

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**Criminal Revision No. 54/2018**

Syed Safeer Hussain Shah

**versus**

Additional District and Sessions Judge (West), Islamabad, etc.

**Petitioner by:** Mr. Muzammil Din Ch., Advocate.

**Respondents by:** Mr. Hasnain Haider Thaheem, State Counsel.  
Mr. Faisal Nawaz, Advocate for respondent No.3.

**Date of Hearing:** 08.05.2020.

**MOHSIN AKHTAR KAYANI, J.** Through this criminal revision, the petitioner has assailed the judgment dated 17.04.2017, passed by learned Judicial Magistrate Section 30 (West), Islamabad, whereby petitioner was convicted U/S 324/34 PPC and sentenced to R.I. for five (05) years along with fine of Rs.10,000/- and also convicted U/S 337-D PPC and sentenced to R.I. for three (03) years with fine of Rs.20,000/- in case FIR No.166, dated 08.06.2012, U/S 324/34/337-D/109 PPC, P.S. Golra Sharif, Islamabad. Benefit of Section 382-B Cr.P.C. has also been extended to the petitioner. The petitioner has also assailed the judgment of appellate Court dated 10.05.2017, passed by learned Additional Sessions Judge, Islamabad, whereby conviction has been maintained and punishment of fine of Rs.20,000/- as Daman was modified in terms of Arsh which is one third of Diyat.

2. Brief facts referred in the instant criminal revision are that case FIR No.166, dated 08.06.2012, U/S 324/34/337-D/109 PPC, P.S. Golra Sharif, Islamabad was registered on the complaint of Syed Aulaad Ali/respondent No.3

through Ex.PA with the allegation that petitioner had some altercation and exchange of hot words with complainant's brother Ajaib Ali Shah four days prior to the occurrence, whereupon Safeer Hussain Shah extended life threats. On 08.06.2012, at about 06:30 p.m., complainant's brother was coming from Fazal Chowk after having grocery and when he reached near Imam Bargah Street, Safeer Hussain Shah and Shafaat Hussain Shah were ambushed in his way and raised *lalkara* upon which Safeer Hussain Shah fired upon complainant's brother with .30 bore pistol which landed on left side of abdomen whereafter his brother fell down. While hearing the sound of firearm, complainant immediately rushed towards the street from his house and saw Safeer Hussain Shah and Shafaat Hussain Shah armed with pistol running from the scene. The complaint Exh.PA was filed, the same was converted into FIR Ex.P-2. The prosecution has produced nine witnesses to prove its case including the injured PW, whereafter petitioner/accused recorded his statement U/S 342 Cr.P.C. Trial Court has convicted the petitioner which has been maintained by the Appellate Court. Hence, the instant criminal revision petition.

3. Learned counsel for the petitioner contends that impugned judgments are based upon false and baseless facts, even the same are against the law; that prosecution has failed to prove its case beyond reasonable shadow of doubt; that contradictions in the statement of I.O and marginal witnesses of recovery have not been considered by the trial Court; that neither any independent witness of the occurrence nor any witness of motive has been produced by the prosecution and even no firearm empty was recovered from spot, neither the weapon of offence has been matched with fire empty or any FSL report has been produced in this regard, therefore, conviction is illegal; that the trial Court has wrongly rejected the defence version without giving any reason and judgment has been passed in violation of judicial principles.

4. Conversely, learned counsel for complainant as well as learned State Counsel contend that prosecution has successfully proved the charges and effective role has been attributed to the petitioner who has fired with his .30 bore pistol on the vital part of injured PW-2 Ajaib Shah; that petitioner/accused is known to the injured PW having close relationship and as such, there is no dispute qua the identity of the accused who has rightly been convicted by the trial Court; that conviction was maintained by the appellate Court; that scope of criminal revision against the concurrent findings before this Court is very limited and petitioner has not highlighted any illegality in the appreciation of evidence by the trial Court or appellate Court, therefore, instant criminal revision is not maintainable.

5. Arguments heard, record perused.

6. Perusal of record reveals that complainant/PW-1 has lodged the complaint Ex.PA with the allegations that his brother Ajaib Shah was injured by the petitioner Syed Safeer Hussain Shah with .30 bore pistol on 08.06.2012 at about 06:30 p.m. in Imam Bargah street near to his house, he has seen the petitioner alongwith co-accused Syed Shafaat Hussain who were running away from the place of occurrence after firing. PW-1 has narrated the motive as exchange of hot words four days earlier to the day of occurrence. The complainant has been cross-examined at length who also acknowledged the previous dispute of the family with reference to FIR No.240/2011 in which firing was attributed to Ajaib Ali Shah. The complainant also acknowledged that site plan was prepared on his instruction and complaint Ex.PA was filed in Police Station. The complainant has close ties and relationship of the witnesses as well as co-accused due to same family. The complainant has entered into compromise with Shafaat Ali Shah co-accused of this case who was acquitted by the learned

Trial Court. He also acknowledged that he has not referred in Ex.PA that he had seen the accused persons with his own eyes.

