

Form No:HCJD/C-121

**ORDER SHEET**  
**LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**Criminal Revision No.194537 of 2018**  
*Shah Hussain versus The State, etc*

**Criminal Revision No.198776 of 2018**  
*Riaz Ahmad, etc versus Shah Hussain, etc*

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

<b>Date of hearing</b>	<b>04.06.2018</b>
<b>Petitioner (Shah Hussain) represented by:</b>	<b>Rai Bashir Ahmad, Advocate.</b>
<b>The State by:</b>	<b>Mr. Tariq Javed, District Public Prosecutor.</b>
<b>Respondent No.2 represented by:</b>	<b>Barrister Salman Safdar, Advocate.</b>

**SARDAR AHMED NAEEM, J.** *The petitioner was tried in case F.I.R. No.300/2016 dated 03.05.2016, registered at Police Station Civil Lines, Lahore for offences under sections 324, 337-A(i), 337-A(ii), 337-F(i), 337-F(ii), 337-F(iv), P.P.C. by learned Judicial Magistrate Section-30, Lahore Cantt, who vide judgment dated 29.07.2017 held the petitioner guilty, convicted and sentenced him as follows:*

- i. *Under Section 324, P.P.C. to seven years rigorous imprisonment with fine of Rs.50,000/- and in default of the payment thereof, to further undergo simple imprisonment for one year;*
  - ii. *Under section 337-A(i), P.P.C. to two years rigorous imprisonment with Daman of Rs.50,000/-;*
  - iii. *Under section 337-A(ii), P.P.C. to five years rigorous imprisonment with Arsh of Rs.84,016/-;*
  - iv. *Under section 337-F(i), P.P.C. to one year rigorous imprisonment with Daman of Rs.50,000/-;*
  - v. *Under Section 337-F(ii), P.P.C. to three years rigorous imprisonment with Daman of Rs.50,000/-;*
  - vi. *Under section 337-F(iv), P.P.C. to five years rigorous imprisonment with Daman of Rs.50,000/-*
- The accused was ordered not to be released till the payment of Arsh and daman even after completion of sentence of imprisonment. All the sentences were ordered to be run concurrently and benefit of section 382-B, Cr.P.C. was extended.*

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2. Being dissatisfied with the judgment of the learned trial court, the petitioner filed appeal, disposed of vide judgment dated 30.03.2018 with the following modification:

- i. Under section 324, P.P.C. for attempting to commit "Qatal-i-Amd of Khadija Siddiqi, sentenced to five years rigorous imprisonment with fine of Rs.50,000/- and in default of payment of fine to further undergo simple imprisonment for three months;
  - ii. Under section 337-A(ii), P.P.C. for causing injury on the left side of forehead of Khadija Siddiqi, sentenced to three years rigorous imprisonment and to pay Arsh Rs.84,016/- to the injured Khadija Siddiqi;
  - iii. Under section 337-F(ii), P.P.C. for causing three injuries to Khadija Siddiqi to pay Daman Rs.50,000/- to Khadija Siddiqi;
  - iv. Under section 337-F(i), P.P.C. for causing injury on the person of Khadija Siddiqi, to pay Daman of Rs.40,000/- to Khadija Siddiqi;
  - v. Under section 337-F(ii), P.P.C. for causing injury to Khadija Siddiqi and sentenced to pay Daman of Rs.40,000/- to Khadija Siddiqi;
  - vi. Under section 337-F(i), P.P.C. for causing injury to Khadija Siddiqi and sentenced to pay Daman of Rs.10,000/- to Khadija Siddiqi;
  - vii. Under section 337-F(i), P.P.C. for causing simple injury to Sufia Siddiqi, sentenced to six months rigorous imprisonment with Daman of Rs.30,000/- to Sufia Siddiqi.
- All the sentences were ordered to be run concurrently and benefit of section 382-B, Cr.P.C. was extended.

3. The facts, in brief, are that on 03.05.2016 at about 02:00 P.M., Riaz Ahmed complainant (PW.5) alongwith Khadija Siddiqi (PW.6) went to Convent School to pick up her younger sister Sofia Siddiqi (PW.7) and parked the vehicle Suzuki Alto Car No.LEA/3002 in front of Ambassador Hotel, Lahore. Khadija Siddiqi took her sister from school and while sitting inside the car one unknown person emerged at the scene and attacked upon Khadija Siddiqi and inflicted her "Churri" blows on various parts of her body. She was shifted to Services Hospital, Lahore by Riaz Ahmad (PW.5), who happened to be their driver. During this occurrence, Sofia Siddiqi also sustained a "Churri" blow.





