

# HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Jail Appeal No.S-03 of 2023

Present

Mr. Justice Dr. Syed Fiaz ul Hasan Shah.

Appellant/Accused: Shahid S/o Muhammad Rafique Rajput.  
Through Mr. Aziz Ahmed Laghari, Advocate  
for Pauper Accused/Appellant.

Respondent: The State  
Through, Mr. Dhani Bakhsh Mari, A.P.G  
Sindh.

Complainant: Waheed S/o Nazeer Ahmed.  
through, Mr. Haji Qalandar Bux Laghari,  
advocate.

Date of hearing: 17.02.2025.

Date of Judgment: 17.02.2025.

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

Dr. Syed Fiaz ul Hasan Shah, J: The Appellants Shahid Rajput filed present Criminal Jail Appeal against the Judgment of conviction dated 15.11-2023 passed by learned Additional Sessions Judge-I, Mirpurkhas in Sessions Case No. 31/2023 (Re: The State Vs. Shahid) emanating out of FIR No.64/2022 U/Ss 324, 337-A(i), 337-F(ii), 504 of Pakistan Penal Code 1860, registered at PS: Digri wherein the appellant was convicted U/S 265-H(ii) Cr.P.C as under;

- For committing offence punishable U/S 337-F P.P.C only to pay Daman of Rs.100,000/- to injured Muhammad Naeem son of Nazeer Ahmed in lump sum. Accused is directed to pay total amount of Daman of Rs.100,000/- in lump sum to injured Naeem and in case of default, he be remanded back to Jail to undergo simple imprisonment until the total amount of Daman is paid.
- For committing offence punishable U/S 337-A(i), P.P.C. only to pay Daman of Rs. 20,000/= to injured Naeem son of Nazeer Ahmed in lump sum. Accused is directed to pay total amount of Daman of Rs. 20,000/= in lump sum

to injured Naeem, and in case of default, he be remanded back to jail to undergo simple imprisonment until the total amount of Daman is paid.

- Moreover, by finding accused Shahid son of Muhammad Rafique Rajput, guilty of committing the offence punishable U/S 504 and 324, P.P.C. and keeping in view that he is first offender, I convict him U/S 265-H(2) Cr.P.C as under:

For committing offence punishable U/S 504, P.P.C. to suffer Rigorous Imprisonment (R.I.) for three months and to pay fine of Rs. 5000/= and in case of default of payment of fine to further undergo simple imprisonment (S.I.) for ten (10) days.

For committing offence punishable U/S 324, P.P.C. to suffer Rigorous Imprisonment (R.I.) for five years and to pay fine of Rs.50,000/= and in case of default of payment of fine to further undergo simple imprisonment (S.I.) for three (03) months.

2. The brief facts of the FIR are that FIR lodged by complainant Waheed Ahmed on 30-07-2022 at 1200 hours at P.S. Digri are that on 28-07-2022 he along with his younger brother Naeem Laghari, aged about 23/24 years, was sitting in the poultry shop of Younus Rajput situated in old meat market where at 03:45 p.m. one Shahid son of Muhammad Rafique Rajput R/o Jeelani Pir Digri City came there, and he started abusing his brother Naeem Laghari and threatened that he has restrained him from coming there; whereupon his brother Naeem Laghari restrained him from abusing, due to which Shahid Rajput after taking Bughda from the shop caused Bughda blow to Naeem Laghari with intent to commit his murder, which hit on the left side of his chest and his brother, who after raising cries, fell down on the ground. Then he tried to apprehend Shahid Rajput but he fled away alongwith Bughda. Then he brought his injured brother Naeem Laghari at P.S. Digri from where obtained letter for medical treatment and then went to Taluka hospital Digri, where due to serious condition the doctor

after providing first aid referred his brother to Hyderabad hospital. Then complainant came at PS and lodged instant FIR.

3. After completion of investigation, challan was submitted before the court of learned Judicial Magistrate-I, Digri by showing present accused as absconder, therefore learned Judicial Magistrate issued NBWs against him but he could not be arrested, therefore, after completing necessary proceedings he was declared proclaimed offender by the learned Judicial Magistrate. Since the alleged offence under Section 324 PPC is exclusively triable by the Court of Sessions therefore, learned Magistrate sent up the R & Ps of this case to the Court of Sessions Judge, Mirpurkhas from where same was received to this court by way of transfer, for its disposal according to law.