7. Prosecution has produced PW-2 Ajaib Ali Shah injured witness of this case, who stated that on 08.06.2012, he was coming after offering of funeral dua and after having grocery from nearby shop towards his house when Syed Safeer Hussain Shah petitioner/accused crossed him on his way. At about 06:30 p.m., behind the Imam Bargah street petitioner and co-accused were standing on the way and Shafaat Hussain Shah raised *lalkara* and petitioner/accused fired upon him which landed upon left side of his abdomen. During this event, his brother came out of house and he told the names of both the accused whereafter he became unconscious. His statement Exh.PB was recorded on 14.06.2012 in PIMS Hospital. He acknowledged that his name has been incorporated in FIR No.240/2011 and he has not in talking terms with his uncle Ghazanfar Ali Shah, however, he acknowledged that:

یہ درست ہے کہ میرے اور شفاعت علی شاہ کے درمیان ایف آئی آر ہذا سے کچھ عرصہ پہلے لڑائی ہوئی تھی۔

He has referred this event in his statement Ex.PB but the same was not found written in the said statement when confronted. He also acknowledged that he has not produced any witness regarding previous exchange of hot words with Shafaat Hussain Shah in this case, however, he has informed Tasawar Hussain Shah and his brother Aulaad Hussain Shah about the previous event. PW-2 entered into compromise with Shafaat Hussain in presence of people of village. He also acknowledged that:-

میں تقریباً دو منٹ تک ہوش میں رہا تھا۔ یہ درست ہے کہ میں نے یہ بات اپنے بھائی اولاد علی شاہ کو سنائی تھی۔ یہ درست ہے کہ جس نے بھی مجھے فائر مارا میں مکمل اس کے رحم و کرم پر تھا۔ یہ درست ہے کہ جس نے بھی مجھے گولی ماری، مجھے مزید فائر مار سکتا تھا جیسا کہ کوئی رکاؤٹ نہ تھی البتہ پٹل خراب ہونے کی وجہ سے نہ مارا۔ یہ درست ہے کہ میں نے اپنے بیان روبرو پولیس بتایا تھا کہ شفاعت کے ہاتھ میں تیس بور پٹل تھا۔ EXPB سے تقابل کروایا گیا جہاں ایسا نہ لکھا ہے۔ شفاعت حسین شاہ اگر چاہتا تو اپنے پٹل سے میرے پردوسرا،

تیسرا، چوتھا فائر کر سکتا تھا۔ مگر فائر نہ کیا۔ میرے اور فائر کرنے والے کے درمیان 10/12 فٹ کا فاصلہ تھا۔ اس وقوعہ سے پہلے کسی بھی قسم کا کوئی بھی جھگڑا میرے اور ملزمان کے خاندان کے مابین نہ ہوا البتہ تلخ کلامی ہوئی۔

8. The prosecution has produced PW-4/I.O of this case who stated that he reached PIMS Hospital after receiving the information of incident where Syed Aulaad Ali complainant of case told him about the incident whereas injured was unconscious and was not in position to get recorded his statement and a request was also filed through Ex.PC to CMO, but the CMO has not allowed the recording of statement. The Investigating Officer has also prepared the injury statement Ex.PE and after receiving MLC offence U/S 337-D PPC was incorporated. He further confirmed that place of occurrence is a street and house of Amjad Hussain Shah is on both ends of street, however following glaring discrepancies have been noted in his testimony:

- (a) No firearm empty was recovered from place of occurrence;
- (b) No blood stained earth was recovered;
- (c) not a single person was investigated near the place of occurrence;
- (d) Investigating Officer has not investigated previous dispute or enmity of the parties including the injured;
- (e) not even investigated the matter of previous criminal case of injured person including the dispute with Ghazanfar Ali Shah as he has not received any information by the prosecution witnesses;
- (f) I.O confirmed that inquiry dated 21.06.2012 is part of challan which was initiated on the application of Shafaat in which he stated that no one has seen the occurrence; and,
- (g) PW-4/I.O has not called any respectable person of the locality, nor any inquiry has been made in this case by him.

