

Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.R.No.24-A/2016.

JUDGMENT

Date of hearing: 17/11/2017

Petitioner (Malik M. Nisar) By Qazi Muhammad Azhar, Advocate

Respondent (State) by Mr. Yasir Zahoor Abbasi, Assistant AG.

Complainant (Muhammad Ashiq) by Mr. Sajjad Sarwar, Advocate.

SYED ARSHAD ALI, J:- Petitioner

Malik

Muhammad Nisar has filed instant revision petition under Section 439 Cr.P.C. against the impugned judgment dated 13.06.2016, passed by learned Additional Session Judge, Haripur, whereby the sentence of the petitioner in case FIR No. 581 dated 23.09.2012 of Police Station Kot, under section 337 A(ii) PPC was converted from 3 years imprisonment to payment of 5 % of Diyat, u/s 337 F(i) and A(i) was converted from imprisonment of one year to payment of Arsh of Rs. 10,000/- and Rs. 5000/- to each injured.

2. Brief facts leading to filing of instant petition are petitioner along with his co-accused Muhammad Rashid, Mukhtar Elahi, Saeed Akthar and Aamir were charged by the complainant

Muhammad Aashiq for causing injuries to him as well as to injured PWs Sajid Nawaz and Khyber Zaman and case FIR No. 581 dated 23.09.2012 under Section 337 A(ii)/34 PPC of Police Station Kot, Haripur was registered. Upon completion of investigation, the local police submitted challan under Section 173 Cr.P.C. against the petitioner and his co-accused for trial before the Court of learned Judicial Magistrate concerned. After providing copies to the petitioner and his co-accused in terms of Section 241-A Cr.P.C. charge was framed against them, to which they pleaded not guilty and claimed trial. The prosecution was thus offered opportunity to lead its evidence. Prosecution produced as many as 13 PWs against the accused and closed its evidence. After completion of prosecution evidence, the statement of petitioner and his co-accused was recorded. The learned trial Court vide its judgment dated 04.06.2015 found the petitioner and his co-accused guilty of offence and resultantly, the petitioner was convicted under Section 337 A(ii) PPC and sentenced him to imprisonment for three years as Taz'ir along with payment of Arsh equivalent to the value of Diyat for the head injury and in default of payment of Arsh, to undergo simple imprisonment till the payment

of Arsh. He was also found guilty of offence under Section 337 A(i) PPC and sentenced to one year imprisonment as Taz'ir and to pay Daman of Rs. 10,000/- to each of the injured and in default to undergo simple imprisonment till payment of Daman. Similarly, he was also convicted under Section 337 F(i) PPC and sentenced to imprisonment for one year as Taz'ir and to pay Daman of Rs. 5000/- to each of the injured or in default to undergo simple imprisonment till payment of daman.

3. The petitioner/convict along with his co-accused filed criminal appeal No. 16/10 of 2015 which was partially allowed by the learned Additional Sessions Judge-III, Haripur and the sentence of 03 years of imprisonment awarded under Section 337 A(ii) PPC was converted to 5% of Diyat, while the sentence of one year recorded under Section 337 F(i) and A(i) PPC was converted to payment of Arsh of Rs. 10,000/- and 5000/- to each injured. Feeling dissatisfied, the petitioner has filed instant criminal revision petition.

4. Arguments heard and record perused.

5. Perusal of record would divulge that petitioner is charged for causing injuries to complainant and injured PWs Sajid Nawaz as well as Khyber Zaman. As

per MLC (Ex PW-11/1), the following injuries were found on the body of complainant:-

- i. Shape (oval) lacerated wound having irregular margin on right side of skull 09 cm above from right pinna 2 cm x 1.5 cm x skin deep.
- ii. Graze mark on back 4 cm x 2 cm x superficial.
- iii. Complainant of chest pain.

Injured PW Khyber Zaman, according to his MLC (Ex PW-11/3) was having a sharp lacerated irregular wound on frontal region of skull, 6 cm above from left eyebrow, 4.5 cm x 3.5 cm x bone exposed. While injured PW Sajid Nawaz according to MLC (Ex PW-11/5) was having the following injuries:-

- i. O shape lacerated wound above left eyebrow measuring 2 cm x 2 cm x skin deep.
- ii. Abrasion mark on lateral aspect of left hand 2 cm x 2 cm x superficial.
- iii. Abrasion on back in inter-scapular region.

