

**JUDGMENT SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.**

Criminal Appeal No.S-143 of 2013

Criminal Jail Appeal No.S-166 of 2013

Criminal Appeal No.S-03 of 2014

Appellants: Malik Humayon (in custody) in Criminal Appeal No.S-143 of 2013 through Mr. Riazat Ali Sahar, Advocate.

Malik Babar (**passed away**) in Criminal Appeal No.S-143 of 2013 through Mr. Ishrat Ali Lohar, Advocate.

Rehman Burfat (present on bail) & Gulab Khaskheli (**passed away**) in Criminal Appeal No.03 of 2014 and Criminal Jail Appeal No.S-166 of 2013) through Mr.Ahsan Sabir, Advocate.

Respondent: The State through Mr. Shahid Ahmed Shaikh, Addl. P.G. Sindh.

Complainant: Vishnu Mal through Mr. Mehmood Alam Abbasi, Advocate.

Date of hearing: 28.11.2024.

Date of Decision: 09.12.2024.

**J U D G M E N T**

**Amjad Ali Sahito, J.** These are three appeals filed by the appellants, which are arising out of one and same crime and common judgment, which is impugned herein; therefore, I would like to dispose of all these captioned appeals altogether.

**2.** Through the above captioned appeals, the appellants have impugned judgment dated 31.10.2013, passed by the learned trial Court/Additional Sessions Judge, Kotri in S.C. No.52/2005 [Re-The State v. Rehman and others], Crime No.11/2004 for the offences under sections 324, 149, 337-D,

337-F (iii), 337-F (vi), 337-L (ii), 109 PPC registered at PS Thano Bula Khan, whereby the appellants were convicted and sentenced in the following manner:-

**U/s. 324 PPC**

Accused are convicted and sentenced to undergo R.I. for 10-years and each accused shall be liable to pay fine of Rs.50,000/-. In default in payment of fine, each accused shall suffer S.I. for six months more.

**U/s. 336 PPC**

Accused are convicted and sentenced to undergo R.I. for, 10-years as Tazir and accused shall be liable to pay Arsh (1/2 of diyat amount) to injured Dr. Tekchand. In default to pay amount of Arsh within the period of six months, the convictee shall be kept in jail to suffer S.I. until such amount of Arsh is paid to injured Dr. Tekchand.

**U/s 337-D PPC**

Accused are convicted and sentenced to undergo R.I. for 10-years as Tazir and each accused shall be liable to pay Daman (1/3 of diyat amount) to injured Dr. Tekchand. In default to pay amount of Daman within the period of six months, the convictee shall be kept in jail to suffer S.I. until such amount of Daman is paid to injured Dr. Tekchand.

**U/s 337-F (iii) PPC**

Accused are convicted and sentenced to undergo R.I. for 3-years as Tazir and each accused shall be liable to pay Rs.20,000/- as daman to injured Dr. Tekchand. In default to pay amount of Daman within the period of six months, the convictee shall be kept in jail to suffer S.I. until such amount of Daman is paid to injured Dr. Tekchand.

**U/s 337-F (vi) PPC**

Accused are convicted and sentenced to undergo R.I. for 7-years as Tazir and each accused shall be liable to pay Rs.40,000/- as daman to injured Dr. Tekchand. In default to pay amount of Daman within the period of six months, the convictee shall be kept in jail to suffer S.I. until such amount of Daman is paid to injured Dr. Tekchand.

**U/s 337-L (ii) PPC**

Accused are convicted and sentenced to undergo R.I. for 1-year as Tazir and each accused shall be

liable to pay Rs.10,000/- as daman to injured Dr. Tekchand. In default to pay amount of Daman within the period of six months, the convictee shall be kept in jail to suffer S.I. until such amount of Daman is paid to injured Dr. Tekchand.

