

ABDUL SATTAR

Versus

The STATE

2016 P Cr. L J 722

JUDGMENT

MAZHAR IQBAL SIDHU, J.---Abdul Sattar appellant in the appeal as mentioned above, has impugned the punishing judgment dated 03.11.2011 handed down by the learned Judge, Anti-Terrorism Court No. 1, Faisalabad, having been tried to conviction in a case registered vide FIR No. 278/2011, dated 30.07.2011 under sections 324/336/34, P.P.C. read with section 7 of Anti-Terrorism Act, 1997 lodged at Police Station City Jhang was punished as follows:-

Under section 324, P.P.C. 10 years' R.I. with fine of Rs.1,00,000/- and in default of payment of fine to further suffer simple imprisonment for 1 year.

Under section 336, P.P.C., 8 years' R.I. along with direction to pay "Arsh" (half of Diyat) payable to Mst. Najma Bibi victim failing which the convict was directed to be kept in jail in simple imprisonment.

Under section 7(b) of A.T.A., 1997, 10 years' R.I. along with direction to pay Rs. 1,00,000/- as fine and in case of default in payment of fine to further undergo simple imprisonment for 1 year.

The sentence under section 336, P.P.C. was directed to run consecutively to the other two sentences which were directed to run concurrently. Benefit of section 382-B, Cr.P.C. was also extended to the convict-appellant.

2. The case of the prosecution is that Mst. Haleema Bibi complainant was resident of Chak No. 453/JB and during those days, she was living in Jhang near Churchi Ground. She served in some houses as maid servant. Some times ago, her daughter Mst. Najma Bibi victim became angry with her and went to Abdul Sattar accused in Shorkot. On 29.07.2011, the complainant came to know that said Najma Bibi victim has come to the house of her friend Mst. Kausar Bibi, in Basti Dewanwali. She along with her "Damad" Rafique and Tassarwar, in the evening went to the house of Mst. Kausar Bibi where Abdul Sattar appellant and Umar Ali (acquitted accused) were also present. They all remained busy in talks for long time and at about 3.00 a.m., she (complainant) and the PWs slept in the adjacent house. Mst. Najma Bibi victim was being forced by Abdul Sattar appellant and Umar Ali (acquitted accused) to accompany them to Shorkot, but she was refusing. All of a sudden, there was scream which attracted the complainant and the PWs. They rushed to the spot to see that Mst. Najma Bibi victim was lying on

the cot, Umar Ali (acquitted accused) had fixed Najma Bibi victim by her legs and Abdul Sattar appellant was throwing acid on the face and eyes of Mst. Najma Bibi victim and she was crying. Within the view of the PWs, the accused fled the place while intimidating the PWs and brandishing the empty bottle of acid.

3. The reason behind the occurrence was that Abdul Sattar appellant willed to marry Mst. Najma Bibi victim and take her to Shorkot, but she was not ready. Due to this grouse, both the accused committed this occurrence of throwing acid on the eyes, chest and other parts of her body and she was taken to hospital while in agony and fighting for life.

4. After usual investigation, challan was prepared and a report in terms of section 173, Cr.P.C. was submitted before the learned trial court recommending the trial of the accused persons.

5. Learned trial Court after observing all the pre-trial codal formalities, indicted the appellant and the acquitted accused to which they pleaded non-culpabilis and claimed trial. Thereafter the prosecution in order to prove its case produced as many as 09 witnesses.

6. Thenceforth statements of the accused were recorded under section 342, Cr.P.C. wherein they negated the charge and professed their innocence. Neither did they opted to make statements on oath as permissible under section 340(2), Cr.P.C., nor did they produced any evidence in their defense.

Abdul Sattar appellant in reply to a question "why this case against you and why the PWs to make statements to involve you" replied infra:-

"This case is false as against me. Muhammad Rafique is the brother-in-law of Mst. Najma Bibi and is named as an eyewitness of the occurrence. He resides adjacently to my plot. He has become in forcible possession of my plot. I got, the possession restored in my favour and due to this grudge, Muhammad Rafique managed my implication in this case."

