JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Appeal No.268 of 2023

Date	Order .with signature of Judge

Appellant:	Sarfraz Ahmed through Mr. Muhammad Ilyas Khan Tanoli, advocate.
Respondent:	State through Mr. Khadim Hussain Addl. P.G.
Complainant:	Zaheer Ahmed through Mr. Javed Ahmed Kazi, a/w Ms. Sadaf Gul advocate.
Date of hearing and Decision:	30.10.2024.

J U D G M E N T

MUHAMMAD IQBAL KALHORO J: Appellant, charged for committing an offence u/s 324, 34 PPC r/w section 337 A(iii), A(iv) PPC at bypass Shahrah-e-Qaideen near Mazar-e-Qaid 12.05.2022 at 2.00 a.m. by firing from his pistol on Shahzad with intention to kill him; was convicted and sentenced vide impugned judgment dated 11.05.2023 by learned IV-Additional Sessions judge, Karachi East u/s 324 PPC to suffer R.I. for 10 years and to pay fine of Rs.100,000/-, in case of default to suffer Si for three months more. In addition to above, appellant was also convicted u/s 337 F(iii) PPC to suffer R.I for three years and to pay Daman of Rs.50,000/- to injured Shahzad, in case of default, to suffer SI for one month more with benefit of section 382-B Cr.P.C duly extended to him.

2. As per FIR registered by complainant, who is a brother in law of injured Shahzad and a real brother of appellant Sarfraz Ahmed , on 02.05.2022 at 2.00 a.m. he was informed on phone by some unknown person that his brother in law Shahzad was brought in Jinnah Postgraduate Medical Centre (JPMC) in injured condition through a Rickshaw. Upon which he reached there and found his brother in law in injured condition, who had received atleast four bullet injures. On inquiry, he informed him that when he was driving his motorcycle towards Ranchhore Line for getting clothes and reached Numaish Chorangi near Mazar-e-Qaid under bypass, appellant Sarfraz Ahmed alongwith another person riding on a motorcycle accosted him. Then accused

Sarfraz pulled out his pistol and fired upon him. Thereafter, accused made their escape good and he was brought in the hospital in a Rickshaw. In the investigation that ensued the FIR, appellant was arrested on 06.06.2022. After culmination of investigation, the Challan was submitted, and the charge was framed against appellant in which he pleaded not guilty. Then prosecution examined five witnesses including injured and I.O. of the case who have produced all the necessary documents to prove the charge. At end of the trial, statement of appellant was recorded u/s 342 Cr.P.C in which he has denied allegations against him. He, however, asserted to examine himself on oath and produce documentary evidence but then by a statement dated 18.04.2023 his counsel declined to do so.

3. After hearing the parties and perusing material available on record, the trial court vide impugned judgment has convicted and sentenced the appellant in the terms as stated above.

4. Learned defence counsel has argued that appellant is innocent and has been falsely implicated in this case; there are so many contradictions in the evidence; no eyewitness has been examined in this case; the injured was in stable condition but he did not register FIR; there are material discrepancies in the evidence of complainant and injured; the place of incident was visited next day by the I.O., no recovery was effected from there; place of incident has not been established as different witnesses have described the same to be situated at different places; CDR of the appellant does not support his presence at spot; in the judgment the trial judge has replied the points for determination as not proved but then has convicted and sentenced the appellant, hence the impugned judgment is not sustainable in law. He has relied upon following case law to support his arguments. 2017 P Cr.L J 479, 2024 SCMR 1310, 2024 SCMR 1191, 2019 MLD 1821, 2004 SCMR 1, PLD 2012 Sindh 307, 2011 MLD 852, 2020 SCMR 1621, 2022 SCMR 1398, and 2019 MLD 1821.

5. On the other hand, learned counsel for complainant and learned Addl. P.G. have supported the impugned judgment.

6. I have considered submissions of the parties and perused material available on record including the case law cited at bar. In order to prove the charge, prosecution has examined three material witnesses which include complainant Ex.3 as P.W.1, injured himself as P.W.2 Ex.4 and MLO Dr. Sikander Azam as P.W.3 Ex.5, who had examined the injured on the very day

when he was brought at JPMC. Complainant has reiterated the entire story narrated by him in the FIR. He has revealed that how in response to information of injuries to the victim on phone, he reached the hospital and found the injured having received four bullet injuries. He has further revealed the fact that injured had informed him about the incident and role of appellant to have fired multiple times upon him. Next, the prosecution has examined injured himself at Ex.4. He has supported the story of FIR. He has identified the appellant to be the accused who had fired upon him four times at the place of incident when he was riding on a motorcycle. The MLO, who had examined the injured, has described eight firearm injuries on the person of injured. As per him, four are entry wounds and four are exit wounds.

