

**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT,  
BAHAWALPUR BENCH, BAHAWALPUR.  
(JUDICIAL DEPARTMENT)**

**Criminal Appeal No.223 of 2021**

Bashir Ahmed vs The State etc.

**P.S.L.A No.19 of 2021**

Mst. Sajeela Zakir vs Ahmed and four others

**Crl. Revision No.98 of 2021**

Mst. Sajeela Zakir vs The State etc

**JUDGMENT**

**DATE OF HEARING:** 22.02.2023.

**APPELLANTS BY:** Syed Aasim Ali Bukhari, Ch. Noor Hassan and Syed Mujahid Abbas Bukhari, Advocates.

**STATE BY:** Mr. Javed Iqbal Bhaaya, Assistant District Public Prosecutor.

**COMPLAINANT BY:** Mirza Muhammad Azam, Advocate.

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**MUHAMMAD AMJAD RAFIQ, J:** - Five accused persons namely Bashir Ahmad, Ahmad, Ali, Fakhar Imam and Muhammad Nawaz faced trial before learned Additional Sessions Judge, Bahawalnagar in a private complaint filed by Mst. Sajeela Zakir under sections 302/148/149 PPC arising out of an FIR No.102/2020 under sections 302/148/149/34 PPC police station Takhat Mahal, District Bahawalnagar and on conclusion of trial vide judgment dated 24.04.2021, accused namely Ahmad, Ali, Fakhar Imam and Muhammad Nawaz were acquitted of the charge, whereas, Bashir Ahmad, appellant was convicted and sentenced as under:-

*"Imprisonment for life under section 302 (b) P.P.C. alongwith compensation of Rs.3,00,000/- under section 544-A Cr.P.C. in default whereof to further undergo SI for six months"*

Benefit of section 382-B Cr.P.C was also extended to him.

2. The appellant has questioned his conviction and sentence through Criminal Appeal No.223/2021, whereas, in addition to preferring P.S.L.A. No.19 of 2021 against acquittal of respondents namely Ahmed, Ali, Fakhar Imam and Muhammad Nawaz, the complainant has also filed Criminal Revision No.98 of 2021 for enhancement of sentence of the appellant. All these matters are being decided through the instant judgment.

3. Facts giving rise to the present complaint are that on 09.05.2020 at about 05:45 a.m., complainant along with her husband Muhammad Ayub, maternal uncle Imam Ali, Mehtab and mother-in-law Kubra Mai were present in the house, where Muhammad Nawaz came and took Ayyub along with him on the pretext to resolve the dispute between Ayyub and Bashir. After a while, on hearing voice of firing from the house of Muhammad Nawaz, they all came to their roof top and saw the act of shooting by Bashir Ahamed, Ahmed, Ali, Fakhar Imam, being armed with pistols, and Nawaz armed with Sota was also present there. In their view, Bashir, appellant made a straight fire with pistol, which landed on the left of nose of Ayub, who fell down on the ground and succumbed to the injury at the spot.

Motive behind the occurrence was a dispute between Ayub, deceased and Bashir Ahmad, appellant over reluctance on sale of plot.

4. On receipt of information regarding the occurrence Muhammad Akram, the then SI/I.O (CW-6) reached at the place of occurrence along with PWs where dead body was lying in the courtyard of the house of accused Nawaz. He recorded statement of the complainant (Ex.PA) and sent the same to the police for registration of FIR. He inspected the dead body, prepared injury statement and inquest report. Thereafter he sent the dead body to District Headquarter Hospital Bahawalnagar for postmortem examination; collected blood stained earth from the spot, made the same into sealed parcel and took the same into possession vide recovery memo (Ex.PC). In the meanwhile, Crime Scene Unit team arrived at the spot, they collected and handed over to him sealed parcel said to contain pistol 9 mm along with magazines and other crime empties which he took into possession vide recovery memo (Ex.PD). He deposited the sealed parcels of crime

weapon, empties and lead bullet recovered from the dead body to the Punjab Forensic Science Agency. On 31.05.2020 he arrested the accused persons and handed over the case file to SHO for preparation of report under Section 173 Cr.P.C. However, as two of the accused namely Ahmad and Ali were declared innocent by the Investigating Officer, whereas, Fakhar and Nawaz were opined to be present but empty handed, therefore, the complainant being dissatisfied with the investigation filed a private complaint.

