

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
[Judicial Department].

**Crl. Appeal No.291-P/2015**

1. Sanobar
2. Abdul Shakoor, and
3. Hashmat sons of Abdul Karim,  
r/o Akhoon Abad, Kaga Wala Badaber,  
Peshawar.

Appellants

**VERSUS**

The State etc

Respondents

For Appellants :-	<u>Sahibzada Asadullah, Advocate.</u>
State :-	<u>Mian Arshad Jan, AAG.</u>
For Respondent :-	<u>Mr. Hussain Ali, Advocate</u>
Date of hearing:	<b><u>09.05.2018</u></b>

**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-** At a trial held by the learned Trial Court/learned Additional Sessions Judge-VII, Peshawar, accused Sanobar, Abdul Shakoor and Hashmat, having been found guilty of committing murder and attempt to commit murder etc, have been convicted and sentenced, vide judgment dated 07.05.2015, as under:-

***Under section 302 PPC:-** Each to undergo imprisonment for life and to pay Rs.1,00,000/-, as compensation to LRs of deceased, in terms of section 544-A Cr.P.C. and in default thereof to undergo 06 months S.I.*

***Under section 324 PPC:-** Each to undergo 10 years R.I. and to pay a fine of Rs.10,000/- or in default thereof to undergo one month S.I.*

**Under section 148 PPC:-** Each to undergo 03 years R.I. and to pay a fine of Rs.5000/- or in default thereof to undergo 01 month S.I..

*All the sentences have been directed to run concurrently and benefit of section 382-B Cr.P.C. has been extended to them.*

2. Through the instant appeal, the appellants have questioned their convictions and sentences, whereas, Ikhtiar son of Sherin Khan, petitioner has filed Crl. Revision Petition No.64-P/2015, for enhancement of sentences of convicts-respondents.

3. As both, the appeal and revision petition are the outcome of one and the same judgment of the learned Trial Court dated 07.05.2015, therefore, are being decided through this single judgment.

4. As per contents of FIR, on 10.06.2013 at 09.45 hours, complainant Ikhtiar in injured condition, while reporting to local police in Casualty of Lady Reading Hospital (LRH), Peshawar, stated that on the fateful day he along with Gul Muhammad, Amjid, Sherin and Noroz Khan, was present at the spot when in the meantime, the appellants-convicts along with co-accused Zahoor and Muhammad, duly armed with deadly weapons, arrived there and on the command of accused Hashmat, co-accused named above, opened fire at them, as a result, Amjid got hit and died on the spot, while he and PW Gul Muhammad, sustained firearm injures. His report was

incorporated in the shape of Murasila, on the basis of which, FIR No.522 dated 10.06.2013 under sections 302/324/148/149 PPC, was registered against the appellants and co-accused in Police Station Badh Ber Peshawar.

5. On arrest of the appellants-convicts and completion of investigation, challan was submitted against them before the learned trial Court, where they were tried and ultimately convicted and sentenced as mentioned above.

6. During the course of arguments it revealed from the record that about the same incident, another FIR No.523 dated 10.06.2013, under sections 324/34 PPC, has also been registered on the report of one Hashmat i.e. one of the appellants. In the cited FIR, complainant party of the instant case has been nominated as accused. If both the FIRs are taken in juxtaposition, the date and place of occurrence as well as parties are the same with slight variation in the time of occurrence. The scribe in foot-notes of the Murasila in case FIR No.123, has endorsed that it is a cross case to FIR No.522 dated 10.06.2013, under sections 302/324/148/149 PPC, PS Badh Ber, Peshawar. Besides, murasila of both the FIRs (*ibid*), have been drafted by one and the same author/ASI in LRH Peshawar. Factum of case FIR No.523 to be a cross case to FIR No.522, is also apparent from order dated

24.01.2015 of the learned trial Court, wherein request of the appellants with regard to requisitioning of record of FIR No.523, had been acceded to and the office was directed to requisition record of the said case, however, the trial of both the cases were not conducted side by side. Findings of the learned trial Court that FIR No.523, is not a cross case to FIR No.522, without recording evidence in FIR No.523, are based on the sole ground that time of occurrence in the two FIRs varies from each other. As stated earlier, the date and place of occurrence as well as parties in both the FIR are the same, therefore, mere slight variation in the time of occurrence could not be a convincing ground for forming an opinion that the cases are not cross. Trial in both the cases should have been conducted side by side by the learned trial Court, as in such like cases, the prime question is the determination of aggressor and aggressed upon. Such question cannot be determined without analysis of the evidence of both the cases. The learned trial Court without conducting trial in case FIR No.523 dated 10.06.2013 under sections 324/34 PPC, Police Station Badh Ber, Peshawar, in a haphazard manner dealt with the trial of the appellants and recorded their conviction and sentences, which exercise undertaken by the learned trial Court is against the general practice in cases of counter versions. True that the Code of Criminal Procedure is silent with regard to procedure to be adopted

in the trial of counter-cases, arising out of the same incident and it has not been laid down anywhere in the Code of Criminal Procedure as an absolute rule that all charges and counter charges must be tried by the same Court, however, it is a salutary practice that when two criminal cases relate to the same incident, they are to be tried and disposed of by the same Court by pronouncing judgments on the same day. The two different versions of the same incident, resulting in two criminal cases, are compendiously called “**case and counter case**” or “**cross cases**”. We think that the fair procedure which should have been adopted was that the trial Court should have conducted trial in both cases side by side. The practical reasons for adopting such procedure is nothing but to staves off the danger of an accused being convicted before his whole case is before the Court; to deter conflicting judgments being delivered upon similar facts and in reality the case and the counter case are to all intents and purposes different or conflicting versions of one incident and finally to determine the question as to who was the aggressor and who was aggressed upon.

7. For the reasons discussed above, we dispose of this appeal in the manner that the impugned judgment of the learned trial Court is set aside and the case is remanded to the Trial Court for decision afresh, after conclusion of trial in the cross case FIR No.523 (supra). The learned trial

Court shall on conclusion of trial in case FIR No.523 and hearing the arguments of parties, shall pronounce judgments in both the cases simultaneously. Since, appellant Hashmat, was on bail during trial, therefore, on remand of the case he shall be released on bail on the already existing bail bonds, whereas, co-accused/appellants shall remain as under trial prisoners. On disposal of the appeal, the connected **Cr.R. Petition No.64-P/2015,** has become infructuous, which is hereby dismissed. Record of the case be sent to the learned trial Court immediately.

**Announced:**  
**09.05.2018**

*Siraj Afridi P.S.*

**JUDGE**

**JUDGE**