IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Shariat Appellate Jurisdiction)

PRESENT:

RAJA SAEED AKRAM KHAN, C.J.
RAZA ALI KHAN, J.

CRIMINAL APPEAL Nos. 05 & 08 OF 2024

(On appeal from the judgment of the Sharaiat Appellate Bench of the High Court dated 22.12.2023 passed in application No. Crim. Appeals No. 27 & 29 of 2018)

Muhammad Younas s/o Ameer Baz caste Jatt r/o Sourkhi Tehsil Dadyal District Mirpur.
(In Crim. Appeal No. 05/2024)

Muhammad Arshad son of Muhammad Hussain caste Jat r/o Sourkhi Tehsil Dadyal, District Mirpur.
(In Crim. Appeal No. 08/2024)

…Appellant(s)

VERSUS

State through Advocate General Azad Jammu and Kashmir Muzaffarabad and another.
(In Crim. Appeal No. 05/2024)

State through Additional-Advocate General Circuit Mirpur and another.
(In Crim. Appeal No. 05/2024)

…Respondent(s)

Appearances:

For the convict-Appellant(s):	Mr. Arshad Mehmood Malik, Advocate.
For the complainant-respondent(s):	Mr. Imtiaz Hussain Raja, Advocate.
For the State:	Mr. Ahmed Saad Khan, Asstt. Advocate-General
Date of hearing:	20.01.2026

JUDGMENT:

***Raza Ali Khan, J*:-** Both appeals against the consolidated judgment dated December 22, 2023, announced on December 26, 2023, rendered by the Shariat Appellate Bench of the High Court (*hereinafter to referred to as 'the High Court'*) in Criminal Appeals Nos. 27 and 29 of 2018.

2. The factual matrix, common to both appeals, reveals that FIR No. 207/13, was registered at the Police Station Dudyal, against the accused-respondent, Muhammad Younas, for the commission of offences punishable under sections 324 and 337-F(iii) of the Azad Penal Code, on the complaint of Muhammad Arshad son of Muhammad Hussain. It was alleged that on November 17, 2017, the accused fired a shot from a 30-bore pistol, causing a firearm injury to the left leg of the complainant. The occurrence was stated to have been witnessed by Muhammad Mushtaq son of Hukam Dad, who allegedly shifted the injured to the hospital, whereafter the accused

fled from the scene. The motive attributed for the occurrence was a subsisting land dispute between the parties.

3. Upon completion of the investigation, a report under section 173, Cr.P.C. was submitted against the accused-respondent before the Tehsil Criminal Court, Dudyal, on December 09, 2013. The accused-respondent was examined under section 242, Cr.P.C., on December 21, 2013, to which he pleaded not guilty, compelling the prosecution to lead evidence. In support of its case, prosecution examined nine witnesses. After the close of the prosecution evidence, the accused-respondent was examined under section 342, Cr.P.C., on November 14, 2017, wherein he categorically denied the allegations. He neither adduced any evidence in defence nor opted to make a statement on oath under section 340(2).

4. Upon hearing the arguments, the learned trial Court convicted Muhammad Younas son of Ameer Baz under sections 324 and 337-F(iii) of the APC and sentenced him to two years' rigorous imprisonment along with Daman of Rs. 35,000 under section 337-F(iii), and three years' imprisonment with a fine of Rs. 10,000 under section 324, APC, with four months' simple imprisonment in default of payment of fine. The benefit of section 382-B, Cr.P.C. was also extended to the convict vide judgment dated March 10, 2018. Aggrieved thereby, both the convict and the complainant, Muhammad Arshad, preferred separate appeals before the Additional District Criminal Court, Dudyal.

5. The learned Additional District Court, Dudyal, vide judgment dated September 17, 2018, partly allowed the appeal filed by the convict, by acquitting him of the charge

under section 324 of the APC, while maintaining his conviction and sentence under section 337-F(iii), APC. The appeal filed by the complainant was dismissed. Both parties thereafter, invoked the appellate jurisdiction of the learned High Court through separate criminal appeals. The learned High Court through the impugned consolidated judgment dated December 22, 2023, announced on December 26, 2023, dismissed the complainant's appeal seeking enhancement of sentence while partly allowing the convict's appeal by reducing the sentence under section 337-F(iii), APC, from two years' rigorous imprisonment to six months' rigorous imprisonment while maintaining the sentence of fine.