**3.** Facts of the prosecution case are that complainant Vishnu Mal, lodged an FIR regarding an ongoing land dispute with the accused, Malik Allaudin's group, which had led to previous altercations and FIRs being crime No.10/2001 and 09/2004 registered at PS Thano Bula Khan. On the night of 09.08.2004, Dr. Tekchand and others were followed by Malik Humayoon and two unidentified culprits, but they escaped unharmed by entering a house. On 10.08.2004, while traveling in their vehicle, Vishnu Mal and Dr. Tekchand were confronted by the accused at a bus stop. Malik Babar opened the vehicle door, grabbed Dr. Tekchand, and shot him in the abdomen from his pistol. Other accused, including Malik Humayoon, Malik Naseer, and Raza Muhammad, also fired at Dr. Tekchand, injuring him. The accused then fled after firing. The commotion caused by the gunfire attracted PWs Gurmukdas, Pessumal, and Odhomal, who were subsequently fired upon by two unidentified culprits. However, the shots missed their targets, and the accused ran away. The complainant then took his brother, Dr. Tekchand, to Taluka Hospital in Thana Bula Khan and informed the police about the incident. As Dr. Tekchand's condition was serious, he was transferred to Agha Khan Hospital in Karachi for further treatment. After leaving Dr. Tekchand at the hospital, the complainant returned to the police station and lodged an FIR, alleging that the offense was committed at the instigation of Malik Allauddin and Malik Ghulam Akbar.

**4.** After investigation, police submitted a police report under section 173 Cr.P.C./challan of the case. At the first instance accused Raza Mohammad alias Razoo and Malik Allaudin were arrested while the rest were shown absconders. Later on, accused Malik Babar, Malik Humayon, Malik Naseer, Malik Ghulam Akbar and Rehman Burfat joined trial after

obtaining bail while accused Gulab Khaskheli was declared a proclaimed offender. A charge against accused was framed. Since accused Malik Naseer was declared juvenile after observing all formalities, as such, his case was separated. Then prosecution examined complainant Vishnu Mal, injured Tekchand, PW Pessumal, mashir Jessumal and PW Dr. Leela Ram. Meanwhile, proclaimed offender Gulab Khaskheli was arrested and sent up with a supplementary report for trial. Consequently, after supplying police papers, an amended charge was framed against accused Malik Allaudin, Malik Babar, Malik Humayoon, Rehman and Gulab for offences under sections 147, 148, 149, 324, 337-D, 337-F (iii), 337-F (vi), 337-L (ii), 109 PPC.

**5.** After framing of amended charge, prosecution again examined complainant Vishnu Mal, injured Dr. Tekchand, PW Pessumal, Dr. Leela Ram, mashir Jessumal, I.O./Inspector Ghulam Fareed Jatt, Dr. Bhawan Mal, ASI Rasool Bux Lashari and thereafter prosecution closed its evidence side.

**6.** The appellants/accused were given chance to explain about the prosecution evidence by recording their statements under Section 342 Cr.P.C, in which they denied all the allegations and said that they are innocent and case against them is registered due to enmity. However, accused Malik Babar produced certified true copies of two judgments dated 07.01.2013 in crime No.09/2004 and 10/2004 of PS Thana Bula Khan respectively. They did not offer to be examined on oath and avoided producing in defense witnesses except appellant Malik Humayoon, who examined DW/DSP Mohammad Bachal Talpur in his defense. After hearing counsel for the appellants, complainant and prosecution, the trial Court pronounced verdict against the appellants as mentioned above.