5. On receipt of complaint and recording of cursory evidence, all five accused were summoned to face trial. Accused were charge sheeted and on their denial the prosecution produced Sajeela Zakir complainant (PW-1) and Imam Ali (PW-2) who both deposed about the ocular account of the occurrence. Muhammad Amjad (PW-3), Muhammad Afzal 597/C (CW-1), Muhammad Iqbal SI (CW-2), Muhammad Din Abid Civil Draftsman (CW-3) and Muhammad Shabbir Nasir 1173/HC (CW-4) are almost formal witnesses and they made statements before the Court about their respective functions. Muhammad Akram SI (CW-6) had investigated the case. Dr. Muhammad Ahmad Faraz M.O. (CW-5) had conducted postmortem examination of Muhammad Ayub, deceased. After close of prosecution evidence accused were examined under section 342 Cr.P.C. wherein the place of occurrence, its time and also the factum of receiving firearm injury by the deceased remain admitted, but with the stance that in fact the deceased was intoxicated, as the houses of complainant as well as Muhammad Nawaz (place of occurrence) were adjoining, the deceased while carrying firearm entered into the house of Nawaz, fell down at the floor and the bullet of his own weapon hit near his nose, which resulted in his death, otherwise, none else from prosecution witnesses was present there. The motive was also specifically denied. The appellant did not opt to appear in the witness box under Section 340(2) Cr.P.C but opted to produce defence evidence. After producing attested copy of writ petition titled *Fakhar Hussain Vs. The ASJ, Bahawalnagar etc* as Ex.DF, CDR Mark-A, Mark-B and Mark-C and call data/location of Muhammad Akram, SI as Mark-D, the defence closed its evidence and the trial ended in the terms as detailed in opening paragraph of this judgment.

6. The learned counsel for the accused/appellant argued that it was an unseen occurrence; the deceased was drunk and had sustained firearm injury at his own hands; the occurrence was reported to the police by the accused/appellant himself and similarly the complainant was also informed about the incident by the accused side but after maneuvering the facts she became the complainant; that in any way the prosecution could not establish either the motive or the ocular account. The learned counsel laid much emphasis on medical evidence and argued that it sufficiently belies the entire prosecution story. Lastly argued that co-accused, including Nawaz, who according to the prosecution case had taken the deceased with him, have been acquitted by the learned trial court, as such, the entire prosecution case becomes extremely doubtful.

7. On the other hand, the learned counsel for the complainant argued that complainant (PW-1) was a natural witness and her statement finds full corroboration from the statement of Imam Ali (PW-2) supported by recoveries and the medical evidence. Added that in any eventuality the dead body was admittedly recovered from the house of the accused party, as such, heavy onus was laid on the defence to clarify its position, which the defence failed to discharge. He lastly argued that by force of principle of abundant caution, the acquittal of co-accused alone would not provide a clean chit to the accused/appellant, particularly when his role was entirely different from the attributions levelled against the acquitted co-accused.

8. Heard. Record perused.

9. From the above narration of facts, it evinces that the prosecution had set a specific motive that there was some dispute of plot between Bashir accused/appellant and Muhammad Ayub (deceased) and both the prosecution witnesses namely Mst. Sajeela complainant (PW-1) and Imam Ali (PW-2) deposed about such motive, but neither of them could give details that how, where and when the earlier dispute had arisen and even no independent witness or document was produced with respect to existence of any plot or refusal of deceased for its sale to the appellant, rather during cross-examination Mst. Sajeela (PW-1) admitted that the land holding of

family fell in her name and there was no land in the name of her husband Muhammad Ayyub/deceased. Though in the very next sentence the complainant deposed that “*The disputed plot was in the name of Muhammad Ayyub and was not in my name*”, if it was so, then the prosecution could have very conveniently established such fact by documentary evidence, but as discussed above, no such document was brought on the record. On this aspect it may also be relevant to refer that even Muhammad Akram Sub-Inspector (CW-6) who had investigated the case deposed that:-

*“I did not collect any revenue record regarding ownership of disputed pot by Ayyub deceased. Neither the complainant nor any of the P.Ws mentioned regarding the description of disputed plot in their statements u/s 161 Cr.P.C. “*

In view of the above, I am of the considered view that prosecution has not been able to prove the motive against the accused/appellant and one shall not forget the fact that it was the only reason (*dispute about property*) set-forth by the prosecution for which purportedly Nawaz (since acquitted) took Ayub (deceased) with him for the purposes of effecting a compromise between Bashir accused/appellant and the deceased, as otherwise, it has no where been even alleged that both the parties, who otherwise were neighbours, were carrying any other grudges for or against each other.

