

Stereo HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Revision No.25587 of 2017

Muhammad Khan versus The State, etc.

J U D G M E N T

Date of hearing:	<u>24.11.2025</u>
Petitioner by:	Mr. Seerat Hussain Naqvi, Advocate for and with the petitioner (petitioner has been identified by his learned counsel).
State/respondent No.1 by:	Mr. Haroon Rasheed, Deputy Prosecutor General along with Umar S.I. and record of the case.
Complainant/ Respondent No.2 by:	Ch. Rab Nawaz, Advocate for and with Talib Hussain (injured of the case, who has been identified by learned counsel for the complainant).

FAROOQ HAIDER, J.:- Through instant revision petition filed under Section: 439 Cr.P.C. by **Muhammad Khan (petitioner)**, following prayer has been made:-

“In the light of above submissions, it is most respectfully prayed that the impugned judgment of conviction dated 30.07.2016 passed by the learned Judicial Magistrate and judgment of lesser relief dated 14.03.2017 passed by the learned Addl. Sessions Judge, Chiniot may kindly be set-aside and the petitioner/convict may kindly be acquitted (as a whole) from the charges, honourably, in the larger interest of justice.”

2. Brief however necessary facts required for decision/disposal of instant revision petition are that Mst. Nooran Bibi (complainant/now arrayed as respondent No.2 in this petition) got registered case *vide* F.I.R. No.379/2012 dated: 26.10.2012 under Sections: 324, 148, 149 PPC against petitioner/accused and others; however, being dissatisfied with the conduct of the police as well as declaring some accused persons as innocent in the case, complainant (respondent No.2) filed “complaint” (Ex.PB) in the Court of learned Area Magistrate Section: 30, Police Station: Langrana against Muhammad Khan and

others under Sections: 324, 337-D, 337-F(v), 337-L(2), 148, 149 PPC; learned Magistrate Section: 30, Bhowana after recording cursory statements of the witnesses, finding sufficient material as well as allegations to proceed with the complaint against the accused persons, summoned them through notice but except Muhammad Khan (petitioner) as well as Nausher, Khuda Yar and Haq Nawaz, none of the accused persons did appear to face the trial; charge was framed against them; in order to prove contents of the complaint, Mst. Nooran Bibi (complainant) herself appeared before the Court as PW-1, produced Talib Hussain (injured of the case) as PW-2 and Muhammad Aslam as PW-3 whereas statement of Talat Abbas, 95/MHC was recorded as CW-1, statement of Mohsin Raza 841/C was recorded as CW-2, statement of Ilyas, A.S.I. was recorded as CW-3, statement of Dr. Muhammad Rehmat Ullah was recorded as CW-4 and statement of Khadim Hussain 237/C was recorded as CW-5; after conclusion of the trial, while acquitting Nausher, Khuda Yar and Haq Nawaz (accused persons, mentioned above), learned Judicial Magistrate Section: 30, Bhowana/trial court convicted and sentenced the petitioner/convict *vide* impugned judgment dated: 30.07.2016; in this regard, relevant portions of the same are hereby reproduced as under: -

“JUDGMENT

30.07.2016

Brief facts of the case as per private complaint are that on intervening night of 23/24.10.2012, at about 11 PM, in the area of Chak No. 155 J.B, Tehsil Bhowana, P.s. Langrana, when complainant alongwith her sons Talib Hussain, Zahoor and Bakht Bibi w/o Saddique, was sleeping at the Dhari of one Saddique, accused persons while armed with firearms came on three cars and made hostage the complainant, Zahoor, Saddique and Bakht Bibi on gun point while accused Khuda Yar and Nawazish raised the "lalkara" that let the Talib Hussain not alive. That accused Nawazish gave a butt blow of gun, which hit on the left abdomen of Talib Hussain, second blow was given by accused Afzaal which hit on the right abdomen of Afzaal. Accused Khuda Yar gave a sota blow which hit on the left wrist of Talib Hussain while remaining accused also beaten him with the butt of the gun and sotas, as a result of which he sustained injuries on his person. That accused Afzaal raised "lalkara" that Talib Hussain is still alive, on which accused Muhammad Khan made straight fire of pistol, which hit on his left shoulder while remaining accused also made firing and went away. That motive behind the occurrence is that earlier a case FIR No.262/12 was got registered by accused Khuda Yar against Talib Hussain etc at P.S Tandlianwala, regarding the abduction and "Zina" of Sajida Bibi, which was cancelled in the light of her statement. That Sajida Bibi also filed suit for dissolution of marriage against her husband at Family Court Tandlianwala while accused had suspicion that it was got filed by Talib Hussain. That on 22.10.2012 when complainant alongwith his son Zahoor was home at his home,

accused Nausheer and Hakim came with Muhammad Aslam and admitted their guilt, whereupon complainant filed another application for nomination of said accused but local police, being collusive with the accused, declared them innocent. Hence, this private complaint.