**7.** Mr. Riazat Ali Sahar, learned advocate appearing on behalf of appellant Malik Humayoon contended that the appellant is innocent and had falsely been implicated in the instant case due to enmity between the parties; that there are

major contradictions are available in the evidence of prosecution witnesses. He further contended that;

- (1) As per evidence of PW-1 complainant Vishno Mal and PW-2 injured Dr. Tekchand, as recorded in their evidence, it was alleged that accused Malik Babar and Malik Humayon fired at the abdomen of the injured Dr. Tekchand, while accused Malik Naseer fired at his legs with a pistol, however, this account stands in stark contrast to the evidence of PW-3 (Pessu Mal, who stated that accused Malik Babar, Malik Humayon, and Malik Naseer fired directly at the abdomen of PW-2, Dr. Tekchand, as such, this inconsistency in the statements of the alleged eyewitnesses constitutes a significant contradiction in evidence adduced in the case.
- (2) Admittedly, the vehicle allegedly used by the injured Dr. Tekchand [complainant party] at the time of the incident was not produced at any stage during the trial, nor was its registration number mentioned by any of the prosecution witnesses. Furthermore, in the cross-examination of PW-1, the vehicle is described as a Darson Pick-Up; hence, this inconsistency in the description of the vehicle highlights a significant contradiction in the testimony of the prosecution witness, thereby undermining the credibility of his account and revealing self-contradictions in his statement.
- (3) The Mashirnama of the recovery of the vehicle in which the injured PW Dr. Tekchand was allegedly seated at the time of the incident does not indicate any scratches or damage to the vehicle, as such, this is also contradicted with the evidence suggesting that a bullet passed through the body of the injured PW Dr. Tekchand while he was seated inside the vehicle.
- (4) The Mashirnama further states that blood was found inside the vehicle. However, during the cross-examination of PW-5 Jessu Mal, stated that he did not observe any blood stains inside the vehicle or any bullet marks on the vehicle; as such, this contradiction between the Mashirnama and the testimony of PW-5 raises serious questions about the reliability and consistency of the prosecution evidence.
- (5) The injury attributed to appellant Malik Humayon is described as a single firearm injury that struck the abdomen of the injured Dr. Tekchand. Similarly, another firearm injury attributed to co-accused Malik Babar also struck Dr. Tekchand's abdomen. Both injuries fall within the ambit of Section 337-D PPC. The Mashirnama of injury also reflects six injuries in total, while the Medical Certificate describes seven injuries. This discrepancy further complicates the narrative of prosecution and points a lack of consistency in the evidence presented.
- (6) The PW-4, Dr. Leela Ram [MLO] deposed that injuries No. 1 and 2 sustained by the injured Dr. Tekchand fall under the category of Jaifah as defined in section 337-D PPC but during his cross-examination he stated that the injured Dr. Tekchand was sent to him by the police for medical treatment and the issuance of a medical certificate. This piece of evidence of the Doctor contradicts the statements of the complainant and injured PW Dr. Tekchand, who claimed that they went directly to Taluka Hospital Thanu Bula Khan and later informed P.S. Bula Khan about the incident, as such, this contradiction raises significant questions about the sequence of events and the credibility of the evidence.
- (7) According to the evidence provided by the alleged eyewitnesses, Dr. Tekchand was held by the neck and injured inside the vehicle at a very close range, within a distance of 3 to 4 feet between the shooter and the injured. However, PW-4, Dr. Leela Ram, stated during his cross-examination that when a firearm