10. There is no dispute that the dead body of Ayyub (deceased) was recovered from the house of Nawaz accused (since acquitted) and in normal circumstances it was the defence which had to clear its position. It has been observed that in the instant case the defence did not dispute the occurrence and also does not question the recovery of dead body from the place of occurrence which happened to be the house of the accused party but a different mode and the manner of the occurrence has been put-forth by the defence side. Even otherwise, it is well settled proposition of law that the prosecution is bound to prove its case against an accused person beyond reasonable doubt at all stages of a criminal case. Reliance is placed on the case reported as “Abdul Majeed v. The State” (2011 SCMR 941), wherein it has been held that:-

*“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. The strangulation to death of the appellant's wife in his house may be a circumstance to be taken into account along with the other prosecution evidence. However, this by itself would not be sufficient to establish the appellant's guilt in the absence of any other evidence of the prosecution connecting him to the crime."*

The judgment reported as "NASRULLAH alias NASRO Versus The STATE" (**2017 SCMR 724**), 'NAZIR AHMAD Versus The STATE' (**2018 SCMR 787**) are also to the same effect.

11. As regards ocular account, in the FIR as well as in the private complaint the prosecution had shown presence of Mst. Sajeela complainant, Ayub (deceased), Mst. Kubran, Imam Ali (PW-2) and Mehtab, at the place of occurrence at the relevant time, but out of them only two namely Mst. Sajeela complainant (PW-1) and Imam Ali (PW-2) were produced in the dock. This court is conscious of the fact that it is not the quantity rather the quality which is required to establish a charge by the prosecution and similarly it is for the prosecution to choose as to which of the witnesses can be useful to it, but having said that the prosecution cannot escape its liability to bring home the guilt against the accused beyond any shadow of doubt. Here in the instant case though Mst. Sajeela complainant (PW-1) being lady, her presence in the house may be quite natural, nevertheless the presence of Imam Ali (PW-2) who though is closely related to the deceased, as her daughter had been married with brother of Muhammad Ayub (deceased) at such early hours of the day at the place of occurrence is not free from doubt. While observing so, I find support from the fact that said witness when appeared in the witness box he got recorded his address at Tehsil & District Bahawalnagar and during cross-examination admitted that in his CNIC his permanent address was written as Chak No.27/GB Tehsil Jaranwala, District Faisalabad. Muhammad Akram SI (CW-6) who had investigated the case also in clear terms admitted that around the place of occurrence there was no residential house of Imam Ali and also that Imam Ali PW was the resident of District Faisalabad. This anomaly was sought to be clarified through the statement of Mst. Sajeela complainant (PW-1) who during cross-examination came out with the stance that Imam Ali also had property at Bahawalnagar and thus resides in both the houses i.e. at Faisalabad and

Bahawalnagar, but neither the proof of any such property of Imam Ali at Bahawalnagar was produced in evidence nor any such fact was disclosed by Imam Ali himself in his statement as PW-2. Taking stock of all these aspects, since no justification whatsoever has come on the record about the presence of Imam Ali at the place of occurrence at the relevant time, therefore, his presence at the house of the complainant and having seen the occurrence at the relevant time cannot be believed.

