

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT

Cr.A No. 280-M of 2014.

JUDGMENT

Date of hearing.....24.01.2018.....

Appellant: (Hazrat Ali) by Sahibzada Asadullah, Advocate.

Respondents/State: (Muhammad Ali) by Mian Arshad Jan,
AAG, assisted by Mr. Rashid Ali Khan,
Advocate, learned counsel for the
complainant.



QALANDAR ALI KHAN, J-. The instant criminal appeal under section 410 Cr.P.C read with Para-10 (8) of *Shariah Nizam-e-Adil* Regulation, 2009, by the convict/appellant, Hazrat Ali, is directed against the impugned judgment dated 25.11.2014, whereby the learned trial Court/Additional Sessions Judge/Izafi Zilla Qazi-II, Swat, convicted the appellant for attempt at the life of Farhad Ali under section 324 PPC and sentenced him to 10 years R.I and fine of Rs: 500000/-

,and in default of payment of fine to further 02 years S.I, and also convicted the appellant for causing *Badi'ah* to Farhad Ali under section 337-F(ii) PPC and sentenced him to 02 years R.I with fine of Rs:200000/-, or in default of payment of fine to 06 months S.I. The appellant was also held liable to *Daman* to the tune of Rs:150000/-to the victim, and in case of default of payment of fine, to suffer 06 months S.I. The appellant was also directed to pay compensation under section 544-A Cr.P.C to the tune of Rs:200000/- to Farhad Ali/injured, which was held recoverable from him as arrears of land revenue, and in case of want of property of the convict/appellant to undergo 06 months S.I for the default; while extending him the benefit of section 382-B Cr.P.C, with further direction about sentences to run concurrently.

2. The case was registered vide FIR No.2525 dated 13.12.2006 under sections 324/34 PPC in Police Station Mingora, Swat, on the report of Muhammad Ali, complainant, who reported to Zar Bakht Khan, ASI/Investigation Officer, after he reached the casualty ward of Saidu Sharif Hospital and drafted *murasila* on

the report of the complainant to the effect that on the eventful day, the complainant went to Continental Plaza for depositing bill in the ufone office situated in the Plaza, accompanied by his cousins Farhad Ali and Gohar Ali sons of Ibrahim, Hamayun son of Bakht Zamin and his brothers namely Rehmat Ali, Anwar Ali and Suliman sons of Rahamdil, and were present in the market after depositing the bill, when *Chowkidar* of the Plaza namely Javed son of Karam Ali started staring at him, and when he asked him for the reason, the *Chowkidar* used harsh language and started grappling with him. In the meantime, the appellant, his son Rahat Ali and Jamshed, residents of Makanbagh, came there duly armed and opened fire at them with the intention to commit their *Qatl-i-amd*, resulting in firearm injuries to Farhad Ali with the firing of the appellant, firing of Jamshed causing injuries to Hamayun and Rahat Ali causing firearm injuries to Gohar Ali with his firing. The motive for the occurrence was the aforesaid altercation; and the occurrence was mentioned to have been witnessed by the other companions of the complainant. All the three accused

named in the FIR were charged for attempting at the lives of the complainant and his companions.

3. After registration of the case, all the three injured-victims were medically examined, and the Medical Officer found firearm injuries on all the three injured sustained by them on lower part of their body i.e. foot, knee and thigh, and simple injuries on Gohar Ali and Farhad, while grievous injury only on Hamayun. The medical report of Javed Iqbal, *Chowkidar* of the Plaza, conducted on the following day of the occurrence i.e. 14.12.2006, revealed that two lacerations on the body of the said injured, with no fracture, were caused by blunt means. During investigation, the I.O inspected the spot, and recovered 06 empty shells of 30 bore there-from, besides securing blood from the place assigned to injured Gohar Ali in the site plan. The I.O also received blood stained garments of the injured-victims, which, alongwith blood secured from the spot, were sent to the FSL, and report of the chemical examiner of FSL from was received in the affirmative. One of the accused namely Jamshed was arrested on the day of

occurrence i.e.13.12.2006; and after completion of investigation, complete challan was submitted against him and Javed Iqbal, besides submissions of challan under section 512 Cr.P.C against the absconding co-accused i.e. the convict-appellant and co-accused Rahat Ali, after they were proceeded against under sections 204 and 87 Cr.P.C. The arrested accused, Jamshed and Javed Iqbal, were formally charged under section 324/34 PPC and 337-F(ii) read with section 34 PPC on two counts, to which they pleaded not guilty and claimed trial, during which, as many as 12 PWs were examined, including the complainant (PW-2), eyewitnesses namely Farhad Ali (PW-3), Gohar Ali (PW-4) and Rehmat Ali (PW-5), and Suliman (PW-6); Scribe of the *murasila* and I.O in the case Zar Bakht ASI (PW-8); Medical Officer, Doctor Nadar Khan (PW-9), and another Medical Officer namely Saeedullah Khan (PW-11). After prosecution closed its evidence, statement of both the accused were recorded under section 342 Cr.P.C, and after hearing both the sides, the learned trial Court/Additional Sessions Judge/Izafi Zilla Qazi-VI, Swat, rendered judgment dated 30.04.2010, whereby both the accused

facing trial, namely, Jamshed and Javed Iqbal were acquitted while extending them the benefit of doubt; and the appellant as well as the co-accused and his son Rahat Ali were declared proclaimed offenders vide the same impugned judgment/order dated 30.04.2010.