- injury is inflicted from a distance of up to 3 feet, blackening typically appears around the entry wound.
- (8) Despite this, the medical certificate does not indicate any blackening on the entry wound, creating a significant inconsistency between the eyewitness accounts and the medical evidence.
  - (9) The recovered articles i.e. 3 empty shells and blood-stained clothes were not sent for chemical analysis.
  - (10) No crime alleged weapon was recovered from any accused person or produced before the court during trial.
  - (11) The Taxi Driver, who transported the injured Dr. Tekchand to the hospital and could have served as a key/ material witness, was neither examined during the course of the investigation nor presented before the court. This omission raises concerns about the thoroughness of the investigation and the completeness of the evidence presented in the case.
  - (12) That all the prosecution witnesses, including the MLO, belong to the Hindu community and are admittedly related to one another.
  - (13) The prosecution has failed to examine any independent witnesses during the investigation or trial, as a result thereof, the possibility of bias/coordinated/set-up narrative cannot be ruled out, raising concerns about the impartiality and reliability of the evidence presented.
  - (14) In the realm of criminal jurisprudence, the principle of ***in dubio pro reo*** (when in doubt, for the accused) is firmly established as a cornerstone of justice and in such eventuality, it is well-established that benefit of doubt may be extended to the accused keeping in view the existence of numerous circumstances raising uncertainty is not a prerequisite but a single circumstance that reasonably casts doubt in the mind of a prudent individual concerning the guilt of the accused is sufficient to entitle the accused to the benefit of such doubt, not as a matter of grace or concession, but as an unequivocal right.
  - (15) Despite the significant contradictions highlighted above, which render the case suitable for acquittal, he emphasized the age of the appellant at the time of the alleged offence. Referring to the attested CNIC and the appellant's statement recorded under Section 342 Cr.P.C., it is evident that the appellant was approximately 18-19 years old at the time, qualifying him as an alleged youthful offender.
  - (16) The stated motive, as alleged by the complainant, pertained to FIR No. 09/2004 of P.S. Bula Khan, in which the accused party allegedly attacked the complainant party over a land dispute. However, the appellant's name was not mentioned in that FIR by either PW-1 Vishnu Mal or PW-2 Dr. Tekchand. This omission undermines the prosecution's claim of motive or enmity against the appellant. As such, he prayed for acquittal of the appellant.
  - (17) The prosecution has not brought on record any evidence of a prior criminal record against the appellant.
  - (18) The appellant's health condition is extremely poor, as he has been suffering from the effects of bullet injuries sustained since 2009. As a result, the lower portion of his body is paralyzed and does not function properly. Consequently, he has been bedridden, leading to the development of grade 3 bedsores. Additionally, he has been dependent on a catheter for passing urine for over a year.

In support of his contentions, learned counsel has relied upon the cases reported in 2006 SCMR 1846, 2007 SCMR

1813, 2018 SCMR 153, 2019 SCMR 956, 2024 SCMR 1427, 2024 SCMR 1579, 2023 YLR 2051 and 2024 YLR 165.

**8.** Mr. Ishrat Ali Lohar, learned advocate representing the appellant Malik Babar, who has passed away, contended that the deceased appellant was innocent and falsely implicated in the instant crime due to enmity. However, learned counsel adopted the same contentions as advanced by Mr. Sahar and prayed for abatement of the proceedings against the appellant Malik Babar.

**9.** Mr. Ahsan Sabir, learned counsel representing the appellants namely, Rehman Burfat and Gulab Khaskheli [expired] contended that the appellants are innocent and have falsely been implicated in this case. Even, the prosecution failed to establish their presence at the place of the incident through confidence-inspiring evidence; however, in this regard, the PWs have contradicted to each other. At the initial stage, they were not nominated in the FIR but based on an un-authenticated source without corroboration of PWs in this regard, they have been joined in this case and none of the persons, from whom the complainant knew identity, have been examined by the prosecution. He, therefore, prayed for the acquittal of the appellant Rehman Burfat while abatement of proceedings against appellant Gulab Khaskheli.

**10.** On the other hand, learned A.P.G. Sindh as well as learned counsel appearing on behalf of the complainant have supported the impugned judgments by contending that the appellants have been found fully involved in the commission of a heinous offence; ocular, medical as well as circumstantial evidence brought on record by the prosecution and has fully supported the prosecution version against the appellants, therefore, the impugned judgments do not require any interference by this Court. They prayed for the dismissal of instant appeals.

