

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CR. JAIL APPEAL NO.108 OF 2023

Appellant	Agha Shariq Raza S/o Agha Ali Raza through Ms. Roop Mala Singh, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh and Mr. Mumtaz Ali Shah, Assistant Prosecutor General.
Date of Hearing	14.10.2024
Date of Order	14.10.2024

J U D G M E N T

Muhammad Karim Khan Agha, J. Appellant Agha Shariq Raza was tried in the Court of IInd Additional District & Sessions Judge Karachi East in Session Case No.159/2019 arising out of FIR No.315/2018 under Sections 324/334/336-B PPC registered at P.S. Soldier Bazar and after a full-fledged trial vide judgment dated 02.02.2023 he was convicted under section 265-H(ii) Cr.P.C. for committing offence under section 336-B and 324 PPC and sentenced to undergo R.I. for 14 years and to pay fine of Rs.one million for the offence punishable under section 336-B PPC. In case of his failure to pay the fine, he shall undergo S.I. for one year more. He was also convicted and sentenced to undergo R.I. for ten years and to pay Arsh as compensation for causing Altaf-i-Udw of eyes, face and other body parts of the complainant equivalent to the value of one-half Diyat, as provided under Section 337-R PPC. The value of Diyat in the year 2022-23 was Rs.43,18,524/- (Rupees Forty-Three lacs Eighteen Thousand Five Hundred and Twenty Four only) the half of which becomes Rs.21,59,262/- (Rupees of Twenty-One lacs, Fifty-Nine Thousand, Two Hundred and Sixty Two only) payable to the complainant/victim Mehdi Abbas son of Muhammad Kashif, failing which the convict is

directed to be kept in jail in simple imprisonment till he pays the amount for the offence punishable under section 334 PPC. He was also convicted and sentenced to suffer R.I. for ten years and to pay fine of Rs.100,000/- (rupees one lac only) for the offence punishable under section 324 PPC. In case of his failure to pay fine he is to suffer one year simple imprisonment. All the above sentences shall run concurrently. Accused is also entitled for benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as narrated in the FIR are that complainant Mehdi Abbas son of Muhammad Kashif lodged the instant FIR at PS Soldier Bazar stating therein that he is Resident of Flat No. 402 Al-Janat residency Parsi Colony, Soldier Bazar and on 12/11/2018, his father-in-law namely Agha Shariq Raza S/o Agha Ali Raza desired to solve the issues/dispute between him and his wife, who is also his mother-in-law namely Sarwat Agha D/o Aftab Hussain Zaidi, for the reason to resolve the issues between him and his mother-in-law, his father-in-law met him at 08:45 in the morning, but on his continuous denial he insisted him to meet him in the evening after his office time only for 10 minutes. He after his office at 05:00 pm reached to his father-in-law's house, at that time there is no one in the house besides him and his father-in-law. In the meeting at Flat No.2 Mohan Bhohan Buildina 1st floor, Soldier Bazar, his father-in-law requested him to resolve the issues between him and his mother-in-law as soon as possible, on which he replied this issue may take 4/5 days to resolve, on which he advised him to call his mother-in-law right now and invite her to the house. It was 05:15 at that time, on his denial he went to the kitchen and after some time while brought a glass which is filled with acid and thrown on his face, resultantly affecting his eyes. According to doctors his vision has left just 25% to 30% and his face has badly burnt also his body as well as his hands. Complainant was shifted to Liaquat National Hospital for treatment, where he kept in ICU on first day, and two days in surgical ward. Due to the treatment he couldn't lodge a complaint timely; however, now he would like to initiate legal proceeding against his father-in-law namely Agha Shariq Raza S/o Agha Ali Raza for throwing acid on him. Hence, this FIR was registered.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove their cases, the prosecution examined 07-PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he denied all the allegations leveled against him. However, he did not give evidence on oath or call any witness in support of his defence.

5. At the very outset, learned counsel for the appellant and learned Addl. P.G. drew my attention to the fact that none of the seven PWs was examined or cross-examined in the presence of defence counsel, as such, the appellant has been prejudiced in his defence and this is a case of remand.

6. I have gone through the record and found contentions of learned counsel for the appellant and learned Addl. P.G. are correct. The only explanation given in the judgment available at Page-221 of the paper book is that due to changing counsel by the appellant, he could not establish his false implication during cross-examination of the witnesses. Under Section 340, Cr.PC the accused is entitled as matter of right to be provided a Pleader on State expenses. In fact, the Court should have appointed a pauper counsel for the appellant to ensure presence of the counsel during the whole trial. This is because under section 353 of the Cr.P.C. the evidence of all the witnesses (evidence-in-chief, cross-examination and re-cross-examination) must be recorded in the presence of the accused and his defence counsel. The idea behind this is that the appellant shall have fair trial as guaranteed by Article 10-A of the Constitution. For example, if the counsel of the defence had been present when the aforesaid important witnesses were giving evidence in chief, they may have objected certain questions being put and certain documents being exhibited, as such the fact that the defence counsel was not present during this process has caused prejudice to the appellant in his defence case. Under these circumstances, I set-aside the impugned judgment and remand the case back to the IInd Additional District & Sessions Judge Karachi East, who shall carry out complete denovo

trial of the appellant and ensure throughout the trial including at the time of framing of charge that counsel would be representing the appellant either of the appellant's choice or counsel duly appointed by the Court. However, this denovo trial shall be completed within a period of three months. A copy of this order shall be sent to IInd Additional District & Sessions Judge Karachi East for compliance alongwith R&Ps.

7. This criminal appeal stands disposed of in the above terms.

JUDGE