

**JUDGEMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)**

Cr.A.No.77-D/2016

MUHAMMAD NAEEM

VERSUS

THE STATE AND ANOTHER

JUDGMENT

Date of hearing: **13.6.2017**

Appellant-petitioner by M/S Noor Gul Khan Marwat and Tehsin
Alamdar Advocate.

Respondent Mr. Adnan Ali AAG for State and Mr. Saifur Rehman
Khan Advocate for complainant

MUHAMMAD AYUB KHAN, J.- This judgment shall dispose
of instant Cr.A.No.77-D/2016 and Cr.Rev.No.27-D/2016 as both
these arise out of same judgment dated 19.8.2016, passed by
learned Sessions Judge, D.I.Khan, in case FIR No.293 dated
10.3.2015 registered under Section 336 PPC at Police Station
Cantt, D.I.Khan, whereby, after trial, appellant Muhammad
Naeem was convicted and sentenced as under:-

“Under Section 336 PPC: *To undergo
three years Rigorous Imprisonment and to
pay Arsh of Rs.1,00,000/- (Rupees one lac)*

or in default thereof, in view of Section 337-X PPC, he shall be kept in jail and dealt within the same manner as if sentenced to Simple Imprisonment until Arsh is paid in full.

Benefit of Section 382-B Cr.PC was extended to the appellant and his period of detention as under trial prisoner was ordered to be counted towards his substantive punishment.”

2. Against his conviction and sentence, the appellant has filed instant Cr.A.No.77-D/2016, while complainant Muhammad Adnan has filed Cr.Rev.No.27-D/2016 for enhancement of sentence awarded to the appellant with prayer to enhance the amount of *Arsh*.

3. On 21.02.2015 at 1015 hours, complainant Muhammad Adnan (PW-7) reported to Fazal Hussain Shah ASHO (PW-2) at Emergency Room of Civil Hospital, D.I.Khan that on the eventful day he while riding on his motorcycle was going to the machine/mill of one Amjid Karlu for grinding wheat. When he reached opposite Ice Factory, Link Road near New Bannu Chongi at 1000 hours, appellant Muhammad Naeem armed with dagger also came there. The complainant forbade the

appellant of his wandering in the street due to which he became furious and attacked the complainant with dagger, as result he sustained injury on his left arm. On hue and cry, Noor Sultan (PW-8) came there and rescued the complainant and witnessed the occurrence. Motive for the occurrence is stated to be money dispute. The report of the complainant was reduced into writing in shape of *Murasila* (Ex.PA/1), on the basis of which above referred FIR (Ex.PA) was registered.

4. After completion of investigation, challan was submitted against the accused before the learned trial Court. He was charge-sheeted. To it he pleaded not guilty and claimed trial. Prosecution in order to substantiate charge against the accused, examined eight (08) witnesses. Thereafter, statement of accused was recorded under Section 342 Cr.PC wherein he professed innocence. However, he neither wished to be examined on Oath as required under Section 340(2) Cr.PC nor wanted to produce evidence in his defence. On conclusion of trial, the learned Sessions Judge, D.I.Khan convicted and sentenced the appellant as mentioned above vide impugned judgment dated 19.8.2016, hence, the appellant filed appeal against his conviction and

sentence while the complainant filed revision for enhancement of sentence awarded to the appellant with prayer to enhance the amount of *Arsh*.

5. I have heard valuable arguments of learned counsel for the parties as well as learned Asstt: A.G. for State and scrutinized the record with their assistance.

6. The record reveals that the instant occurrence has taken place in a broad daylight at 10:00 a.m. The complainant charged single accused in a promptly lodged FIR at 10:15 a.m. for giving dagger blow to him due to which he sustained injury on his left elbow. The injured/complainant Muhammad Adnan has reiterated his version in his statement recorded as PW-7 as given in the *Murasila*/FIR. During taxing cross-examination nothing favourable to the accused could be brought on record. PW-8 Noor Sultan has rescued the complainant and also witnessed the occurrence. He deposed that on the day of occurrence at 10:00 a.m. he was present near the spot and in the meanwhile accused gave a dagger blow to the complainant. He rushed to the spot and rescued the complainant. He remained consistent qua events of the occurrence. He was examined by the

police after sometime of the occurrence. He is *mohalladar* of the complainant and knows the accused prior to the occurrence. On thorough scrutiny and appraisal of evidence, statements of PW-7 and PW-8 are found truthful and confidence inspiring. The defence failed to shatter their depositions and to point out any contradiction in their statements. From the evidence available on record, it transpired that the prosecution has been able to bring home charge of dagger blow against the appellant. As far as the quantum of sentence is concerned, Section 337-N PPC being relevant is reproduced below:-

“337-N. Cases in which qisas for hurt shall not be enforced.

- (1)
- (a)
- (b)
- (c)
- (d)

(2) *Notwithstanding anything contained in this Chapter in all 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, [or the offence has been committed by him in the name or on the pretext of honour].*

[Provided that the ta'zir shall not be less than one-third of the maximum imprisonment provided for the hurt caused if the offender is a previous convict, habitual, hardened, desperate or dangerous criminal or if the offence has been committed by him in the name or on the pretext of honour.]

There is nothing on record that the accused is previous convict, habitual or hardened, desperate or dangerous criminal, therefore, in the light of above reproduced section of law, the award of three years imprisonment as *Ta'zir* vide impugned judgment dated 19.8.2016 to the appellant is legally incorrect so the same is set aside.

7. The ocular testimony is also fully corroborated by the medical evidence. To this effect, Dr. Farmanullah, District Headquarter Teaching Hospital, D.I.Khan was examined as PW-6. On 21.02.2015 at 10:30 a.m. he examined the injured/complainant and according to his report/MLC Ex.PW-6/1 he found a sharp wound of about 3" x 2" on the medial aspect of left elbow. He exhibited discharge slip of the victim as Ex.PW-6/2. According to it *'multiple arterial/venous branches actively bleeding, main branch artery was intact. Ulnar nerve completely*

traumated at elbow level, median nerve epineurium lacerated, hemostasis secured by ligation of arterial/venous branches, ulnar nerve explored and repaired'. The nature of injury was '*Itlaf-i-Salahiyat-i-Udw*'. The medical evidence and the ocular account are in juxtaposition with each other. Today complainant/victim was present in the Court. He was called and asked to come to the rostrum and found that his left hand was not working. Learned Asstt: A.G. also checked it and confirmed that the left hand of the victim was not functional. Discharge slip of the complainant Ex.PW-6/2 reveals the nature of injury as '*Itlaf-i-Salahiyat-i-Udw*'. Permanent impairing of the power of one hand is established. Since the complainant has lost his one hand, therefore, under Section 337-R PPC the complainant/victim is entitled to *Arsh* equivalent to one-half of the *diyat* amount. In year 2015, when the occurrence took place, the *diyat* amount was Rs.19,23,843/- (Rupees one million nine hundred twenty three thousand and eight hundred forty three), therefore, its one-half i.e. 9,61,921.5 (Rupees nine lac sixty one thousand nine hundred twenty one and five paisa) to be paid by the appellant to the complainant/victim in lump sum. In case of non-payment of *Arsh*

amount the appellant shall be kept in jail and dealt within the same manner as if sentenced to Simple Imprisonment until *Arsh* is paid.

8. In light of what has been discussed above, both the Cr.A.No.77-D/2016 and Cr.Rev. No.27-D/2016 stand disposed of accordingly.

Announced.
Dt:13.6.2017.

JUDGE