11. Heard and perused the material available on record including the case law cited by the learned counsel.

12. On careful perusal of material brought on the record it appears that the prosecution case solely depends upon the ocular testimony adduced in the shape of evidence of complainant Vishnu Mal, injured Dr. Tekchand, PW Pessumal as well as Medical Officer Dr. Leela Ram and Investigating Officer Inspector Ghulam Fareed Jatt. The evidence of the injured Dr. Tekchand, complainant Vishnu Mal, PW Pessu Mal and Medical Officer Dr. Leela Ram are very important to be analyzed. Injured Dr. Tekchand in his deposition deposed with regard to earlier altercations before the incident. However, in respect of the incident he has deposed that; ***“On 10.08.2004, I along with my brother Vishnu Mal left my house for attending duty at Taluka Hospital, T.B Khan in a Toyota Hilux. It was about 8.30 a.m., when we reached at bus stop, Thano Ahmed Khan, I decrease the speed of the vehicle being driven by me due to rush, meanwhile, accused Malik Babar, Malik Humayoon, Malik Naseer, Raza Muhammad @ Razoo, Gulab Khaskheli & Rehman Burfat, while challenging us came near to the vehicle. In the meantime, accused Malik Babar opened the door of my vehicle, caught hold me from my neck and fired upon me with his respective pistol with intention to commit my murder, which hit on my abdomen, accused Malik Humayoon also fired upon me with his respective T.T. pistol, which also hit me on my abdomen. On sustaining fire arm injuries, I fell down on the ground. Accused Malik Naseer, Raza Muhammad, Gulab Khaskheli & Rehman Burfat also fired upon me, which hit on my legs. I went semi-conscious and my brother Vishnu Mal took me to Taluka Hospital, T. B Khan.”*** Injured also deposed with regard to subsequent proceedings after the incident. Now, I would like to reproduce the injuries sustained by injured as stated by Medical Officer Dr. Leela Ram who examined the injured, which reads as under:-



1. Punctured lacerated wound of fire arm measuring 1 cm in diameter over right hypochondrium. Wound of entry and wound of exit present on the left lumber region at post aspect measuring 2 cm.
2. Punctured lacerated wound of fire arm measuring 1 cm in diameter over left lumber region at posterior lateral aspect. This was wound of entry and wound of exit present over right limber region at posterior literal aspect measuring 2 cm.
3. Punctured lacerated wound of fire arm measuring 1 cam in diameter over interior aspect of right upper 1/3 part of thy. This was wound of entry and wound of exit present over right hip at lateral aspect measuring 2.2 cm in diameter.
4. Punctured lacerated wound of fire arm measuring 1 cm in diameter over right upper 1/3 lower leg at interior aspect. This was wound of entry and exit present over posterior aspect of same area measuring 2.5 cm in diameter.
5. Punctured lacerated wound of fire arm measuring 1 cm in diameter over literal aspect of left upper 1/3 part of thy. This was wound of entry and exit present over left thigh at medial aspect and then was penetrated in scrotum and same was exited from base of scrotum measuring 2.5 cm in diameter.
6. Punctured lacerated wound of fire arm measuring 1 cm in diameter over interior aspect of left upper 1/3 part of thy. This was wound of entry.
7. A gutter shape of lacerated wound of fire arm measuring 4 cm x 1 cm in to muscle deep over posterior aspect of left lumber region blow the exit wound of injury No.1.

13. During evidence, Dr. Leela Ram stated that he has declared the injuries No.1 & 2 as Jaifah, 337-D PPC. While injuries Nos.3, 5, 6 & 7 were declared as Ghyer-e-Jaifah Mutalahimah, 337-F (iii) PPC and injury No.4 as Ghyer-e-Jaifah Munaqillah, 337-F (vi) PPC.

14. Evidence of the complainant Vishnu Mal and PW Pessu Mal adduced by the prosecution is almost same to that of injured Dr. Tekchand in respect of injuries caused by the accused Malik Babar and Malik Humayoon to the injured Dr. Tekchand with the intention to commit his murder.