2. After institution of this private complaint accused persons were summoned by learned predecessor vide order dated, 03.03.2014. thereafter on 14.10.2016 formal charge against accused namely Muhammad Khan, Haq Nawaz, Nausheer and Khuda Yar were framed u/s 324/337L2/F5/337D/148/149-PPC, to which they pleaded not guilty and claimed to be tried whereas the remaining accused were declared proclaimed offender due to their non-appearance in the court.

3. Whereupon complainant was directed to produce her evidence. Complainant Nooran Bibi herself appeared in the witness box as PW-1, she produced Talib Hussain, the alleged injured as PW-2, Muhammad Aslam as PW-3. Tallat Abbas 95/MHC appeared as CW-1, Mohsin Raza 841/C CW-2, Ilyas ASI/I.O as CW-3, Dr. Rehmat Ullah S.M.O THQ Hospital Bhowana as CW-4, Khadim Hussain 237/C CW-5 and learned ADPP closed his evidence.

4. Thereafter statements of the accused u/s 342 Cr.PC was recorded, whereby they denied the happening of the occurrence and agitated that this case was got registered against them due to support of accused Khuda Yar in returning of hand of Sajida Bibi, the abductee. Accused persons showed their ignorance about MLC and asserted that PWs are inter se related, hence they deposed falsely against them, being collusive with the complainant.

5. Accused did not opt to get record their statements under 340(2) Cr.PC, as well as to produce their defense evidence."

"7. In order to prove her contention complainant herself appeared in the witness box as PW-1 and in her examination in chief she almost stated the same facts as narrated in the private plaint EX.PB and application EX.PA. She stated that on intervening night of 23/24.10.2012, at about 11 AM she alongwith Talib Hussain, Bakkht Bibi, Saddique and Zahoor was sleeping at the "Dhari" of Saddique, accused persons while armed with firearms came and after appearance, accused Nawazish gave a butt blow of gun, which hit on the left abdomen of Talib Hussain, accused Afzaal also gave a butt blow of gun, which hit on the right abdomen of Talib Hussain while accused Khuda Yar gave a sota blow, which hit on the right forearm of Talib Hussain and accused Muhammad Khan made fire shot, which hit on the right side of the shoulder of the Talib Hussain near heart. The injured Talib Hussain while appearing in the witness box as PW-2 also stated that on intervening night of 23/24.10.2012 at about 11 PM when he alongwith his brothers Zahoor, Saddique and Bakht Bibi was sleeping, at the "Dhari" of Saddique, accused persons while armed with gun and sotas came there, accused Nawazish gave sota blow, which hit on his left abdomen, accused Afzaal gave a butt blow of gun, which hit on his right abdomen, accused Khuda Yar gave a sota blow, which hit on his left forearm and accused Muhammad Khan made a fire shot of pistol, which hit on his left side near heart. He further stated that remaining accused were also present there who also beaten him. Muhammad Aslam while appearing in the witness box as PW-3 stated that on 27.10.2012, accused Hakim Ali and Nausheer came to him and told that they made firing upon Talib Hussain.

8. Tallat Abbas 95/MHC while appearing in the witness box as CW-1 stated that on 26.10.2012, he registered the instant FIR Exh.CWA. Mohsin Raza 841/C while appearing in the witness box as CW-2 stated that on 13.11.2012, when he was posted at Choki Mangoana, accused Afzaal got recovered rifle P-1 to Ilyas ASI/I.O in his and presence of Khadim Hussain, Imran & Iqbal constable, which was taken into possession vide recovery memo. Ilyas ASI while appearing in the witness box as CW-3 stated that on 26.10.2012 he visited the spot, prepared site map EX.CWD, recorded statements of the witnesses u/s 161 Cr.PC and injured. He further stated that on 13.11.2012 he recovered rifle 222 on pointation of accused Afzaal and on 17.11.2012 he recovered Sota on pointation of accused Haq Nawaz, vide recovery memo

