

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Crl. Appeal No.S-155 of 2016.

Ghulam Hyder alias Sheedo.Appellant.

Versus.

The State.Respondent.

Syed Inayat Hussain Shah, Advocate for the appellant.

Ms. Romeshan Oad, A.P.G.

Mr. Yasin Laghari, Advocate for the complainant.

Date of hearing and judgment: 28.06.2018.

JUDGMENT

IRSHAD ALI SHAH, J.-The appellant by way of instant appeal has impugned judgment dated 08.08.2016 of the learned Assistant Sessions Judge-I, Tando Allahyar, whereby she for an offence punishable under section 324 PPC convicted and sentenced the appellant to undergo R.I. for a period of five years with benefit of Section 382-B Cr.P.C. without imposing upon him penalty of fine, which was mandatory or awarding any punishment for hurt, which was caused to the victim of the incident.

2. The facts in brief necessary for disposal of instant appeal are that the appellant with co-accused Shabbir in furtherance of their common intention allegedly caused hatchet injury to P.W. Muhammad Ismail, on his right arm with intention to commit his murder to satisfy his dispute with complainant party over plot, for that he was booked and challaned in the present case.

3. At trial, the appellant did not plead guilty to the charge and prosecution to prove it, examined P.W-1 complainant Khair Muhammad, produced through him FIR of the present case, P.W-2. Muhammad Ismail, P.W-3 Mashir Abdul Majeed, produced through him mashirnama of arrest of the appellant and recovery of hatchet from him, P.W-4 Mashir Khalid Mehmood, produced through him mashirnama of place of incident and examination of injury of the inured, P.W-5 Dr. Hakkha Raam, produced through him provisional and final medical certificates in respect of injuries

sustained by injured Muhammad Ismail and P.W-6 SIO/ASI Akhtar Ali and then closed the side.

4. The appellant during course of his examination under section 342 Cr.P.C. before learned trial Court denied the prosecution allegations by pleading innocence. He did not examine anyone in his defense or himself on oath in disproof of the prosecution allegations.

5. Learned trial Court, on evaluation of evidence so produced before it, convicted and sentenced the appellant by way of judgment, which the appellant has impugned before this Court by way of instant appeal, as stated above.

6. At the very outset, it is contended by learned counsel for the appellant that he would not press the disposal of instant appeal on merit, if the conviction and sentence, which is awarded to the appellant, are reduced to one already undergone.

7. Learned APG readily accepted the proposal, which is advanced by learned counsel for the appellant, while learned counsel for the complainant opposed the same by contending that the appellant has caused hatchet injury to P.W. Muhammad Ismail with intention to commit his murder only to satisfy his dispute with the complainant party over plot, as such he is not liable to any concession.

8. I have considered the above arguments and perused the record.

9. The incident in the first instance was recorded in "Roznamcha", it is not written therein that hatchet was used while causing injury to injured. The FIR of the incident was lodged with delay of two days to the incident, such delay could not be lost sight of. In mashirnama of injuries injured was found sustaining single injury on his right arm. On medical examination, the injured was found sustaining two injuries, which appears to be strange. The injury or to say both injuries were not on vital part of body of the injured, which prima facie, suggests there was hardly an intention with the appellant to commit death of the injured. The hatchet allegedly recovered from the appellant was not found stained with blood. Parties admittedly are disputed over possession of plot. The appellant, as per jail-roll has already undergone imprisonment of 02 years, 09 months and 28 days. Besides, this he has also

earned remissions of 11 months. In that situation, it would meet the ends of justice, if the conviction and sentence recorded against the appellant is reduced to one, which is already undergone by him. It is ordered accordingly.

10. With above modification in conviction and sentence, the instant appeal is dismissed.

J U D G E

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