12. So far as statement of Mst. Sajeela complainant (PW-1) is concerned, according to the prosecution case occurrence took place at 5.45 a.m. but the matter was reported to the police at 8.35 a.m. If the occurrence had really been witnessed by the complainant, then in the facts and circumstances of the case such delay in reporting the matter to the police does not sound good. In addition to the above, it has been consistent stance of the complainant that she had reported the occurrence to the police by call on 15 (Police emergency service) and Muhammad Akram Sub-Inspector (CW-6) also deposed so, but the prosecution took no pain to procure and produce 15 emergency call record, which fact was admitted by the I.O in the following words: -

*"I did not mention in police proceedings endorsed on the back of Exh.PA that Sajeela Zakir complainant made telephonic call to me about this occurrence. I did not collect the record of rescue 15 to establish the fact that the call was made by Sajeela Zakir complainant to 15 about this occurrence."*

On the contrary the defence had taken a stance that the deceased had sustained injury by firearm at his own hands, none from the complainant was present at that time and it was Bashir Ahmad accused/appellant who by call on 15 had informed the police when the deceased had made firing upon him, whereas, the complainant made call on 15 later when the police had already reached at the place of occurrence. The fact about making emergency call on 15 by Bashir Ahmad accused/appellant is reflected by documents tendered by the defence as Mark-A and Mark-B, the details incorporated therein indicate that on 09.05.2020 at 6.07 a.m. Bashir Ahmad had made call on 15 informing that somebody did aerial firing.

13. In addition to the above it has been noticed that Muhammad Akram Sub-Inspector (CW-6) at the time of visiting the spot, secured one bandolier wrapped around the back of deceased which contained 60 live bullets of 9-mm (P7/1-60), one packet of cigarettes, one handsfree set, wallet, currency notes, sweets soft mint, I.D card etc. The Crime Scene Unit team collected and handed over to him sealed parcel said to contain pistol 9 mm along with magazines, and crime empties. Such articles are also reflected from the snaps taken by the police at the crime scene, and brought by the defence on the record. The Investigating Officer during cross-examination admitted that; "*It is correct that the snaps Exh.DA/1-12 were taken by the police*". He further admitted that pistol 9 mm (P2) lying near the dead body was used by Muhammad Ayyub (deceased) at the time of occurrence and he made fires from that pistol during this occurrence. All these items collected from near the dead body were sent to PFSA and report depicts LP-4 latent finger prints taken from the magazine were "*of value*" for comparison but no fingerprints and palm prints of deceased or the accused were sent for comparison, therefore, such items lost their efficacy. Similarly, according to the Investigating Officer on 06.06.2020 the accused/appellant Bashir Ahmad while in police custody got recovered pistol 30-bore P1 along with magazine having six live bullets P1/1-6 lying under the mattress of bed present in his residential room and according to PFSA report (Ex.PH) items C5 to C6 were identified as having been fired in the item P1 pistol, but at the same time four crime empties/ items C1 to C4 were identified as having been fired in the item P2 pistol, recovered from near the dead body, which according to the I.O had been used by the deceased during the same occurrence.

14. Muhammad Akram SI (CW-6) who had investigated the case, during cross-examination deposed that version of the complainant to the extent of accused namely Ali and Ahmad was found to be false, whereas, the accused namely Nawaz and Fakhar were found by him to be present at the spot empty handed with no overt act. The Investigating Officer while giving details of his investigation deposed that: -

*"It was found during my investigation that deceased Muhammad Ayyub while armed pistol 9 mm and ammunition bag trespassed in the house of accused Nawaz."*

As regards alleged recovery of pistol on the lead of Bashir Ahmad accused, the Investigating Officer deposed that “*at the time of alleged recovery of pistol 30 bore the inmates of the house were present there and house was open and recovery was effected from the room.*” Such situation causes serious doubt about the recovery of pistol from the appellant as being in his exclusive possession.

15. In the light of above position, as according to the prosecution the firing was being made by the accused side and one fire by Bashir accused/appellant had hit the deceased on his nose, whereas, according to the defence Ayyub (deceased) sustained injury at his own hands by the weapon carried by him, there existed an ambiguity as to whose fire had hit the deceased. It has been noticed that Dr. Muhammad Ahmad Faraz (CW-5) at the time of postmortem examination of deceased had also detected one lead bullet, which along with last worn clothes of deceased, etc. was also delivered to the Investigating Officer in a phial, it was later sent to PFSA for comparison, PFSA marked such lead bullet as B3 and preferred its comparison with Pistol P2 of deceased; after examination reported that because of the lack of sufficient suitable corresponding microscopic marking, it was not possible to either identify or eliminate that the bullet B3 as having been fired from the item P2 pistol. Therefore, it can be presumed that such bullet was of Pistol 9mm which was carried by the deceased, otherwise PFSA could have its comparison with Pistol 30 bore P1 allegedly recovered on the lead of Bashir Ahmad accused/appellant. It is another eliminator/factor which reduces the criminal liability of the appellant.

