

IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(Judicial Department)

Cr.A No.167-B of 2025

Hameed Ullah etc
Vs
The State etc

JUDGMENT

For appellant: Mr. Khalid Riaz Khattak, Advocate.

For State: Mr. Inam Ullah Khan Niazi, State counsel.

For respondent: Messrs. Masood Adnan, and Tauqeer
Ahmad Marwat, advocates.

Date of hearing: 16.10.2025.

ABDUL FAYAZ, J--- This appeal under section 410 Cr.P.C is directed against judgment dated 22.07.2025 passed by the learned District & Sessions Judge, District Lakki Marwat in a criminal case FIR No.716 dated 13.08.2022 under sections 334/337 L(ii)/34 PPC registered at Police Station Naurang, District Lakki Marwat, whereby, the appellants were convicted and sentenced as under:

- i. Under section 334 PPC, to pay 1/6th of Diyyat amount which comes out to be 13,50,659.17/-

- ii. **Under section 337-L(ii) PPC, to pay Rs. 50,000/- (each of the accused) as daman in lump sum.**

Benefit under section 382-B Cr.P.C was extended to the appellant.

2. Feeling aggrieved, the appellants have assailed through Criminal Appeal No.167-B/2025 titled "*Hameed Ullah etc. v. The State etc.*" the legality of the impugned judgment as well as the sentence awarded therein, whereas the complainant, being dissatisfied with the quantum of sentence, has preferred Criminal Revision No.56-B/2025 titled "*Atta Ullah v. The State etc.*" seeking enhancement thereof. Since both these matters arise out of one and the same judgment, they are being decided together through this single judgment.

3. Briefly stated, the prosecution case as set forth in the *Murasila* is that the complainant/injured (PW-01) reported the occurrence to the local police at the Emergency Room of THQ Hospital, Serai Naurang, stating that on **03.08.2022**, at about **18:45 hours**, he was proceeding towards the shop of one Sher Ahmad Khan to purchase household articles. When he reached near the house of one Najib Ullah, situated in village Zafran Abad, the accused persons, namely **Hameed Ullah son of Mir Payo Khan** and **Naimat Ullah son of Bostan**, both

Khattak by caste and residents of village Zafran Abad, appeared there, caught hold of him, and started beating him with kicks, fists and sticks. During the occurrence, accused Hameed Ullah caught hold of the complainant while accused Naimat Ullah bit his right ear, as a result of which he sustained injuries on his right ear and nose. The complainant further stated that he was rescued by the persons who were playing cricket near the place of occurrence, where-after both the accused fled away from the spot. The occurrence was also witnessed by other persons present nearby. He added that there was no previous enmity; however, some hot words had been exchanged between them earlier in the morning. Hence, the instant FIR.

4. After completion of investigation, a complete challan was submitted against the accused for commencement of trial. The prosecution, in support of its case, produced and examined as many as eleven witnesses. On conclusion of the prosecution evidence, the statements of the accused were recorded under Section 342, Cr.P.C., wherein they denied the allegations but neither opted to appear as witnesses on oath nor desired to produce any evidence in their defense. After hearing

the learned counsel for the parties and appraising the material on record, the learned Trial Court, vide the impugned judgment, convicted and sentenced the appellants as mentioned hereinabove. Hence, the instant appeal has been preferred against the judgment of conviction, whereas the complainant has filed a connected criminal revision seeking enhancement of the sentence.

5. Arguments heard. Record perused.

6. Although the learned Trial Court has dealt with the matter in a comprehensive manner and, after due appraisal of the evidence available on record, proceeded to convict the appellant, yet this Court is required to examine whether the prosecution has been able to establish the charge against the appellants beyond reasonable doubt. It also calls for consideration whether the appellants have been implicated with mala fide intent, particularly in the backdrop of the alleged motive between the parties, and further, whether the occurrence took place in the manner and sequence as narrated by the injured complainant.

7. For proper analysis of the case, I would like to reproduce the statements of the injured/complainant and

the contents of the FIR as well as the statement of the doctor who examined the injured/complainant.