EX.CWD. He also stated that as per his investigation accused Akram, Akhtar, Kazim, Hakim, Nawazish, Noor, Khuda Yar, Nausheer were not found at the place of occurrence while presence of accused Muhammad Khan, Haq Nawaz, Afzaal and Shama was established at the place of occurrence. He also stated that as per his findings accused Muhammad Khan was not armed with any weapon and he did not injure the Talib Hussain. Khadim Hussain 237/C appeared in the witness box as CW-5 and stated that on 17.11.2012 Ilyas ASI, the investigating officer recovered a Sota P-2 on pointation of accused Haq Nawaz, vide recovery memo EX.CWD in his and presence of constable Iqbal.

9. Dr. Rehmat Ullah S.M.O THQ Hospital Bhowana appeared in the witness box as CW-4 and stated that on 24.10.2012 he was posted as S.M.O at THQ Bhowana, Mr. Talib Hussain was brought by Khadim Hussain Constable with injury statement, rapat No. 06 dated 24.10.2012, EX.CW-E. There was history of firearm injury, shirt and vest were blood stained having corresponding holes. His observations as as under:-

Injury No.1.

A lacerated wound of 1.1 CM X 1cm with inverted margins on front of left upper chest with corresponding exit wound of 2.5CM and 2 CM on back of right middle chest. Corresponding holes on blood stained clothes (shirt and vest) were present. X-ray of chest was advised. After the examination due to critical condition patient was referred to Allied Hospital Faisalabad for expert management. The injury was kept under observation. This injury was inflicted by firearm weapon while probable duration of injury was within last 6 hours. EX.CW-F is carbon copy of his medico legal report while EX.CWF/1 is sketch of injuries.

On 25.10.2012, he issued a corrigendum to SHO P/S Langrana, regarding this injured, vide letter No. 405. As the patient was in critical condition due to firearm injury in chest with profuse bleeding and dyspnoea. Following blunt injuries were missed un-intentionally in MLC No. 1265/12. So, these injuries should be considered as part of MLC No. 1265/12. This corrigendum is his hand written and bears his signature EX.CW-G.

Injury No.2

Contused swelling of 7cm X 2cm on right lateral abdominal. Ultrasound of abdomen was advised.

Injury No.3

Contused swelling of 6cm X 3cm front of left abdomen, 4CM from midline.

Injury No.4

Contused swelling of 8cm X 7cm on back of left forearm, lower part. X-ray of left forearm was advised.

All these injuries were kept under observation. These Injuries No.2, No.3 and 4 were inflicted by blunt means and the probable time was within last 24 hours. The EX.CW-G is his original document of corrigendum.

Declaration of Kuo injuries.

Keeping in view the X-ray, report Ultrasonography reports and operation notes of Allied Hospital Faisalabad injuries were declared as under:

1. As there was fracture of shaft of ulna so, the injury No. 4 was declared "Jurh Ghair Jaifa Hashima" u/s 337 F5 PPC.

2. According to abdominal USG and operation notes no visceral injury was noted so the injury No.2 and 3 were declared as u/s 337-L2 PPC.

3. According to operation notes there was chest injury on left side where 200-300 ml, blood was drained and chest tube was passed. Keeping in view this report injury No.1 was declared as "Jurh Jaifa u/s 337-D PPC. About spinal injury related to spinal cord caused by injury No.1 was reserved till discharge of the patient from the hospital. His declaration about these injuries is EX.CWH.

10. Perusal of record transpires that instant FIR was registered against ten nominated accused persons, namely Muhammad Khan, Afzaal, Khuda Yar, Haq

Nawaz, Akram, Kazim, Nawazish, Noor, Akhtar and Shamaan whereas two accused namely Hakim Ali and Nausheer were nominated by the complainant through her supplementary statement on 04.11.2012. Record further depicts that out of total twelve accused six accused persons namely Akram, Kazim and Nawazish were declared innocent by the police with observation that they were found not present at the spot. Likewise, about two other accused Khuda Yar and Nausheer Noor I.O also opined that they were not present at the place of occurrence while about accused Muhammad Khan I.O observed that he was not armed with any weapon and he did not injure the Talib Hussain.