16. It has further been noticed that doctor had also taken specimen of stomach and intestine from the dead body and same were sent to PFSA and according to PFSA report (Ex.PK), diazepam, nordiazepam, bromazepam, codeine, morphine, 6-aceyl morphine, pheniramine and papaverine were detected in the mixture of stomach and intestinal content. The existence of such content in the viscera speaks a long way to give a boost to the version put-forth by the defence that deceased entered the house of Nawaz co-accused in an intoxicated condition.

The above position gets strength from yet another factor i.e. in column “*Examination of Neck*”, of the post mortem examination report (Exh.CW-5/A) between the phrase “*blackening present*” the word “*not*” was found written with somewhat different ink; on this aspect the doctor was cross-examined and the relevant lines are reproduced hereunder: -

*“....it is also correct that in Mark-C in column of examination of neck in line No.2 blackening present is mentioned whereas according to my report Exh.CW-5/A blackening not present is present in the examination of neck column.”*

It has further been observed that when cursory statement of complainant side was recorded the postmortem report tendered in the proceedings also carried same effect like “*blackening present*” and later it was manipulated. That was the reason defence has challenged that entry for registration of FIR against the doctor. In support of such fact copy of writ petition pending before this Court was tendered in defence evidence as Ex. DF

In the light above referred document as well as statement of the doctor, sufficient doubt casts about the insertion of word “*not*” in the relevant column and without there being any clarification from the prosecution side, it can be inferred that the word “*not*” was later added as an attempt to bring the medical evidence in line with the ocular account, as otherwise, according to the site plan the distance between Point No.1 (*the presence of dead body*) and Point No.3 (*showing the presence of Bashir Ahmad accused/appellant*) is 27 feet and if fire had been made from such a long range, there was remote chance that injury would have carried blackening.

Further, it has been noticed that according to the prosecution case occurrence took place at 5.45 a.m. the matter was reported to the police at 8.35 a.m, the dead body was received to mortuary at 4.00 p.m., police papers were received at 4.30 p.m. and the post mortem was conducted at 4.45 p.m. Such inordinate delay in receiving the dead body in the dead-house and conducting of autopsy about eleven hours after the occurrence is a situation that could safely be read against the prosecution particularly with a further doubt when doctor during cross-examination deposed that occurrence probably may have occurred within 23 hours before postmortem

examination. It raises questions about the presence of prosecution witnesses at the place of occurrence at the relevant time.

17. Contentious standpoint of the case is the locale of injury, giving rise to divergent hypotheses; was it a distant fire made by the appellant or a close-range accidental fire emitted from the muzzle of pistol held by the deceased? Description of injury characterized by the doctor as having lead staining/ blackening not present around the entry wound of 1 CM x 1 CM on the left side of nostril was claimed as perfect by the prosecution due to inter se distance between the appellant and the deceased as 27 feet, in addition bullet too was found present inside the body with no exit wound, and two bullet casings collected from the place of firing by the appellant stood matched with the pistol recovered on his lead. Defence version strongly confronted the prosecution stance with the touch that primarily doctor observed in postmortem report as '*lead staining/blackening present*' which was later interpolated by inserting the word 'not' with different pen and ink to make it '*blackening not present*'; further presence of bullet inside the body without exit wound does not mean that it was not a close-range fire because the locale from where it entered was a zygomatic bone, bullet jacketed in the skull while touching the maxilla bone which are very hard bones of the body and even due to ricocheting effect bullet usually deflect inside the body, therefore, no exit wound was observed, and four bullet casings of pistol 9 mm used by the deceased was also found matched with such pistol found near the dead body. Both the contentions require a response to many questions involved in the controversy including a term '*lead staining*' used by the doctor. The question whose fire actually hit the deceased has an overall impact on the whole case to determine the truthfulness of prosecution stance or otherwise, therefore, before proceeding further, let's see what doctor has observed about the injury in postmortem report and its channel which is as under;

A lacerated wound was present on left side of nostril of nose with inverted margin (Lead staining/blackening present). Direction of wound is towards Back of skull. (Measuring 1 CM x 1 CM)

CRANIUM AND SPINAL CORD

Scalp;           damaged

Skull;           damaged (at the site of injury) fracture was noted

Membranes; damaged  
Brain; damaged  
Vertebrae; Healthy.  
Spinal cord; Healthy.

