

IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

J.Cr.A. No.559-P/2015

Date of hearing: _____

Appellant (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- This jail criminal appeal has been filed by appellant Faqir Khan vide which he has questioned the judgment of learned Trial Court/ Sessions Judge Mardan dated 02.03.2015, whereby he has been convicted and sentenced for attempting at the life of his wife Mst. Bibi Ayesha and causing him firearm injuries, as under:-

Under Section 324 PPC: To undergo 10 years R.I. and to pay a fine of Rs.10,000/- or in default thereof to undergo 03 months S.I. further.

Under sections 337-A (ii) and 337-F(ii) PPC:

To undergo 03 years R.I. under each section of law and to pay Daman amounting to Rs.50,000/- to the injured and in case of failure to be kept in Jail till its payment.

The sentences have been directed to run concurrently and benefit of S.382-B Cr.P.C. has been extended to him.

2. According to report of complainant-injured Mst. Bibi Ayesha (PW.10), on the fateful day during altercation on a petty domestic matter, her husband Faqir Jan open fire at her with his pistol with the intention to do her away, as a result, she got hit and injured. She was shifted to Casualty Hospital Mardan where she lodged report, which was reduced into writing in the shape of murasila Exh.PA/1 by Islam ud Din IHC, on the basis of which FIR No.249 dated 20.03.2002, under sections 324/337-A (ii)/337-F (ii) PPC, was registered against the appellant in Police Station Sadar Mardan. Islam ud Din IHC, prepared injury sheet of injured and referred her for medical examination.

3. Dr.Rashida (PW.9) examined injured Mst. Bibi Ayesha on 20.08.2002 at 8.30 a.m. and observed the following injuries on her person:-

1. Wound of anterior on left side of face 1 x 1 cm corresponding exist wound on right side of face $\frac{1}{4}$ x $\frac{1}{4}$ in diameter.

2. Entrance wound on right shoulder $\frac{1}{2}$ x $\frac{1}{2}$ in diameter with corresponding exit wound on right axilla $\frac{1}{2}$ x $\frac{1}{2}$ in diameter.
3. Firearm entry wound on right arm 2 cm below elbow joint and side corresponding exit wound on right arm on ventral side of elbow joint $\frac{1}{2}$ x $\frac{1}{2}$ cm.
4. Two firearm entry wounds on left arm 4 cm below shoulder charring marks present, corresponding exit wound on ventral size $\frac{1}{2}$ x $\frac{1}{2}$ cm.
5. Firearm entry wound on back of body on right side below 4 cm shoulder $\frac{1}{4}$ x $\frac{1}{4}$ cm in diameter.
6. Graze wound on back one inch below neck 3 cm long $\frac{1}{2}$ cm deep.

Nature of injury has been declared as “grievous”.

Kind of weapon: firearm

4. Shamim Khan SI (PW.13) conducted investigation in the case. He proceeded to the spot and prepared site plan Exh.PB at the pointation of injured complainant. During spot inspection, he secured blood with cotton from the place of injured and three crime empties in presence of marginal witnesses through recovery memo. He also took into possession the bloodstained garments of injured through recovery memo, recorded statements of the PWs and applied for

proceedings under section 204 and 87 Cr.P.C. before the learned Illaqa Judicial Magistrate, sent the bloodstained articles to the FSL report whereof is Exh.PK and on completion of investigation, handed over the case file to the SHO, who submitted complete challan against the accused/appellant.

5. On arrest of the accused/appellant and completion of investigation supplementary challan was submitted against him before the learned Trial Court, where he was formally charge sheeted to which he pleaded not guilty and claimed trial. The prosecution led its evidence and after its closure, statement of the accused/appellant was recorded under section 342 Cr.P.C., wherein he denied the prosecution allegations and professed his innocence. He, however, declined to be examined on oath under section 340 (2) Cr.P.C. or to produce evidence in defence. On conclusion of trial, the learned Trial Court, after hearing both the sides, convicted and sentenced the accused/appellant as mentioned above, hence, this appeal.