11. Being dissatisfied with the investigation of the police complainant filed instant private complaint EX.PB, against all the accused persons who were summoned after recording cursory statement of the complainant and her witnesses but except accused Nausheer, Muhammad Khan, Khuda Yar and Haq Nawaz, accused persons did not appear to face the trial and ultimately they were declared proclaimed offender. However, the aforesaid accused persons appeared in the court and face the trial. Record signifies that no specific and distinctive role has been attributed to the accused Haq Nawaz and Nausheer in the application EX.PA and complaint EX.PB and even during the evidence of complainant and injured as PW-1 & PW-2 respectively. Further, no alleged weapon of offence was recovered from the possession of the accused Nausheer during the investigation whereas a sota has been shown to be recovered from the possession of accused Haq Nawaz but it has not been alleged by the complainant that he actively participated in the occurrence or he did any overt act during the occurrence. Accused Khuda Yar is though nominated in the FIR with specific role of causing injury on the left wrist of the injured Talib Hussain but surprisingly complainant while appearing in the witness box as PW-1 stated that he caused injury on the right forearm of the injured Talib Hussain while said Talib Hussain as PW-2 stated that he caused injury on his left forearm. In the circumstances, it is obvious that there is material contradiction between the statements of the complainant as PW-1 and injured Talib Hussain as PW-2 as to causing of injury by accused Khuda Yar.

12. It is also pertinent to mention here that on 24.10.2012, police prepared the injury statement of the injured Talib Hussain EX.CWE, whereby only one injury of firearm was noted on his person and accordingly M.O issued MLC EX.CWF, showing one injury of lacerated wound on front of left upper chest, with corresponding exit wound but astonishingly on the very next day he issued a corrigendum EX.CWG, observing that three other injuries were also found on the person of the injured and as per statement of the M.O same could not be mentioned on the first MLC due to critical condition of the injured. This fact casts serious doubts as to veracity of remaining injuries No. 2 to 4 of the injured and suggests that these injuries are after thoughts and manipulated.

13. Keeping in view the aforementioned facts and circumstances, case of the prosecution to the extent of accused Nausheer, Haq Nawaz and Khuda Yar is highly doubtful and it is settled law that benefit of doubt, how slightest it may be, is always given to the accused. Therefore, by extending benefit of doubt accused Nausheer, Khuda Yar and Haq Nawaz are hereby acquitted from the instant case. Their sureties stand discharged from liability.

14. So far as, role of accused Muhammad Khan is concerned, as per version of the complainant he caused injury with the fire shot of pistol on the person of injured Talib Hussain on the left side of his chest near shoulder. Complainant and injured Talib Hussain are also in line about the role of the accused Muhammad Khan. They categorically stated that he made fire shot of pistol, which hit on left side of the injured Talib Hussain on chest near heart and left shoulder. Injury statement EX.CWE and MLC EX.CWF of the injured also fully corroborate the stance of the complainant to the extent of this injury. Rehmat Ullah M.O as CW-4 clearly stated that he found lacerated wound of 1.1CM X 1CM, with inverted margins on front of left upper chest, with corresponding exit wound of 2.5CM and 2CM on back of right middle chest of the injured. He further stated that after the examination due to critical condition patient was referred to Allied Hospital Faisalabad for expert management. He also

observed that injury was inflicted by firearm weapons, which was later on declared as u/s 337D-PPC (jurh Jaifa), keeping in view X-ray reports, ultrasonography report and operation notes of Allied Hospital Faisalabad. The said fire arm injury is on vital part of the injured Talib Hussain which establishes that accused Muhammad Khan made fire shot with the intention to cause death of the injured Talib Hussain and attempted to commit his murder. Counsel for the accused argued that during investigation no alleged weapon of offence was recovered from the possession of accused Muhammad Khan and it was also found that he did not make any fire shot on the person of the injured Talib Hussain. Needless to say that opinion of the police is not binding upon the court, particularly when the ocular account i.e. statement of the injured and eye witnesses and medical evidence are supporting each other and secondly the recovery of weapon of offence is just a corroborative piece of evidence and cannot be treated as substantial evidence. Ocular testimony of the complainant, being eye witness and statement of the injured are trust worthy and in-consonance with medical account.