9. Prosecution has produced PW-7 Dr. Furrukh Kamal, who prepared MLC Ex.PM and gave his opinion regarding the nature of injury as 337-D PPC Jaifah

and stated that no blackening was present on the injury and it is usually observed that diameter of .30 bore firearm injury is 0.5 cm. He further confirmed that when injured appeared before him he was conscious.

10. The prosecution has produced PW-9 Muhammad Asif/constable, who alongwith the second I.O Turabul Hassan, ASI/PW-6 joined the investigation in whose presence accused Syed Safeer Hussain Shah disclosed about the weapon of offence Exh.P1 and same was recovered on his pointation from steel almirah in the residential room of his house containing two live bullets. He also acknowledged that accused's brother was present in the said house and I.O has not called any person of the locality to become witness of recovery, nor even *Lumberdaar* was called, however, the room from where recovery was effected was already open. The other recovery witness i.e. second I.O /PW-6 stated that he arrested the accused after dismissal of his pre-arrest bail on 10.10.2012 and on 12.10.2012 accused got recovered .30 bore pistol Ex.P-1 from his house situated in village Sangrayal from steel almirah, whereupon another FIR U/S 13/20/65 AO was registered. He also confirmed that complainant informed him regarding dispute which made the basis of the incident (برادری کی وجہ سے جھڑا ہوا ہے) but the complainant has not produced any witness of the incident during investigation. PW-6/I.O has also acknowledged that he has not recovered the fire empty, bloodstained clothes, bloodstained soil during his investigation, nor complainant has ever produced any evidence qua the presence of accused at the time of incident. The I.O conceded that he has not investigated the matter regarding presence of accused on 08.06.2012, however, he admitted that he was informed that accused was present in his in-laws at Taxila at the time of incident, the same was confirmed by 3/4 persons. No one has joined the investigation from village Sangrayal during recovery proceedings. I.O. confirmed that he has not <sup>sent</sup> live

bullets and recovered pistol to FSL/laboratory for the purpose of comparison as to whether the same was used in the occurrence or not.

11. I have gone through the statement of accused recorded U/S 342 Cr.P.C. in which he has denied his involvement in the alleged occurrence and even denied the recovery of weapon of offence and stated that all the witnesses are interested witnesses and he has been made scapegoat in this case. Whereas, learned trial Court has believed the ocular account and medical evidence as well as recovery of weapon of offence and prosecuted the petitioner with reference to Section 324 PPC read with Section 337-D PPC separately, which was maintained by the appellate Court.

12. I have meticulously perused the entire record and evidence of this case with the alleged motive, whereas the motive raised by PWs has not been proved, nor even justified through any independent mode or manner. The recovery of .30 bore pistol is inconsequential as the same was not verified through any independent manner i.e. due to non-sending of .30 bore pistol and firearm empties to the FSL, and even no bloodstained earth was secured from the place of occurrence, therefore, the place of occurrence has not been confirmed through independent witnesses of the vicinity. It is trite law that weapon of offence if not confirmed through FSL report for the purpose of its working or matching with the crime empties, the same loses its value and it could not be relied upon. Reliance is placed upon 2017 SCMR 1662 (Zahoor Ahmad vs. The State), 2017 SCMR 2002 (Zahri Yousaf vs. The State), 2017 SCMR 2041 (Saif Ullah vs. The State) and 2019 SCMR 872 (Sajjan Solangi vs. The State).

13. It is not denied by the prosecution that the injured PW recorded his first statement on 14.06.2012 with delay of six days of the alleged occurrence, whereas the Investigating Officer of this case confirmed that he sought permission from CMO for recording of statement of injured but the CMO did not permit the same,

but surprisingly when PW-7 Dr.Furrukh Kamal has been confronted with this aspect, he confirmed that:-

جس وقت معزوب میرے پاس آیا تو وہ ہوش و حواس میں تھا۔ معزوب پانچ سے پندرہ منٹ تک میرے زیرے معائنہ رہا پھر سر جیکل

ٹیم کے حوالے کر دیا۔ تقریباً 08:20 پر میں نے معزوب کا معائنہ کیا۔

Hence, the stance taken by the I.O. regarding medical condition or unconsciousness of injured person PW-2 has not been justified from the medical evidence.

14. I have also gone through the MLR Ex.PN, which contained two injuries, injury No.(i) is entry wound 1x1 cm circular inverted margin blood stained left hypochondrium and injury No.(ii) is exit wound 1.5x1.5 cm irregular averted margin blood stained right gluteal region.

15. The complainant has not seen the actual occurrence with his own eyes who is real brother of injured. All these aspects create serious discrepancies in this case, especially the error committed by the trial Court to believe the recovery which is not justified on the basis of legal principles.

