

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT, HYDERABAD.**

Cr. Jail Appeal No.S-152 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

For regular hearing.

Mian Taj Muhammad Keerio, advocate for
appellant.

Mr. Imtiaz Ali Chahnio, Advocate for
complainant.

Mr. Shahzad Saleem Nahiyoona D.P.G

Date of hearing: 03.10.2017.

Date of decision: 03.10.2017.

=

JUDGMENT

ABDUL MAALIK GADDI, J- Through instant Jail appeal, the appellant has challenged the judgment dated 05.08.2016, passed by learned Vth Additional Sessions Judge, Hyderabad in Sessions Case No.1023 of 2015, Re: State vs. Muhammad Anwar, U/s 324 & 337-D PPC, in Crime No.74 of 2015, P.S City Hyderabad, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant under section 265-H(2) Cr.P.C in point No.2 of the impugned judgment which reads as under:-

“From my findings on point No.1, the prosecution has successfully established that on the stated date, time and place, accused Muhammad Anwar stabbed knife blow over injured Muhammad Asif in a manner if committed his Qatl-i-amd, which caused him injury within the meanings of section 324 read with 337-D PPC. Therefore, accused Muhammad Anwar is convicted and sentenced

for offence U/S 324 PPC to suffer rigorous imprisonment for four years and he is also convicted for an offence U/S 337-D PPC to suffer rigorous imprisonment for three years and also to pay compensation to victim Asif to the tune of Rs.25,000/- for actual injury caused to injured Muhammad Asif, in case of failure, the accused shall suffer simple imprisonment for three months more, in exercise of powers conferred by section 265-H(ii) Cr.P.C. That the both above sentences shall run concurrently, and the benefit U/S382-B Cr.P.C is extended to accused as since arrest accused is confined in jail. Certified copy of judgment be supplied to him without charges. Accused Muhammad Anwar is produced in custody. He be sent back to prison to undergo sentences, as above. That the copy of judgment be forwarded to the District Public Prosecutor Hyderabad, as required by section 373 Cr.P.C.

2. The brief facts of the prosecution case are that on 05.08.2015 complainant Muhammad Asghar lodged FIR with police station City Hyderabad, alleging therein he alongwith his brothers namely Javed, Akram, Asif and accused Anwer reside in same house. That Muhammad Anwer used to fight with Asif, and many times accused Anwar issued murderous threats to Asif, but the Nekmards held mutual settlement / Faisla between them. That on 14.8.2015 the complainant was available at the house of his brother-in-law namely Muhammad Sabir situated near Ameer Shah Shrine Shahi Bazar, when at about 7-30 pm, his brother Asif via-mobile phone informed him that he was offering Maghrib prayer in Ameer Shah Bukhari Masjid when brother Anwer attacked upon him with knife with intention to commit his murder and he sustained injury over the backside of abdomen. On that complainant arrived at Ameer Shah Bukhari Masjid where saw his brother Asif was laying at the main gate of Masjid in injured and semi unconscious condition, who

sustained injury over his backside of abdomen and blood was oozing. The complainant with the help of neighbors namely Ali Raza and Irfan brought Asif at Civil Hospital for treatment, and after hospitalizing Asif, he appeared at police station and report the matter that brother Anwer attacked upon brother Asif and injured him with knife with intention to commit his murder.

3. A formal charge against present accused u/s 324 and 337-D PPC was framed at Exh.2, to which he pleaded not guilty and claimed to be tried, vide his plea at Exh.2/A.

