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ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Cr. Appeal No.S-19 of 2021

Date of Hearing	ORDER WITH SIGNATURE OF JUDGE
05.04.2021.	

1. For orders on office objections.
2. For hearing of M. A. No.1177/2021.
3. For hearing of Main Case.

Mr. Riaz Hussain Khoso, advocate for the appellants.

Mr. Aitbar Ali Bullo, DPG.

Mr. Khoso learned Counsel submits that the cost of the paper book has been deposited; however, he wishes to confirm the same from his Court clerk. The case file does not show whether the complainant has been served or not. Let the office issue a notice to the complainant and ensure that service report is on file by or before the next date of hearing i.e. 19.04.2021.

OB
JUDGE

Hg of case

- 1- for orders on office obj - 'A' -
- 2- for Hg of MA no. 1177/2021 (426)
- 3- for Hg of main case

- notice issued to complainant -
19.04.2021

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- Mr. Riaz Hussain Khoso Advocate.
 - Mr. Aitbar Ali Bullo. DPG.
- Arguments heard. Judgment reserved.

OB
JUDGE

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.S-19 of 2021

Appellant : Bashir Ahmed Chandio & another,
through Mr. Riaz Hussain Khoso, Advocate.

Respondent : The State, through Mr. Aitbar Ali Bullo,
Deputy Prosecutor General.

Date of hearing : 19.04.2021.

Date of Judgment : 30.04.2021.

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J U D G M E N T.

Omar Sial, J.: On 25-10-2020 Mohammad Nawaz recorded information of an offence that had occurred a month earlier i.e. on 24-9-2020. He stated that his uncle had been murdered in the year 2018 for which a case had been lodged and that Mir Jan (one of the appellants in this appeal) and others had been threatening him demanding that he pulls back from the case. In the night of 24-9-2020 Mohammad Nawaz along with his uncle Ali Dost, his mother Aalman Khatoon and his brother Nadir Ali had dinner and then all of them along with other family members went to sleep. At about 10:30 p.m. they awoke due to a noise in the house. They saw Bashir Ahmed (the other appellant in this appeal) armed with a Kalashnikov and Mir Jan armed with a pistol standing inside the house. After a reference to an old enmity, Mir Jan fired at Aalman Khatoon and the bullet hit her in her back. The intruders then left the house. Nawaz brought his mother to the police station and after her medical examination returned to the police station where F.I.R. No.56 of 2020 was registered against the two men under sections 324, 337-F(vi), 504 and 34, P.P.C. at the Faridabad Police Station.

2. The appellants were charged on 6-1-2021 to which charge they pleaded 'not guilty' and claimed trial. At trial, the prosecution in order to

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prove its case examined 5 witnesses. PW-1 Mohammad Nawaz was the complainant in the case. PW-2 Waryam Chandio was the witness to the injuries sustained by Aalman as well as to the inspection of the place of incident. PW-3 A.S.I. Khuda Bux Solangi was the investigating officer of the case. PW-4 Dr. Mahwash Shaikh was the doctor who examined Aalman's injuries. PW-5 Aalman Khatoon was the injured. In their respective section 342 Cr.P.C. statements the two appellants denied all accusations, pleaded innocence and attributed enmity that the complainant party had with them as the reason for the false accusation.

3. At the conclusion of the trial, the learned 4th Additional Sessions Judge, Dadu on 9-3-2021 found the two appellants guilty of the charge against them and convicted and sentenced them as follows:

- (i) For an offence under section 337-F(vi) P.P.C. Mir Jan was sentenced to 5 years rigorous imprisonment and ordered to pay Rs. 5000 as daman or undergo a further period of 2 months imprisonment.
- (ii) For an offence under section 324 P.P.C. read with section 34 P.P.C. both the appellants were sentenced to 5 years rigorous imprisonment and ordered to pay a fine of Rs. 20,000 or undergo a further period of 2 months.
- (iii) For an offence under section 425 P.P.C. read with section 34 P.P.C. both the appellants were sentenced to 3 years rigorous imprisonment.
- (iv) The sentences were to run concurrently and the benefit of section 382-B was also extended to them.

It is this judgment of the learned 4th Additional Sessions Judge, Dadu that has been challenged through these proceedings.

4. After hearing the learned counsel for the appellants as well as the learned DPG (no one effected an appearance on behalf of the complainant) and having perused the record with their able assistance, I am of the view that the prosecution failed to prove its case beyond reasonable doubt. My reasons to reach such a conclusion are as follows.

