

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

Cr. Appeal No. S- 114 of 2015

---

**DATE**

---

**ORDER WITH SIGNATURE OF JUDGE**

---

15.01.2016

M/s. Muhammad Aleem and Lutufllah Arain, Advocate Appellant  
Mr. Karamullah Memon, Advocate for Complainant  
Syed Meeral Shah, D.P.G.

**MUHAMMAD IQBAL KALHORO, J.-** Today this appeal is fixed for hearing of application under Section 426 Cr.P.C. (MA 6785/15). However, with the consent of the parties this appeal has been taken up for regular hearing and has been heard.

2. Against the appellant an FIR bearing Crime No. 247 of 2012 under Section 324, 337-F(vi), 504 and 34 PPC of PS Sanghar was registered by complainant Shakeel Ahmed on 30.11.2012. The allegations against the appellant are that he caused firearm injury to one Tahir Hussain on the lower part of his left leg. The case was challaned. During trial the complainant, besides examining himself examined injured Tahir Hussain, P.Ws Muhammad Saleem, Wazeer Ahmed, H.C Kushi Muhammad, ASI Sultan Ahmed, Dr. Shabbir Ahmed and Dr. Atif Rasool. All the relevant papers from FIR to medical certificates were produced by these witnesses. The statement of the appellant was also recorded under Section 342 Cr.P.C. He denied the allegations against him in his statement. Learned Trial Court after hearing the parties and examining the record convicted the appellant vide impugned judgment dated 18.8.2015 and sentenced him to suffer R.I for 05 years under Section 324 PPC with fine of Rs.50,000/-. In addition to the above, the appellant was also convicted to suffer a sentence under Section 337-F(vi) for causing injury to the victim for a period of three years, and payment of Daman Rs.30,000/- was also imposed on him and in case of failure to pay Daman, the appellant is required to undergo S.I till payment of Daman. The appellant has challenged his conviction and sentence through this appeal.

Mr. Muhammad Aleem Arain, Advocate for appellant has argued that the case against the appellant is full of doubts. There is no eye-witness who

has seen the incident. He states that there are material contradictions in the evidence which have been totally ignored by the Trial Court. He has next contended that only on the basis of evidence of injured, the appellant has been convicted which is against the law. According to him, the conviction awarded by the Trial Court is not sustainable in the eye of law for want of necessary and confidence inspiring evidence.

Mr. Karamullah Memon, Advocate for Complainant has argued that the prosecution has fully established the case against the appellant. He states that specific role of causing firearm injury is attributed to the appellant by the injured himself and his such account is also supported by the medical evidence. He states that no material contradictions have come on record and none has been pointed out by the appellant. Since the injury on the person of the injured is admitted as opined by the Medicolegal Officer, the case cannot be treated to be doubtful.

Syed Meeral Shah Bukhkari, D.P.G. has supported the judgment. He states that all the eye-witnesses have fully supported the prosecution case, in order to establish the injury on the person of the injured, the Medicolegal Officer has given a complete account, which has not been shattered. He is of the view that in injury cases account of the injured duly supported by the medical evidence is sufficient to award conviction to an accused, accused of causing injury.

I have heard counsel for the parties and perused the material available on record including the entire evidence with the assistance of the counsel.

The injured namely Tahir Hussain has sustained a sole firearm injury on the lower part of his leg and that the injury is specifically attributed to the present appellant. The Medicolegal Officer has opined that this injury falls under Section 337-F(vi) PPC. The injury under Section 337-F(vi) is defined in Section 337-E(vi), according to which, if by injury the bone of the victim is exposed, it is Ghyr-e-Jaifa Madiha and is punishable upto the extent of 07 years. In so far as the factum of injury on the person of victim is concerned, by producing Medicolegal Certificate and examining the injured himself, the prosecution has been able to establish it. A lengthy cross examination of the injured has been conducted but no material contradictions have come on record to doubt his version of the incident. However, it is also obvious that injured has sustained only a single firearm injury at the lower part of his body. He was at the mercy of the appellant at the time of incident but he did not repeat his action of firing upon him. The intention of the appellant therefore to

cause murder of the injured is not without doubt. Even from the contents of FIR, it is clear that at the time of alleged incident, nobody was available to save the injured and the appellant could have easily murdered him, had he so wanted. But instead of repeating the fires he fled away from the spot. I am, therefore, convinced that in so far as the offence under Section 324 PPC is concerned, it has not been established by the prosecution beyond reasonable doubt. No evidence is available on record to infer that the appellant has committed an offence under Section 324 PPC. In these circumstances, I, set-aside the conviction awarded to the appellant under Section 324 PPC, but maintain the same awarded to him under Section 337-F(vi) PPC for causing injury to the victim. It is however not out of place to mention here that there is no material to show that the appellant is a previous convict or has any past criminal history. He appears to be first offender and has been behind the bars since the date of conviction i.e. 18.8.2015. I am of the view that the interest of justice would be better served, if his sentence is modified and reduced. At this juncture, the counsel for appellant has requested to reduce it to a period of one and half year.

Accordingly, in view of the above, this appeal is dismissed, however, the sentence awarded to the appellant is modified and reduced to the period of one and half year with benefit of Section 382-B Cr.P.C. also extended to him. The findings regarding Daman of Rs.30,000/- will remain intact.

JUDGE

\*Karar/-