

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

JAIL PETITION NO. 148 OF 2022

(On appeal against the judgment dated 15.02.2022 passed by the Lahore High Court, Rawalpindi Bench in Criminal Revision No. 205/2021)

Muhammad Usman

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s):

Mr. Junaid Iftikhar Mirza, ASC

Mr. Anis Muhammad Shahzad, AOR

For the State:

Ch. Muhammad Sarwar Sidhu, Addl. P.G.

Date of Hearing:

11.04.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Petitioner Muhammad Usman along with co-accused was tried by the learned Judicial Magistrate, Section 30, Kahuta, District Rawalpindi pursuant to a case registered vide FIR No. 201 dated 18.07.2017 under Sections 324/337-F(v)/34 PPC at Police Station Kahuta, District Rawalpindi for attempting to take life of the complainant and his wife. The learned Trial Court vide its judgment dated 17.05.2021 convicted the petitioner as under:-

i) **Under Section 324 PPC**

To suffer rigorous imprisonment for five years and to pay fine of Rs.50,000/-. In case of default of payment of fine, the petitioner shall undergo SI for a term of three months.

ii) **Under Section 337-F(v) PPC**

To pay Daman amounting to Rs.50,000/- to injured Oudrat Hussain. The amount of Daman was directed to be paid in lump sum.

Benefit of Section 382-B Cr.P.C. was also given to the petitioner.

2. The co-accused of the petitioner was also convicted and sentenced on various charges. In appeal the learned Additional District Judge, Rawalpindi while acquitting the co-accused, maintained the conviction of the petitioner and the same was upheld by the learned High Court vide impugned judgment pursuant to Criminal Revision filed by the petitioner. The prosecution story as given in the judgment of the learned Additional District Judge reads as under:-

"4. Briefly stated the facts of the prosecution case are that Qudrat Hussain complainant/PW-1 moved complaint EX.PA before the police claiming therein that the accused persons came to his house for affecting compromise between Muhammad Usman accused and daughter of complainant who are husband and wife. In the meanwhile the accused persons became furious, the accused Ghulam Qadir made fire shot on the son of complainant which was missed. The accused repeated the fire which hit the wife of the complainant on left thigh and then Muhammad Usman after snatching the pistol made fire shot to the complainant which hit him on left elbow joint and then the witnesses rescued them and requested the accused persons who thereafter fled away, hence the case."

3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced ten witnesses. In his statement recorded under Section 342 Cr.P.C, the petitioner pleaded his innocence and refuted all the allegations leveled against him. However, he neither appeared as his own witness on oath as provided under Section 340(2) Cr.P.C in disproof of the allegations leveled against him nor produced any evidence in his defence.

4. At the very outset, learned counsel for the petitioner contended that the petitioner has been falsely involved in this case against the actual facts and circumstances. Contends that the ocular account in this case is coming from a source which is related and it does not inspire confidence to sustain conviction of the petitioner. Contends that the prosecution witnesses of the ocular account are at variance on salient features of the prosecution version, as such, the same cannot be made basis to sustain conviction of the petitioner. Contends that the pistol allegedly recovered from the petitioner was not sent to the Forensic Science Laboratory, therefore, the recovery is inconsequential. Contends that the

learned High Court did not take into consideration the above aspects of the matter, therefore, the impugned judgment may be set at naught. In the alternative, learned counsel contended that the sentence of the petitioner may be reduced to what he has already undergone.

5. On the other hand, learned Law Officer vehemently opposed this petition on the ground that the eye-witnesses had no enmity with the petitioner to falsely implicate him in this case and the medical evidence is also in line with the ocular account, therefore, he does not deserve any leniency from this Court.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.

7. A bare perusal of the record shows that the unfortunate incident, wherein the complainant and his wife sustained injuries, took place on 18.07.2017 at 10:30 pm. The injured were firstly taken to Tehsil Headquarter Hospital where the matter was reported to the Police through written complaint and thereafter the FIR was lodged on the same day at 11:30 pm i.e. just after one hour of the occurrence. Thus, it can safely be said that FIR was lodged with promptitude. Promptness of FIR shows truthfulness of the prosecution case and it excludes possibility of deliberation and consultation. The ocular account in this case has been furnished by Qudrat Hussain, complainant (PW-1), Rukhsana Bibi (PW-2) and Muhammad Zaheer (PW-3). These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioner or adverse to the prosecution could be brought on record. These witnesses have given all necessary details of occurrence qua the date, time, place, name of accused, name of witnesses, manner of occurrence, kind of weapon used in the occurrence, the locale of injuries and the motive of occurrence. These PWs remained consistent on each and every material point inasmuch as they made deposition according to the circumstances surfaced in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. The medical

evidence available on the record further corroborates the ocular account so far as the nature, time, locale and impact of the injuries on the person of injured is concerned. Qudrat Hussain, complainant (PW-1) had received injury at the hands of the petitioner. The testimony of this injured PW as well as the stamp of injuries on his person clearly proves his presence at the place of occurrence. Qudrat Hussain (PW-1) and Mst. Rukhsana Bibi (PW-2) were the inmates of the house where the occurrence took place, therefore, both these witnesses were the most natural witnesses. In the present case, the eye witnesses, one of whom had received injuries by the petitioner, have spoken consistently and cogently in describing the manner of commission of the crime in detail. The testimony of an injured eyewitness carries more evidentiary value. During the course of proceedings, the learned counsel contended that there are material discrepancies and contradictions in the statements of the eye-witnesses but on our specific query he could not point out any major contradiction, which could shatter the case of the prosecution. Although, the weapon of offence i.e. a pistol was recovered from the petitioner but as the same was not sent to the Forensic Science Laboratory, therefore, the recovery is inconsequential. To prove the motive part of the prosecution story, the witnesses of the ocular account appeared in the witness box and deposed against the petitioner. The perusal of the record reflects that the defence did not seriously dispute the motive part of the prosecution story. In these circumstances, there is sufficient evidence available on the record to sustain conviction of the petitioner. However, so far as the sentence of 05 years is concerned, we are of the view that the occurrence took place at the spur of the moment without there being any pre-meditation on the part of the petitioner. The complainant himself stated that his daughter was married with the petitioner and due to strained relations she was living in her parents' house for the last one month. The petitioner came there to convince her and to take her to his house. They also had taken meal there. However, subsequently a quarrel took place between the parties, which resulted in the commission of the crime. 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 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.*" In this view of the matter as we have already reduced the sentence of the petitioner to what he has already undergone, keeping him behind the bars for the indefinite period till the payment of Daman would not be in the interest of justice. We, therefore, direct that the petitioner may be released subject to his furnishing surety equal to the amount of Daman to the satisfaction of the learned Trial Court. The learned Trial Court is directed to grant one year's time to the petitioner for payment of Daman amount, which would be payable in equal installments. However, it is made clear that in case of any default in payment of monthly installment, the petitioner shall be taken into custody and dealt with in accordance with law.

8. For what has been discussed above, this jail petition is converted into appeal, partly allowed and the impugned judgment is modified accordingly.

JUDGE

JUDGE

Islamabad, the
11th of April, 2023
Approved For Reporting
Khurram