5. Inspection of injuries: The incident is said to have occurred on 24-9-2020 and the injuries examined by the police the same day. The record shows that the injuries sustained by Aalman were

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inspected by A.S.I. Khuda Bux in the presence of two male witnesses Suhraab and Waryam. It is these two whose thumb prints ostensibly are affixed on the memo of inspection of injuries. An all male examination and witnessing of injuries on a female victim was not in accordance with police protocols. One of the witnesses to the inspection i.e. Waryam Chandio testified that *"I and police saw injuries of the injured and prepared memo"*. Waryam was not a relative of the injured and apart from failing to confirm his identity at trial according to his own version, the relatives of the injured had taken her to the police station after the alleged incident and that he was not with them. Why would the relatives of the injured allow strangers to be witness to the inspection of injuries when they themselves were available at the police station is not only odd but absolutely unbelievable keeping our rural society norms in mind. Waryam's testimony and whether he was even present all along became further doubtful when he testified that *"police came to village and obtained my LTI on memo of injuries."* Perhaps realizing that he had spoken the truth by mistake he tried to cover the lapse by subsequently stating that *"my signature was obtained on memo of injuries at P.S."* He faltered in his cover up statement too as the memo shows a thumb print on it and no signature. Even, further doubt in the story of the inspection of injuries was created when A.S.I. Khuda Bux Solangi admitted in his cross examination that *"it is correct to suggest that the injuries of injured were seen through a lady belongs to complainant party but her name is not mentioned in memo. It is correct to suggest I have not seen injuries of injured but same were told to me by the one lady accompanied with injured"*. No credence can be given to such an inspection of injuries or to the testimony of Waryam or A.S.I. Solangi's testimony in this regard.

Dr. Mahwish Sheikh's testimony reveals that though Aalman was ostensibly shot and injured on 24-9-2020 and was sent to her the same day after the inspection discussed in the preceding paragraph was carried out, it was not until 29-9-2020 that she came to the doctor. Further, the inspection carried out by her does not

reconcile at all with the ocular version. In the complainant's version one shot had hit Aalman in her back, however, in the doctor's report she seems to have been hit 3 times at various parts of her body and does not reveal that she was shot in her back. Dr. Sheikh, while explaining the delay of 5 days for the injured coming to her after the alleged incident, said that she was told by the injured herself that after receiving a letter from the police station, she had gone to a hospital in Larkana instead of coming to the hospital in Mehar. This version of the injured is doubtful in itself as the record reveals that she was given a letter addressed to the Mehar hospital woman medical officer. The hospital record presented at trial is far from convincing and does not corroborate the prosecution case.

6. Delay in F.I.R. The F.I.R. in the case was registered after a period of one month. None of the witnesses gave any explanation for this delay. If one gives Aalman Khatoon the benefit of doubt that her testimony can be taken as an explanation of the delay even then I do not find it true. It is a matter of record that on 24-9-2020 she was in her senses when she came to the police station. She was in her senses when she came to Dr. Mahwish 5 days later. In view of the evidence led at trial I do not believe Aalman's statement that she fell unconscious immediately after the incident and remained unconscious for 6 days. Speaking hypothetically even if the prosecution version is given concession and it is assumed that Aalman was unconscious for 6 days, even then there was no reason for her or her relatives to not register the F.I.R. for another 24 days especially keeping in view the fact that one month later too it was not Aalman but Mohammad Nawaz who had come to register the F.I.R. The F.I.R. appears to have been molded and manipulated with malafide keeping in view the admitted enmity between the parties.

7. Witnesses: According to A.S.I. Khuda Bux Solangi, Aalman did not record her section 161 Cr.P.C. statement until 28-10-2020

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and the statements of the other two ostensible eye-witnesses were not recorded till 5-12-2020. No explanation for this delay on record nor were the 2 eye-witnesses examined at trial. Rab Nawaz, the person who was said to have transported the injured Aalman from her house to the police station, was not examined. No reason for their non-appearance was given. In such a situation, illustration (g) of Article 129 of the Qanun-e-Shahdat Order will come into play and it would be assumed that had they been examined, they would not have supported the prosecution case. The Honorable Supreme Court in a number of cases (2020 SCMR 1049, 2017 SCMR 486 and 2010 SCMR 584) has held that the delay in recording witness statements without a plausible explanation would reduce their value to nil and cannot be relied upon. The honesty and credibility of the witnesses is doubtful.

8. Recovery: The investigating officer did not inspect the place of incident till 25-10-2020. Obviously by that time even if there were any clues the same did not exist. Needless to say no blood stains or empties or footprints were seen. It is doubtful that the incident actually occurred in the house as stated by the complainant. The weapons used in the offence were also not recovered. No recovery was effected to corroborate the prosecution version. No satisfactory evidence was led to even prove that the incident occurred at the house of the complainant party.

9. For the above reasons, the appeal is allowed and the appellants acquitted of the charge. They may be released forthwith if not required in any other custody case.


30/4/21
JUDGE