4. In order to establish its case, the prosecution produced fourteen witnesses.

5. In his statement recorded under section 342, Cr.P.C., the petitioner denied all the allegations levelled against him.

6. Learned trial court held the petitioner guilty and the judgment of the learned trial court was maintained with the above modification by the learned Additional Sessions Judge.

Hence, this revision.

7. Learned counsel for the petitioner contended that the prosecution miserably failed to prove its case against the petitioner beyond shadow of reasonable doubt; that the petitioner was not nominated in the F.I.R.; that the last worn clothes of the injured Khadija Siddiqi (PW.6) were neither produced before the Investigating Officer nor secured by him; that the statements of the witnesses find no support from the attending circumstances; that their statements were full of discrepancies/contradictions fatal to the prosecution; that recovery of "Churri" (P.2) was effected from the petitioner five months after the occurrence without any bloodstain; that motive was not proved; that the facts of this case were, in fact, distorted by the complainant party due to some extraneous factors. Adds that medical evidence was also maneuvered just to aggravate the story of the prosecution, in particular, in the initial Medico Legal Report, Khadija Siddiqi (PW.6) sustained eleven injuries and in the follow up (corrigendum) twelve other injuries were also included in the list, thus, this act of the Medical Officer was novel and was neither backed by some



law nor rules and that the Medical Officer during her cross-examination also admitted that it was a high-profile case. Adds that case of the prosecution was full of doubts.

8. Learned District Public Prosecutor assisted by the learned counsel for the complainant opposed this petition with vehemence and submitted that the victim became unconscious after sustaining injuries and she got recorded her statement nominating the petitioner with specific "role causing "Churri" blows on attaining her senses i.e. on 08.05.2016; that the petitioner got recovered "Churri"; that motive was also proved; that the discrepancies/ contradictions hinted at by the learned counsel were minor and do not adversely effect the case of prosecution; that it was a broad daylight occurrence and the case was of single accused, substitution was rare phenomenon in such like cases; that direct evidence in this case was the injured, both, and they withstood the test of cross-examination firmly; that they had stamp of injuries on their persons proving their presence at the crime scene; that no enmity was suggested to disbelieve their statements; that the prosecution proved its case against the petitioner to the hilt, thus, the petition was liable to be dismissed.

9. Learned counsel for the complainant further submitted that the petitioner caused "Churri" blows to the victim mercilessly and in a reckless manner, thus, there was no question of leniency as a female student was harassed by the petitioner during her studies and that the learned court of appeal misdirected itself while sentencing the petitioner





leniently, thus, the sentences awarded to the petitioner by the court of appeal may suitably be enhanced.

10. Arguments heard. Record perused.

11. The nutshell of the prosecution's case was that the petitioner attacked upon Khadija Siddiqi and Sofia Siddiqi on 03.05.2016 at 02:00 P.M. in front of Ambassador Hotel, Lahore. The petitioner inflicted them "Churri" blows. Thereafter, they were shifted to Services Hospital, Lahore by their driver in Suzuki Alto Car No.LEA/3002. He wrote the application and handed that over to Habib-ur-Rehman (PW.2), who forwarded the same for the registration of F.I.R. through Khurram Manzoor, constable.

12. In order to prove its case, the prosecution apart from other witnesses produced Muhammad Riaz (complainant), Khadija Siddiqi and Sofia Saddiqi (injured). The complainant was the driver of the vehicle, wherein the injured sustained "Churri" blows. They bleed profusely after sustaining the injuries but neither their bloodstained clothes were produced during the investigation nor secured by the Investigating Officer during the investigation. The victim nominated the petitioner in her statement recorded on 08.05.2016 and claimed to be comatose, meanwhile. The injured Khadija Siddiqi was class fellow of the petitioner, not nominated in the F.I.R., thus, there was no question of his identity. He was allegedly wearing a red-coloured helmet at the time of occurrence, which was fallen in the car upon resistance offered by the complainant and then all the three saw the assailant, not nominated till 08.05.2016.