4. On 26-09-2023, supplementary challan arrest report of accused Shahid was received from Honourable Sessions Judge, Mirpurkhas. Accused Shahid was already supplied copies of FIR, statements U/S 161 Cr.P.C. and Mashimama(s) by learned J.M-I, Mirpurkhas vide receipt dated 20-09-2023, at Ex. 03. Therefore, charge was framed against the accused on 02-10-2023 at Ex. 04, in which he pleaded not guilty vide his plea at Ex. 04-A substantiate the charge, examined following witnesses:

- P.W. No. 1 Medical Officer/ Dr. Kashif Fayyaz was examined at Ex. 05, and he produced letter of police, provisional MLC, letter of Additional Medical Superintendent, Liaquat University Hospital Hyderabad/Jamshoro along with X-Rays film and Radiologist Report and Final MLC at Ex. 05-A to 05-F.
- P.W. No.2 Complainant Waheed Ahmed was examined at Ex. 06 and he produced FIR at Ex.06-A.
- P.W. No. 3 Injured Naeem was examined at Ex. 07.
- P.W. No. 4 of injuries of Mashir Faheem Ahmed was examined at Ex. 08, and he produced memo of inspection injured and memo of site inspection at Ex. 08-A and 08-B.

- P.W. No.5 Arresting Officer/ ASI Doulat Khan was examined at Ex. 09, and he produced attested copy of Roznamcha entry No. 17 time 1500 hours and entry No. 22 time 1710 hours dated 19-09-2023 and Mashirnama of arrest of accused at Ex. 09-A and 09-B.
- P.W. No.6 Mashir of arrest/PC Shahid Hussain was examined at Ex. 10
- P.W. No. 7 Investigating Officer/SIP Pervez Locus was examined at Ex. 11, and he produced attested copies of Entry No.17 time 1600 hours dated 28-07-2022, entry No. 6 time 1200 hours dated 30-07-2022, entry No. 08 time 1240 hours and entry No. 15 time 1715 hours dated 30-07-2022 at Ex. 11-A to 11-C.

5. Statement of accused under Section 342 Cr.P.C. was recorded at Ex. 13, whereby he denied allegations leveled against him by the prosecution and stated that he did not commit crime, case is false. However, accused neither examined himself on oath nor did he lead any defence evidence.

6. I have heard the Counsel for State and the APG for State and perused the record. The prosecution has examined PW-2 and PW-3 to establish the ocular account of the incident and the injuries received by the PW-3 Naeem Leghari. The PW-2 is a natural witness who had visited the poultry shop accompanying his brother the PW-3 Naeem Leghari. The evidence of both the prosecution witnesses is firm, cogent and straightforward. PW-2 Waheed Ahmed deposed ***“On 28-07-2022 at 03:45 pm I alongwith my brother Naeem Laghari were sitting in the poultry shop of one Yonus, where Shahid Rajput came and after abusing my brother Naeem Laghari he told him that he has restrained from sitting there, on which my brother Naeem restrained him from abusing. Then Shahid Rajput attacked upon my brother Naeem with Bughda (Kaat) with intention to kill him, which hit him on the left side of his chest. After receiving injury my brother Naeem fell down on the ground”***. The

PW-2 was subjected to cross-examination but his evidence is trustworthy and straightforward. ***“My injured brother was having only one injury..... It is correct that I had not seen the accused prior to the said incident”***

The evidence of PW-3 who is the victim is also trustworthy and there is no inconsistency in the evidence of this witness. He deposed ***“On 28-07-2022 at 03-345 pm I alongwith my brother Waheed Ahmed were sitting in the poultry shop of one Yonus, where Shahid Rajput came and absued me, on which I restrained him from abusing. Then Shahid Rajput attacked upon me with bughda (Kaat) with intention to kill me, which hit me on the left side of my chest; after receiving injury I fell down on the ground... then my brother Waheed Ahmed brought me at PS Digri and after obtaining letter for medical treatment he brought me at Taluka Hospital Digri. After providing first aid the medical officer referred me to Hyderabad Hospital. Then on 30-07-2022 my brother Waheed Ahmed lodged instant FIR”***. Both the witnesses have fully supported the incident and both the witnesses were subjected to cross-examination by the Appellant but the evidence of both the prosecution witnesses remained un-impeachable and uncontroverted on this ocular account.

