

# ISLAMABAD HIGH COURT, ISLAMABAD

NO. \_\_\_\_\_ IHC/Jude. Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. Ctrl-Appel-271/2005

Titled Muhammed Irshad Vs The State

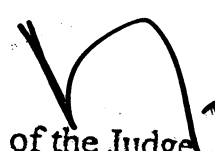
(a) Judgment approved for reporting

✓  
Yes / No

(b) Judgment any comment upon the Conduct of the  
Judicial Officer for Quality of the impugned  
judgment is Desired to be made.

Yes / No

(In case the answer is the affirmative Separate  
confidential note may be Sent to the Registrar  
drawing his Attention to the particular aspect).

  
Initial of the Judge

## NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

Judgment Sheet

**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

Crl. Appeal No. 271 of 2005

**Muhammad Irshad**

*Vs.*

**The State**

Appellant by: -  
(Muhammad Irshad)

**Muhammad Ilyas Siddiqui, Advocate**

Respondent by: -  
(Muhammad Sakhi)

**Sardar Muhammad Ishaq Khan, Advocate**

State by: -

**Malik Manzoor Ahmed, standing counsel**

Date of hearing: -

**12-11-2013**

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**Riaz Ahmad Khan J:-** This judgment is directed to dispose of present criminal appeal No. 271 of 2005, as well as criminal appeal No. 281 of 2006, arising out of one and the same judgment.

2. Appellant, Muhammad Irshad S/o Said Khan was convicted under Section 316 PPC and sentenced to 10 years as 'tazeer' and also to pay 'diyat' at the prevailing rates to the legal heirs of the deceased Mst. Ayesha Bibi in case F.I.R. No. 136, dated 30-06-2001, U/ss 302/148/149 PPC, Police Station Bhara Kahu, vide judgment dated 22-07-2005, passed by the learned Addl. Sessions Judge, Islamabad. Feeling aggrieved of the same, Muhammad Irshad filed present appeal No. 271 of 2005. Complainant Muhammad Sakhi also filed revision in this Court for enhancement of sentence awarded to Muhammad Irshad with the prayer that the sentence awarded to Muhammad Irshad accused may be enhanced and he may be convicted and sentenced under S. 302 PPC for qatl-e-amd of Mst. Ayesha Bibi. During pendency of said revision petition, learned counsel for petitioner, Syed Zafar Ali Shah submitted application for conversion of

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revision petition into appeal. The said application was accepted and said revision was converted into criminal appeal.

3. During pendency of appeal filed by Muhammad Irshad arguments were addressed, however, the then Hon'ble Chief Justice while dictating judgment observed that notice for enhancement was required to be issued to Muhammad Irshad, as he was sentenced under Section 316 PPC, instead of 302 PPC. This order was passed on 04-06-2008 in the revision filed by Muhammad Sakhi.

4. Learned counsel for the complainant Muhammad Sakhi argued the case regarding conviction of Muhammad Irshad with the prayer that his sentence be enhanced and he may be convicted under Section 302 PPC instead of S. 316 PPC. The rest of the claim regarding acquittal of the other accused was given up.

5. Brief facts of the case are that Muhammad Sakhi on 30-06-2001 lodged report Exh.PD/1 before S.H.O. Police Station Bhara Kahu, Islamabad, stating therein that he had land dispute with Muhammad Mushtaq and Muhammad Imtiaz, sons of Eidal Khan. In that respect, civil suits were pending in the civil court. It was further stated that at the back of his house, Muhammad Mushtaq etc. had agricultural land. They were digging a well in their land, but since the area was stony, so they were using gunpowder. According to complainant, he asked them to stop using gunpowder, as the same could cause damage to his house, but they were not adhering to the demand of the complainant. On the fateful day, at about 6:00 p.m. they fixed gunpowder in the land, wife of the complainant Mst. Ayesha Bibi, aged about 40/42 years, forbid them, but Muhammad Mushtaq and his brother Muhammad Imtiaz duly armed, with their companions, namely

