

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Rev. Application No. 198 of 2017

Applicant : In person

Respondent : The State
through Mr. Talib Ali Memon, APG

Date of hearing : 22nd November, 2022

ORDER

Omar Sial, J.: Muhammad Sabir reported to the police that on 19.07.2011 at about 10:00 p.m. he was asleep at home with his brother Tariq, when the applicant Chaudhry Abrar, along with one other named Muneer had come to his house and after an exchange of harsh words with Tariq, Abrar had made a pistol fire at Tariq, which hit him on his shoulder. Sabir alleged that Abrar and his companion had also robbed the complainant family of Rs. 500,000 and 4 tolas of gold. F.I.R. No. 427 of 2011 under sections 392 and 397 P.P.C. was registered against the 2 men at the Saeedabad police station. Abrar's father, Chaudhry Mohammad Saleem was later implicated in the crime by Sabir, who claimed that Saleem had instigated his son Abrar to shoot at Tariq. On 26.07.2011, Chaudhry Saleem was arrested. On 31.07.2011, both Abrar and Muneer were arrested. After having implicated Chaudhry Saleem for instigating his son, Sabir subsequently told the police that he had been mistaken and that Chaudhry Saleem had no role in the incident. It appears that at some stage Chaudhry Saleem was dropped as an accused. Not only this, Sabir also told the police that he had also been mistaken when he had told the police that Abrar and Muneer had stolen cash and gold from the house and that in fact nothing had been stolen. The charge under sections 392 and 397 P.P.C was therefore dropped on 25.11.2011 and the 2 men were subsequently charged with having committed an offence under section 324, 109 and 34 P.P.C. Both, Abrar and Muneer, pleaded not guilty and claimed trial.

2. At trial the prosecution examined **PW-1 Mohammad Sabir**, the complainant. **PW-2 Muhammad Tariq**, the injured. **PW-3 Abdul Hameed**, the complainant's uncle lived in the same neighborhood and testified that earlier on the day of the incident there had been bad blood between the parties over Tariq making advances towards the younger sister of Abrar. **PW-4 S.I. Moula Bux** was the investigating officer of the case. **PW-5 Dr. Ghulam Sarwar Channa** was the doctor who provided medical aid to the injured Tariq. In their respective section 342 Cr.P.C. statements, both accused denied any wrong doing and professed innocence. The learned 4th Assistant Sessions Judge, Karachi West on 18.04.2017 convicted Abrar for an offence under section 324 P.P.C. and sentenced him to a 3 year prison term. Co-accused Muneer was acquitted. He was also directed to pay a fine of Rs. 20,000 or remain in prison for another 1 month. An appeal was preferred before the learned 10th Additional Sessions Judge, Karachi West, however, the same was dismissed on 11.11.2017.

3. The applicant, who is on bail, has argued his case himself as he did not have the means to pay the counsel who had earlier been appearing for him. He has, right at the outset, submitted that he had fired at Tariq, though not in the circumstances as claimed by the complainant, because he had been greatly offended at Tariq's continuous advances towards his younger sister and that on a number of occasions his family had warned Tariq's family that they should restrain his behavior in the neighborhood and ask him to not trouble his sister. According to the applicant, Tariq did not mend his ways and each time his sister would go out in the lane, he would be up to his tricks. He submitted that he had not intended to hurt Tariq in the manner he ended up getting hurt. He also stated that more than 12 years had passed since the incident and that apart from confinement in jail he has reached a position of financial distress because of the long and protracted trial and appeal process. He therefore threw himself at the mercy of this court and prayed for leniency in sentence. The learned APG was of the view that in view of the fact that the applicant has repented and is remorseful of what had happened, and especially in view of

the reason he had stated in his defence, he would have no objection if the court takes a lenient view on the sentence given to him. None appeared on behalf of the complainant as the complainant at an earlier date had informed the court that he did not wish to engage a counsel. Notice was also issued to the injured Tariq but he too did not effect an appearance.

4. In view of the applicant's submissions, a jail roll was called from the Prison. The roll reflects that out of the 3 year prison sentence, the applicant has completed 1 year and 23 days. It appears from the record and what the applicant has argued that the fire was made not in the home of the injured, as claimed in the F.I.R. but on a street outside. The complainant initially involving the applicant in a robbery case and then saying that there had been no robbery, similarly, the complainant wrongly throwing the net wide to bring within it the father of the applicant and then after having him arrested saying that he was mistaken and that the father did not have any role in the incident, suggests that an exaggerated account of how the event unfolded was given. The applicant has also suffered the agony of these proceedings for a period of 7 years. It also appears that it was a momentary loss of senses as the applicant was overwhelmed with emotion on the applicant continuously teasing his little sister that the fire was made by the applicant. He did not repeat the fire. Shooting at and injuring a person cannot be permitted under any circumstances; however, keeping the above observations in mind, it would be appropriate that the sentence of the applicant is modified.

5. While dismissing the appeal, the impugned judgment is modified to the extent that the sentence of the applicant is reduced to the period he has already spent in jail. This would also include the imprisonment in lieu of fine. The applicant is on bail. His bail bonds stand cancelled and surety discharged. It may be returned to its depositor upon identification.

JUDGE