7. There is plethora of authorities in interpretation and criminal jurisprudence that whenever a statement of injured is confidence inspiring and the occurrence was viewed in sufficient light, it can safely be relied upon to be read against the appellants. Reliance can be placed on the Nasir’s case.<sup>1</sup> It is settled law that an eyewitness is always sufficient to establish the guilt if his evidence is confidence, inspiring and trustworthy and corroborated by another independent source of evidence because the law considers the quality of evidence and not its quantity to prove the

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<sup>1</sup> **“NASIR alias NASIREE and another versus The STATE and another” (2021 SCMR 1614)**

charge. The accused can be convicted if the Court finds direct oral evidence of one eye-witness to be reliable, trustworthy and confidence-inspiring. Reliance can be placed on rule laid down the Supreme Court of Pakistan.<sup>2</sup>

8. Further, the prosecution has also produced corroborative evidence in order to support the ocular account. The Medical Officer, Taluka Hospital Dr. Kashif Fayyaz was also examined as PW-01. He deposed ***“I found following injuries:***

- 1. Incised wound of 6 cm x 4 cm x 2 cm on left side of chest near to axilla, muscle deep;***
- 2. Abrasion of 0.4 cm x .8 cm just behind left ear.***

***..... I received MLC radiological expert opinion from Additional Medical Superintendent (MLC) Liaquat University Hospital Hyderabad/Jamshoro bearing No.LUH/Estt/(MLC)/6343 dated 05-12-2022 alongwith one X-ray film and Radiologist report wherein it is mentioned that no traumatic bony lesion and no pneumo/ haemothorax were seen.”*** The Medical evidence by itself does not throw any light on the identity of the offender but the Medical evidence may confirm the available substantive evidence concerning certain facts including the injury, nature of injury, cause of death, kind of weapon used in the occurrence, duration between injuries and death, and presence of an injured witness or the injured accused at place of occurrence, but it does not connect accused with commission of the offence. It cannot constitute corroboration for proving involvement of accused person in commission of the offence, as it does not establish identity of the accused person. Reliance can be placed upon cases

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<sup>2</sup> ***“Muhammad Ismail v. The State” (2017 SCMR 713); “Niaz-Ud-Din v. The State” (2011 SCMR 725); “Muhammad Ilyas Vs. The State” (2011 SCMR 460); “Faisal Mehmood Vs. The State” (2010 SCMR 1025); “Muhammad Ehsan v. The State” (2006 SCMR 1857); “Naeem Akhtar Vs. The State” (PLD 2003 SC 396) ; “Muhammad Ali and others v. The State” (1999 SCMR 1957); and “Muhammad Iqbal Vs. The State” (1996 SCMR 908).***

of Yaqoob Shah & others.<sup>3</sup> In the case in hand, the medical evidence is fully supported with ocular evidence in respect of injuries which were as per this piece of evidence were caused by sharp cutting weapon which also supports the time of receipt and duration of injuries.

9. The argument of learned counsel for the appellant that the prosecution witness/Complainant is the brother of the injured victim and he is an interested witness therefore his evidence cannot safely be relied upon. This argument has no force as the evidence of prosecution witness No.2 has realistically explained the date, time, and place of occurrence, and his presence is natural as he was going with his brother/victim for purchasing at poultry shop. The PW-02/complainant has explained each and every development of event at crime scene in natural way and it is quite consistent with the evidence recorded by the victim who is the injured person of the incident. It is clarified that rule of appreciation is that a witness comes within the ambit and definition of natural witness if he explains his presence, the occurrence, its time and date and other relevant factors in a confidence-inspiring way, otherwise the Appellant/Accused would have to satisfactorily establish that such witness is not the witness of truth but an interested one. It may be observed that it is unperceivable that by virtue of close relationship or friendship, a witness of event would become an interested witness.

