JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.A No. 172-M/2020

Nizam-ud-Din son of Sar Zamin resident of Zulam Munda, Tehsil Samarbagh, District Dir Lower.

Versus

1) The State.
2) Bakht Rawan son of Hakim Khan resident of Zulam Munda, Tehsil Samarbagh, District Dir Lower.

Present:

Mr. Amir Gulab Khan, Advocate for the appellant/convict.

Mr. Razauddin, A.A.G. for State.

Mr. Murtaza Khan, Advocate for complainant.

Date of hearing: **05.10.2020**

Date of announcement: **09.10.2020**

JUDGMENT

ISHTIAQ IBRAHIM, J.- The present appellant/convict Nizam-ud-Din and his co-accused Muhammad Rahim Shah were charged under sections 324, 337-D, 34 P.P.C vide case F.I.R No. 577 dated 09.09.2017 registered at Police Station Munda, District Dir Lower. After regular trial of the present appellant before the learned Additional Sessions Judge, Dir lower at Samar Bagh for the said offences, the learned trial Court vide judgment dated 10.07.2020 sentenced him on his conviction u/s 324 P.P.C to undergo simple imprisonment for five years with fine of Rs.30,000/-

payable to the victim, in default thereof he was directed to suffer further six months S.I. He was also convicted u/s 337-D P.P.C and sentenced to pay an amount of Rs.925,784.33/- as *Arsh* equivalent to 1/3rd of *Diyat* to the victim with further directions to remain in jail till payment of the aforesaid amount.

2. The occurrence was reported to police by complainant Bakht Rawan (PW-3) in emergency ward of DHQ Hospital, Timergara on 09.09.2017 at 18:30 hours. According to his narrations in *Murasila*/F.I.R, his nephew Khan Bahadar (PW-2) had gone to the nearby shops for purchasing food stuffs. While coming back when he reached near the house of Zar Zamin, the present appellant and his absconding co-accused, who were already present there, stopped his nephew and questioned him with regard to his passage over the thoroughfare. A scuffle took place between them during which the appellant drew out his pistol and fired at Khan Bahadar whereby he sustained injury on the left side of his chest. The occurrence was stated to have been witnessed by complainant, Umar Hayat and Zar

Zamin whereas dispute over the thoroughfare was mentioned as the motive behind the occurrence.

3. After recording the report of complainant in shape of *Murasila* (Ex.PA/1), Muhibullah S.H.O (P-10) prepared the injury sheet (Ex.PW-10/1) of the injured and submitted the same for opinion of the doctor. The gist of medical reports Ex.PW-4/1 to Ex.PW-4/3 prepared by Dr. Muhammad Salim (PW-4) after examining the injured, is as under:

> **Date and time of arrival in Emergency**: 09.09.2017 at 06:15 P.M.
>
> One entrance fire arm injury (FAI), wound size 2 cm circular in shape with inverted margins over the left side chest 3 cm below the left side nipple.
>
> One exit (FAI), wound size 3 cm circular in shape with everted margins over the back left side chest.
>
> **Opinion:** FAI to the left side chest.
>
> **Nature:** Grievous.
>
> The discharge summary of LRH is annexure "A" while the record of emergency is Ex.PW-4/4.

4. During spot inspection, the Investigating Officer (PW-9) collected two crime empties of 30-bore pistol with one live cartridge from the spot and also secured blood-stained shirt of the injured through recovery memo. After remaining absconder for one month, the local elders produced

the appellant before police alongwith the crime weapon 30 bore pistol regarding which he could not produce any license/permit. The pistol was sent for forensic analysis qua the recovered crime empties which have matched inter se as per F.S.L report Ex.PW-9/20.

5. After completion of investigation, complete challan was put in Court where formal charge was framed against the appellant, however, he denied the allegation of prosecution by pleading not guilty. Prosecution produced and examined eleven PWs in support of its case and closed the evidence. After examination of the appellant u/s 342, Cr.P.C, the learned trial Court vide judgment dated 10.07.2020 found him guilty of the charge, hence, sentenced him in the manner discussed above. The appellant, being aggrieved of his conviction and sentence, has challenged the judgment of the learned trial Court through this appeal.

6. I have heard the arguments of learned counsel for the parties including the learned A.A.G. for State and gone through the record with their able assistance.