4. At trial, prosecution in support of its case examined PW-1 complainant Muhammad Asghar at Exh.03, who produced FIR at Exh.3/A. PW-2 injured Muhammad Asif at Exh.04, PW-3 mashir Syed Sabir Hussain at Exh.05, who produced memo of place of incident at Exh.5/A, memo of injuries at Exh.5/B, and memo of recovery of blood stained cloths of injured at EXh.5/C, PW-4 Muhammad Irfan at Exh.6, who produced memo of arrest of accused Anwer at Exh.6/A, and memo of recovery of knife (crime weapon) at Exh.6/B. PW-5 Dr. Muhammad Ayoob Wasan at Exh.7, who produced provisional medical certificate at Exh.7/A, police letter at Exh.7/B and final medical certificate of injured Asif at Exh.7/C, PW-6 IO SIP Tarique Baladi at Exh.08. That complainant filed an application wherein stated that PW Ali Raza Qureshi has permanently shifted to Punjab as such could not be produced at Exh.09 and thereafter learned ADPP for the State closed the side of prosecution vide statement at Exh.10.

5. Statement of accused Muhammad Anwer as required Under Section 342 Cr.P.C was recorded at Exh.11, wherein he has denied the case of prosecution and stated that he is innocent and falsely involved in this case by foisting the knife upon him. The accused has neither examined himself on oath nor examined any witness in his defence.

6. After hearing the parties' counsel, learned trial court came to the conclusion that the case has been proved against the appellant/accused; he convicted and sentenced him as stated above.

7. It is stated by the learned counsel for appellant that prosecution has failed to prove the charge against accused. He argued that PWs during evidence contradicted to each other, and that all PWs are related and are interested witnesses. It is argued that the prosecution has not produced any corroborative piece of evidence in support of allegations. He argued that section 324 PPC is not attracted to the facts of the case as the victim Asif was allegedly stabbed once, therefore, intention of committing murder is missing. He argued that in medical certificate produced by the MLO there are over writing on the dates, which fact creates doubts over the authenticity of medical certificates. He argued that the crime weapon (knife) was not sent to the serologist for examination to determine that whether the same was used in alleged crime. He finally argued that the prosecution story is false and accused is innocent. In support of his argument, counsel for appellant relied upon the cases of Ghani vs the State reported in SBLR 2016 Sindh 447, Mehmood Ahmad & 3 others vs the State 1965 SCMR 127, Farooque vs the

State 2011 PCrLJ (Karachi) 158, Shams-Ullah vs the State 2011 P.Cr.L.J (Quetta) 162, Liaquat Ali vs the State 2008 SCMR 95, Muhammad Younas vs the State 2015 YLR (Lahore) 2369, Mst. Kulsoom Bibi through Attorney vs Muhammad Waseem and 3 others 2015 YLR (Peshawar) 2375, Rafiullah vs the State 2012 MLD (Lahore) 343, Muhammad Yameen alias Raja vs the State 2009 SCMR 84, Liaquat Ali vs the State 2009 SCMR 91, Ashiq Hussain vs the State 1993 SCMR 417, Munir Ahmed alias Munni vs the State 2001 SCMR 56, Muhammad Sultan vs Muhammad Shah Din and others 2001 SCMR 63 and Muhammad Irshad and another vs the State 1999 SCMR 1030.

8. On the other hand learned D.P.G assisted by learned counsel for complainant contended that the prosecution examined six witnesses who have fully supported the prosecution case. He submitted that there is no contradiction in the deposition of PWs and further victim Asif himself specifically implicated the accused with the offence; that accused, complainant and victim Asif are real brothers while other PWs are their near relative, therefore, question of false implication of accused in present case does not arise; that during investigation the crime weapon was recovered on the pointation of accused in presence of mashirs who have no inimical terms with appellant and further medical certificate and evidence of the MLO supports the ocular version of the case; that prosecution has successfully proved the charge against the accused, therefore according to them the learned trial judge has rightly convicted the appellant; therefore, they prayed for dismissal of instant appeal.

9. I have heard the parties at length and have perused the documents and evidence on record. Perusal of contents of FIR reveals that on 14.8.2015 the complainant was available at the house of his brother-in-law namely Muhammad Sabir situated near Ameer Shah Shrine Shahi Bazar, when at about 7-30 pm, his brother Asif via-mobile phone informed him that he was offering Maghrib prayer in Ameer Shah Bukhari Masjid when his brother Anwer attacked upon him with knife with intention to commit his murder and he sustained injury over the backside of abdomen. Appraisal of record it contemplates that the appellant Muhammad Anwer, complainant Asghar and victim injured Asif are real brothers inter-se and there was an apparent motive behind the commission of offence between the appellant and said victim injured Asif upon property is in admitted position, so evident from the record.

