

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Appeal No.D-97 of 2017.

Before:

Mr. Justice Muhammad Iqbal Mahar

Mr. Justice Irshad Ali Shah

Appellant: Muhammad Hashim Saleem son of Niaz Hussain alias
Haji Ramzan,
through M/s. Wazeer Hussain Khoso and Masood
Rasool Babar, advocates.

Complainant: Through Mr. M. Akram Rajput, Advocate

Respondent: The State, through Mr. Shahzado Saleem Nahiyoon,
Additional Prosecutor General

Date of hearing: 28-10-2019.

Date of decision: 28-10-2019.

J U D G M E N T

The facts in brief necessary for disposal of instant appeal are that the appellant with one more culprit in furtherance of their common intention not only committed Qatl-e-amd of Zulfiquar Ali by causing him fire shot but caused fire shot injury to PW Muhammad Yasin with intention to commit his murder on account of their failure to pay them Bhatta, and then went away by making aerial firing to create terrorism. For that he was booked and reported upon before learned Judge, Anti-Terrorism Court Mirpurkhas, to face trial for the above said offence by police.

2. At trial, the appellant did not plead guilty to the charge and the prosecution to prove it examined complainant Abdul Ghaffar and his witnesses and then closed the side.

3. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence, he examined himself on oath and DW Mir Abdul Latif and Abdul Qayoom in his defence and then closed the side.

4. On evaluation of evidence, so produced by the prosecution, learned trial Court convicted and sentenced the appellant vide judgment dated 11.09.2017, the operative part whereof reads as under;

“he is therefore, convicted under section 302(b) PPC and sentenced to suffer R.I for Life Imprisonment with fine of Rs.100,000/-to be paid to the legal heirs of deceased Zulfiqar Ali, in case of default in payment of fine amount accused will further suffer R.I for 12 months, he is also sentenced under section 7(a) Anti-Terrorism Act, 1997 to suffer R.I. for Life Imprisonment with fine of Rs.1,00,000/-to be paid to the legal heirs of deceased Zulfiqar Ali, in case of default in payment of fine amount accused will further suffer R.I. for 12 months. He is also convicted under section 324 PPC and sentenced to suffer R.I for 10 years with fine of Rs.50,000/- to be paid to injured Muhammad Yasin, in case of default in payment of fine amount, accused will further suffer R.I. for 6 months, he is also sentenced under section 7(c) Anti-Terrorism Act, 1997 and sentenced to suffer r.I for 10 years with fine of Rs.50,000/=to be paid to injured Muhammad Yasin, in case of default in payment of fine amount accused will further suffer R.I for 6 months, he is also convicted under section 387 PPC and sentenced to suffer R.I for 7 years, he is also sentenced under section 7(h) Anti-Terrorism Act, 1997 and sentenced to suffer R.I for 7 years.”

5. The appellant has impugned the above said judgment before this Court by way of instant judgment.

6. It is contended by learned counsel for the appellant that appellant being innocent has been involved in this case falsely and he is nothing to-do with the alleged incident and the role attributed to the appellant in commission of incident is only to the extent that he fired at PW Muhammad Yasin and liability of the appellant ought to have been to that extent. By contending so, he sought for modification of the conviction and sentence to the appellant only to the extent of section 324 PPC, with little modification in sentence.

7. Learned D.P.G for the State and learned counsel for the complainant consented the proposal of learned counsel for the appellant.

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

9. The role attributed to the appellant in commission of incident is only to the extent that he caused fire shot injury to PW Muhammad Yasin on his left knee joint, which is non-vital part of his body. There is no recovery of crime weapon from the appellant. No "Bhatta" is paid to the appellant by the complainant party. No terrorism or terrorist act is evident of the record. The liability of the appellant in the circumstance obviously would only be to the extent of his individual act. In that situation, learned D.P.G for the State and learned counsel for the complainant have rightly consented for modification of the conviction and sentence to the appellant only to the extent of section 324 PPC, it is ordered accordingly.

Consequently, the appellant for an offence punishable under section 324 PPC is convicted and sentenced to undergo Rigorous Imprisonment for five years and to pay fine of Rs.50,000/- payable to PW Muhammad Yasin as compensation and in case of his failure to make payment of fine to undergo Simple Imprisonment for three months with benefit of section 382-B Cr.P.C.

10. Subject to above modification the instant appeal is dismissed.

Judge

Judge

Ahmed/Pa₂