

Judgment Sheet

IN THE PESHAWAR HIGH COURT,  
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.M No.221-A of 2015

JUDGMENT

Date of hearing.....15/06/2015.....

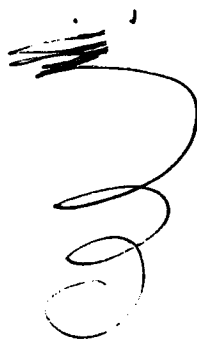
Petitioner...(Mir Afzal etc) by Mr. Shad Muhammad Khan,  
Advocate.....

Respondent ...(The State etc) by M/S Raja Zubair, Assistant Advocate  
General and Ghulam Mustafa Khan Swati,,  
Advocate.....

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QALANDAR ALI KHAN, I:- All the four  
accused/petitioners, namely, Mir Afzal son of  
Sikandar, Sher Afzal, Khan Afsar and Safeer  
Ahmad sons of Mir Afzal have been arrested  
and are behind the bars in case vide FIR No.284  
dated 21.09.2014 under Sections 302/324/34  
PPC PS Saddar Mansehra, lodged on the report  
of complainant / respondent No.2, Banaras,  
who charged accused / petitioner Mir Afzal for  
causing stab wounds to Shoukat with 'churri'  
and when he and his brother Sajid tried to

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By:   
Peshawar High Court  
Abbottabad Bench  
Authorized Under Section 25 of the Courts

rescue Shoukat, accused / petitioner Raja Sher Afzal stabbed Sajid with 'churri'. The complainant further alleged that accused/ petitioner Safeer Ahmad caught hold of him and accused / petitioner Khan Afsar hit him with axe on his head, forehead and nose and Raja Sher Afzal also caused him injury on right side of his chest with 'churri'. The report about the occurrence, which took place at 8.40 PM on 21.09.2014, was lodged on the same day at 2140 hours at Emergency Ward of KAT Hospital, Mansehra. The motive was shown as altercation on prevention of injured Shoukat from using the path, and Shafaqat son of Muhammad Zaman and Amjad son of Gohar Rehman were mentioned as eyewitnesses in the FIR.

2. Injured Sajid later on succumbed to the stab wounds on his abdomen and chest, while injured Shoukat survived serious / grievous deep stab wound over the abdomen, whereas


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Examiner  
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three wounds of Banaras complainant were described by the medical officer as follows:

1. Mild laceration on the scalp.
2. Bruise over the nose.
3. A bruise over the right lower chest.

However, neither nature of injuries, whether the injuries were simple or grievous, nor the weapon used in the commission of offence have been recorded in the medical report of the complainant.

 3. All the four accused have since been arrested in the case, and out of four accused charged in the case, accused/petitioners Mir Afzal, Khan Afsar and Raja Sher Afzal have recorded their confessional statements; and the 'churri' mentioned as the weapon of offence has been recovered on the pointation of accused/petitioner, Mir Afzal from his house, while still having stains of blood. Likewise, the axe used by accused / petitioner Khan Afsar during the occurrence has also been recovered from his house on his pointation. Similarly, the 'churri'

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400/1120044 Bench  
Amritsar District, Punjab

allegedly used by accused / petitioner Raja Sher Afzal has been recovered from his house on his pointation. The two reports of Forensic Science Laboratory with regard to blood stained earth, blood stained garments of the deceased and injured and both blood stained 'Churris' recovered on the pointation of above-referred accused /petitioners have been received in the affirmative. It may be mentioned here that the accused /petitioner Mir Afzal also lodged a report to the police at 00.15 hours on 22.09.2014, which was recorded in the Daily Diary of the Police Station at Serial No.23, wherein he charged Sajid Deceased, Banaras complainant, Shafaqat and Shoukat for causing him and his sons Khan Afsar and Sher Afzal injuries with stick and axe blows. However, neither medical reports of the said accused / petitioners are available on the record nor a separate FIR has been registered on the report of the accused/petitioner, Mir Afzal. Anyhow,

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as stated above, complete challan against the accused / petitioners and supplementary challan against accused / petitioner Safeer Ahmad have been submitted, whereupon, trial against all the four accused / petitioners has also commenced with framing of charge against all the accused charged in the case.