10. An interested witness is not the one who is relative or friend but is the one who has a motive to falsely implicate an accused. The close relationship or friendship of an eye-witness with complainant or victim can never be a ground alone to discard evidence of such an eye-witness when it

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<sup>3</sup> *Yaqoob Shah v. State (PLD 1976 SC 53); Machia v. State (PLD 1976 SC 695); Muhammad Iqbal v. Abid Hussain (1994 SCMR 1928); Mehmood Ahmad v. State (1995 SCMR 127); Muhammad Sharif v. State (1997 SCMR 866); Dildar Hussain v. Muhammad Afzaal (PLD 2004 SC 663); Iftikhar Hussain v. State (2004 SCMR 1185); Sikandar v. State (2006 SCMR 1786); Ghulam Murtaza v. Muhammad Akram (2007 SCMR 1549); Altaf Hussain v. Fakhar Hussain (2008 SCMR 1103) and Hashim Qasim v. State (2017 SCMR 986).*

is trustworthy and inspiring cogent and confident. Therefore, evidence of PW-2 could be believed and safely relied upon being natural witness. The Appellant has failed to bring on record any malafide on the part of both PW-2 & PW-3 or any tangible substance for false implication of the Appellant at the cost of escape of real culprit by an eye-witness. It may further be observed that it is not stricto sensu rule that evidence of interested witness automatically be discarded and evidence of natural witness or even victim can be believed. The judicial propriety in criminal laws has well developed that it cannot be believed that every injured witness would speak truth and every unhurt eyewitness would tell lie. The Court assesses or determines the veracity and credibility of a witness, according to the facts and circumstances of the case and intrinsic statement in the light of attending circumstances of each and every case. A straightforward and truthful account of events, furnished by an eyewitness, cannot be brushed aside, merely for the reason, that he does not succumb injuries or he has safely has escaped from crime scene unhurt. For guidance reliance can be placed on Haroon ur Rasheed's case.<sup>4</sup> Even the law on the subject of interested witness has been settled. The testimony of interested person cannot be discarded but it has to evaluate with great care and caution<sup>5</sup> and its credibility, admissibility and validity is essentially depends upon the independent corroborative evidence in safe administration of justice.<sup>6</sup> Therefore, the evidence of interested witnesses cannot brush aside in normal course but his evidence to be properly sifted and weighed with necessary care and caution and should be evaluated in the light of the facts of each case and in the presence of corroborative evidence. Reliance can be placed on dictum of Hon'ble Supreme Court of Pakistan.<sup>7</sup> The evidence adduced by the

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<sup>4</sup> "Haroon-ur-Rashid and others v. State and another" 2005 SCMR 1568

<sup>5</sup> Ali Ahmed v. the State (PLD 1962 SC 102)

<sup>6</sup> Dalmir v. the State (1970 SCMR 840)

<sup>7</sup> "Shahzado v. State" (PLD 1977 SC 413),



prosecution witnesses about the ocular account is unimpeachable and no tangible material has been brought on record that may led this Court to form an opinion of false implication of the Appellant. It would conduce to delineate the excerpt in Zulfiqar Ahmed's case<sup>8</sup>:

***...It is well settled by now that merely on the ground of inter se relationship the statement of a witness cannot be brushed aside. The concept of 'interested witness' was discussed elaborately in case titled Iqbal alias Bala v. The State (1994 SCMR-01) and it was held that 'friendship or relationship with the deceased will not be sufficient to discredit a witness particularly when there is no motive to falsely involve the accused.***

11. The Counsel for the Appellant had argued on other points that the FIR was registered with considerable delay of 02 days and the statement of victim is recorded on 01.08.2022 after delay of 04 days which has sufficiently been explained by the prosecution. The learned Counsel has further argued on point of some minor contradictions in the evidence which are not considerable in view of the strong ocular account and the fact that the eye-witnesses have fully supported the case of prosecution on every aspect. Their evidence is further supported by corroborative evidence and medical record. It is settled principle of law that where in the evidence, the prosecution established its case beyond reasonable doubt then if there arise some minor contradictions which always are available in each and every case and can conveniently been ignored.<sup>9</sup> as no one can give evidence like a pen-picture, hence the same are to be ignored.

