

IN THE HIGH COURT OF SINDH AT KARACHI**Criminal Appeal No. 341 of 2018**

Appellant : Saif-ur-Rehman
through Ms. Kiran Channer, Advocate

Respondent : The State
through Ms. Robina Qadir, DPG

JUDGMENT

Omar Sial, J.: Saif-ur-Rehman, the appellant, has impugned a judgment dated 17-4-2018 passed by the learned 10th Additional District and Sessions Judge, Karachi West. In terms of the said judgment the appellant was convicted for an offence punishable under section 324 P.P.C and sentenced to serve a five year prison term.

2. The F.I.R. in this rather strange case (being No. 189 of 2015) was registered under section 324 P.P.C at the Mochko police station on 12-8-2015 on the complaint of one Talat Shehnaz. She narrated that she lives with her two sons Obaid and Faizan and that 16 years ago she had thrown out of her house her third son Saif-ur-Rehman. On 21.7.2015 at 6:00 a.m. Saif entered her house by scaling the wall and sprinkled petrol over her two sons who were sleeping at that time. Saif then came to the complainant's room and tried to disrobe her. He also sprinkled petrol over her and tried to light a match but was prevented to do so by the complainant and her sons. Saif then left the house hurling threats at them.

3. The appellant was arrested on 13-8-2015. The charge against the appellant was framed on 26-9-2016 to which he pleaded not guilty and claimed trial. In order to prove its case the prosecution examined P.C. Shafi Mohammad as its first witness. He was a witness to the arrest of the appellant. The second prosecution witness was the complainant Talat Shehnaz. The third witness was the scribe of the F.I.R namely S.I. Khan Nawaz. The fourth prosecution witness was Faizan-ur-Rehman, who was the son of the complainant and the eye witness to the occurrence. The last witness was A.S.I. Mumtaz Khan Tanoli who was the investigating officer of the case.

4. The appellant recorded his statement under section 342 Cr.P.C. on 12-12-17 in which he pleaded his innocence and further stated that he had been falsely involved in this case due to a dispute over property.

5. I have heard the learned counsel for the appellant as well as the learned D.P.G. The complainant did not effect an appearance despite notice. My observations are as follows.

6. I find it rather strange that the reason given by Talat in her testimony for throwing out the appellant from her home when he was 12 years old was that he had wanted to marry her. Twelve is a very tender age, and if the reason given by the complainant was correct, perhaps instead of throwing the child out of her home, it would have been better if psychiatric help was sought. This appears a reasonable assumption in view of the fact that the complainant herself testified that till the age of 11, the appellant could not talk and that she had not sent him to school as well and that she herself understood that the appellant was a "mental case" and that he had also been admitted in a "mental hospital". I also find it strange that Talat in her testimony said that on the date of the incident, Saif scaled the wall, took out petrol from a motorbike parked inside the house and then sprinkled it over her and her two sons. It appears that all of them were sitting watching (though they denied it) Saif do all this without making any attempt to stop him. The motorcycle from which the petrol was taken was not produced in trial nor was any pipe or other instrument or receptacle (a cup according to the eye witness Faiz) Saif would have used to enable him to do so produced at trial. I also find it baffling that the incident was said to have occurred on 21-7-2015 and the appellant was arrested on 13-8-2015 from the house of the complainant. It appears that during this time the appellant was residing with the complainant party. Talat testified that the appellant was arrested at 10:00 a.m. in the morning whereas the memo of arrest shows the arrest as having been made at 2:00 p.m. Both Talat and her son Faiz admitted that they were not injured in the scuffle and that the torn clothes of Talat were also not produced. I find it unnatural too that Faiz simply stood and watched (as he himself testified) while Saif tore the clothes of their mother. No petrol soaked clothes were produced at trial nor was any match that Saif was alleged to have carried produced. No independent witness was cited or examined by the prosecution. The investigating officer testified that he had not registered an F.I.R and that the same was lodged pursuant to a court order. He also testified that there was a property dispute between the members of the family.

7. In view of the above, not sufficient evidence was produced at trial to justify an offence under section 324 P.P.C. When the defence version is put in juxtaposition with the prosecution case, it is the former that inspires more confidence. It appears that matters of inheritance are at the heart of this case and perhaps the complainant family

thought it more convenient to eliminate a person with special abilities from inheritance or as a nuisance value by lodging this case against him. Be that as it may, the guilt of the appellant was not proved beyond reasonable doubt. The benefit of such doubt should have gone to the appellant.

8. Above are the reasons for my short order dated 25.10.2018 which was as follows:

“For reasons to be recorded later on, appeal is allowed and the appellant is acquitted of the charge(s). Let the appellant be released forthwith if not required in any other case(s).”

JUDGE