15. So far rest of the accused are concerned, PW complainant Vishnu Mal deposed that ***“Accused Malik Naseer and Raza Muhammad also fired with their respective pistols upon my brother, which hit him on his legs. We***

*raised cries. The commotion of firing and our cries attracted Gurmukdas, Pesu Mal & Oudhal Mal, available at bus stand. They also arrived on the venue of incident. Meanwhile, accused Rehman Burfat and Gulab khaskheli also fired upon them but the fire missed. We raised hakkals to the accused and they went away.*” In his cross-examination, this witness stated **“I had identified 2-unknown persons shown in the FIR as unidentified accused namely Rehman Burfat and Gulab Khaskheli. The names of those accused were enquired from the people of Thano Ahmed Khan. It is correct that I had not produced the villagers, who disclosed the names of accused Rehman Burfat and Gulab Khaskheli to me. It is correct that none of them has shown witness of the case.”** The evidence adduced by the complainant is supported by other witnesses, such as the injured Dr. Tekchand and PW Pessu Mal, in relation to the injuries inflicted by the accused, Malik Naseer and Raza Muhammad. However, these witnesses contradicted the complainant's account regarding the involvement of accused Rehman Burfat and Gulab Khaskheli in causing the injuries. The complainant claimed that he learned the names of the unidentified culprits from the people of Thano Ahmed Khan, but none of them were examined by the prosecution to confirm this claim. Furthermore, even if it is assumed that Rehman Burfat and Gulab Khaskheli were the unidentified culprits, they should have been named in the FIR, especially since the FIR was filed more than 15 ½ hours after the incident.

**16.** Furthermore, in this case, the Investigating Officer Inspector Ghulam Fareed Jatt, testified that on 30.08.2004, he recorded a further statement from the complainant, Vishnu Mal, in which the complainant exposed the names of the previously unidentified accused as Gulab Khaskheli and Rehman Burfat. However, despite this statement, the I.O. failed to provide any details regarding the steps taken to verify the accuracy of these identifications. Specifically, there was no mention in the evidence that the I.O. had confirmed with any

local residents from the locality as to whether Gulab Khaskheli and Rehman Burfat were indeed the persons referred to by the complainant in his statement. Furthermore, the I.O. did not disclose any source through which he became aware of the identities of these accused. The absence of independent verification of the complainant's disclosure of identifying these accused as well as the lack of any credible source or corroborative evidence to support the identification of the accused, raises significant doubts about the reliability of these disclosures. Without any additional testimony or confirmation from the locality or other sources, the identities of the accused remain unsubstantiated and the failure to establish the credibility of these identifications dents the case of prosecution. Therefore, due to the lack of supporting evidence or a clear chain of inquiry, the identification of these accused by the complainant becomes questionable, undermining the overall reliability of the claim of prosecution.

**17.** From the evidence adduced by the prosecution, it appears that the prosecution could only establish the case against the appellants Malik Babar (now deceased) and Malik Humayon for causing injuries classified under Sections 335 and 337-D PPC. The injuries sustained by the injured Dr. Tekchand were defined by Medical Officer Dr. Leela Ram, who identified them as injuries No. 1 and 2. These injuries fall under the definition of "Jaifah" in Clause (a) of Subsection 2 of Section 337-B PPC. The punishment for "Jaifah" is specified under Section 337-D PPC, which reads as under:-

*“Whoever by doing any act with the intention of causing hurt to a person or with the knowledge that he is likely to cause hurt to such person, causes jaifa to such person, shall be liable to arsh which shall be one-third of the diyat and may also be punished with imprisonment of either description for a term which may extend to ten years as ta’zir.”*

