

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE SAJJAD ALI SHAH

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO.566 OF 2021

(Against the judgment dated 03.05.2021 of the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat passed in Criminal Appeal No.44-M/2021)

Hayat Muhammad

...Petitioner(s)

Versus

State through Additional Advocate General, KP and another

...Respondent(s)

For the Petitioner(s): Mr. Asadullah Khan Chamkani, ASC

For the State: Mian Shafaqat Jan, Addl.A.G. KPK

Date of Hearing: 20.09.2021

ORDER

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the judgment of the Peshawar High Court, Mingora Bench (Dar-ul-Qaza) Swat dated 03.05.2021 whereby his appeal was partially allowed.

2. As per contents of the crime report bearing FIR No.38 dated 25.05.2020 registered under Sections 324, 148, 149, 337D, 337F(iii) and 337F(v) PPC at Police Station Talash District Lower Dir lodged by Lal Muhammad son of Taj Muhammad it was alleged that five persons in furtherance of common intention gathered close to his house and cut down the water pipeline. One of the accused Hayat Muhammad turned infuriated and made fire shots with his pistol which landed on the front left side of abdomen, as a consequence the complainant sustained injury. The motive behind the occurrence was disclosed as cutting of water pipeline. In pursuance of the aforesaid crime report, the matter was entrusted to Additional Sessions Judge, Timergara, District Lower Dir. Charge in the aforesaid crime was framed against the accused

persons. After completion of the same, the petitioner was convicted and sentenced as under:-

- (i) Under Section 324 PPC to seven years RI;
- (ii) Under Section 337-D PC to five years RI with directions to pay arsh equal to 1/3 of diyat to the injured;
- (iii) 337F(iii) PPC to one year RI with directions to pay Rs.50,000/- as daman to the injured; and
- (iv) 337F(v) PPC to one year imprisonment with directions to pay Rs.50,000/- as daman to the injured.

All the sentences were ordered to run concurrently. The judgment of the Trial Court was assailed before the learned High Court through Criminal Appeal No.44-M/2021. The learned High Court after taking into consideration the facts and circumstances of the case and providing opportunity of hearing to both the parties, maintained the conviction awarded to the petitioner under Sections 324 and 337-D PPC, however reduced the sentence from 07 years to 05 years Rigorous Imprisonment under Section 324 PPC, whereas the conviction and sentences awarded under Sections 337-F(iii) and 337-F(v) were set aside.

3. During the course of proceedings before this Court, the learned counsel for the petitioner vehemently contended that the statements of Lal Muhammad (PW-3) and Bakhtiar Ahmad (PW-4) of the ocular account are at variance which do not inspire confidence. Contends that other prosecution witnesses produced by the prosecution are only corroborative in nature, hence the conviction and sentences recorded by the Trial Court and upheld by the High Court are not sustainable in the eyes of law. When confronted, the learned counsel admitted that it is now settled principle of law that the statement of injured PW if corroborative with medical evidence is sufficient for conviction.

4. On the other hand, the learned Law Officer has opposed the contentions raised by the learned counsel for the petitioner and supported the judgments of the Trial Court and the learned High Court.

5. We have heard the learned counsel for the parties and gone through the record.

There is no denial to this fact that the occurrence has taken place in a broad daylight and the parties are known to each other. The role ascribed to the petitioner by the injured PW, Lal Muhammad, clearly reflects that the statement made by him was not confusing in any manner rather the same is fully corroborated by medical evidence as Dr. Muhammad Iqbal (PW-12) has clearly reported in his testimony that there was an inversion wound with no blackening on left groin region with corresponding hole 1x1 cm on shalwar and qameez with blood stain, therefore, the medical evidence fully corroborates the statement of injured so far as the time, locale and nature of injuries is concerned. There was absolutely no chance of mis-identification, otherwise the substitution is a rare phenomenon in the instant case. We have gone through the statement of PW-3, Lal Muhammad who sustained injuries and found that the statement of injured PW is straightforward, confidence inspiring and does not left any room to reconsider the conviction and sentences awarded to the petitioner. After the occurrence, the pistol was snatched from the petitioner by PW-7 Sirajullah and was subsequently handed over to the SHO. From the place of occurrence two empties were also taken into possession. Both the pistol and the empties were sent to Forensic Science Laboratory for examination and the report received is to the effect that the empties were fired from the pistol. As the prosecution has produced the ocular account, medical evidence and the same is also corroborated by the statement of the Investigating Officer, there is no possibility left to establish that both the courts below have not appreciated the law in its true perspective. Resultantly, this petition being devoid of merit is dismissed and leave is refused.

JUDGE

JUDGE

JUDGE

Islamabad, the
20th of September, 2021
Approved for reporting
Waqas Naseer/*