

ORDER SHEET

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Appeal No:D- 166 of 2009.

For Regular hearing.

Present,
Mr. Justice Ahmed Ali M. Sheikh
Mr. Justice Salahuddin Panhwar,
JJ.

Date of hearing: 21.02.2012.

Appellants:

Ali Khan and Mumtaz.

The State.

Through Mr. A.R Kolachi APG.

JUDGMENT

Ahmed Ali M. Sheikh, J.

Through this appeal appellants have impugned the judgment of Special Judge (STA), Sukkur dated 13.10.2009 passed in Special case No. 01/1998 Re: State Vs. Ali Khan and others, arising out of Crime No.27/1997, P.S Qadirpur, under Sections 324, 353, 148, 149 PPC, and sentenced them to suffer R.I for three years and to pay fine of Rs. 50,000/- each or in default thereof to suffer six months further imprisonment.

2. It appears that on 25.12.1997 Inspector Mushtaque Ahmed Khoso incharge CIA Centre, Sukkur lodged report at Police Station Qadir Pur stating therein that on that day he received information to the effect that criminals namely Barkat Ali, Gulzar Ali, Ahmed Ali and Mumtaz Ali along with their gangs will emerge out from 'Alaf Katcha' with intention to commit some crime, following which he along with his sub-ordinates duly armed with official weapons left Police Station vide entry No. 21 and proceeded to the pointed place and held nakabandi of 'Alaf Katcha' forest near village Allah Dino Dharejo. At about 08:00 a.m. police party noticed a movement of 11 persons emerged out

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from Jungle they were armed with deadly weapons like Kalashnikovs and DBBL guns; they were identified as Reham Ali @ Rehmatullah, Manthar, Barkat Ali, Manzoor, Gulzar, Allah Bux, Rehmatullah S/o Ali Sher, Allah Rakhiyo, Ali Khan and Mumtaz. On seeing the police party they opened fire upon police party, resultantly the police party retaliated with their weapons. Such encounter continued for about 20 minutes later on the guns of the accused became silent. Thereafter police party moved ahead and found injured person lying in the bushes with a Kalashnikov who disclosed his name Ali Khan. Another person namely Mumtaz was armed with DBBL gun, they both were arrested and their weapons were secured under proper mashirnama. Police party found that Ali Khan had fire arm injury of his right hand, right leg and thigh. Apprehended accused disclosed the names of other culprits who made their escape good. Police party secured 40 empties of 7.6 bore and 8 empty cartridges of 12 bore as well as number of G-3 fire by the police party. During investigation accused Ali Khan was referred to hospital for treatment after usual investigation appellants were sent-up to face the charge subsequently co-accused Barkat Ali, Allah Bux and Allah Rakhiyo were arrested they were also sent-up through subsequent report. However, rest of the accused i.e Raham Ali @ Rehmatullah, Manzoor and Manthar could not be arrested ultimately they were they were declared as Proclaimed Offenders while accused Rehmatullah, Bangu and Gulzar reported to have been died/murdered thus proceedings against them stood abated.

3. A formal charge was framed against the appellants to which they pleaded not guilty and claimed trial.

4. To substantiate the charge, prosecution examined complainant Mushtaque Ahmed, PW-2 Shoukat Ali, PW-3 Khair Muhammad PW-4 Dr. Baddaruddin thereafter one of the absconding accused Manthar was arrested as such amended charge was framed, whereafter00 accused Allah Bux absconded during trial and was declared as Proclaimed offender. The statement under Section 342 Cr.P.C of accused were recorded, in which they denied the accusation of the prosecution and professed their innocence.

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However, neither they examined themselves on oath nor led any evidence in their defence.

5. At the very outset appellants have argued that they were innocent and were falsely implicated in this concocted case. They further contended that prosecution story is nothing but brainchild of the complainant, who, acted at the behest of rival party and got registered a false case against them. Appellant Ali Khan contended that infact on the day of occurrence he received gun shot injuries at the hands of his opponent party and when he appeared at Police Station along with co-appellant, instead of lodging his report, he as well as co-appellant were nominated and arrested in a false and fabricated case. During arguments appellant Ali Khan invited our attention to Medical Certificate which is available at page No. 159 of the paper book and contended that Medical Certificate as well as deposition of PW-4 Dr. Badaruddin would prove that he had received gun shot injuries, whereas per prosecution police party had official weapons like SMG and Kalashnikov etc.