4. Arguments of Mr. Shad Muhammad Khan, Advocate, for the accused/petitioner, Raja Zubair, Assistant Advocate General for the State and Mr. Ghulam Mustafa Khan Swati, Advocate, for the complainant/respondent No.2 heard, and record perused.

5. It may be pointed out at the outset that the accused / petitioners have been assigned distinct roles in the FIR lodged by the injured complainant within one hour of the occurrence. One of the injured, namely, Sajid, who received stab wounds on abdomen and chest succumbed to his injuries. The role of causing him stab

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FIR to accused / petitioner Raja Sher Afzal, who recorded confessional statement before the Magistrate, wherein he confessed causing stab wounds to deceased Sajid with '*Churri*'. The presence of the accused / petitioner Raja Sher Afzal on the spot has also been admitted in the report of accused / petitioner Mir Afzal, as Raja Sher Afzal also, allegedly, sustained injuries as a result of stick and axe blows by Shafaqat.

Besides, the '*churri*' used as the weapon of offence, has also been shown to have been recovered from his house on his pointation, which was found stained with blood by the chemical examiner in the FSL. The above stated evidence collected by the investigating agency, during investigation, prima facie, connect the accused / petitioner, Sher Afzal, with the commission of the offence. Therefore, the joint petition for bail is dismissed to the extent of his plea for release on bail.

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By order of the Court  
 Shri. M. S. Bhat  
 Additional Judge, District Court, Shimoga

6. Likewise, the accused / petitioner, Mir Afzal, has been attributed role of causing stab wound to injured Shoukat, who sustained serious / grievous deep stab wound over the abdomen. This accused / petitioner has also recorded confessional statement before the Magistrate, therein, confessing causing stab wound to injured Shoukat with '*churri*', which was also recovered from his house on his pointation. His presence on the spot and participation in the commission of the offence is established by his own report recorded at serial No.23 of the Daily Diary of the Police Station dated 22.09.2014. This accused / petitioner is charged for attempt at the life of injured Shoukat by causing him serious / grievous on the vital part of his body, therefore, he is also not entitled to the concession of bail like his son and co-accused Raja Sher Afzal, who was charged for stab wound on the chest and abdomen of Sajid, who later on succumbed

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Magister  
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Abbottabad Bench  
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to the injuries, while injured Shoukat survived stab wound on his abdomen. The grave charge of causing serious / grievous injury on vital part of injured Shoukat and thereby attempting at his life, in view of the evidence made available on the record, would disentitle him to the concession of post arrest bail. Therefore, the joint application to the extent of his plea for bail is also dismissed.

7. The cases of the remaining two accused / petitioners, namely, Khan Afsar and Safeer Ahmad are quite distinguishable, as the latter is only charged for catching hold of the complainant, Banaras, and the former giving him axe blows on his head, forehead and nose, which have been described by the medical officer as mild laceration on the scalp, bruises over the nose and right lower chest, without either describing the nature of the injuries or the nature of weapon used in the commission of the offence. No doubt, accused / petitioner

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Abolished Bench  
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Khan Afsar has also recorded confessional statement but his confessional statement is exculpatory in nature, wherein he has not confessed his alleged act of causing axe blows to complainant, Banaras. His role, in the circumstances, would therefore be subject to further inquiry, like his brother and co-accused, Safeer, who is only charged for catching hold of complainant, Banaras. Moreover, the School Leaving Certificate of Safeer Ahmad would show his date of birth as 20.02.1997, making him entitled to the concession of post arrest bail on that score as well. Consequently, on the acceptance of application to the extent of these two accused /petitioners, Khan Afsar and Safeer Ahmad, they are admitted to bail subject to their furnishing bail bonds in the sum of Rs.100,000/-, each with two sureties in the like amount to the satisfaction of Ilqa / Duty Judicial Magistrate, Mansehra.

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Peshawar High Court  
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**JUDGE**

/<sup>†</sup>M.S.Awan<sup>‡</sup>/

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