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Muhammad Irshad S/o Said Muhammad being armed with hatchet, Muhammad Razzaq S/o Said Muhammad, armed with soti (stick), Muhammad Pervaiz s/o Aurengzeb armed with Laathi (stick), Muhammad Khurshid s/o Aurengzeb armed with soti (stick) attacked the wife of the complainant. Muhammad Irshad hit her with the blunt side of his hatchet on her head. On listening noise, the complainant alongwith Rehman, Wajid Nawaz, Shaukat Ali S/o Muhammad Sarwar attracted to the spot. Muhammad Mushtaq and Muhammad Imtiaz raised lalkara that the complainant party be killed. As a result, the accused attacked the complainant party. Muhammad Imtiaz hit Rehman with a brick, whereas Wajid accused hit Khurshid with soti; Pervaiz gave a blow of soti on the head of complainant, however, the injury was caused on his right eye. Because of the noise, many people attracted to the spot and the accused/party entered the house of the complainant. The complainant party in self-defence also attacked the accused. As a result of which, they were also injured. Thereafter, the complainant called Rub Nawaz, who got car and they took the injured Mst. Ayesha Bibi to the Poly Clinic Hospital. She was unconscious on the way, however, succumbed to the injuries in the hospital. On the said information, FIR No. 136/2001 was registered under section 302/148/149 PPC. In respect of the same occurrence, another FIR No. 137/2001, dated 01-07-2001, U/s 324/148/149 PPC was registered against Muhammad Sakhi S/o Allah Ditta, Rehman Nawaz and Wajid Nawaz Ss/o Muhammad Sakhi, Tariq Mehmood S/o Muhammad Nisar, Shaukat Ali S/o Muhammad Sarwar, Ikhlaq Ahmed S/o Sher Akbar and Talib Hussain S/o Muhammad Nazar, at Police Station Bhara Kahu. Evidence was recorded in both the cases. In case FIR No. 136, lodged by Muhammad Sakhi, Muhammad Irshad was convicted under S. 316 PPC and

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sentenced to 10 years R.I. as stated above, however, rest of the accused were acquitted. In second F.I.R. No. 137/2001 filed by Shamraiz Akhtar, the accused Rehman Nawaz was convicted and sentenced to 5 years R.I., accused Wajid Nawaz was convicted and sentenced to 4 years R.I. and accused Shaukat Ali was convicted and sentenced to one year, whereas rest of the accused were acquitted. The appeal against the said judgment was filed. During pendency of appeal, compromise was effected to the extent of accused Wajid Nawaz and Shaukat Ali and they were acquitted of the charge vide order dated 16-12-2005. However, as the accused Rehman Nawaz had served his conviction, so appeal to his extent was withdrawn. The appeal filed by Muhammad Irshad remained pending, though he had also served his sentence, but since notice for enhancement was issued, therefore, both the appeals were taken up and heard together.

6. Learned counsel for the complainant Muhammad Sakhi submitted that the site plan Exh.PG shows that in between land of Muhammad Sakhi and the accused Muhammad Mushtaq etc. there was a metal road. No doubt, the accused party was digging a well in their own land, but said well was near the house of the complainant party. Since the accused party was using gunpowder for digging purpose, therefore, the same could damage the house of the complainant party. The accused party from their own land had come to the land of complainant party and had attacked the wife of complainant Muhammad Sakhi. It was further submitted that the evidence also revealed that Muhammad Irshad accused had attacked the wife of complainant Mst. Ayesha Bibi with blunt side of hatchet. The injury was caused on her head, which resulted in her death. Learned counsel further submitted that the accused party were the aggressors. Furthermore, they had come prepared with a plan to commit offence, as sticks and hatchets were not required for

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digging purpose. Learned counsel further submitted that the learned Trial Court in the impugned judgment admitted that Muhammad Irshad accused had caused injury, but erroneously held that since the injury was caused with the blunt side of hatchet, therefore, intention was not to kill the deceased, therefore, sentenced the accused under S. 316 PPC. According to learned counsel for the complainant, it was immaterial as to whether injury had been caused with blunt side of hatchet or the sharp, but it would not denied that in the ordinary set of circumstances, the said injury could cause death and therefore, the accused was required to be convicted under Section 302 PPC and not under Section 316 PPC.

7. On the other hand, learned counsel for appellant/accused Muhammad Irshad submitted that the conviction was awarded on the basis of surmises and conjectures, as no recovery had been effected from the spot. Neither any hatchet nor any stick was recovered on the alleged place of occurrence, even blood was not found. Learned Trial Court also failed to take into notice the injury caused to Muhammad Irshad accused/convict. In addition to that, the accused party i.e. Muhammad Irshad etc. had received 13 injuries, whereas on the other side, only Muhammad Sakhi and his wife had received injuries. Learned counsel further submitted that there are material discrepancies in the statements of different witnesses. There was no evidence to show that the accused/party had planned the commission of offence, rather the evidence revealed that it was a sudden occurrence. Learned counsel further submitted that the occurrence did not take place in the manner as provided by the prosecution. The statements of eye-witnesses are full of doubts and the accused was entitled to benefit of doubt.