**About Mouth, Pharynx and Esophagus**, it was observed as under: -

Damaged (Clotted blood present in Oral and Nasal cavity)

The wound of entry was the nostril and channel begin from nasal cavity, entered into oral cavity and then cranium showing damage of skull, brain, membrane and even the scalp, which means the bullet either, after touching the scalp, ricocheted or it was only a reaction of kinetic energy or pressure of gas that causes such fracture. It is required to be assessed from the facts of the case and the forensic literature.

If it is determined from the factual point of view as spurs out from this case, it is observed that the position of appellant at point No. 3 was north-west to the deceased at a distance of 27 feet, if from such position fire is made it would probably hit in front of face of the deceased and in that eventuality, injury must have been on the front of nose and is expected to be exited from the back of neck or the occipital region of skull; but the doctor has observed the injury on the left side of nostril with skull, brain, membrane and scalp damaged, neither the trajectory of bullet was shown by the doctor nor the location was mentioned where the bullet was jacketed or recovered. Entry wound of bullet in nostril takes the case close to version put forth by the defence that deceased in an intoxicated condition was firing at the spot when he slipped from a raised cemented step and one fire accidentally hit on his mouth from his own pistol. If this story is given consideration, then fire being made from a close range must have a size bigger than 1 CM x1 CM and does have an exit wound but we know that absence of an exit wound due to ricochetting effect of bullet is possible. if so, what factors cause deflection of bullet in any situation, and whether in all situations a close-range fire produce a large aperture or due to elasticity of a tissue it can be squeezed back to normal or even of lower size. All such questions are being attended in the light of literature available on the subject.

Brian J. Heard in his book “Handbook of Firearms and Ballistics” Examining and Interpreting Forensic Evidence, published by WILEY-

BLACKWELL, A john Wiley & Sons, Ltd., Publication. In CH3, BALLISTICS observed the size of entry and exit wounds as under:-

“Firstly, as the bullet passes through human tissue, it imparts some or all of its kinetic energy to the surrounding tissue. The energy so supplied throws the tissue away from the bullet’s path in a radial manner leaving a temporary wound cavity much larger than the diameter of the bullet. The temporary nature of this cavity results from the natural elasticity of animal tissue (French 1962), which allows it to regain its original structure after the bullet has passed. There is also a permanent cavity which results from the destruction of tissues caused by the bullet itself. This permanent cavity is dependent on cross-sectional area of the bullet and any secondary missiles which may be produced from the break up of the bullet during its passage.”

“This temporary cavity has a very short life span and is followed by number of aftershocks decreasing its severity. The final, permanent cavity may be many times greater than the diameter of the missile, but it is also many times smaller than the temporary cavity.”

It is also in the experience of forensic experts that while entering the body, the bullet attempts to penetrate against the elasticity of skin. The skin is stretched before penetration and with resultant perforation the margins become inverted. Due to elasticity of skin, the entry wound gets retracted and the wound appears small. So, it depends on the locale of body where the bullet actually entered. It is only in case of contact wound when the size of entry wound is large. Contact wound is also known as ‘point blank shot’, it shows cavitation and may be of triangular, satellite, cruciate or star shaped due to explosive effect of gas liberated. The gas gets accumulated between skin and subcutaneous tissue and causes tearing of skin, thus imparting various shapes. In the present case, nothing like was observed by the doctor; therefore, it was not a contact wound, though a close-range fire due to blackening around the wound. Thus, it was possible that size of entry wound would be like 1 CM x1 CM as mentioned in the postmortem report.