6. Learned counsel for the appellant argued that impugned judgment of the learned Trial Court is against the law, facts and evidence on record; that the testimony of injured complainant Mst. Bibi Ayesha is suffering from

material contradictions and discrepancies creating serious doubts in the prosecution case, therefore, benefit of the same was to be extended to the appellant; that medical evidence also negates the version of injured, therefore, mere stamp of injuries on her person would not be a certificate of her truthfulness. He lastly submitted that if this Court considers the available evidence as sufficient to prove the guilt of the appellant, then keeping in view the relationship of appellant as husband of the injured and the motive as a sudden flare-up on petty domestic affair, his sentence may be reduced.

7. Injured-complainant Mst. Bibi Ayesha present stated at the bar that she being poor is unable to engage a private counsel, therefore, would rely on the arguments of learned State counsel.

8. Learned State counsel contended that appellant is directly and singularly charged by her injured wife Mst. Bibi Ayesha and it does not appeal to a prudent mind that she will charge her husband by letting off the real culprit; that injured has furnished the straightforward and truthful account of the incident and defence failed to shatter her testimony despite lengthy cross-examination; that recovery of blood and crime empties from the spot coupled with medical evidence as well as unexplained

noticeable abscondence of the appellant corroborate the ocular account of the injured. He while supporting the impugned judgment sought dismissal of the appeal. He lastly submitted that keeping in view the brutality of the appellant as evident from the medical evidence, he deserve no leniency in punishment.

9. Arguments heard and record perused.

10. In reply to a very first question in his statement under section 342 Cr.P.C. qua his relation with injured Mst. Bibi Ayesha, appellant admits her to be his wife. The incident has taken place in the house of the complainant/injured situated in village Dheri Baba. The recovery of blood and three crime empties from the said house, by the Investigating Officer during spot inspection coupled with positive Serologist report regarding the blood secured from the spot and the blood over the garments of the injured, confirms the crime venue to be the same as alleged by the injured complainant Mst. Bibi Ayesha.

11. In support of her version, injured Mst. Bibi Ayesha appeared as PW.10 wherein she reiterated the same story as set forth by her in her initial report. She has been subjected to lengthy and searching cross-examination but nothing beneficial could be extracted from her mouth by the defence. She remained stuck to her stance and

charged the appellant for commission of the offence. No doubt there may be certain minor discrepancies in her statement but such discrepancies being inbuilt proof of truthfulness of a witness are ignorable because a human being cannot be expected to furnish a tape-recorded statement. Those contradictions and discrepancies are considered fatal which squarely shatter the basic fabric of the prosecution case, but no such contradictions and discrepancies have been brought in the statement of injured witness. She was and is still the wife of the appellant; therefore, it does not appeal to a prudent mind that she will charge her innocent husband/appellant by letting off the real culprit. Medical evidence, recovery of blood and crime empties from the spot coupled with noticeable abscondence of the appellant whose wife was lying seriously injured, fully corroborate the ocular testimony of injured Mst. Bibi Ayesha and indicate towards the guilty conscious of the appellant.

12. For what has been discussed above, the prosecution has successfully proved the guilt of the appellant through cogent and confidence inspiring evidence beyond shadow of reasonable doubt, therefore, the learned Trial Court has rightly held him guilty of the offence to which no exception can be taken.

13. Now the moot question for determination before me is that what should be the quantum of sentence to be awarded to the appellant to meet the ends of justice. The learned Trial Court has awarded the maximum sentence to the appellant as provided under section 324 PPC i.e. 10 years rigorous imprisonment alongwith fine. However, keeping in view the motive i.e. sudden flare-up of the appellant over a petty domestic matter with his wife/ injured, coupled with the fact that their wedlock is still intact from which they have minor kids, I while taking lenient view by maintaining the conviction of the appellant under section 324 PPC, reduce his sentence from ten years R.I. to 06 years R.I. However, the conviction and sentences of the appellant under section 337-A (ii) and 337-F (ii) PPC, alongwith sentence of fine under section 324 PPC, are maintained. The sentences shall run concurrently and benefit of S.382-B Cr.P.C. is extended to the appellant.

14. With the above modification in the sentence of the appellant, this appeal stands dismissed.

Announced
16.02.2016.

J U D G E

