

IN THE PESHAWAR HIGH COURT,
PESHAWAR
 (Judicial Department)

Cr.A. No.466-P/2015

Date of hearing: _____

Appellant (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- At a trial held by learned Trial Court/ Sessions Judge, Hangu, appellant Rafiullah, having been found guilty of offence to commit qatl-i-amd of Mst. Imraj Bibi, has been convicted under section 324 PPC and sentenced to undergo imprisonment for five years and to pay a fine of Rs.1,00,000/- or in default thereof to undergo 06 months S.I. further, vide judgment dated 23.07.2015. Benefit of S.382-B Cr.P.C. has been extended to him.

2. Through the instant appeal, the appellant has questioned his conviction and sentence while injured Mst. Imraj Bibi, through connected Cr.R. No.101-P/2015, seeks enhancement of sentence of the convict/ respondent as provided under the law. Since, both the matters are the outcome of one and the same judgment of the learned Trial Court, therefore, this single judgment shall govern both.

3. The prosecution case is that on 26.03.2014 at 1820 hours, appellant-convict alongwith co-accused, duly armed with firearms entered the house of complainant Mst. Dilbar Jana, forced her daughter Mst. Imraj Bibi to go with them and on her refusal, opened fire at her with the intention to commit her murder, as a result, she got hit and injured. In addition to complainant and injured, the incident is stated to have been witnessed by Mst. Rafeeda Bibi. Refusal of the hand of Mst. Imraj Bibi in marriage for the appellant-convict has been advanced as motive behind the incident.

4. At the very outset, while going through the impugned judgment, it seems very strange that the learned Trial Court despite holding the appellant guilty of the offence under section 324 PPC and convicting him thereunder, did not inflict any punishment upon him for the injuries caused by injured Mst. Imraj Bibi, so much so that the appellant has not been confronted with specific charge of the injuries caused to injured. The language of S.324 PPC is clear and unambiguous which not only provides punishment for the act of attempt to commit qatl-i-amd but also held liable the offender to the punishment provided for the hurt caused in addition to the punishment for attempt to

commit murder. For convenience Section 324 PPC is reproduce below:-

“Attempt to commit qatl-i-amd:- Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused qatl, he would be guilty of qatl-i-amd, shall be punished with imprisonment of either description for a term which may extend to ten years [but shall not be less than five years, if the offence has been committed in the name or on the pretext of honour], and shall also be liable to fine, and, *if hurt is caused to any person by such act, the offender shall [in addition to the imprisonment and fine as aforesaid] be liable to the punishment provided for the hurt caused*”.

5. The words “**the offender shall in addition to the imprisonment and fine as aforesaid be liable to the punishment provided for the hurt caused**” make the punishment for the hurt caused as mandatory. When confronted with the above situation, learned counsel for the parties and learned AAG fairly and frankly conceded that the case be remanded to the learned Trial Court for

trial de novo after correction formulation of charge. However, learned counsel for the appellant/convict stressed for release of the appellant-convict on bail on the ground he is behind the bars from the last two years. Learned counsel for the complainant and learned AAG opposed release of the appellant on bail, however, requested for issuance of direction to the learned Trial Court for expeditious conclusion of the trial.

6. In view of the above, the impugned judgment dated 23.07.2015, is set aside and the case is remanded to the learned Trial Court for trial denovo, right from the stage of framing of charge. The learned Trial Court shall conclude the trial as early as possible, but not later than two months from the date of receipt of the record and shall proceed with the case on day to day basis. In case of adjournment on cogent and reasonable ground, its period shall not exceed three days. Office is directed to send the record to the learned Trial Court within two days, without fail. On setting aside the impugned judgment, connected Cr.R. No.101-P/2015, titled, “Mst. Imraj Bibi Vs Rafi Ullah etc” has become infructuous, which stands dismissed as such.

Announced
18.01.2016

JUDGE