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8. We have heard learned counsel for the parties and have also perused the record.

9. In the present case, Shamraiz Akhtar had received 3 injuries, Muhammad Pervaiz had received 5 injuries, Abdul Razzaq received 2 injuries, Gulzaib Akhtar received 1 injury and Muhammad Irshad appellant had received two injuries, but since they were also accused in case F.I.R. No. 137/2001, so they did not appear as PWs in the present case pertaining to case F.I.R. No. 136/2001. In other case, their statements were recorded under S. 342 Cr.P.C. In the present case, Muhammad Sakhi, husband of deceased Mst. Ayesha Bibi had appeared as PW-5, eye-witness Rehman Nawaz appeared as PW-6. Sakhi Muhammad in his statement before the Court, submitted that as soon as his wife turned back to her house, Muhammad Irshad accused gave a blow on the head of his wife with the blunt side of hatchet. Similarly, Rehman Nawaz in his statement before the Court submitted that Muhammad Irshad convict had given blow to Mst. Ayesha Bibi on the back of her head. According to medical report, the deceased lady had received injury on the front of her head. Admitted position in the present case is that a scuffle had taken place between the parties. The presence of Muhammad Irshad convict/appellant on the spot cannot be denied, as he himself had received injuries. It has also been admitted that the parties had thrown stones on each other, but it has not been proved on record that Muhammad Irshad accused had caused injury to deceased Mst. Ayesha Bibi with the hatchet. Even the statement of eye-witnesses are belied by medical evidence, so in such like situation doubts arises that the occurrence had actually taken place in the way as described by the prosecution or not. The fact also cannot be denied that companions of Muhammad Irshad convict/appellant had also received injuries, whereas

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from the other side, only lady Mst. Ayesha Bibi had received injuries. The fact as to who was aggressor and who had been aggressed upon is also a question, which could not be proved. The accused party was digging a well in their own land near the house of the complainant party. In the first part, occurrence had taken place in the said land and in second part, occurrence had taken place in the house of complainant Muhammad Sakhi. This fact has also not been proved for the reason that no blood was recovered from any place. The alleged hatchet or the sticks were also not recovered from the spot. In these circumstances, it cannot be said that the allegation against Muhammad Irshad convict has been proved beyond shadow of doubt.

10. Presence of the accused Muhammad Irshad on the spot, however, cannot be denied, as he himself had received injuries. Specific role was also attributed to accused Muhammad Irshad, therefore, the learned trial Court had rightly convicted the accused Muhammad Irshad. However, conviction under Section 316 PPC was not correct for the reason that Section 316 PPC is regarding Qatl shibh-i-amd, which has been defined in Section 315 PPC. According to said section, whoever, with intent to cause harm to the body or mind of any person, causes the death of that or of any other person by means of a weapon or an act, which in the ordinary course of nature is not likely to cause death, is said to commit qatl shibh-i-amd. However, said section 316 PPC would have no application, if it is found on record that the fight itself was a free fight and that too without pre-meditation. In the present case, the record shows that it was a free fight and in absence of recovery of any weapon, it cannot be said that the offence was pre-meditated. In such a situation, section 316 PPC has no application. Since evidence as provided under Section 316 PPC is not available to award punishment, we therefore, hold that the convict/appellant would be convicted under Section 302 (C)

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PPC and not under Section 316 PPC. Accordingly, we alter the conviction and the appellant Muhammad Irshad is convicted under Section 302(C) PPC, however, sentence awarded by the learned trial Court is proper and sufficient, which is accordingly maintained. Benefit of Section 382-B Cr.P.C. given by the learned Trial Court shall also remain intact. Criminal appeal No.281/2006 filed by Muhammad Sakhi for enhancement of sentence awarded to convict Muhammad Irshad accordingly stands dismissed and notice for enhancement is withdrawn.

(NOOR-UL-HAQ N. QURESHI)  
Judge

(RIAZ AHMAD KHAN)  
Judge

Announced in the Open Court on 21-11-2013.

Judge

Judge

Wajid

Approved for Reporting

JUDGE.

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