The punishment under Section 337-D PPC is subject to the proof of the essential conditions outlined in Section 337-N (2) PPC. This section stipulates that imprisonment by way of Ta'azir can only be imposed if the convict is a "previous convict, habitual or hardened criminal, or has committed the offense in the name or pretext of honor." In this case, the prosecution has not provided any evidence to suggest that the appellants, Malik Babar (now deceased) and Malik Humayon, meet the criteria defined in Section 337-N (2) PPC. Therefore, they cannot be awarded a sentence of imprisonment by way of Ta'azir under Section 337-D PPC. As a result, they are only liable to pay arsh, which is one-third of the diyat, for causing "jaifa" to the injured Dr. Tekchand. Further, the prosecution has proved that the injuries sustained by the injured were caused by these appellants and fall under the definition of Section 335 PPC. Section 335 PPC provides that **"Whoever destroys or permanently impairs the functioning, power or capacity of an organ of the body of another person, or causes permanent disfigurement is said to cause itlaf-i-salahiyyat-i-udw"**. During arguments injured Dr. Tekchand showed his abdomen/tummy, which was totally disfigured by the appellants Malik Hamayoon and Malik Baber (Now dead) while firing upon him as such, the punishment under Section 336 PPC can be awarded to them. Therefore, based on this evidence, these appellants can be sentenced under Section 336 PPC.

**18.** Regarding the punishment awarded to the appellants Malik Babar (now deceased) and Malik Humayon for the offense under Section 324 PPC, it is important to note that the punishment for this offense can be extended up to ten years. However, the minimum punishment prescribed is five years, unless the offense is committed in the name or on the pretext of honor, in which case additional penalties, including a fine, are imposed. Furthermore, if the act results in hurt to any person, the offender is liable not only to imprisonment and fine as mentioned above but also to the punishment provided for the

hurt caused. Section 324 PPC also states that if the hurt caused is subject to *qisas*, but cannot be executed, the offender will be liable to *Arsh* and may be punished with imprisonment of either description for a term. In this case, it is admitted that the offense was not committed under the pretext of honor. Instead, the alleged motive is based on a private land dispute; therefore, the provisions related to honor-based offenses under Section 324 PPC do not apply in this case.

**19.** Under Section 324 PPC, the punishment prescribed for the offense is imprisonment for a term that may extend to ten years. The use of the word "**may**" in this context clearly indicates that the imposition of a sentence is at the discretion of the Court. This discretion allows the Court to assess the facts and circumstances of the case and determine the appropriate quantum of the sentence, taking into consideration various factors, including any mitigating circumstances presented by the defense. In the instant case, learned counsel for the appellants has informed the Court that appellant Malik Humayon is now on his deathbed. He sustained gunshot injuries in 2009 in a separate incident, which have severely impacted his health and as a result of these injuries, the appellant has suffered long-term effects, including paralysis of the lower portion of his body, which no longer functions properly. Due to this condition, he is confined to bed and has developed grade 3 bedsores. Further, he has been dependent on a catheter for passing urine for over a year. The jail authorities have also confirmed that appellant Malik Humayoon was admitted to the jail ward of Civil Hospital Hyderabad with a history of gunshot injury sustained in 2009 and has developed pressure sores due to restricted mobility secondary to loss of sensation in the lower extremities. His examination findings described as Right buttock as a large grade III pressure sore, approximately 9 x 4 cm in size and his Left buttock as a grade II pressure ulcer, approximately 5 cm in diameter. He has been catheterized for a long time. It is also important to note that at the time of the incident, Malik Humayon was a young man,

approximately 18 or 19 years old. His present health condition and age can be considered as mitigating circumstances when determining the appropriate punishment. The severely impaired health condition of Malik Humayoon and the fact that the offense was not committed in the name or pretext of honor and there is no prior criminal history, these factors should be considered as significant mitigating circumstances. His deteriorating health, including paralysis, bedsores, and dependence on a catheter and especially the absence of an honour-related motive for the crime strongly suggest for a reduction in the quantum of the sentence awarded to him.