15. In these circumstances, I am of the view that complainant has successfully proved her case to the extent of accused Muhammad Khan, s/o Naseer, therefore he is convicted of offence u/s 324-PPC and is sentenced to simple imprisonment of five years and he shall also be liable to pay fine of Rs. 20,000/- and in case of non-payment of fine he shall further undergo simple imprisonment for the period of fifteen days. The injury caused by the accused Muhammad Khan has been declared as 337-D-PPC, therefore he is also convicted of the offence u/s 337-D PPC. Record depicts that he is previous non convict, non record holder, thus keeping in view the spirit of section 337N2-PPC, he shall be liable to pay 1/3 arsh of the diyat, to the injured Talib Hussain, according to notification for the year 2012 & 2013, which is Rs. 844,024/-, which will be paid in lump sum and convict shall also remain in jail till the payment of amount of Arsh. The benefit u/s 382B Cr.PC is also extended in favour of convict. The sentence shall run concurrently with the other sentences, if any. The convict Muhammad Khan s/o Naseer is on bail, he is taken into custody. Warrant of sentence be issued in the name of Superintendent District Jail Jhang. Copy of this judgment is delivered to the convict Muhammad Khan free of cost. Case property, if any, be dealt in accordance with law.”

(emphasis added)

Being aggrieved, petitioner challenged aforementioned convictions and sentences through appeal before learned Sessions Judge, Chiniot whereas Mst. Nooran Bibi (complainant of the case) preferred revision petition seeking enhancement of the sentences awarded to the petitioner; appeal filed by the petitioner was partly allowed whereas revision petition filed by complainant of the case was dismissed by the learned Additional Sessions Judge, Chiniot *vide* impugned judgment dated: 14.03.2017; relevant portion of the same in this regard is hereby reproduced as follows:-

*“12. After hearing the learned counsel for the appellant, learned counsel for the complainant and ADPP for the state and having gone through the record of the case with their able assistance, it has been observed that learned trial court observed certain material contradictions in the statements of complainant and injured/Pw.1. Talib Hussain, regarding injuries caused by others co-accused persons. **So far as role of present appellant Muhammad Khan is concerned, the single fire-shot injury mentioned in injury statement Ex.CWE and MLC, Ex.CW.F, issued by Medical Officer is attributed to him. The seat of injury is***

near to his left shoulder on upper side of chest. Injured Talib Hussain categorically stated that Muhammad Khan made this fire-shot. Complainant as Pw.I attempted to state in line with crime report, but injured Talib Hussain did not name his mother Noran Bibi complainant as present at the time of occurrence, or eye witness, during his examination in chief. So, the presence of complainant at the time of occurrence stands doubtful. No other independent /private/eye witness has been produced by prosecution out of Zahoor, Bakhat Bibi or Siddique, named by injured during his evidence.

13. Now coming to nature of injury as 337-C – “Jalfah is defined as injury extending to the body cavity of trunk”. Cavity fairly means hollowness. The seat of Injury would be on chest cavity or thoracic cavity which is the cavity in the vertebrate body enclosed by the ribs between the diaphragm and the neck containing the lungs and heart, i.e., vital organs, but in the case in hand, neither the fire-shot injury damaged any of these vital organs, nor the ribs. Medical Officer who examined the injured on 24.10.2012 did not find this injury attracting 337-D or extending to the body cavity of trunk. In the situation supra and in absence of any other medical evidence on record to establish the fire-shot injury effecting the body cavity, and not the muscles and flesh only, the attraction of 337-D is not safe. This situation is coupled with the prima-facie non-framing of charge under this section, rather later addition of 337-D with pen without initial signatures of the learned trial Magistrate. Therefore, neither the framing of charge u/s 337-D, nor the attraction of this offence is made out, therefore, conviction on this score is set-aside.

14. Although complainant party has denied the presence of Sajida Bibi with injured Talib Hussain at the time of occurrence but they have alleged the doubt of abduction of Sajida Bibi qua the injured Talib Hussain, as "motive of the occurrence". Perusal of record suggests of defence counsels during evidence of Pws and Cw.3. Muhammad Ilyas show that Sajida Bibi was statedly abducted by Talib Hussain on 2.7.2012 who came back on 8.7.2012, later to that her father got registered FIR No.262/2012 in P.S Sadar Tandiawala district, Faisalabad against Talib etc in this regard. Thereafter to get the favourable statement of Sajida Bibi in his favour, statedly Talib Hussain re-abducted her, and at the time of occurrence in hand, she was with Talib and was taken back by her family and accused party. At present Sajida Bibi has died. Injured Talib Hussain and 3 others have been exonerated by the learned trial court, by observing that Sajida Bibi/victim vide her statement u/s 164 Cr.P.C dated 25.9.2012 exonerated the accused persons from commission of crime. This date of her statement u/s 164 Cr.P.C, i.e. 25.9.2012, falls in between her earlier abduction on 2.7.2012 and return on 8.7.2012, and the later occurrence in hand dated 23/24.10.2012.

