i) he was not the aggressor, ii) there was a significant threat to his life, property, dignity etc. iii) he used a reasonable force to prevent such harm or threat; only then a considerable plea of 'private defence' is able to be analyzed by the Court. Pleas cannot be taken in a casual and lenient manner but always should be established and considered on some grounds and legal tests that the law provides. Another essential point in the present case is that there were no reported injuries sustained by the convicts during the incident which further doubts the story of the prosecution as there should have been any injury or injures that would show that the convicts were attached upon by the other side to response of which they had to act in their private/self-defense. Therefore, in this context, the accused are merely attempting to cast doubt on the prosecution's version by presenting a weak and unsubstantiated defense without any ground or basis.

12. The learned counsel representing the convict-appellant contends that all the prosecution witnesses are interested, biased and lacking impartiality. As no independent and unbiased witness has been presented in this case therefore, a conviction based solely on such evidence fails to serve the interests of justice. However, this argument lacks merit, as it is crucial to emphasize that a witness's credibility is not solely determined in reference to his relationship with the involved parties. The legal doctrine firmly establishes that a witness's testimony on their relationship with the involved parties, unless it is proven that a witness harbors hostility towards accused, their testimony should not be automatically distrusted or disregarded merely on the ground of relationship with the parties. The reliability of a witness's testimony is assessed based on various factors,

including their demeanor, consistency, and coherence rather than solely on their relationship with parties involved. Familiar personal ties do not inherently compromise a witness's ability to provide truthful and accurate testimony, instead, each witness's statement must be evaluated independently, considering the circumstances surrounding the case and the witness's demeanor on the stand. Moreover, the absence of independent or impartial witness does not automatically discredit the prosecutions' case. As long as witness's testimony is found to be truthful, coherent and corroborated by other evidence, it should be given weight in determining the outcome of the case. While dealing with the proposition, this Court in an authoritative judgment reported as *Ghazanfar Ali vs. The State & another*², has observed that: -

“13. The argument of the learned counsel for the convict-appellant that the statement of the witness, namely, Tallat Zahoor is also not reliable as his father has enmity with the convict-appellant, is also not convincing in nature. If for the sake of argument, it is assumed that his father had any ill-will or animosity against the convict-appellant, even then that cannot be made basis to discard the statement of the said witness. The defense also failed to bring anything on record that the said witness was inimical towards the convict-appellant, whereas, he categorically stated in his statement that he has no enmity against the accused party. After scrutinizing the evidence of the eye-witnesses, we are of the view that all the eyewitnesses are independent and trustworthy and the trial Court as well as the learned Shariat Court has appreciated their evidence according to the settled norms of justice. The argument of the learned counsel for the convict-appellant that all the witnesses are closely related to each other, therefore, their statements cannot be believed, has also no substance. It is settled principle of law that

² [2015 SCR 1042]

mere relationship is no ground for discarding the evidence of a witness.”

In another latest judgment rendered by this Court in *Syed Kamran Hussain Shah vs. State*³, following principle of law has been laid down which reads as follows.

“23. Here another aspect is worth-understanding that the term ‘related’ should not be confused with the term ‘interested’ because both are entirely distinct concepts. There is considerable distinction between the terms ‘related and ‘interested’, because the interested witness need not necessarily, be a related but it is the person who has such a motive on account of enmity or any other consideration that due to such enmity or consideration, he has prepared himself to depose falsely. The term ‘related’ is positive in its meaning while the term ‘interested’ is negative in its meaning because the term ‘interested’ has a concept to gain favour for whom or what he/she is interested with. Although the burden is always upon the prosecution to prove truthfulness of a related witness but where the defense claims the witness as ‘interested’, burden shifts upon defense to establish that such witness had a motive on account of enmity or any other consideration which compelled him to depose falsely against the accused.”

13. The argument put forth by the learned counsel for the convict-appellant regarding alleged material contradictions in the witnesses' statements, thus rendering the convict-appellant's sentence untenable, lacks merit. The overwhelming evidence on record unequivocally establishes the occurrence of the incident. Once the fundamental occurrence is substantiated, minor contradictions in witness's statements, which do not significantly impact the case, are insufficient grounds to dismiss the prosecution's story entirely. While it is acknowledged that there are slight

³ [2022 SCR 365]

disparities in the witnesses' statements, they do not fatally undermine the prosecution's case, especially considering that all witnesses provided natural testimony, devoid of rehearsed or parrot-like statements. It is noteworthy that the reported incident occurred in the year 2014 and witnesses recorded their statements in Court more than two and a half years later. Consequently, minor contradictions in their statements are not unexpected hence, do not substantially weaken the prosecution's narrative. Significant discrepancies in eyewitness's testimony, if deemed minor in nature, may not necessarily discredit their evidence. The efforts of the convict-appellant's counsel to highlight such discrepancies are, in our assessment, negligible and do not undermine the cumulative evidence presented. Minor discrepancies on inconsequential matters that do not affect the crux of the case should not detract from the prosecution's narrative. Granting undue importance to such minor inconsistencies would constitute an overly technical approach. When evaluating evidence, the Court should not overly emphasize minor discrepancies, as they do not fundamentally challenge the core version of the prosecution's case and should be disregarded accordingly. We are fortified in our view from the case reported as *Yasmin Ashraf & 7 others vs. Abdul Rasheed Garesta & 5 others*⁴, wherein, it has been held that: -

“In the instant case, all the witnesses remained consistent on the material points, however, some minor discrepancies are found in their statements which can lightly be ignored and it is settled principle of law that the minor discrepancies do not affect the case of the prosecution as a whole, however, these may make some mitigation to some extent which may be taken into the consideration towards the quantum of the sentence.”

⁴ [2018 SCR 661]

The same view has been taken in the case reported as *Muhammad Naseem vs. State & another*⁵, wherein, this Court held that: -

“So far as the contention of the learned counsel for the convict-appellant that there are discrepancies in the statements of prosecution witnesses, thus, the conviction cannot be recorded on such evidence is concerned, it may be observed that the minor discrepancies in the prosecution evidence does not thresh out the whole case of the prosecution as the minor discrepancies can be ignored lightly. However, as stated hereinabove that all the prosecution witnesses remained consistent on the material part of the prosecution version, thus, the convict-appellant failed to point out any major contradiction in the prosecution evidence.”

14. In view of the above detailed discussion, we are of the view that the learned trial Court has rightly convicted and sentenced the convict-appellant which has been affirmed by the High Court in the impugned judgment. We, therefore, also concur with the impugned judgments of the Courts below and upheld the same.

This appeal along-with the miscellaneous application being devoid of any substance stands dismissed.

JUDGE

JUDGE

Mirpur,
20.02.2024

⁵ [2018 SCR 417]