**20.** For what has been discussed above, appellant Malik Humayon is found guilty of the offences under sections 324 335, 337-D PPC now the question arises regarding the quantum of the sentence. Admittedly, the provisions of section 337-N(2) PPC are squarely attracted in the case of this appellant as the prosecution has not produced any proof to show that the accused is a previous convict, a habitual, hardened, desperate or dangerous criminal, therefore, I am of the considered view that he is liable for principal punishment of *Arsh*. Consequently, **his conviction for committing an offence under section 336 PPC and sentence is modified to pay *Arsh* equivalent to one-third of the *diyat* amount as per existing notification with regard to the *diyat* amount,** which shall be paid to injured Dr. Tekchand. Appellant Malik Humayon is also **convicted for committing an offence under section 337-D PPC and the sentence is modified to pay *Arsh* equivalent to one-third of the *diyat* amount as per existing notification with regard to the *diyat* amount,** which shall be paid to injured Dr. Tekchand. His conviction for committing an offence under section 324 PPC and sentence is reduced from R.I. for ten years with a fine of Rs.50,000/- to R.I. for three years and six months with enhancement of fine amounting to Rs.100,000/- and in case of default to pay the fine amount, he shall suffer further six months as Simple Imprisonment. The prosecution had failed to prove the charge for an offence under sections

337-F-(iii), 337-F-(vi), and 337-L (ii) PPC against appellant Malik Hamayoon, hence, the conviction and sentence awarded to the appellant for the above sections are set aside. He is also extended the benefit of Section 382-B Cr.P.C.

**21.** According to the Jail Roll received from the Superintendent, Special Prison and Correctional Facility Nara Hyderabad, appellant Malik Humayoon has already served over 3 years and 6 months, including remission. As such, the office is directed that once the *Arsh* equivalent to one-third of the diyat amount as well as the fine amount viz. Rs.100,000/-, as stated above, is paid with the Accountant of this Court, a release writ should be issued for his immediate release if not required in any other custody case. In case, the said amounts are deposited with the Accountant of this Court, the same shall be given to injured Dr. Tekchand after issuing notice to him, proper verification and identification. However, in case, said injured Dr. Tekchand in any manner fails to receive due to non-service of the notice or any other reason then said amount shall be invested in a profitable scheme till the injured appears and claims the same by filing an application.

**22.** In this case, the accused Rehman Burfat and Gulab Khaskheli initially were as unidentified in the FIR, which was lodged following the alleged incident. However, after the lodging of the FIR, the complainant conducted an inquiry, during which the names of these accused persons were exposed by certain villagers. Despite this, it is crucial to note that none of the villagers who purportedly provided these names were examined as witnesses in Court. Furthermore, the investigation failed to establish the veracity of the source from which the names were disclosed, leaving a significant gap in the evidentiary support for the identification of the accused. In the absence of any direct testimony or reliable evidence to corroborate the identification of the accused, I find that the charge against the accused lacks sufficient corroboration, which manifestly suggests failure of the prosecution to prove its burden. As a result, due to the lack of

credible evidence and the failure to properly examine the sources of discovery, the prosecution has failed to prove its case beyond a reasonable shadow of a doubt against the appellant Rehman Burfat.

**23.** It is also a well-settled principle of law that for giving the benefit of the doubt to an accused, there doesn't need to be many circumstances creating doubts but if there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. It is also well known maxim that, "ten guilty persons should be acquitted rather than one innocent person be convicted". In this respect, reliance can be placed upon the case of **MOHAMMAD MANSHA v. The STATE (2018 SCMR 772)**, in which the Hon'ble Supreme Court of Pakistan has held as under:-

***"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749)."***

**24.** In view of the above facts and circumstances, the learned Trial Court has failed to appreciate the evidence and material brought by the prosecution against appellant namely Rehman Burfat. Consequently, I while giving the benefit of the doubt acquit him from the charges. He is present on bail, his bail bond stands cancelled and surety discharged.



**25.** Since appellants Malik Babar and Gulab Khaskheli have passed away, as such, proceedings against them are abated to the extent of the portion of their sentences in view of section 431 Cr.P.C.

**26.** With the above modification in the impugned judgment, all the appeals are accordingly disposed of.

JUDGE

**\*Abdullah Channa/PS\***  
**Hyderabad.**  
**Dated 09.12.2024**