7. P.W.4 Ex.6 is I.O. who in his evidence has stated that on the day of incident, he was called by the complainant for visiting place of incident where he had prepared such memo. He has further disclosed in his deposition that on 06.06.2022 he had arrested the appellant who is a real brother of complainant and with whom complainant and injured had got a property dispute. Reportedly complainant is closer to injured in that the latter has given his child to complainant for adoption. The last witness examined by the prosecution is P.W.5 ASI Mumtaz Ahmed, who in his evidence has stated that he had received information about incident through some intelligence officer and had reached JPMC where he was informed by MLO that one injured namely Shahzad had been brought in the hospital in semi unconscious condition. Since he was not in complete senses, hence statement of his brother in law /complainant was recorded u/s 154 Cr.P.C. As against such evidence, the appellant in his 342 Cr.P.C statement has simply denied prosecution case.

8. In this case as is apparent, injured sustained four firearm injuries. The factum of those injuries has been confirmed by the medical officer, who has disclosed the injuries to the person of the injured as under:-

1. Entry wound 0.8 cm x 0.6 cm, alongwith perfuse bleeding and pain with inverted margins at right hypochondriac region of abdomen.
2. Exit wound 1 cm x 0.8 cm alongwith perfuse bleeding and pain with averted margins at right back of chest.
3. Entry wound of 0.7 cm x 0.8 cm, alongwith perfuse bleedings with pain inverted margins at left side of abdomen wound of 2 cm below umbilicus.
4. Exit wound of 1 cm x 0.8 cm alongwith perfuse bleeding and pain with outward directly margins at left side of lower back.

5. Entry wound of 1 cm x 0.8 cm with perfuse bleeding and pain at pelvic region of abdomen lower end.
6. Exit wound 1 cm x 0.6 cm alongwith perfuse bleeding and pain without outward margin at left buttock.
7. Entry wound of 0.5 cm x 0.5 cm alongwith perfuse bleeding and pain with inverting at anterio medial aspect of left thigh.
8. Exit wound 1 cm x 0.3 cm alongwith perfuse bleeding and pain with outwardly margin at posterior aspect of left thigh.

9. Appellant has been clearly identified by the injured who is his brother in law. Apparently the complainant and injured have no ill will or a motive to falsely implicate the appellant in a case in which he has made a serious attempt on life of the injured. In the cases of injuries or murder it is very rare for the complainant or the injured to substitute the real culprit with a false one, not the least when the accused is near one of the complainant party. The appellant is a real brother of complainant and brother in law of the injured; without any strong motive, the evidence of which is lacking, both the witnesses are not expected to falsely implicate their brother and brother in law in a case which carry 10 years punishment. The discrepancies pointed out by the learned defence counsel and reproduced above in his arguments are minor in nature, do not impinge on merits of the case. On the basis of such discrepancies, version of the prosecution presented in the court through five witnesses cannot be discarded and appellant acquitted.

10. Next I have found the prosecution evidence confidence inspiring, all the pieces of evidence connect the appellant with commission of offence. Non recovery of weapon or any empty from place of incident cannot undermine the prosecution case which is otherwise established from the direct account furnished by the injured himself. Appellant was arrested after more than one month and before his arrest the Challan had already been submitted. Non-recovery of empties from spot could be due to the fact that place of incident is stated to be a busy road and its inspection was carried out on the next day, therefore, the chances of the same being misplaced cannot be ruled out. However, these minor discrepancies cannot injure intrinsic value of the evidence of the P.Ws. They have furnished firsthand account of the incident. The evidence of injured does not suffer from any discrepancy or contradiction. He has clearly identified the appellant to be the culprit. This is a daytime incident, and there is no chance of mistaken identity.

11. Learned Addl. P.G. during arguments has revealed that appellant had earlier also assaulted the complainant due to property dispute and such FIR bearing Crime No.07/2020 at P.S Baloch Colony u/s 324 PPC was registered against him. The motive to commit the offence by the prosecution is, therefore, established.

12. I have gone through the impugned judgment, the trial court has reproduced evidence of all the P.Ws and has discussed entire evidence against appellant. Its findings are supported by solid reasons. The fact that in the judgment in reply to points for determination it is written "not proved" and "accused acquitted u/s 265-H Cr.P.C" shows lack of focus of the trial court and inadvertent mistake on its part. Otherwise the tenor and trend of the discussion in the judgment clearly shows that trial court had come to the conclusion that appellant was guilty, had committed the offence and prosecution had established the case beyond a shadow of doubt. I, therefore, find the same discrepancies as mere irregularity curable u/s 537 Cr.P.C as it has caused no prejudice to the accused insofar as merits of the case are concerned. More so, the appeal is continuation of trial and the appellate court, if certain errors or omissions are committed by the trial court, is competent to make good of the same and remove the same. I myself have gone through the evidence of the prosecution and of the view that prosecution has established the case against the appellant beyond a reasonable doubt. There are no material contradictions in the evidence to give its benefit to the appellant and acquit him.

13. In view of the above, I find no merits in the instant appeal and accordingly dismiss it.

The Appeal stands dismissed in the above terms alongwith pending application.

These are the reasons of my short order passed on 30.10.2024, whereby this appeal was dismissed.

JUDGE

A.K