"That on 03.08.2022, I went to the shop of one Sher Ahmad Khan, in order to purchase house hold articles. When I reached near the house of one Najib Ullah situated in village Zaufran Abad, it was about 18:45 hours, in the meantime, Hamid Ullah s/o Mir Qarar and Naimat Ullah s/o Bostan, cast Khattak, residents of village Zaufran Abad emerged and caught hold of me and also started beating me with their kicks, fists and sticks. After beating me, Hamid Ullah accused caught hold of me while accused Naimat Ullah bit me at my right ear. Due to beating of above said two accused, I sustained injuries upon my nose and also due to the bite of Naimat Ullah, I was injured on my right ear. Thereafter, I was rescued by the persons who were playing cricket near the place of occurrence. After the commission of offence, both the accused fled away from the spot. The occurrence was also witnessed by other persons present near the spot. There was no motive with the accused, however in the morning hot words were exchanged between us. After the occurrence I was shifted to THQ hospital, Serai Naurang. Where on the arrival of local police, I reported the matter about the occurrence. My report was reduced into writing, contents of which were read over to me, which I admitted correct and signed the same in English as a token of its correctness. After registration of FIR, I also pointed out the place of occurrence to the Investigating Officer on 13.08.2022, who prepared site plan at my instance as well as the pointation of other eyewitnesses. During spot inspection, I produced my lost worn garments, i.e. one Qamiz of silver colour, stained with blood, to the Investigating Officer, which Investigating Officer took into his possession and sealed into parcel, vide recovery memo, which correctly bears my signature as one of its marginal witnesses. I have also produced medical prescription regarding my treatment to the Investigating Officer. My statement was recorded by the Investigating Officer. I charge both the accused for commission of offence."

"عطا اللہ ولد رحمت اللہ سکھ نار بھمل احمد زئی بھر 40/39 شانتی کارڈ نمبر: 11201-0338878-9، موبائل نمبر: 0300-9591624 بحالت مجردیت بمقام ایمر جنسی روم THQ ہسپتال سرانے نورنگ بمورخہ 03.08.2022 بوقت 19:30 بجے رپورٹ کرتا ہے کہ امروز میں بغرض سودا سلف لینے دکان اڑاں میر احمد خان واقع زعفران آباد جارہا تھا۔ جب بالقابل خانہ نجیب اللہ واقع زعفران آباد پہنچا۔ کہ بعمل قریب 18:45 بجے مسیان (۱) حمید اللہ ولد میر قرار (۲) نعمت اللہ ولد بوستان قوم تنک ساکنان کو کلمہ زعفران نمودار ہو کر فوراً مجھے پکڑ کر لا تھوں، مکھوں اور ڈنڈوں سے زدوکوب کرنا شروع کیا۔ بعد زدوکوبی حمید اللہ بالانے پکڑ کر نعمت اللہ نے میرے دائیں کان پر پک لگایا۔ جو ہر دو کسان تنہ کرہ بالا کے زدوکوبی سے میں ناک پر جبکہ نعمت اللہ

بالا کے چک لگانے سے میں دائیں کان پر زخمی ہوا۔ بعد وہاں کرکٹ کھیلے کسان نے آکر ان سے میری خلاصی کرائی۔ بعد وقوعہ ہر دو کسان متذکرہ بالا وقوعہ سے بھاگ پڑے۔ وقوعہ میرے علاوہ وہاں پر موجودہ گان نے چشم خود دیکھا ہو گا۔ سابقہ عداوت نہیں البتہ ملزمان بالا کے ساتھ صبح و پلا تلخ کلامی ہوئی تھی۔ میں بذریعہ ڈنڈا ہازد کو بکر کے زخمی کرنے کا اور کان پر چک لگا کر زخمی کرنے کا برخلاف ہر دو کسان متذکرہ بالا دعویٰ اراہوں۔ العبد کاروائی پولیس حسب گفتہ سائل رپورٹ حرف بہ حرف درج بالا ہو کر پڑھ کر سنانے و سمجھانے پر درست تسلیم کر کے زیر رپورٹ خود اپنا دستخط انگریزی ثبت کیا۔ جسکی میں تصدیق کرتا ہوں۔ معصوب کا نقشہ ضرر مرتب کر کے بغرض علاج معالجہ درائے ڈاکٹری زیر حفاظت کنسٹیبل محمد صدیق نمبر 921 حوالہ ڈاکٹر صاحب کیا گیا۔ بعد حصول میڈیکل رپورٹ زیر کاروائی حسب ضابطہ عمل میں لائی جائیگی۔ سریدست رپورٹ ہذا بغرض اندراج روزنامہ بدست کنسٹیبل شفقت اللہ نمبر 577 ارسال تھانہ ہے۔"