6. On the other hand Mr. A.R. Kolachi learned A.P.G for the State though halfheartedly supported the impugned judgment but could not controvert the contentions advance by appellants.

7. We have heard the appellants and learned APG and perused the evidence adduced at trial. PW-1 Mushtaque Ahmed who is first informant stated the same facts as mentioned in the FIR. PW Shoukat Ali is mashir of arrest and recovery. His deposition reveals that on 20.09.1999 he along with ASI Assadullah Shah, SHO P:S Jhangro, HC Taj Muhammad, HC Ghulam Sarwar proceeded for investigation in crime No. 18/1999 of Police Station, Jhangro when they reached at Mando Dero received spy information that absconding accused Allah Bux and Allah Rakhiyo required in crime of Police Qadirpur are available at Bacha Bund near Jhangi Khan Mahar, following which they proceeded to the pointed place and arrested them, such mashirnama was prepared by ASI Assadullah Shah in his presence as well as co-mashir Hc Taj Muhammad. PW Khair Muhammad

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who claimed to be eye witness of alleged occurrence also narrated the same facts as given in the FIR.

8. PW-4 Dr. Baddaruddin was posted as Medical Officer at Civil Hospital, Sukkur, his deposition reveals that on 25.12.1997 at about 3:45 p.m. injured Ali Khan was referred to him for examination, treatment and certificate. He examined the injured and found following injuries on his person;

1. A lacerated punctured wound of entry over lateral side of upper part of right lower leg 1 cm x diameter, margins inverted.
2. Lacerated punctured wound of exit injury No.1, over medial side of right lower leg measuring 1 & ½ cm with margins everted.
3. A lacerated punctured wound over anterior aspect of upper 1/3rd of right thigh with margins inverted size 1 cm in diameter, wound of entrance.
4. A lacerated punctured wound over medial side of right thigh, with margins everted which was wound of exit of injury No.4, measuring 1 & half cm in diameter.

In cross examination while replying to a question he stated that;

"I had not secured any bullet or pellet from any of the injuries on the person of the said injured but there was a pellet available inside injury No. 8 on the person of the said injured. While replying to another question he stated that injuries on the person of said injured were of shot gun".

9. From the deposition of PW-4 Dr. Baddaruddin, it appears that appellant Ali Khan had sustained gun shot injuries while it was the case of prosecution that police party had official/service weapons and the appellant had received fire arm injuries during course of the encounter and none of the PWs who were examined during trial ever stated that he was armed with shot gun or similar weapons or repeater in which pellet, cartridges can be used. Hence, this fact alone is sufficient to negate the prosecution case. Besides above, prosecution claimed that alleged encounter continued for half an hour where hundred rounds were exchanged by rival parties but surprisingly none from the police party received any single scratch. Even not a single bullet hit police vehicle. These dents in prosecution case are sufficient to create doubt in the prudent mind. It is settled

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principle of the law that for extending benefit of doubt it is not necessary that there should be many circumstances. If a single circumstance creates reasonable doubt in the prudent mind then the benefit of such doubt must be extended in favour of the accused not as a concession but as a matter of right. Reference can be made to the case of Tarique Pervez v. The State reported in 1995 SCMR 1345; in which the Honourable Supreme Court has held that "the concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right".

10. The upshot of above discussion is that during trial prosecution could not prove its case up to the hilt and miserably failed to produce inspiring confidence evidence warranting conviction, thus, for the foregoing reasons we are of the considered view that prosecution has miserably failed to prove its case beyond reasonable doubt, hence the impugned judgment whereby conviction recorded by the trial Court on 13.10.2009 is hereby set-aside and appellant/accused are acquitted of the charge.

Accordingly, this appeal was allowed by short order dated: 21.02.2013 and these are the reasons of the same.

27.2.2013
JUDGE

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JUDGE