The injured Khadija Siddiqi claimed that she was not in her senses and justified to explain the delay, whereas, the prosecution could not prove that Khadija Siddiqi (PW.6) was unconscious as the Medical Officer during her cross-examination admitted that she examined her orientation by asking many medical questions including name, place, time and person and she answered correctly. She further gone on to depose that the injured told her that a boy attacked upon her with a knife on the road nearly at 02:00 P.M. on that day. She observed eleven injuries as mentioned in the Medico Legal Certificate (Exh.PJ), however, at trial she described that the injured sustained 23 injuries. She explained that at the time of her first medical examination, the injured was in a serious condition and was shifted to I.C.U. and then was ultimately operated upon and for that reason she could not completely examine the injured and handed her over to the Surgeon for operation. The addition of twelve injuries has been made on the basis of operation notes and opinion of the expert Surgeon. Neither any Surgeon nor any operation notes were produced during trial. There was no detail of any procedure or surgery underwent by Khadija Saddiqi. The Medical Officer described that injury No.12 to 23 were observed during the procedure and the investigation including abdomino pelvic ultrasound done by Dr. Amir and Dr. Sulman Aziz but none of them either summoned or produced during trial to prove operation notes, procedure or ultrasound, if any. In short, injuries No.12 to 23 were not observed by Dr. Rozina Mustafa and she cannot be

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author of Exh.PJ/1. It may be mentioned that reliance upon a Medico Legal Certificate in continuation of one earlier available on record by way of corrigendum is something unique adopted in this case. Assuming for the sake of arguments that Khadija Siddiqi was in a precarious condition as mentioned by Dr. Rozina Mustafa in her statement but on the top of Exh.PJ as well as Exh.PJ/1 she is mentioned as well oriented in time and space. This fact is further supported by Exh.PJ that had she been in a precarious condition she could not have gone to the Illaqa Magistrate seeking order for her medical examination. The nature of the injuries No.1 to 5, 12, 16, 17, 21 and 22 was 337-F(ii), P.P.C., whereas injuries including 6, 7, 8, 13 to 15, 18 to 20 and 23 fall under section 337-F(i), P.P.C., injury No.9 attracts section 337-A(ii), P.P.C. and injuries No.10 and 11 were 337-A(i), P.P.C. For the above addition/ corrigendum, the Medical Officer explained that as the patient was seriously injured, thus, she could not completely examined the injured and dispatched her to operating theatre. This process appeared to be novel as well as unusual. The injuries sustained by the injured were challenged by the petitioner and a District Standing Medical Board was constituted upon his request but she never appeared before the said District Standing Medical Board. The Medical Officer, however, admitted that when she received summon, she came to know that it was a case of high-profile.

The complainant shifted both the injured to Services Hospital. There was profuse bleeding inside the car but neither



any foot mat nor any other article from inside the car was taken into possession during the investigation or produced during trial. How did the complainant offered resistance to a furious assailant, there was also no material. He did not inform the parents of the injured and himself wrote the application and got the F.I.R. registered without intervention of the family of the injured as highlighted by his cross-examination.

13. The injured, namely, Khadija Siddiqi being unconscious could not nominate the petitioner, her class fellow. They were known to each other. There was no question of mistaken identity. The occurrence took place on a thoroughfare. Suzuki Alto Car of the complainant was surrounded by different vehicles. It was in the evidence that the petitioner came from the side of Shimila Hill by foot and adopting the same route went away after enacting the episode. He himself sustained no scratch or bloodstain at the time of causing injuries either to Khadija Siddiqi and Sofia Siddiqi. The injured regained her senses on 08.05.2016 and nominated the petitioner but it is falsified by the Medical Officer as she stated that injured told that a boy attacked upon her. She was straightaway shifted to services hospital from the place of occurrence but this fact is also belied by her Medico Legal Certificate which reflects that the injured, both, were medically examined by the order of Magistrate Section-30, Lahore Cantt., before the registration of F.I.R.

14. It is settled by now that injury on a witness is only indication of his presence at the spot but is not affirmative

67

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proof of his credibility and truthfulness. It is not a universal rule that each and every word coming from the mouth of injured person is truth. This Court in case of "Altaf Hussain and 4 others v. The State" (PLD 2000 Lah. 216) observed as under:

"22. Believability and acceptability of a witness depends on numerous factors being injured is just one of them. The injury on the person of a witness does not transform his nature, or his attitude, or mentality. This would make him more vindictive. The injury primarily proves one fact only, and that is, that he was present at the scene of crime but it by no stretch of imagination proves him to be right of truthful. Where a witness is biased, and inimical towards the opposite party which is the case here, his testimony has to be scrutinized with care and corroboration of prosecution case in all of its material aspects is required. In Jahangir Hayat v. The State, (PLD 1999 Lah. 285) the principles and guidelines for assessment of evidence were stated to be that different constituent factors of prosecution case must support each other and no single factor would suffice for recording conviction unless the same was corroborated in material respects by other constituent factors of elements. In serious cases entailing harsh sentences a single factor in itself would provide too narrow a foundation to base conviction of an accused. Evidence of witnesses of fact who were injured in the incident is just one factor or facet of prosecution case. Viewed in isolation, it might give impression of a plausible story to an untrained mind, but examined in a proper ambience its seamy side would become palpable immediately...."