There was no exit wound in this case which gives rise to two hypotheses either it was a distant fire and locale of injury (maxilla) did not allow the bullet to pass on or it was a close-range fire and bullet after striking the hard bone deflected inside the body.

The book titled “Firearms, the law and the Forensic Ballistics by T.A. WARLOW” Published by Taylor & Francis (Forensic Science) SERIES, mentions the factors which cause deflecting of bullet or incidence of ricochet, as under: -

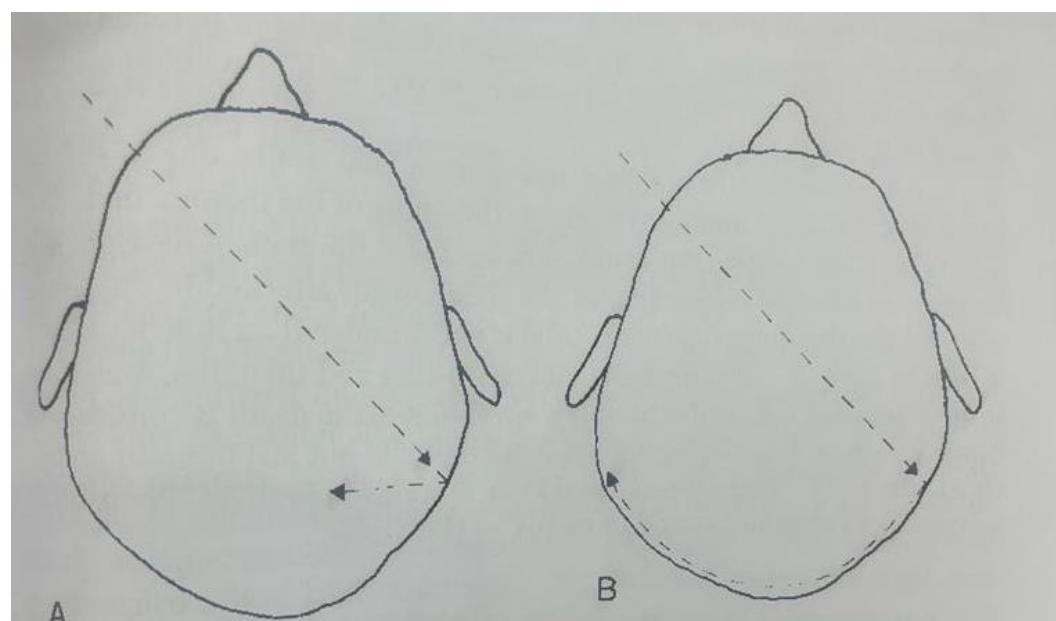
“The human body is not a homogenous block of material such as that typified by a block of 10 percent ordnance gelatine. In reality it contains hard bones exhibiting curved surfaces which can deflect a bullet or cause it to break up at velocity levels where one would expect penetration.”

“A bullet can be deflected off a rib on a person’s back so it is directed along a circular path in the tissue covering the rib cage leaving the victim with a relatively trivial injury. A bullet can be deflected or break up on striking a relatively modest item of screening cover interposed between the firer and the intended victim, or some article inside a pocket of the coat worn by the victim.”

“For incidence of ricochet numerous tests have shown that firearm missiles striking the smooth surface of water at an angle of incidence of less than 7 result in ricochets; in this instance the surface of water has acted in effect as a firm surface. Even bullet striking surface of rougher bodies of water such as sea can ricochet at angles up to 20 from the nominal horizontal.”

The ricochet effect is different in the cranial cavity as compared to other part of the body; some surprising facts based on experience of forensic experts cited in a book titled “GUNSHOT WOUNDS”, Practical Aspects of Firearms, Ballistics, and Forensic Techniques; SECOND EDITION, by Vincent J.M. Di Maio; published by CRC Press, Boca Raton, New York. Some excerpts from Chapter-9 (Bloody Bodies and Bloody Scenes) are given below: -

“As a general rule, internal ricochet is more commonly associated with lead bullets and bullets of small caliber. Thus, ricochet within the cranial cavity occurs most commonly with .22 led bullets. The type of ricochet most commonly encountered results from a bullet that passes through the brain, strikes internal table of the skull on the other side, and is deflected in a cortical or subcortical path parallel to the internal table. This results in a shallow gutter wound track in the cortex of the brain. Less commonly, bullets ricochet back into the brain at an acute angle or along the original bullet track. The length of internal ricochet track may be quite long.”



