

1999 P Cr. L J 1700

[Peshawar]

Before Sardar Muhammad Rata Khan, J

SHAMRAIZ and another---Petitioners

Versus

THE STATE and another---Respondents

Criminal Miscellaneous No.254 of 1998, decided on 30thOctober, 1998.

(a) Criminal Procedure Code (V of 1898)---

---S. 497---Penal Code (XLV of 1860), Ss.337-A(ii), 337-F(iv), 452/34---Bail, grant of---Offences though did not fall in prohibitory clause of S.497, Cr.P.C., but since accused armed with deadly weapon had entered house of complainant when a woman having no protection of male in house was present, Court could award imprisonment, as well which fell within prohibitory clause of S.497, Cr.P.C.---Bail was declined to accused in circumstances.

(b) Criminal Procedure Code (V of 1898)-----

---S. 497---Penal Code (XLV of 1860), Ss.337-A(ii). 337-F(iv), 452/34---Bail grant of---Injury was caused by accused on head---No fracture of any bone was caused---Accused was admitted to bail in circumstances.

Saeed Akhtar Khan for Petitioners.

Abdullah Khan Tanoli for the State.

Khalid Rehman Qureshi for the Complainant.

Date of hearing: 30th October, 1998.

JUDGMENT

Shamrez and Gulzeb, sons of Banaras of village Siriya, Haripur, having been charged under section 337-A(ii)/337-F(v)/452/34, P.P.C. vide F.I.R. No.223, dated 23-5-1998 of Police Station Kot Najibullah and having been refused bail by the forums below, are before this Court.

Mst. Zakia Bibi wife of Abdus Sattar is a complainant in this case. On 29-5-1998 at 2100 hours while in injured condition and alongwith her injured daughter Mst. Rukhsana lodged a report at Police Station Kotnajibullah that on the day of occurrence after "Peshi" prayers, she alongwith her daughter and other children was present in her house when Shamraiz petitioner knocked at her door. Basharat, her son opened the door whereupon shamrez said that he had brought a "Jirga" and as to where her husband Abdus Sattar was. Saying this, both Shamrez and Gulzeb entered the house. Gulzeb gave an axe blow on the wrist of Mst. Zakia Bibi complainant while Shamrez injured Mst. Rukhsana Bibi with his axe on her head. Gulzeb

also injured Mst. Zakia Bibi on her head as well as legs. There was no male present in the house and the report was lodged only after when her husband returned home.

3. The medical report of Mst. Zakia indicates that though she was injured at her hands as well as head but the blow at the left wrist had fractured the ulna.

4. Learned counsel for the petitioners claimed that the offence against both the victims falling under sections 337-A(ii) and 337-F(v), P.P.C. do not fall under the prohibitory clause of section 497, Cr.P.C. and hence the petitioners be released on bail particularly when the principal punishment of the offences is "Daman" or "Arsh".

5. No doubt that the original punishment of the offences is the same as alleged by the learned counsel for the petitioners but regard being had to the circumstances of the case, the Court can award imprisonment as well which falls within the prohibitory clause of section 497, Cr.P.C. The accused Gulzeb while armed with a deadly weapon had entered the house of Mst. Zakia Bibi when she had no protection of a male in the house and, therefore, I decline to use discretion in his favour.

6. So far as Shamrez is concerned, he is charged for causing injury on the head of Mst. Rukhsana Bibi but there is no fracture of any bone, rather, according to the doctor, no bone injury was seen. His case deserves leniency.

7. Consequently, the application of petitioner Gulzeb is rejected while Shamrez accused is directed to be released on bail provided a bond in sum of Rs.80,000 with two local, reliable resourceful sureties is furnished to the satisfaction of Illaqa Magistrate alone.

Q.M.H./M.A.K./208/P

Order accordingly