Mere presence of injuries would not stamp that he is a truthful witness. His testimony is to be tested and appraised on the principles applied for appreciation of any other prosecution witness. A similar question came up for consideration before their lordships in "Amin Ali v. The State" (2011 SCMR 323), the relevant observations of their lordships can also be reproduced hereunder:

"12. Certainly, the presence of the injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise, because merely the injuries on the persons of P.Ws. would not stamp them truthful witnesses..."



15. The motive behind the occurrence was that the petitioner harassed the injured Khadija Siddiqi and upon her refusal, he became infuriated and inflicted repeated "Churri" blows in reckless manner. However, the injured admitted during the cross examination that she wrote a letter of four pages (Exh.DW) to the petitioner proposing him for marriage and mentioned thrice "تول ہے تول ہے تول ہے". It was also admitted that she never complained against the petitioner for any misconduct or harassment either to the collage administration or police authorities or even to her parents, thus, the motive set up by the prosecution comes to the ground.

16. During the investigation the petitioner led to the recovery of "Churri" (P.2) from a Public Park (Jinnah Garden). It was taken into possession after five months of the occurrence vide memo Exh.PD. It was not blood stained as admitted by Mumtaz Hussain (PW.9). Thus, recovery of "Churri" at belated stage lend no support to the prosecution. The place of recovery was not exclusively owned by the petitioner or in his possession in any manner. The red-coloured helmet stated to be of the petitioner was also of no help to the prosecution as Asghar Ali (PW.10) stated that a black coloured helmet was taken into possession from inside the car.

17. The injured witness ordinarily is not disbelieved but the circumstances of this case forced me to disbelieve the injured prosecution witnesses for the reasons that the occurrence took place on a thoroughfare. The Suzuki Alto Car of the injured was parked with other vehicles. It was daylight occurrence. No

67  
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independent witness was cited by the prosecution. During the cross-examination, the injured admitted that she had different friends and had her photographs with all of them in or outside her collage including the petitioner. She denied the suggestions that it was a case of high-profile or there was some external pressure but acknowledged that Tahmina Durani exercised her influence at later stage. A similar admission was made by the Investigating Officer that it was a case of high-profile. The star witness Khadija Siddiqi has not described the true/complete tale. The occurrence might have taken place but not in the manner as described by the eye/injured witnesses. The above discussion leads to the conclusion that she was in her senses, well oriented in time and space, thus, registration of F.I.R. against unknown accused in her presence is a question mark. Evidence of eye/injured witnesses, thus, could not be relied upon with any amount of confidence. This aspect of these witnesses had escaped the notice of both the courts below resulting into miscarriage of justice.

18. For the reasons mentioned above, I am satisfied that the prosecution has failed in its duty to prove guilt of the appellant beyond reasonable shadow of doubt and the benefit of doubt is always extended in favour of the accused. Reliance in this context can be placed on "Muhammad Mansha v. The State" (2018 SCMR 772) and relevant observations of their lordships appearing in para-4 at page No.778 can advantageously be reproduced hereunder:



"4. 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 guilty 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 Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)"

19. In view of the above, the findings of the courts below holding Shah Hussain (petitioner) guilty on the basis of above evidence called for interference in the exercise of revisional jurisdiction. Reliance, in this context, can be placed on "Muzaffar Hosain and 11 others v. The State" (1968 SCMR 1429).

Resultantly, **Criminal Revision No.194537 of 2018** is allowed as the charges against the petitioner were not established beyond all shadows of reasonable doubts. He is given benefit of doubt and acquitted of the charges. The accused is in judicial custody and shall be released forthwith if not required in any other criminal case.

20. For the same reasons, **Criminal Revision No.198776 of 2018** filed by the complainant/injured for enhancement of sentence is **DISMISSED**.

  
(SARDAR AHMED NAEEM)  
JUDGE