6. The present petitioner was shown to be armed with axe and inflicting its blows to complainant and both the injured PWs. The stance set out in the FIR was fully supported by both the injured PWs namely Khyber Zaman and Sajid Nawaz (PW-3 and PW-4), the two eyewitnesses namely Mumtaz Ahmed and Ghulam

Yazdan (PW-5 and PW-6), the investigating officer PW-8 and the medical officer PW-11. The said witnesses were subjected to lengthy cross examination but nothing favourable to accused/petitioner could be extracted from them. The complainant, injured PWs and the eyewitnesses remained consistent in their deposition and their testimony could not be shattered. The stance of the complainant was further strengthened by the medico-legal reports as well as recovery of blood stained garments of the complainant and that of injured PWs.

7. It was argued by the learned counsel appearing on behalf of the petitioner that in the initial report, recorded vide Mad No. 8 dated 23.09.2012, axe was mentioned by the complainant as weapon of offence, however, after receipt of medical reports, when no injury on the person of complainant or injured PWs was found to be with sharp edged weapon, the complainant changed his stance and stated that the injuries were inflicted with back side of the axe, thus improved his earlier stance, causing doubt in the prosecution case. No doubt in the initial report, the complainant has not specifically mentioned that injuries were caused by the present petitioner with back side of

the axe, however, it is very much settled that the first information report is not an encyclopedia, containing each and every detail of the occurrence, rather it is sort of information, to put the machinery of law into motion. Thus non specifying the fact that the injuries were caused with the back side of the axe in the initial report and later on clarifying this fact, cannot be termed as improvement.

8. Now coming to the conviction and sentence passed by the Courts below, the learned trial Court convicted the petitioner under Section 337-A(ii) PPC to undergo imprisonment for three years and to pay Arsh equivalent to the value of Diyat, under Section 337-A(i) PPC to undergo imprisonment for one year and to pay Damman of Rs. 10,000/- to each of the injured and under Section 337-F(i) PPC to undergo imprisonment of one year and to pay Daman of Rs. 5000/- to each of the injured PWs. In appeal the learned appellate court converted the aforementioned conviction and sentence to payment of Arsh under Section 337-A(ii) PPC and Damman under Section 337 A(i) and 337 F(i) PPC to each of the injured PW, however, both the Courts below have failed to

appreciate the evidence as to who out of the injured PWs sustained what type of injury.

9. According to the MLC of complainant Ashiq, he was having a skin deep lacerated wound having irregular margins on right side of skull which falls under the definition of Shajjah-i-Khafifah punishable under Section 337-A(i) PPC. The punishment provided for the offence under Section 337-A(i) PPC is daman and imprisonment which may extend to two years as Ta'zir. Similarly, injured PW Sajid Nawaz, according to his MLC was having a lacerated wound on left eye brow which was skin deep also falling within the definition of Shajjah-i-Khafifah punishable under Section 337-A(i) PPC and an abrasion on lateral aspect of hand which was a superficial injury falling within the definition of Damiyah punishable under Section 337-F(i) PPC and the punishment provided for the Damiyah is Damman and may also be punished with imprisonment up to one year as Ta'zir. Only Khyber Zaman injured, according to his MLC was having a lacerated wound on frontal region of skull which exposed the bone, falling within the definition of Shajjah-i-Mudihah punishable under Section 337 A(ii) PPC to Qisas or Arsh which shall be five percent of

Diyat and may also be punished with imprisonment of either description for a term which may extend to five years as ta'zir. Thus only injured PW Khyber Zaman was entitled to receive Arsh equal to 5% of Diyat, while complainant Ashiq and injured PW Sajid Zaman were entitled to receive Damman, keeping in view the injuries on their person.

10. In view of the above, while partially allowing petition in hand, the petitioner is directed to pay Arsh equal to five percent of Diyat under Section 337-A(ii) PPC (Rs. 126603/-) to the injured PW Khyber Zaman, while to pay Daman under Section 337-A(i) PPC to complainant Muhammad Ashiq and injured PW Sajid Nawaz (Rs. 10,000/- each) and Daman under Section 337 F(i) PPC to injured PW Sajid Zaman amounting to Rs. 5000/-.

11. The convict/petitioner shall pay the aforesaid amount of Arsh and Daman within two months. Till then he shall remain on bail against already submitted surety bonds. However, if he fails to pay the amount within the aforesaid period, his bail granting order shall stand recalled, he shall be taken into custody and shall remain in imprisonment till the payment of aforesaid amount.

Announced.
Dt.17.11.2017.

J U D G E

/Aftab P.S/*

Justice Syed Arshad Ali.