10. Besides, the learned counsel for appellant has mainly underlined the grounds for saving the skin of appellant from the conviction as awarded by the trial court that there is 18 hours delay in lodgment of FIR; that PWs during evidence contradicted to each other; that all the PWs are related and are interested witnesses; that section 324 is not attracted in this case; that the alleged weapon was not sent to the serologist for examination to determine that whether the same was used or not in the alleged crime. In this respect, it is apposite to say that these grounds so agitated by the counsel for appellant are being supportless per circumstances of the instant case.

Whereas, the counsel for appellant urged that there is a considerable delay in lodgment of FIR, but in my view the delay in lodging of FIR could not be presumed to be fatal for the prosecution case as each case has its own merits and circumstances, therefore mere delay in lodging of FIR alone is not sufficient to claim of releasing the accused from charge. Even though, the complainant has satisfactorily explained the above said delay in lodging of FIR that he received information through cell phone regarding the incident which was took place at about 7:30 pm on the date of incident, then he went to the place of occurrence and with the help of locality persons as well as PWs he brought his severe injured brother Asif at Civil Hospital and then remained busy for his first-aid/ treatment, thereafter he went at police station and lodged FIR.

11. So far as, the other ground taken by counsel for appellant are concerned, the ocular account and circumstantial evidence in this case, slashes the same. Whereas, the complainant and PWs during evidence have categorically deposed that prior to the alleged date of incident accused Anwar used to fight with victim Asif and many times he issued murderous threats to Asif. Likewise, victim Asif during his evidence has deposed that accused Anwer assaulted on him with knife when he was offering Maghrib prayers and was in "Sajda" at the place of incident viz. Masjid and fully supported the version of complainant

as narrated in the FIR. Also, perusal of evidence of PW-4 Muhammad Irfan, who during evidence deposed that on the date and timings of incident he was present in “Wazokhana” of the Bhukhari Masjid, where he saw the accused going out of Masjid being armed with knife and followed by victim Asif. This witness also fully supported the case of prosecution in his evidence. In this aspect of evidence, the medico legal officer opined that the injury received by injured is sharp cutting weapon and it was a incised wound (stab) size 03cmx 0.5 cm x deep over right side back of abdomen upper part. Further, the investigation officer also upkeep the evidence of complainant as well as injured and other witnesses while stating in his examination in chief deposed that during interrogation accused disclosed that he hidden the crime weapon after washing it in the garbage, therefore not sending the crime weapon to serologist does not affect the prosecution case. As the complainant, victim and accused are real brothers, therefore during evidence of these two star-witnesses namely complainant Muhammad Asghar and injured Asif nothing has come on record in respect of false implication of accused in this case. The careful perusal of the evidence of all PWs, it appears that they were cross examined at length, but their evidence could not be shaken, rather they corroborated each other on all material aspects of the case to the extent of accused and their

evidence was trustworthy and confidence inspiring which consistent and supportive to the prosecution case as no any contradiction has been pointed out. It is obvious that the injured Asif received severe injury and the incident took place in a Masjid where many person were busy in performing prayer, hence, no question arise that anybody can let-off his real culprit.

12. In view of the above facts and circumstances of the case no perversity, illegality and incorrectness have been found in the impugned judgment. Learned trial court while passing impugned judgment has appreciated all the points involved in this case. No illegality has been pointed out in the impugned judgment by the learned counsel for appellant. I, therefore, under the facts and circumstances of the case find no merit in this appeal which is dismissed. These are the reasons for my short order dated 03.10.2017, whereby the instant appeal was dismissed. However, the facts and circumstances of the case laws so relied upon by the learned counsel for appellant are quite distinguishable from the facts and circumstances of instant case, hence, are not helpful for appellant.

JUDGE.