"That on 03.08.2022, at 7:25 pm, injured namely, Atta Ullah s/o Rahmat Ullah r/o village Nar Bakhmal Ahmadzai, aged about 39/40 years was brought to the hospital. On the same day, at 08:00 p.m, the injured Atta Ullah was produced before me by Sadiq FC No. 921 for medical examination. I examined the injured and found the following: -

Wounds:

Physical assault.

Patient vitally stable.

On examination,

Lower half helix portion lost extending for the middle to the lobe.

Excoriation mark of the medial canthus of the left eye.

Nature of Injury..... Grievous

Probable duration of injury.... 30 minutes to one hour.

After medical examination of the injured, I handed over the MLC Ex.PW-03/1 to the police constable. The MLC correctly bears my signature. My endorsement on the injury sheet is Ex.PW-03/2."

8. The prosecution case hinges primarily on the testimony of the injured complainant Atta Ullah (PW-01), whose account is direct, consistent, and medically corroborated. He has unequivocally stated that on 03.08.2022, at about 18:45 hours, while proceeding to a shop in village Zafran Abad, he was assaulted by the appellants by beating him with kicks, fists, and sticks,

and specifically, appellant Naimat Ullah bit his right ear, causing permanent injury. The complainant's narration is not only coherent but also finds support from the testimony furnished by Adnan Khan (PW-02) whose testimony also appears to be natural and confidence inspiring. The medical evidence furnished by PW-03, Dr. Muhammad Ishaq, who examined the complainant at THQ Hospital, Serai Naurang, the same evening.

9. The MLC (Ex.PW-03/1) records the following injuries:

“Lower half helix portion lost extending from the middle to the lobe.

Excoriation mark of the medial canthus of the left eye.

Nature of injury: Grievous.

Probable duration: 30 minutes to one hour.”

10. This medical evidence substantiates the complainant's assertion regarding the bite injury and the assault. The site plan as well as the recovery of bloodstained garments further buttresses the prosecution case.

11. As noted above, an eyewitness to the occurrence, Adnan Khan, was also examined as PW-02, whose testimony corroborates the complainant's version. Although, the name of the eyewitness was not mentioned

in the FIR, however, this omission alone does not render his testimony unreliable.

12. So far as injury No.2, i.e, Excoriation mark of the medial canthus of the left eye is concerned, that injury has not been attributed neither to the appellant Hamidullah nor to Naimatullah, therefore, nobody can be convicted and made responsible for the said injury.

13. It was argued on behalf of the appellants that the non-mentioning of the eyewitness's name in the FIR casts doubt on the veracity of his testimony. This contention, however, is legally untenable. The FIR is not an encyclopedic document and need not contain every detail or name of every witness. Its primary purpose is to set the criminal law in motion and provide a broad outline of the occurrence.

14. It is a well settled proposition of law that non-mentioning of a witness's name in the FIR is not fatal to the prosecution case if the witness's testimony is otherwise credible and confidence-inspiring. In the present case, the eyewitness was examined during trial, subjected to cross-examination, and his account remained unshaken. He had no apparent motive to falsely depose against the accused, and his presence at the scene was

natural and well explained. His testimony, therefore, cannot be discarded merely on the ground that his name was not mentioned in the FIR. Reference can also be made to "***Rahat Ali Vs. The State and another***" (2018 PCr.LJ 206), wherein it was observed:

"The significant piece of evidence before us is the statement of Abdar Ali Shah (PW-7). As stated earlier, he has not been named in the FIR to be the eye-witness of the occurrence. Learned counsel for the appellant during the course of his arguments vehemently urged that since the name of Abdar Ali Shah is not mentioned in the FIR, therefore, his testimony is not worth consideration. He was of the view that the safer course is to keep his statement out of consideration. We know that as a rule of prudent, Courts should keep out of consideration the testimony of a witness whose name is not figured in the FIR but it is not a rule of law. The Court in a fit case may go for consideration of the testimony of such a witness if it is corroborated with other reliable evidence on record and in this view of the matter, we would see as to whether Abdar Ali Shah has witnessed the occurrence and, if so, up to what degree it has been corroborated."

