

IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.A. No.338-P/2015

Date of hearing: _____

Appellant (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- This appeal is directed against the judgment dated 18.05.2015, rendered by learned Trial Court/ Additional Sessions Judge-XII, Peshawar, whereby appellant Zeeshan has been convicted and sentenced as under:-

Under section 324 PPC:- To undergo imprisonment for 07 years and to pay a fine of Rs.1,00,000/- or in default thereof to undergo 06 months S.I. further.

Under section 337-D PPC: To undergo imprisonment for 05 years as Ta'azir and to pay Arsh equal to one third of prevailing Diyyat) to injured complainant within one year from the date of judgment.

Benefit of S.382-B Cr.P.C. has been extended to the appellant.

2. The prosecution case is that on the eventful day, appellant-convict alongwith absconding co-accused Aurangzeb as well as two unknown accused, duly armed with firearms, attempted at the life of the complainant Muhammad Jehangir and caused him firearm injuries on ring road Kambo Adda Hayat Model School. Previous blood feud has been alleged as motive behind the incident.

3. At the very outset during the course of arguments, it transpired from the impugned judgment that the learned Trial Court without formulating any charge under section 337-D PPC, has also convicted and sentenced the appellant-convict under the aforesaid section of law. It is well settled principle of law that charge against accused shall be specific, fair and clear in all respects to provide an opportunity to the accused to defend himself/herself in due course of trial. The charge shall be clear and by no means, confused to prejudice the accused.. The charge must convey to the accused with sufficient transparency and in clear terms what the prosecution intends to prove against the accused. It shall contain all essential details as to time, place as well as specific manner of the alleged offence, the manner in which the offence was committed with full description of the accusation so as to afford the accused an opportunity to explain the

accusations with which he is confronted. Guidance in this regard may be derived from **S.A.K Rehmani's case (2005 SCMR 364)**. Section 232 of the Cr.P.C. empowers the appellate Court that in case it is found that on account of omissions of particulars in framing charge, the accused has been prejudiced and has not been provided an opportunity of clear understanding of the charge to defend himself, it may direct a fresh trial or even quash the conviction.

Section 232 Cr.P.C. speaks as under:-

“S.232. Effect of material error:- (1) If any Appellate Court, or the High Court or [Court of Session] in the exercise of power of revision or its power under Chapter XVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge by any error in the charge, it shall direct a new trial to be held upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction”.

As per obligatory provisions contained in S.233 Cr.P.C. for every distinct offence, a separate charge shall be framed in order to enable the accused to defend the accusation leveled against him. Section 233 Cr.P.C. runs as under:-

“S.233. Separate charges for distinct offences: For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239 Cr.P.C.

S.235 Cr.P.C. provides a proper mechanism for trial of an accused, charged for more than one offence, according to which if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. Sub-section (2) of S.235 Cr.P.C. further clarifies the situation, according to which if the alleged acts constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial, for each of such offence. Sub-section 3 of S.235 Cr.P.C. says that if several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for, the offence constituted by such acts when combined and for any offence constituted by any one, or more, of such acts. The following illustrations shall further clear the above provision of S.235 Cr.P.C.

A commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with B's wife. A may be separately charged with, and convicted of, offences under section 454 and 497 PPC.

A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately

charged with, and convicted of, offences under sections 498 and 497 PPC.

4. In view of the above discussed and law on the subject referred above, I am of the considered view that appellant has been prejudice in his defence by not confronting him with the proper charge against him. When confronted with the above legal situation, learned counsel for the parties and AAG fairly and frankly conceded and requested for remand of the case for trial denovo. However, learned counsel for the appellant-convict requested for release of the appellant on bail on the ground that he is behind the bars from the last four year. Learned counsel for the complainant and learned AAG opposed release of the appellant on bail and requested for issuance of direction to the learned Trial Court for conclusion of trial within the shortest possible period.

5. In view of the above, the impugned judgment dated 18.05.2015, is set-aside and the case is remanded to the learned Trial Court for trial denovo right from the stage of formulation of charge-sheet in light of above observation and shall conclude the trial as early as possible but not latter than two months from the date of receipt of the record by proceeding with the same on day to day basis. In case of adjournment on any reasonable and plausible ground, its period shall not exceed three days. In

case of failure to conclude the trial within the specified period, if delay was not on the part of the appellant or anybody acting on his behalf he would be at liberty to file application for bail before the learned Trial Court which shall be disposed of independently. Office is directed to send the record to the learned Trial Court within two days, without fail.

6. Before parting with the judgment, I deem it appropriate to mention here that this Court has observed with great concern in plethora of cases that due to such like legal errors and flaws in the trial the accused are languishing in Jail for their no fault. It is the duty of the learned Trial Court to keep vigilant eyes on each and every proceedings conducting during trial. Formulation of charge against an accused is the duty of the Trial Court, therefore, it is the responsibility of the learned Trial Court to keep in mind the relevant law on the subject discussed above coupled with S.265-D Cr.P.C. at the time of formulating charge against the accused so as to avoid future agonies and injustice to the parties. Parties are directed to appear before the learned Trial Court/ Additional Sessions judge-XII, Peshawar on 25.01.2016.

7. The Additional Registrar (Judicial) of this Court is directed to send copy of this judgment to the

learned Sessions Judges of each District of Khyber Pakhtunkhwa with the direction that they shall further circulate its copy amongst the learned Judicial Magistrates/Additional Sessions Judges of their concerned District, for future guidance, with intimation to this Court.

Announced
18.01.2016

J U D G E