6. Mr. Arshad Mehmood Malik, learned counsel for the convict-appellant, contended that the judgments rendered by the learned High Court, the Additional District Criminal Court, Dadyal, and the Tehsil Criminal Court, Dadyal, are vitiated by illegality, misapprehension, and non-appreciation of evidence. He submitted that the prosecution has failed to establish its case beyond reasonable doubt. It was argued that the ocular witness is an interested witness whose testimony does not inspire confidence and does not fully support the version narrated by the complainant. The learned counsel further pointed out that the alleged recovery witnesses disowned the recovery proceedings, no incriminating article was produced for identification during trial, and no independent corroboration was available. He further submitted that the statutory benefit under section 382-B Cr.P.C., which had rightly been extended by the courts below, was erroneously withdrawn by the learned High Court. Further, the learned counsel submitted that the

prosecution case lacked corroboration from the inquest report, medical evidence, or site plan, thereby rendering the allegations highly doubtful. According to the learned counsel, the appellant has been falsely implicated due to mala fide intent and collusion with the police. In support of his contention, reliance was placed upon precedents reported as 2022 SCR 855, 2009 SCR 88, 2012 P.Cr.CJ 1502, 2010 P.Cr.LJ 491, 2017 SCR 428, NLR 2008 Cr (SC) 251, PLD 2005 SC 63, and 2022 SCR 365, with the prayer that the appeal be allowed, the impugned judgments be set aside, and the appellant be acquitted.

7. On the contrary, Mr. Imtiaz Hussain Raja, learned counsel for the complainant-respondent, submitted that the consolidated judgment dated December 22, 2023, announced on December 26, 2023, rendered by the High Court, is perverse, contrary to law, and inconsistent with the facts on record, therefore liable to be set aside. He contended that the motive for the occurrence stood established in the shape of a subsisting land dispute between the parties. He further submitted that the incident occurred in broad daylight and that the FIR was lodged promptly within one hour of the occurrence, a fact evident from its contents. Learned counsel further submitted that although the sole eyewitness had personal enmity with the accused, his testimony stood corroborated even by the relatives of the convict. With regard to the alleged recovery, it was submitted that even if the same is excluded from consideration, the consistent and confidence-inspiring testimony of the eyewitness alone suffices for conviction. He further emphasized that although two other persons were present at the scene, only the appellant was nominated in

the FIR, and had there been malice or false implication, the complainant would have roped them in as well, particularly when they were present on the convening side.

8. We have considered the submissions advanced by the learned counsel for the parties and have carefully examined the record of the case. Both the convict as well as the complainant have preferred separate appeals against the judgment of the learned trial Court, necessitating a reappraisal of the evidence within the settled parameters governing criminal appellate jurisdiction. Accordingly, we shall first address the appeal filed by the convict-appellant.

9. The record reflects that, according to the FIR, the convict, Mohammad Younus, allegedly fired a shot from a 30 bore pistol which struck the complainant on his left leg and caused firearm injuries. The occurrence was purportedly witnessed by Mohammad Mushtaq Ahmed, who is stated to have reached the spot, assisted the injured, and shifted him to the hospital, whereafter the convict fled from the scene. Upon completion of the investigation, a report under section 173, Cr.P.C., was submitted to the competent Court. During the trial, the prosecution examined nine witnesses, out of whom Mushtaq Ahmed emerged as the sole ocular witness, whose testimony constituted the primary basis for conviction by all the courts below.

10. It is a settled proposition of criminal jurisprudence that a conviction can legally be founded on the testimony of a single eyewitness; however, such evidence must be subjected to strict and cautious judicial scrutiny. The Court must be fully satisfied that the witness is wholly reliable, inspires confidence, and is free from any motive to falsely

implicate the accused. The testimony must be consistent, natural, and free from material contradictions, exaggerations, or inherent improbabilities. Ordinarily, it should also find independent corroboration from circumstantial, medical, or other supporting evidence, particularly where the witness is related or otherwise interested.

11. Where the testimony of a sole witness is tainted by doubts, material inconsistencies, or lacks independent corroboration, it becomes manifestly unsafe to found a conviction solely upon such evidence. In the present case, the prosecution has failed to discharge the heavy burden required to sustain a conviction on the basis of a single eyewitness. The testimony on record neither inspires confidence nor maintains internal consistency. Rather, it is riddled with contradictions and finds no support from independent corroborative material, including medical evidence, recovery proceedings, or site particulars, thereby rendering the conviction legally unsustainable.

12. A closer scrutiny of the statement of witness Muhammad Arshad, the complainant, reveals significant discrepancies. Notably, there is a contradiction between his stated place of residence and the location reflected in the site plan. He further admitted that Mohammad Mushtaq Ahmed, the purported eyewitness, is his cousin. He also acknowledged that the land on which the occurrence allegedly took place is Crown land and that the disputed portion was in fact under the cultivation by the accused. In contrast, Mushtaq Ahmed deposed that only the accused was present at the location prior to the complainant’s arrival, an

assertion materially at variance with the prosecution's own narrative.

