

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition Nos.513 & 102-P of 2021

(Against the judgment dated 19.3.2021 passed by the Peshawar High Court Bannu Bench Bannu in CrI. A. No.7-B/2021)

Muhammad Anwar

(in C.P.513/2021)

Dildar Hussain

(in C.P.102-P/2021)

.....Petitioner(s)

Versus

The State through A.G. Khyber Pakhtunkhwa and another

(in C.P.513/2021)

Muhammad Anwar and another

(in C.P.102-P/2021)

...Respondent(s)

For the Petitioner(s):

Mr. Asghar Ali Khan, ASC

(in Cr.P.513/2021)

Mr. Tariq Khan Kakar, ASC

(in Cr.P.102-P/2021)

For the State:

Mr. Zahid Yousaf Qurshi,

Addl. Prosecution General, KP

Date of Hearing

28.01.2022.

ORDER

Qazi Muhammad Amin Ahmed, J.- Indicted for murderous assault, Muhammad Anwar, petitioner, was returned a guilty verdict by a learned Addl. Sessions Judge at Banda Daud Shah, District Kark; convicted under section 324 of the Pakistan Penal Code, 1860, he was sentenced to 8-years RI with a direction to pay fine; on coordinate charges, arisen out of injuries endured by Diladar Hussain (PW-6), he was directed to pay monetary compensation in terms of *Daman*. The High Court maintained the conviction, however, reduced the sentence of imprisonment of 8-years to 4-years vide impugned judgment dated 19.03.2021, leave to appeal wherefrom is being prayed for.

2. On the eventful day, i.e. 01.04.2019, Dildar Hussain was present in the village mosque when at 2:00 p.m. within the

view of witnesses, the petitioner armed with a .30 caliber pistol targeted him with multiple fire shots. Motive for the crime was a dispute over installation of water connection. The injured was shifted to the hospital where the Medical Officer noted three entry wounds with corresponding exits involving right hypochondrium, umbilicus and dorsal side of right feet. The casings secured from the spot were opined to have been fired from one weapon, never recovered during the investigation.

3. Learned counsel for the petitioner contends that the courts ran in concurrence of error inasmuch as the prosecution had miserably failed to prove its case on the strength of proof beyond doubt; that independent witnesses, admittedly present in the mosque, did not come forward to support the complainant, himself no other than real brother of the injured; that forensic report regarding casings in the absence of any wedded weapon hardly lent any support to the prosecution. Nature of injuries fails to constitute "*intention or knowledge*" within the contemplation of section 324 of the Act, a sine qua non, to attract mischief thereof and, thus, the petitioner could only be saddled with the monetary compensation for the injuries endured by the witness, being outcome of assault simpliciter, concluded the learned counsel. The learned Law Officer faithfully defended the impugned judgment.

4. Heard. Record perused.

5. The occurrence is a daylight affair inside village mosque at a point of time where the presence of witnesses cannot be viewed as improbable. The incident is reported to the police with a remarkable promptitude, followed by medical examination that conclusively confirms receipt of three fire shots with a weapon awfully lethal by all means. Survival of the victim is nothing less than a miracle; he came forward to unambiguously point his accusing finger upon the petitioner, a solitary assailant at the scene. It would be naive to argue that three consecutive fires hitting different parts of the body do not constitute "*intention or knowledge*" and circumstances contemplated by section 324 of the Act *ibid* to bring petitioner's case within the remit of the said statutory provision. Aftermaths of a deadly assault particularly by

firearm cannot be quantified on the touchstone of degree of concomitant violence experienced by a victim; it is not his perseverance or endurance that determines assailant's culpability nor intervention by Providence presents him any extenuating option; it is solely his own conduct that decisively determines the intention regardless of the consequences thereof. Likewise, primary punishment for murderous assault is imprisonment that may extend to 10-years; punishment provided for the injuries is, in addition thereto, so as to monetarily compensate the victim, having no indemnifying effects on the former. Criminal Petition No.513 of 2021 fails. Leave declined.

Much water has flown under the bridge and, thus, we do not feel inclined to enhance sentence at this point of time. Criminal Petition No.102-P of 2021 also fails; leave declined.

Judge

Judge

Judge

Islamabad, the
28th January, 2022
Azmat/-