4. Rahat Ali, co-accused, was later on arrested in the instant case on 16.09.2011, and after facing trial, during which the same material witnesses, earlier examined in the trial against co-accused Jamshed and Javed Iqbal i.e. complainant (PW-1), eyewitnesses namely Farhad Ali (PW-2) and Gohar Ali (PW-3), besides other official witnesses, were again examined, while private PWs namely Hamayun, Suliman and Rehmat Ali were abandoned by the prosecution, being unnecessary; and deceased Zar Bakht Khan S.I was also abandoned being dead. However, on conclusion of trial, co-accused Rahat Ali was also acquitted of the charges vide judgment/order of the learned trial Court/Additional Sessions Judge-III/Izafi Zilla Qazi dated 30.01.2013; and appeal against the order of acquittal of the co-accused, Rahat Ali, dated

30.01.2013, was dismissed in *limine* by this Court vide judgment/order dated 23.10.2013.

5. In the above background, culminating in the acquittal of two co-accused, the only remaining absconding accused i.e. the appellant was formally arrested on 20.02.2013, after he secured ad-interim pre-arrest bail from the learned trial Court/Additional Sessions Judge/Izafi Zilla Qazi, Swat. The appellant faced trial after being formally charged, during which the same PWs i.e. complainant, eyewitness, Gohar Ali (PW-3) and Farhad Ali (PW-4) were examined, besides other formal official PWs, and on conclusion of trial, the appellant was convicted and sentenced, as mentioned hereinabove; hence this appeal against conviction and sentences awarded to the appellant.

6. Arguments of learned counsel for the convict-appellant, AAG for the State assisted by learned counsel for the complainant heard; and record perused.

7. The complainant, Muhammad Ali, had charged three persons of the same family, father Jamshed, son Hazrat Ali and grandson Rahat Ali for attempting at his life and also at the lives of his companions, while assigning roles of effective firing on Farhad Ali to Hazrat Ali, firing on Hamayun to Jamshed and causing serious firearm injuries on Gohar Ali to Rahat Ali. The complainant did not impute motive for the occurrence to the said three accused named in the FIR, rather motive was ascribed to altercation and grappling between the complainant and Chowkidar of the Continental Plaza namely Javed Iqbal son of Karam Ali after they had a quarrel over staring at the complainant by the said Chowkidar of Continental Plaza where the occurrence took place at 18:30 hours while report was lodged in the casualty of Saidu Sharif Hospital at 18:55 hours. The accused were shown armed with firearms, without specifying nature of weapons of offence; but during trial there were improvements as well as contradictions in this regard as some of the witnesses showed the accused armed with pistols and others deposed to the effect that the accused were armed with both pistols and

Kalashnikovs. It is, indeed, noteworthy that the complainant, to whom motive is also attributed, escaped unhurt, while his companions received firearms injuries on non vital parts of their bodies like knee, foot or thigh, which were described as 'simple' in cases of injured Gohar Ali and Farhad and 'grievous' only that of injured Hamayun. The nature of injuries received by the injured coupled with occurrence as result of quarrel taking place at the spur of moment would raise question about attempt at the lives of the complainant and his companions under section 324 PPC.

8. It is a matter of common knowledge that there is complete darkness at 06:30 PM in the month of December, but not only source of light was not mentioned either in the FIR or in the site plan; but belatedly on 28.12.2006 three bulbs were taken into possession by the I.O from the Plaza, although version of the prosecution was to the effect that light of the day was still there and darkness had not yet spread. This aspect of the case assumes importance in view of fact that the accused were not known to the complainant

and the PWs prior to the occurrence and they had emerged on the scene after altercation and grappling between the complainant and *Chowkidar* of the Plaza and each of the accused was specifically charged for effective firing on a particular injured PW. It is also noteworthy that inspite of admission on the part of the PWs about presence of bullet marks inside the Plaza, no such bullet marks were noticed by the I.O during spot inspection. Moreover, the Continental Plaza is admittedly a crowded place, and almost all the shops in the Plaza, with exception of few, were open at the time of occurrence; but, astonishingly, neither any other person received even a scratch during alleged firing by the three accused, nor anyone from the general public or shops keepers came forward to deposed about the occurrence.

9. The 'Chowkidar' of the Continental Plaza was admittedly present there at the time of occurrence, and received two lacerated wounds through blunt means, and was also made an accused in the case, and faced trial alongwith accused Jamshed and was simultaneously acquitted alongwith the said accused

Jamshed; but he had furnished a different version regarding the occurrence.

10. Above all, the acquittal of co-accused Jamshed and later that of Rahat Ali, and also dismissal of appeal of the complainant against acquittal of accused Rahat Ali would further render evidence of prosecution against the appellant not worthy of reliance, for the simple reason that the said two co-accused were also charged for effective firing and attempt at the lives of complainant and his companions, and their acquittal was also based on discrepancies and infirmities in the same evidence of the prosecution also produced in the case against the appellant. Needless to say that improvement, if any, made in the statements of the PWs during trial of the appellant would be further fatal to the case of the prosecution against the appellant.

11. In the absence of confessional statement of the appellant and non recovery of anything incriminating from him, after his arrest; would make case against him not distinguishable from the already acquitted co-accused. The abscondance of the

appellant, per se, in the absence of corroborative evidence, would not make other evidence against him worthy of reliance and confidence inspiring to lead to his conviction.

12. Consequently, the appeal is accepted; and while setting aside the impugned judgment/order of the learned trial Court/Additional Sessions Judge/Izafi Zilla Qazi, Swat, dated 25.11.2014, together with conviction of the appellant and sentences awarded to him, vide the impugned judgment, the appellant is acquitted of the charges levelled against him; and be set at liberty, forthwith, if not required in any other case.

Announced.
Dt.24.01.2018

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** M.Iqbal**

(D.B) *Hon'ble Mr. Justice Rooh-ul-Amin Khan.*
Hon'ble Mr. Justice Qalandar Ali Khan.