15. Even otherwise, if the statement of above said PW Adnan Khan is kept out of consideration, still I have before me the direct testimony of the complainant, which is already discussed above, is natural, trustworthy, and confidence inspiring. It finds complete support from the medical evidence as well as the circumstantial evidence. It was not convincingly shattered by the defence. The well entrenched principle of criminal jurisprudence is that it is not the quantity, but the quality of evidence which matters. Even a single testimony of a witness is sufficient

to sustain conviction if it has the ring of truth. Reliance is placed on *Muhammad Sadiq v. The State* (2022 SCMR 690), wherein the Supreme Court held:-

Even otherwise, if we keep aside the testimony of Mst. Zubaida Bibi (PW-6) even then the petitioner can be convicted on the *solitary* statement of Ahmed Nawaz (PW-7) as it is an established principle of law that testimony of a solitary eye-witness is sufficient to sustain conviction of an accused if the same rings true and inspires confidence and it is the quality of the testimony of a witness that has to be weighed and not the quantity of witnesses.

16. Now, the main question before this Court is whether the conviction of appellant No. 2, Naimat Ullah, under Section 334 PPC was legally justified, and whether appellant No. 1, Hameed Ullah, was rightly convicted.

17. The complainant clearly stated that he was attacked by both the accused and that Naimat Ullah bit his right ear, causing him the aforementioned injury. This version is supported by the medical report, which notes that the “lower half helix portion lost extending from the middle to the lobe.” The injury was described as grievous, but the report does not mention that there was permanent disfigurement or loss of function. There is no mention of amputation or severance of the ear, nor any lasting deformity.

18. Section 334 PPC applies only when there is dismemberment or permanent loss of a limb or organ. In

this case, the ear injury was partial and healed. Therefore, the injury does not meet the legal standard for *Arsh* under the scheme of Section 334 PPC. Nonetheless, the injury sustained by the complainant is not trivial, rather it involved a visible and painful wound to the ear, which, although not amounting to *Arsh*, qualifies as hurt attracting penal consequences. In the peculiar facts and circumstances of the case, and in view of the nature of the injury, this Court finds it appropriate to modify the conviction of appellant Niamat Ullah from Section 334 P.P.C to Section 337-A (i) PPC, read with Section 332 P.P.C. Accordingly, he is directed to pay a sum of Rs.100,000/- to the complainant as *Daman*. In default of payment, he shall remain in custody until payment of the said amount. He is accordingly taken into custody and sent to the District Jail, Lakki Marwat with a direction to the Jail Superintendent to execute the sentences according to law.

19. As regards appellant Hameed Ullah, the prosecution failed to attribute to him any specific act of injury. There is nothing on record demonstrating that Hameed Ullah shared a common intention with Naimat Ullah to cause the alleged injury. Mere presence at the

crime scene or passive involvement is not sufficient to sustain a conviction under the penal law. In the absence of any overt act, shared intent, or direct participation in the alleged injury, the benefit of doubt must be extended to appellant Hameed Ullah. He is accordingly acquitted of the charges leveled against him.

20. With these observations, this appeal is partly allowed, modifying the impugned judgment to the extent as aforesaid.

21. In view of the modification of conviction and sentence by partially allowing the Criminal Appeal No.167-B/2025, the connected Criminal Revision Petition No.56-B/2025, filed by the complainant seeking enhancement of sentence, is rendered infructuous. It is, therefore, dismissed.

22. The foregoing are the detailed reasons for my short order of even date.

Announced

06.10.2025

Muhammad Bilal S.G

672
4/11
SCANNED
04 NOV 2025
Khalid Khan

(S.B) Hon'ble Mr. Justice Abdul Fayaz