12. The learned Counsel for Appellant has lastly urged that the Appellant is financially very weak, the case property was not recovered and

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<sup>8</sup> *Zulfiqar Ahmed & another v. State (2011 SCMR 492)*

<sup>9</sup> *Zakir Khan V. The State (1995 SCMR 1793)*

the prosecution has failed to brought on record the motive and that in view of the fact that the Appellant is first offender and he is also bread earner of his family therefore he may be released by reducing his sentence which he has already undergone.

13. However, looking to the mitigating factors that the Appellant is first offender, the case property has not recovered, admittedly victim has not suffered with traumatic bony lesion or pneumo/ haemothorax, the victim Naeem Leghari has only received one injury and the Appellant has not repeated the same and prosecution has failed to give motive which was sudden fight, therefore taking guidance from the principled laid down by Hon'ble Supreme Court<sup>10</sup>, the relevant portion is reproduced:

“In our view, the imposition of punishment has been left upon the discretion of the Court, considering the facts and circumstances of each given case. There may be cases of different types of accused, who may be involved in the commission of the offence of section 9(c) of the Act, but their role, part, act or omission, character or conduct is such as to call for lesser punishment than of death. The case of first offender, who is not a drug baron, can fall in this domain. An accused having no antecedents of any criminal case to his score, he being not an incorrigible, desperate, or hardened criminal, the punishment lesser to the death in such case can serve the purpose of dispensation of criminal justice. In such cases, the extreme penalty of death can be avoided to be handed down to the accused, to grant him a chance to mend his ways in his future life.”

Line added

as well as Hasrat Khan's case<sup>11</sup> and Muhammad Usman's case<sup>12</sup> as held by Hon'ble Supreme Court of Pakistan, the relevant portion is re-produced hereunder:

“The injured Qudrat Hussain only sustained one firearm injury and the petitioner did not repeat the same. The locale of the injury suggests that the petitioner had no intention to kill the injured. The petitioner has already suffered most of his sentence. In this view of the matter, while maintaining the conviction of the petitioner under Sections 324/337-F(v) PPC, the sentence of 05 years RI awarded to him under

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<sup>10</sup> **Muhammad Tariq Vs. The State (2009 SCMR 1220)**

<sup>11</sup> **“Hasrat Khan v. the State” (Crl. P. No.69-Q of 2022 Supreme Court of Pakistan)**

<sup>12</sup> **Muhammad Usman v. The State (Cr Jail Petition No.148 of 2022)**

Section 324 PPC is reduced to the period which he has already undergone. During the course of arguments, learned counsel for the petitioner had prayed that petitioner is a poor person and cannot pay the Daman amount in one go, therefore, requested for installments of the Daman amount. Section 337-Y(2) PPC provides that “in case of non-payment of daman, it shall be recovered from the convict and until daman is paid in full to the extent of his liability, the convict may be kept in jail and dealt with in the same manner as if sentenced to simple imprisonment or may be released on bail if he furnishes security equal to the amount of daman to the satisfaction of the Court.”

14. In view of reasons and material record, I do not find any illegality in the impugned Judgment dated 15-11-2023 passed by the Additional Sessions Judge-I Mirpur Khas in Sessions Case No.31 of 2023 arising out of Crime No.64 of 2022 PS Digri. Therefore, the Jail appeal is **dismissed** while maintaining the conviction and sentence under section 337(ii) PPC to pay Daman of Rs.1,00,000/- to the injured Naeem Leghari and in case of default, he has to undergo simple imprisonment until the total amount of Daman is paid, Sentence under section 337-A(i) PPC to pay Daman Rs.20,000/- to injured person Naeem Leghari and in case of default, he has to undergo simple imprisonment until the total amount of Daman is paid, Sentence under section 504 PPC to suffer Rigorous imprisonment for three month and to pay fine of Rs.5000/- and in case of default in payment of fine to further undergo simple imprisonment for ten (10) days with modification in respect of Sentence under section 324 PPC to suffers Rigorous imprisonment for five years and to pay fine of Rs.50,000/- and in case of default of payment of fine to further undergo simple imprisonment for three (03) months is reduced to period which he has already undergone.

Let copy be forwarded to trial court and Superintendent, Central Prison, Mirpurkhas for compliance.

**JUDGE**