

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, **JUDICIAL DEPARTMENT**

Criminal Revision No.20/2019

Mufti Kafayat Ullah

v.

The State & another

Petitioner by: Mr. Bakht Badar Jan Syed, Advocate along with petitioner.

Respondents by: Mr. Sadaqat Ali Jahangir, State Counsel.
Shah Nazar, S.I., P.S. Margalla, Islamabad.

Date of Hearing: 05.03.2020.

MOHSIN AKHTAR KAYANI, J: Through the instant criminal revision petition, the petitioner has called in question judgment of the learned Sessions Judge (West), Islamabad, dated 27.02.2019, whereby appeal filed by the petitioner against the conviction order of the learned Judicial Magistrate Section 30, (West), Islamabad, dated 17.12.2018, has been dismissed.

2. Brief facts referred in the instant criminal revision petition are that Mrs. Sabiha/Respondent No.2 filed a complaint having allegations that on 08.02.2013, when she along with brother namely Abdul Majeed went to District Courts, F-8, Islamabad and got free from the proceedings of the suit filed by her against the petitioner for dissolution of marriage, she was attacked by the petitioner by making fire shot through pistol, however they luckily survived as the bullet went off missed. However, the petitioner along with a police constable present there managed to disarm the petitioner, though the petitioner succeeded to escape from the scene. Resultantly, FIR No.68, dated 08.02.2013, under Section 324/34 PPC, P.S. Margalla, Islamabad was registered. On 22.03.2013, the petitioner was arrested and after completion of investigation, report under Section 173 Cr.P.C. was submitted in the Court, whereafter charge under Section 324/34 PPC was framed against the petitioner on 09.05.2013, to which he pleaded not guilty and claimed trial. The prosecution in order to bring guilt of the petitioner home has

produced five prosecution witnesses and the learned trial Court pursuant to recording of evidence of prosecution witnesses, recorded the statement of petitioner under Section 342 Cr.P.C., on the basis of which the learned trial Court, vide impugned judgment dated 17.12.2018, convicted the petitioner under Section 324 PPC and sentenced him to undergo six (06) months rigorous imprisonment along with fine of Rs.5,000/-, in default of payment of fine, the petitioner has to further undergo one week simple imprisonment. However, benefit of Section 382-B Cr.P.C. has been extended to the petitioner. Feeling aggrieved thereof, the petitioner filed an appeal, which was dismissed by the learned first Appellate Court vide impugned judgment dated 27.02.2019. Hence, the instant criminal revision petition.

3. Learned counsel for petitioner contends that both the Courts below have not appreciated the facts and circumstances of the case in true perspective as it has been ignored that no recovery has been effected from the petitioner and as such, the allegedly recovered pistol has not been sent to forensic expert for opinion; that there are material contradictions in the statements recorded by the prosecution witnesses but both the Courts below have not taken into account such discrepancies and resorted to passing the impugned judgments, which are not sustainable in the eyes of law, therefore, the same are liable to be set-aside and the petitioner may be acquitted of the charge.

4. Conversely, learned State Counsel opposed the filing of instant criminal revision petition and supported the impugned judgments of both the Courts below by contending that the law on subject has rightly been applied while passing the impugned judgment and as such, the petitioner was caught red handed in attempting murder of Respondent No.2; that the petitioner has failed to shatter the stand taken by the prosecution witnesses, who remained consistent in their statements, which have rightly been appreciated by both the Courts

below while passing the impugned judgments, therefore, the same are liable to be maintained and the instant criminal revision petition may be dismissed.

5. Arguments heard, record perused.

6. Perusal of record reveals that Mufti Kefayat Ullah/petitioner has been convicted in case FIR No.68, dated 08.02.2013, under Section 324/34 PPC, P.S. Margalla, Islamabad vide impugned judgment dated 17.12.2018, passed by learned Judicial Magistrate Section 30 (West), Islamabad for attempting to commit murder of his ex-wife Mst. Sabiha daughter of Muhammad Nawaz/complainant (PW-1), whereby the petitioner has been sentenced to undergo six (06) months rigorous imprisonment along with payment of fine of Rs.5,000/-, and as such, the said sentence has been maintained by learned Sessions Judge (West), Islamabad vide impugned judgment dated 27.02.2019.

7. The entire prosecution case is based upon the testimony of PW-1 Sabiha, who filed a suit for dissolution of marriage on the basis of khulla against the petitioner, which was pending before the Family Court, Islamabad, however on 08.03.2013, when the complainant along with her brother namely PW-2 Abdul Majeed was going from the Family Court after attending the hearing of the suit, petitioner started firing upon PW-1 Sabiha (complainant), but all the bullets went off missed and the petitioner was apprehended by PW-2 Abdul Majeed and PW-5 Syed Tahir Abbas/Constable. The pistol Exh.P1 was taken over from the petitioner, however the petitioner managed to fled away from the scene. The complainant has lodged the FIR (Exh.PC) in P.S. Margalla, whereby the Investigating Officer namely PW-4 Muhammad Anwar/ASI confirmed the occurrence of this case and contended that five live bullets (Exh.P2 to 6) were taken into possession vide recovery memo Exh.PD.