15. Adverting to the supra facts, evidence of injured Talib Hussain and seat of injury caused by fire shot of Muhammad Khan, commission of offence u/s 324 PPC stands proved and he has been rightly convicted by learned trial court u/s 324 PPC. However, considering the earlier episode and invitation of luckless event by the injured himself, without any direct enmity of Muhammad Khan with the injured Talib Hussain, Muhammad Khan appellant who is confined in jail, his sentence is reduced to simple imprisonment of 2 years and he shall also be liable to pay fine of Rs.20,000/- and in case of non-payment of fine he should further under go simple imprisonment for the period of fifteen days.

16. As far as injury caused by fire-shot of Muhammad Khan is concerned, the same is an entry and exit wound as per record exposure of without fracture of bone. So, the same is attracting section 337F3 PPC, and the basic punishment provided for section 337F3 PPC being Daman, whereas the punishment of imprisonment as discretionary, in this case of single fire-arm injury, in the absence of any previous record of accused, he is convicted u/s 337F3 PPC and sentenced to pay Rs.20,000/- as Daman. In case of default in payment be kept in jail till the payment of amount of Daman.

17. *Although the complainant has requested to enhance the sentence of the accused, but in the light of supra detailed discussion, the assertion of complainant regarding enhancement of sentence is not convincing.*

18. *The upshot of above discussion is that criminal appeal is partly allowed in the above narrated terms, whereas revision petition filed by Nooran Bibi, complainant is dismissed."*

(emphasis added)

3. Feeling aggrieved, petitioner has filed instant criminal revision petition before this Court wherein notice was issued to the State and respondent No. 2/ complainant.

4. Learned counsel for the petitioner has submitted that both the impugned judgments (mentioned above) are against the law as well as facts of the case; adds that prosecution remained unable to prove its case beyond shadow of reasonable doubt; finally prays for setting-aside the impugned judgments and clean acquittal of the petitioner from this case.

5. Conversely, learned Deputy Prosecutor General assisted by learned counsel for the complainant has submitted that prosecution has proved its case against the petitioner up to hilt while producing confidence inspiring evidence; finally prayed for dismissal of this revision petition.

6. Arguments heard and available record perused.

7. By now it is well settled that while exercising powers under revisional jurisdiction, this Court has to only look legality, correctness, regularity and propriety of the proceedings of the Courts below rather than to have a full-fledged reappraisal of evidence and in this regard, guidance has been sought from the case of **"KHADIJA SIDDIQUI and another versus SHAH HUSSAIN and another"** (PLD 2019 Supreme Court 261); relevant portion from its paragraph No.18 is hereby reproduced: -

"Apart from that the High Court ought to have appreciated that it was only seized of revision petitions and not an appeal and in exercise of its revisional jurisdiction the High Court ought to have confined itself to correctness, legality, regularity or propriety of the proceedings of the courts below rather than embarking upon a full-fledged reappraisal of the evidence, an exercise fit for appellate jurisdiction."

It goes without saying that while appreciating evidence particularly ocular account in a “**murder**” case, it is kept in mind that recipient of the injuries has died and not in the witness box to tell that who has caused injuries to him; therefore, circumstances including natural or as per chance presence of eyewitnesses at the place of occurrence, possibility of their seeing the occurrence with exactness, telling the occurrence with accuracy and other factors including their own grudges, if any, regarding involvement of the accused in the case, chances of exaggerations, false implication and corroboration of their testimony alongwith other relevant facts have to be seen whereas in the “**hurt**” case, recipient of the injury i.e. victim having stamp of injury on his body, appears before the Court, his presence at the place during the occurrence usually cannot be denied, he tells about the person(s) who caused injury to him; though intrinsic value of his testimony is to be tested on the touchstone of principle of appreciation of evidence yet minor discrepancy due to passage of time is to be overlooked and when credit of his testimony has not been impeached rather same appeared as truthful, cogent, convincing and reliable as well as confirmed by the medical evidence, then it establishes the allegation.