13. Equally, material contradictions emerged with regard to the shifting of the injured to the hospital. The complainant asserted that Mushtaq transported him from the spot to the hospital, whereas Mushtaq Ahmed stated that he himself reached the hospital independently and that the Riaz brought the complainant there. Inconsistencies are also apparent regarding Mushtaq's presence at the scene. The complainant claimed that Mushtaq was cutting grass on the land of Mushtaq Kramat, while Mushtaq maintained that he was cutting grass on the disputed land belonging to the complainant. He also acknowledged the existence of prior litigation initiated by the accused, Younas, relating to a claim over his mother's share in property. Moreover, material contradictions persist between Mushtaq's statement recorded under Section 161 Cr.P.C. and his testimony before the trial Court.

14. In the face of such glaring inconsistencies in the statements of the complainant and the sole eyewitness, independent corroboration through recovery, forensic linkage, or medical evidence becomes indispensable. However, the alleged recoveries themselves are rendered doubtful. The evidence on record suggests that they were not effected from the place of occurrence. The recovery witnesses, Asif Hussain and Mohammad Shakeel, who were declared hostile by the complainant, categorically stated through affidavits that the investigation officer, Shahnawaz, procured signatures on blank papers. Furthermore, the recovered articles were never subjected to chemical or

forensic examination, gravely undermining the prosecution's version. The record also reflects non-compliance with Section 103 Cr.P.C., which assumes added significance given the admitted family relationship and pre-existing land dispute between the parties.

15. It is further conceded that, the learned counsel for the complainant-respondent that the firearm allegedly recovered was not sent for forensic examination to determine whether it was the weapon used in the commission of the offense. The medical report appearing on the record merely notes an entry wound on the outer aspect of the left upper leg and an exit wound on the inner aspect in the middle zone. Crucial particulars, such as the nature and trajectory of the shot, probable firing distance, presence or absence of blackening, tattooing, or scorching, dimensions of the wounds, type of weapon used, or medical linkage with the prosecution version, are conspicuously absent. In the absence of such essential details, the medical evidence fails to furnish any meaningful corroboration of the ocular account and cannot be safely relied upon to sustain a conviction.

16. The learned High Court, despite noticing numerous material contradictions in the statements of the complainant and eyewitnesses, failed to carry these findings to a logical conclusion and instead merely proceeded to reduce the sentence awarded by the learned Additional District Criminal Court under the rubric of mitigating circumstances. Another settled view is that mitigation in criminal jurisprudence operates only at the stage of sentencing and presupposes that the prosecution has successfully established the guilt of the accused beyond

reasonable doubt. Mitigating factors are those considerations which, without exonerating the accused of criminal liability, may justify a reduction in the quantum of punishment. Such factors may include the age of the accused, absence of previous convictions, minor or tactical discrepancies in the prosecution's evidence, the nature of injuries, passage of time, or any other circumstance which, upon holistic appraisal, warrants a moderated or lenient approach in sentencing.

17. It is, however, well settled that mitigating circumstances cannot be invoked to cure fundamental defects in the prosecution's case. Mitigation presupposes a conviction that is otherwise legally sustainable, founded upon credible evidence, and free from serious infirmities. Where the prosecution's narrative itself is doubtful, inconsistent, or lacks independent corroboration on material particulars, the doctrine of mitigation has no application. In such circumstances, the Court is not called upon to temper punishment but rather to examine whether the conviction itself can be sustained.

18. In the present case, the matter assumes an altogether different complexion. The prosecution case is beset with serious doubts, material contradictions, and a complete absence of reliable corroborative evidence. The testimony of the sole eyewitness does not inspire confidence and is contradicted on material particulars by the complainant himself, while the medical and recovery evidence fails to lend support to the prosecution's version. The cumulative effect of these infirmities results in the manifest failure to prove the charge beyond reasonable

doubt. In such a situation, the question of invoking mitigating factors does not arise. The only lawful and just course, consistent with settled principles of criminal jurisdiction and criminal jurisprudence, is to extend the benefit of doubt to the accused and grant an acquittal rather than sustain a conviction on an inherently fragile and dubious prosecution case.

19. As regards the appeal preferred by the complainant seeking enhancement of sentence, it has already been discussed at length that the prosecution has wholly failed to establish the charge against the accused beyond reasonable doubt. In such a factual and legal posture, the question of enhancement of sentence does not arise and is entirely misconceived.

20. In view of the foregoing reasons, the impugned judgments rendered by all courts below are hereby set aside. The appellant is extended the benefit of doubt and is acquitted of all the charges. Accordingly, Appeal No. 05 of 2024 filed by the convict-appellant is allowed, whereas the cross appeal preferred by the complainant stands dismissed.

JUDGE **CHIEF JUSTICE**

Mirpur,
27.01.2026