8. The prosecution evidence of three (03) eyewitnesses i.e. PW-1 Sabiha (complainant), PW-2 Abdul Majeed (brother of complainant) and an independent witness namely PW-5 Syed Tahir Abbas/constable remained consistent

regarding the allegation of attempt to commit murder, especially the mode and manner in which the petitioner had drawn the pistol and made repeated fires, but all the fires went off missed, even the stance referred in the statement of PW-2 Abdul Majeed explained every aspect in a clear manner, as it has been stated that by PW-2 Abdul Majeed that:

"گاڑی کے ساتھ ہم تھے تو ملزم نے پستول نکالا۔ اس تین فائر کیا، دو فائر مس ہوئے جو اس نے گھوڑا دہایا تو گولیاں پستول سے نکلیں اور اس نے پھر تیسری گولی پڑھائی تو میں اس کی طرف لپکا اور میں نے اور پھر جو وہاں پولیس تھی انہوں نے مل کے ملزم کو پکڑ لیا اور پستول لے لیا۔"

The above referred stance has also been considered by the learned Trial Court in Para-8 of the impugned judgment, with due care and caution, which proves the intention of the petitioner to commit the offence.

9. The prosecution has successfully proved the case in the mode and manner in which the criminal case has been registered as the incident took place around 12:20 p.m. while the FIR (Exh.PC) was got lodged at 01:35 p.m., which suggests that it was promptly registered and such promptness negates every possible concoction and false implication of the petitioner. The motive of this case is apparent from record that petitioner is aggrieved with the conduct of his ex-wife i.e. Mst. Sabiha (complainant), who has filed a suit for dissolution of marriage against the petitioner and the Family Court is proceedings in the said suit, therefore, the revenge and anger is apparent on the part of petitioner, even the complainant's statement, if seen in the light of the fact that the two children (aged 10 and 11) born from the wedlock of the petitioner and complainant are with the complainant/mother i.e. ex-wife of the petitioner. PW-1 Mst. Sabiha/complainant has justified the motive part, which has not been denied in this case.

10. The Investigating Officer has taken the pistol from PW-5 Syed Tahir Abbas/constable including the missed rounds and live bullets, while PW-5 Syed Tahir Abbas/constable is a natural and independent witness, who is not related

to either party and was appointed in prosecution branch available in District Court premises.

11. The petitioner has also given his version in his statement recorded under Section 342 Cr.P.C., whereby he denied the entire case, however while answering Question No.9, he has confirmed the motive part in the following manner:

Q No.5. Why this case has been registered against you?

وراثتی جائیداد کا تنازعہ تھا۔ مسات صبیحہ محمد نواز کے والد میرے حقیقی ماموں ہے وہ میری والدہ کو وراثتی جائیداد کے حق سے محروم رکھنا چاہتے تھے۔ مجھ پر دباؤ ڈالنے کیلئے یہ کیس کیا گیا کہ میں اپنی والدہ کو زمین لینے سے دستبردار کر اؤں لیکن جب میری والدہ محترمہ دستبردار نہ ہوئی تو انہوں نے صبیحہ کا سہارا لیکر میرے خلاف جھوٹا مقدمہ دائر کیا۔

12. Besides the above referred position, the petitioner has also taken another stance for false implication in this case as he while answering Question No.5 has stated that:

Q. No.9. Do you want to say anything else?

جی ہاں۔ میں بے گناہ ہوں۔ مجھے من گھڑت اور جھوٹے کیس میں گزشتہ کئی سالوں سے اذیت میں مبتلا کیا ہوا ہے۔ جس سے میں ذہنی طور پر اور مالی طور پر کافی پریشان ہوں۔ گزشتہ کئی سالوں سے مجھ سے میرے بچوں کو دور رکھا ہوا ہے اور ابھی مجھے میرے دوسرے بیوی کے بچوں سے جدا کرنے کی کوشش کی جا رہی ہیں۔ میرا معزز عدالت سے استدعا ہے کہ مجھے ہاعزت طور پر بری کیا جائے تاکہ انصاف کے تقاضے پورے ہو سکیں۔

13. Placing the above reasons of false involvement of the petitioner in this case in juxtaposition with the entire case, there is nothing on record to suggest that there is a dispute of inherited property of petitioner's mother with the complainant's father, even no such document has been placed on record nor even this fact has been corroborated through any independent mean, rather the reason for such attempt to commit murder is the filing of suit for dissolution of marriage filed by PW-1 Mst. Sabiha, which is apparent from the record.

14. I have considered the impugned judgments of the learned trial Court as well as of the learned first Appellate Court, who have rightly appreciated each and every aspect of this case i.e. from the motive part till recovery of pistol, and as such, all the prosecution witnesses remained consistent with each other. The

learned Trial Court has rightly awarded the sentence of six (06) months rigorous imprisonment along with fine of Rs.5,000/-, though it is on lesser side, but it is in accordance with settled principle of law.

15. Keeping in view the above position, the instant criminal revision petition is misconceived as no illegality has been highlighted in the impugned judgments, therefore, the same is hereby **DISMISSED**. The petitioner is on bail, he be taken into custody and sent to prison to serve his remaining sentence. His bail bonds submitted before this Court during suspension of his sentence are hereby **DISCHARGED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: 17th March, 2020.

JUDGE

Khalid Z.