16. I have gone through the sentence awarded to the petitioner U/S 324 PPC for attempt to commit murder, but the MLC as well as statement of doctor does not reflect gravity of offence to that extent nor the intention has been proved with reference to the motive, although there is no denial on record that firearm injury landed upon the abdomen region of PW-2, which falls under the definition of Section 337-D PPC *Jaifah*, which means "*whoever causes jurh in which the injury extends to the body cavity of the trunk, is said to cause jaifah*" and as such it is the vital organ and punishment for said offence provided in Section 337-D PPC is qualified with the term intention of causing hurt or with injury shall be liable to *Arsh* which shall be 1/3<sup>rd</sup> of *Diyat* and may also be punished with either description which may extend to ten years as *Ta'zir*. However, this punishment was not confirmed at the touchstone of Section 337-N(2) PPC, which



only permits the sentence in cases of hurt, *the Court may, having regard to the kind of hurt caused by him, in addition to payment of arsh, award ta'zir to an offender who is a previous convict, habitual or hardened, desperate or dangerous criminal (for the offence committed by him in the name or on the pretext of the honor).*" The said provision contains the non-obstante clause which gives an overriding effect upon the other provision dealing with the hurt contained in Chapter 16 of the Pakistan Penal Code, 1860. The provision of sub-Section 2 of Section 337-N PPC contemplates that in all cases of hurt normal punishment is to be awarded to an offender is payment of *Arsh* or *Daman* and the optional additional punishment of imprisonment provided for relevant offence can be awarded to an offender only where the offender is a previous convict, habitual or hardened, desperate or dangerous criminal or the offence has been committed in the name or on the pretext of honor. Reliance is placed upon 2019 SCMR 516 (Abdul Wahab vs. The State). Whereas, the trial Court awarded the sentence under Section 337-D PPC of three (03) years to the petitioner vide judgment dated 17.04.2017, which is contrary to the law.

17. The meticulous comparison of entire record and evidence reveals that the complainant PW-1 Syed Aulaad Ali Shah has not seen the actual occurrence with his own eyes and he reached at the place of occurrence after the incident on 08.06.2012. Similarly, injured PW-2 Syed Ajaib Ali Shah i.e. injured PW acknowledged that he became unconscious and his first ever statement was recorded after six (06) days of the alleged occurrence, whereas PW-7 Dr. Furrukh Kamal confirmed that injured was in his (ہوش و حواس), when he inspected the injured in the hospital, hence, the version recorded by the injured *viz-a-viz* the evidence of the doctor is contradicted. The motive has not been justified independently from any witness however the disputes of the family were admitted by the prosecution witnesses, which rendered the motive as a double

edged weapon, which cuts on both sides and there is possibility for false implication of the petitioner in this case.

18. The Investigating Officers have conducted poor investigation in this case, as such, both the Investigating Officers are incompetent as no firearm empty was recovered from the place of occurrence nor bloodstained earth was secured, even statements of independent witnesses were not recorded and similarly, the bloodstained clothes of injured were not taken into possession through which it could be justified that the injured PW-2 has received any injury to confirm the corresponding holes, even the recovered weapon Exh.P1 was not sent to Forensic Science Laboratory as to whether the same was in working condition. All these aspects create a doubt in the prosecution case.

19. While considering the above background, I have gone through the record with the able assistance of learned counsel for the parties as well as the State and has taken into account the powers U/S 439 Cr.P.C. regarding the legality of sentence awarded to the petitioner and reached to an irresistible conclusion that both the Courts below have not appreciated the illegalities and discrepancies in prosecution evidence, many doubts emerges on record whereas it is settled law that a single doubt is enough for acquittal of the accused person in such type of case as it creates a reasonable doubt in a prudent mind about guilt of accused, therefore, the accused would be entitled to benefit of the same not as a matter of grace and concession, but as a matter of right. Reliance is placed upon 1995 SCMR 1345 (Tariq Pervez vs. The State), 2009 SCMR 230 (Muhammad Akram vs. The State) and 2014 SCMR 749 (Muhammad Zaman vs. The State).

21. In view of above, the petitioner is entitled for benefit of doubt by applying rule of caution and care in such type of cases where interested witnesses have involved the petitioner in this case, whose role was not verified from any independent source, even false implication could not be ruled out at this stage,

therefore, the instant criminal revision petition is ALLOWED, the impugned judgments dated 17.04.2017 and 10.05.2017, passed by both the Courts below are hereby SET ASIDE and petitioner is ACQUITTED of the charge by extending benefit of doubt. He be released forthwith if not required in any other case.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 18.05.2020.

JUDGE

Zahid