7. Upon conclusion of the trial, the appellant was convicted and sentenced as mentioned op-cit by the learned trial Court. Hence, the instant appeal.

8. Learned Counsel for the appellant has submitted that co-accused Umar Ali has been acquitted by the learned trial Court observing that allegation against him is shrouded in thick clouds of history whereas, the same evidence is relied upon against the appellant without any corroboration; incident took place during the darkness of night in this way identity of the culprits remained in shrouded; the motive setup by the prosecution has not been proved whereas except the statement of Mst. Haleema (PW-7) and Mst. Najma Bibi (PW-8) who are inter se mother and daughter having not been corroborated by any independent evidence, therefore, appeal may be accepted.

9. Submissions have been opposed on the ground that the learned. trial Court has rightly applied principle of sifting the chaff from grains in this case and the distinguishability in between the case of acquitted co-accused as well as the appellant exists as appellant sprinkled acid on the body of victim Mst. Najma Bibi and also got recovered bottle in which it was containing; the medical evidence fully supports the ocular account whereas incident took place inside the house, therefore, presence of these two witnesses was quite natural. Even otherwise, in the circumstances of the case statement of Mst. Najma Bibi the victim is sufficient to uphold the conviction and sentence, therefore, it has been longed to dismiss the appeal.

10. Heard intently. Record perused minutely.

11. Facts have been mentioned in detail in preceding paragraphs of the judgment, therefore, no need remained to rewrite the same to avoid prolongation of the judgment.

12. Prosecution produced two eye-witnesses one is victim Mst. Najma Bibi and the other her mother Mst. Haleema Bibi. Both are unison and consistent in their statements qua inculpability of the accused. Statement of the victim has also been corroborated by the two Medical Officers. PW-1 Lady Dr. Sadaf Naqvi has noticed superficial to deep burn involving whole side of face and half of left side of face, right side of neck, right side of front of chest involving 3/4 of right breast, left side of front of chest about 1/2 of left chest, upper part of right shoulder, front and back, upper right arm of front side, right forearm on back and front, back of right hand, left arm and forearm on front and back in sprinkled manner, upper part of abdomen on front in sprinkled manner, front of right thigh and leg in sprinkled manner. She opined after the report of eye specialist that according to eye specialist, right eye cornea was opaque with no view seen inside anterior chamber. Right eye is blind with disfigurement. So, the said injury has resulted into loss of function of right eye declared the right eye as "Itlaf-e-Salahiat-e-Udv."

13. PW-6 Dr. Mohsin Niaz Mighiana, Senior Consultant, District Headquarter Hospital, Jhang has been examined as a secondary evidence because Dr. Farooq Hussain Khan, Eye Specialist had proceeded to perform Hajj. He identified his handwriting and made statement as to his opinion regarded to the loss of vision of right eye of the victim. In this way again the prosecution version has been beefed up. During investigation the appellant also got recovered bottle in which he brought acid.

14. So far as the apple of discord is concerned, it is not always regarded a sine-qua-non for proof and disproof of the guilt. Now it has been settled by the Hon'ble Supreme Court of Pakistan that it remains convert in the brain of wrong doer.

15. For what has been discussed above, the Court has been persuaded that the prosecution has fully proved its case against the appellant, therefore, instant appeal being devoid of force stands dismissed. However, it is strikingly clarified that all sentences imposed upon the appellant shall run concurrently instead of consecutively.

16. Before parting with this judgment, the Court expresses its regret and disquietude on happening of such like unfortunate incidents by the malefactors having no equanimity whereas, human being are ever best creature of Almighty Allah and to disfigure or to disfigure the most beautiful part of a woman, i.e., face permits punishability to a maleficent but may be regarded a sin the schadenfreude had visioned incessant plight and pity of the hapless victim till death. Oh! what a yelling and moaning, anyhow, Allah Almighty has absolute powers to dispense the real and ultimate justice.

SL/A-86/L

Appeal dismissed