7. Perusal of the record would reveal that the occurrence has taken place in daylight wherein injured Khan Bahadar sustained firearm injury by the firing of present appellant in presence of eye witnesses out of whom complainant Bakht Rawan appeared before the Court as PW-3 whereas the injured himself appeared in the witness box as PW-2. Being victim of the same occurrence by sustaining firearm injury on his person, presence of the injured PW-2 is established without any doubt. His statement being worth credence cannot be discarded on the basis of minor contradictions which do happen with the passage of time as observed by august Supreme Court of Pakistan in the case of *Mawas Khan Vs. The State and another* reported as **PLD 2004 Supreme Court 330.**

> **It is also to be noted that Murtaza (P.W.2) also sustained injuries which confirms his presence at the spot. Even otherwise the statement of injured witness cannot be brushed aside merely on the ground of some minor contradictions which do creep in the passage on time.**

Similarly, the complainant has appeared before the Court as PW-3 and his statement corroborate the narrations of the injured witness. The statements of both the aforesaid witnesses are

consistent on material particulars of the occurrence and there was no reason for them to implicate an innocent person in the case, therefore, their testimony was rightly relied upon by trial Court for convicting the present appellant. Objection of learned counsel for the appellant that both the eye witnesses are interested, is repelled on the ground that there is no inflexible rule that statement of an interested witness can never be accepted without corroboration. When the Court gets the satisfaction that no innocent person was implicated alongwith the guilty, the Court can consider the statement of an interested witness if corroborated through independent source. Guidance is sought from the judgment of the august Supreme Court of Pakistan in the case of *Riaz Hussain Vs. The State* **(2001 SCMR 177)**. The rule laid down by the august Court is as under:

> **In order, therefore, to be satisfied that no innocent persons are being implicated alongwith the guilty, the Court will in the case of an ordinary interested witness look for some circumstance that gives sufficient support to his statement so as to create that degree of probability which can be made the basis of conviction. This is what is meant by saying that the statement of an interested witness ordinarily needs corroboration.**

8. The ocular account is corroborated by medical evidence as well as recoveries in shape of crime empties, crime weapon and blood-stained shirt of the injured. The prosecution has produced Dr. Muhammad Salim (PW-4) as well as the relevant witnesses of the recovery memos namely constable Nazir Syed (PW-5), constable Saeedullah (PW-6) and constable Umar Rehman (PW-7) who have supported the recoveries of blood-stained shirt of the injured, two crime empties from the spot and recovery of pistol from the appellant at the time of his arrest. Their testimony cannot be brushed aside on the sole ground that they are police officials because it is settled law that police officials are as good witnesses as other private witnesses unless it is proved that they have deposed against the accused with ill-will or mala fide, which is not the situation before this Court in the present case.

9. Thus, in view of the overwhelming direct and circumstantial evidence available on the record, the learned trial Court has rightly convicted the present appellant after proper appraisal of evidence available against the appellant on record. At the this juncture, the learned counsel for the

appellant argued that the injury caused on the person of injured Khan Bahadar is not covered by the definition of *Jaifa* as defined in section 337-C, P.P.C. In support of his above contention he produced copy of the judgment of Lahore High Court in the case of *Pervaiz Khan Vs. The State* reported as **PLD 1998 Lahore 84** wherein the word "body cavity of the trunk" was discussed and it was observed that if an injury does not cause any damage to any organ located inside the cavity and merely passes through flesh or muscles, cannot be treated or considered as *Jaifah.*

10. The objection raised by learned counsel for the appellant needs wide consideration of this Court. According to medico-legal report (Ex.PW-4/1) on the injury sheet, the doctor has found one entry wound of 2 cm in size circular in shape with inverted margins over the left side chest 3 cm below the left side nipple the exit of which was found over the back left side chest of 3 cm in size circular in shape with everted margins. The I.O sought opinion of the District Public Prosecutor through application Ex.PW-9/3 who opined that:

> Medico-legal report in respect of injured Khan Bahadar examined which shows that the injury extends to the body cavity and there are perforations in wall of stomach, therefore, section it attracts 337-D P.P.C.

Section 337-D P.P.C prescribes punishment for *jaifa* whereas the word "*jaifa*" has been defined in section 337-C, P.P.C which read:

> **337-C. Jaifah.** Whoever causes jurh in which the injury extends to the body cavity of the trunk, is said to cause *jaifah.*

The plain reading of section 337-C shows that once the injury extends to body cavity of the trunk then that is *Jaifa* notwithstanding that any damage has been caused to any vital part of the body or any evidence has been led by prosecution or not most particularly by keeping in view the particular circumstances of the present case. In order to know that what is "*jurh*", the relevant section 337-B is reproduced below for ready reference.