It is relevant to mention here that in this case, prosecution witnesses were subjected to searching cross-examination but anything favourable to present petitioner could not come on the record rather they remained coherent, consistent and credibility of their testimony could not be minimized/impeached to the extent of present petitioner; any material could not be brought on record to establish that prosecution witnesses were having any reason to falsely involve the petitioner in the case; even otherwise, presence of Talib Hussain (injured witness/PW-2) who was having stamp of receiving firearm injuries on his body at the “time and place” of occurrence, is beyond doubt and his testimony carries more evidentiary value; in this regard, guidance has been sought from cases of “**ALLAH DAD and others versus MUHAMMAD NAWAZ and others**” (2001 SCMR 1111), “**MUHAMMAD SADIQ versus THE STATE**” (2003 SCMR 736) and “**AQIL versus The STATE**”

(2023 SCMR 831). Therefore, ocular account produced by the prosecution to the extent of present petitioner is confidence inspiring, truthful and reliable.

It is also relevant to see that occurrence in this case took place in the year 2012 and statements of witnesses of ocular account i.e. Mst. Nooran Bibi (complainant/PW-1) and Talib Hussain (injured of the case/PW-2) were recorded in the year 2016. Minor inconsistencies and discrepancies do appear in the statements of witnesses with the passage of time; however, such inconsistencies/ discrepancies cannot dislodge the case of prosecution; in this regard, case of **“SAJID MEHMOOD versus The STATE”** (2022 S C M R 1882) and **“MUHAMMAD BASHIR and another versus The STATE and others”** (2023 S C M R 190) can be safely referred.

As per ocular version, Muhammad Khan (petitioner) caused firearm injury at right side of shoulder of Talib Hussain (injured/PW-2); Dr. Rehmat Ullah (CW-4) conducted medical examination of said injured, issued MLC (Ex.CW-F) and observed the wound of 1.1cm x 1 cm with inverted margins on front of left upper chest with corresponding exit wound of 2.5cm and 2 cm on back of right middle chest; so, medical evidence comprising of Medicolegal Examination Certificate (Ex.CW-F) of Talib Hussain (injured/PW-2) and statement of Dr. Rehmat Ullah (CW-4), has confirmed/supported afore-mentioned ocular version.

So far as attempt of the Investigating officer to extend concession to the petitioner during his statement before trial court that though petitioner participated in the occurrence yet he was not having firearm weapon with him is concerned, suffice it to say that same is without any substance, mere *ipse dixit* and not based upon any supportive, cogent material/evidence; even any witness was not produced during trial of the case in support of said opinion of the Investigating Officer. It is trite law that concession extended by Investigating Officer without production of witnesses in support of the same is inadmissible in evidence; in this regard, guidance has been sought from the case of **“MUHAMMAD IQBAL and others versus**

MUHAMMAD AKRAM and another” (1996 SCMR 908) wherein it has been held as under: -

“The reasons given by the High Court for giving benefit of doubt to the accused are artificial and imaginary. The opinion of the Police about the innocence of Muhammad Akram or with regard to alibi pleaded by him before the Police during the investigation, which according to the Investigating Officer was supported by a number of witnesses, lack evidentiary value. The accused has not produced the witnesses in the Court in proof of his alibi. Needless to say that opinion of the Police about the guilt or innocence based on statement of witnesses not produced before the Court is inadmissible in evidence.”

As far as non-recovery of weapon of offence from the petitioner is concerned, suffice it to say that recovery is mere corroboratory piece of evidence and when ocular account is otherwise confidence inspiring, then mere non-recovery is not necessary for conviction. Even otherwise, non-recovery of weapon from the petitioner by the Investigating Officer is quite understandable because he (Investigating Officer) was toeing the line of his opinion that petitioner was not equipped with firearm weapon.

So far as acquittal of co-accused persons namely Nausher, Khuda Yar and Haq Nawaz *vide* impugned judgment dated: 30.07.2016 passed by learned Judicial Magistrate Section: 30, Bhowana/trial court is concerned, suffice it to say that Nausher was not nominated in the application (Ex.PA) for registration of case; as per said application (Ex.PA), Khuda Yar and Haq Nawaz did not cause any firearm injury to anyone in the occurrence rather Khuda Yar with co-accused raised lalkara and then he gave blow with stick which hit on the wrist of left hand of Talib Hussain (injured) whereas Haq Nawaz along with other co-accused persons was alleged with collective role of causing injuries to Talib Hussain but in the Injury Statement (Ex.CWE) of Talib Hussain as well as in the medico-legal examination certificate (Ex.CWF) issued by Dr. Rehmat Ullah (CW-4), only one firearm entry and one firearm exit wound were mentioned; however, on the next day, he issued a corrigendum (Ex.CWG) while observing that three other injuries were also found on the person of the injured but the trial court did not give any weight to this aspect i.e. corrigendum and due to said collective reasons