**Figure 9.2** Patterns of bullet ricochet inside cranial cavity. Type B is the most common.

"In one case, a .38 Special lead bullet entered the right frontal lobe, perforated the brain, exiting the left frontal lobe. The bullet then ricocheted off the bone travelling along the lateral aspect of left frontal, parietal, and occipital lobes; crossed the midline; and continued along the lateral aspect of the right cerebral hemisphere, coming to rest in the lateral cortex of the right frontal pole adjacent to where it had entered."

Doctor has not explained where the bullet was jacketed either in the maxilla or in the skull vault, however, observed fracture of skull. Whether fracture of skull could only occur when bullet strikes that very place or any other circumstance can also cause such fracture; here is the explanation;

The skull may fracture as a result of direct or indirect violence. Indirect violence results from (1) fall from a height on feet or buttocks (2) explosion from below and (3) **blow on the chin when the force is transmitted from mandible to the skull.**<sup>1</sup>

Doctor has not observed any lead ring around the wound so as to make it a contact wound; however, observed 'lead staining' which shows that bullet was jacketed in the maxilla bone and deposits of lead inside resulted into staining of skin. This phenomenon has been explained as under: -

*"A bullet entered in a body may lodge in tissue. If such bullet is not removed, the bullet may remain in body and gets covered by encapsulation of tissue. Thus, it is retained bullet inside the body. Such retained bullet inside the body is called a souvenir bullet. Lead poisoning may occur from such bullet but is rare.<sup>2</sup>"*

Such staining or tattoos on the skin like marbling shows sign of poisoning; the above situations are explanatory to the fact that bullet emitted from the muzzle of pistol 9mm held by the deceased had entered through nostril, took a route of cranial cavity and returned to the maxilla bone due to ricochetting effect and struck therein, leaving signs of lead staining around the wound. Blackening was also present but doctor later with malafide interpolated it 'not present' to make it in line with the inter se distance of appellant and deceased which was 27 feet. The recovery of led bullet from the body of deceased was also preferred to have its comparison with the pistol of deceased and not with that of appellant; which shows that it was a bullet of 9mm pistol, which PFSA though had reported upon that no opinion can be

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<sup>1</sup> **Medical Jurisprudence** by Dr. Muhammad Ikram, M.E.H.P.C. (Medical Advisor P. Firm) Published by Lahore Law Times Publications Chowk Urdu Bazar.

<sup>2</sup> **Principle of FORENSIC MEDICINE & TOXICOLOGY** by **Rajesh Bardale MD**; Department of Forensic Medicine, Government Medical College and Hospital Nagpur (Maharashtra), India; published by JAYPEE BROTHERS MEDICAL PUBLISHERS (P) LTD; New Delhi, Panama City, London.

given as to whether it has been fired from pistol 9mm because of poor marks over it, yet can safely be presumed it was the bullet that hit from the pistol of deceased by his own hands. Prosecution has failed miserably to prove the death of deceased by the fire of the appellant.

18. For what has been discussed above, in the instant case the prosecution has totally failed to establish the charge against the accused/appellant beyond any shadow of doubt and it is trite that to extend benefit of doubt to an accused person, it is not necessary that there should be several circumstances creating doubt, rather one reasonable doubt is sufficient to acquit an accused. Reliance is placed on the cases "BASHIR MUHAMMAD KHAN versus The STATE" (2022 SCMR 986) and "KHALID MEHMOOD alias KHALOO Versus The STATE" (2022 SCMR 1148). Consequently, Criminal Appeal No.223 of 2021 is allowed and the accused/appellant is acquitted of the charges. He shall be released forthwith if not required in any other case. The case property, if any, shall be disposed of in accordance with law and the record of the trial court be sent back immediately.

19. For the above reasons, PSLA No.19 of 2021 and Criminal Revision No.98 of 2021 filed by the complainant fail and are therefore, dismissed.

(Muhammad Amjad Rafiq)  
Judge.

Approved for reporting.

Judge.

Javed\*