> **337-B. Jurh.** (1) Whoever causes on any part of the body of a person, other than the head or face, a hurt which leaves a mark of the wound, whether temporary or permanent, is said to cause *jurh.*
>
> (2) *Jurh* is of two kinds, namely:--
>
> (a) *Jaifah*; and
>
> (b) *Ghayr-jaifah.*

Jurh Ghayr-jaifah has been defined in section 337-E P.P.C which reads.

> **337-E. Ghayr-jaifah.** Whoever causes *jurh* which does not amount to *jaifah*, is said to cause *ghayr-jaifa.*

Learned counsel for the appellant argued that there is no evidence that any major or vital organ of the victim was injured, thus, he questioned the applicability of section 337-C, P.P.C to the present case which is misconceived because, as discussed earlier, section 337-C is applicable when once the injury enters the body cavity notwithstanding whether it has damaged any major or vital organ or not. The word trunk has been defined in ***Dorland's Pocket Medical Dictionary*** (29th Edition) as under:

> 1. The main part of the body, to which head and limbs are attached. 2. A major, undivided and often short, part of a nerve, vessel, or duct.

The British Medical Association complete Family Health Encyclopedia has defined the word "trunk" in the following words.

> The central part of the body, comprising the thorax (chest) and abdomen, to which the head and limbs are attached. The term trunk also refers to any large blood vessel or nerve from which smaller vessels or nerves branch off.

Similarly, the same word has been defined in ***Black's Medical Dictionary*** (37th Edition) according to which "trunk" is:

A major vessel or nerve from which lesser ones arise, or the main part of the body excluding the head, neck and limbs.

The word "*Jaifah*" has been defined in اسلامی قانون فوجداری by Maulana Salamt Ali Khan at Page-343 in the following words.

۹۵۰۔ جائفہ کی تعریف :وَالْجَائِفَةُ مَا تَصِلُ اِلَى الْجَوْفِ مِنَ الْبَطْنِ اَوِالظَّهْرِاَوِ الصَّدْرِ اَوْ مَا يَتَوَصَّلَ مِنَ الرَّقَبَةِ اِلَى الْمَوْضَعِ الَّذِىْ اِذَا وَصَلَ اِلَيهِ الشَّرَابُ كَانَ مُقَطَّرًا فَذَالِكَ كُلُّه' جَائِفَةٌ وَمَا فَوْقَ ذَالِكَ فَلَيْسَ بِجَائِفَةٍ وَلَا تَكُوْنُ فِى الْيَدَيْنِ وَالرِّجَامَيْنِ وَالْفَخْذِ وَالْفَمِ وَالرَّاسِ جَائِفَةٌ وَاِنْ كَانَتَ الْجَرَاحَةُ بَيْنَ الْاُنْثَيَيْنِ وَالذَّكَرِ حَتّٰى يَصِلُ اِلَى الْجَوْفِ فَهِىَ جَائِفَةٌ

ترجمہ: جائفہ اس زخم کو کہتے ہیں جو جوف بدن تک پہنچ جائے مثلاً پیٹ، پیٹھ، سینہ اور گردن اور اگر جوف بدن تک نہ پہنچے تو وہ جائفہ نہیں ہوا اور جو زخم ہاتھ، پاؤں، ران، منہ اور سر میں لگے وہ بھی جائفہ نہیں ہے اور اگر زخم خصیہ اور عضو تناسل سے جوف بدن میں پہنچ جائے تو وہ بھی جائفہ ہے۔

In view of the medical report and the above definitions of trunk and *Jaifah* under the Islamic Law, the injury sustained by the injured in the present case is covered by definition of *Jaifa* and the learned trial Court has committed no illegality by directing the appellant to pay *arsh* equivalent to 1/3rd of the amount of Diyat on his conviction u/s 337-D, P.P.C.

11. The judgment referred by learned counsel for the appellant in ***Pervaiz Khan's*** case *supra* has no relevance with the facts and

circumstances of the present case because in the ibid case the injured had sustained firearm entry wound over back of right upper chest 6 cm from right posterior axillary fold 12 cm from right clavicle which made its exit on front of right upper chest running transversely parallel to middle of right clavicle which was 5 cm from middle and 4 cm below right clavicle. In the present case, the position of injury is quite different because the injured has sustained firearm entry wound on the left side of chest below the left nipple the exit of which was found on the back left side of chest. Thus, it is clear from the aforesaid difference that the injury sustained by the injured in the present case has extended to body cavity which is not the position in the above referred judgment.

12. For what has been discussed above, learned counsel for the appellant could not make out a case for interference in the impugned judgment, therefore, this appeal, being devoid of merits, is accordingly dismissed.

Announced.
Dt: 09.10.2020

JUDGE