while extending benefit of doubt, Nausher, Haq Nawaz and Khuda Yar (co-accused persons, mentioned above) were acquitted in the case; in this regard, paragraphs No.12 and 13 of the impugned judgment dated: 30.07.2016 passed by trial court are relevant/self-explanatory (which have already been reproduced above); even otherwise, when in such circumstances, said co-accused persons have been acquitted as an abundant caution, then their acquittal cannot have any adverse effect on the prosecution's case regarding the remaining accused i.e. present petitioner; in this regard, case of **"SHAHEEN IJAZ alias BABU versus The STATE"** (2021 SCMR 500) can be safely referred wherein it has been held as under: -

"Petitioner's sole nomination as being the one to have targeted the deceased with five entrance wounds is a circumstance that reflects positively on complainant's conduct; nomination of co-accused with inconsequential roles notwithstanding, their presence at the scene followed by acquittal, seemingly out of abundant caution, does not tremor prosecution's mainstay qua the role assigned to the petitioner. In the totality of circumstances, presence of petitioner's sons in an incident, coming about next door, would not by itself bring them into the community of intention and as such their acquittal cannot be viewed as a circumstance casting away the entire case."

Now coming to the defence version, petitioner neither produced any evidence in his defence nor himself appeared on oath under Section: 340 (2) Cr.P.C. for dislodging of allegation levelled against him; therefore, defence version is liable to be discarded. Now when Court has kept aforementioned prosecution version, which is based upon statements of eyewitnesses including injured/witness, who have faced acid test of cross-examination and supported by medical evidence in the case, in juxtaposition with defence version, which comprises upon only concession extended by the Investigating Officer and bald claim of appellant contained in his statement recorded under Section 342 Cr.P.C, then it has been observed that defence version stands nowhere and same has neither been proved nor found as probable/possible whereas prosecution version has been found as straightforward, plausible and reliable to the extent of present petitioner; therefore, prosecution has proved its case against the petitioner upto hilt, beyond any shadow of doubt.

Nutshell of the above discussion is that in peculiar facts and circumstances of the case, there is no illegality in the convictions recorded and sentences awarded to the petitioner rather same are perfectly valid and quite in accordance with settled principles of law on the subject as well as facts of the case, therefore, same need no interference. It again goes without saying that Supreme Court of Pakistan in the case of **“FAROOQ HUSSAIN and others versus SHEIKH AFTAB AHMAD and others”** (PLD 2020 Supreme Court 617) has clearly observed that if the Court having examined the decision challenged before it, is satisfied with its reasoning and conclusions and is of the view that it does not call for any interference, then Court can simply endorse the impugned decision and adopt the reasoning of the Court below; relevant portion of said order is hereby reproduced below: -

“It is emphasized that if this Court, having examined the judgment challenged before it, is satisfied with its reasoning and conclusions and is of the view that it does not call for any interference, this Court can simply endorse the impugned judgment and adopt the reasoning of the court below. In such a case, re-tracing the same path travelled by the court below appears to be an unnecessary exercise and a waste of public time-time which can be allocated to other cases where the decisions of the courts below have been overturned or modified. Finding no reversible error in the judgment, a concise, simple order can suffice. On the other hand, if the Court is to reverse or modify the judgment of the court below, the reasons for the reversal or modification must be set forth.

3. This approach adopted by the court, is by no means a short-cut which is offensive to fair trial under Article 10-A of the Constitution nor does it in any manner undermine due process and fair-play. It is simply a creative way forward that spares the Court from writing opinions where a mere adoption of a well-reasoned judgement of the court below through a short order serves the purpose adequately.”

8. In view of what has been discussed above, instant criminal revision petition is without substance and is hereby **dismissed**. Order dated: 21.06.2017 passed by this Court in CrI. Misc. No.01/2017 with respect to suspension of execution of sentence of the petitioner is hereby recalled. Office is directed to transmit copy of this judgment to the trial court for execution of remaining sentence of the petitioner in accordance with law.

(Farooq Haider)
Judge

Approved for reporting

(Farooq Haider)
Judge