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IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Khadim Hussain Tunio,*

**SPL. CR. ANTI-TERRORISIM APPEAL NO.175 OF 2021.**

Appellants	1. Toor Jan s/o Muhammad 2. Muhammad Sadiq s/o Ikhlas through Mr. Ajab Khan Khatak, Advocate
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.

**SPL. CR. ANTI-TERRORISIM APPEAL NO.176 OF 2021.**

Appellant	Muhammad Sadiq s/o Ikhlas through Mr. Ajab Khan Khatak, Advocate
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.

**SPL. CR. ANTI-TERRORISIM APPEAL NO.177 & 178 OF 2021.**

Appellant	Toor Jan s/o Muhammad through Mr. Ajab Khan Khatak, Advocate
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.

**SPL. CR. ANTI-TERRORISIM APPEAL NO.179 & 180 <sup>and 181</sup> OF 2021.**

Appellant	Abdullah s/o Dost Muhammad through M/s. Ajab Khan Khatak and Israr Ali Bhagat, Advocates
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.
Date of Hearing	18.05.2022
Date of Announcement	18.05.2022

## JUDGMENT

Mohammad Karim Khan Agha, J:- The appellants Muhammad Sadiq s/o Ikhlas, Abdullah s/o Dost Muhammad, Toor Jan s/o Muhammad have preferred these instant appeals against the judgment dated 25.10.2021 passed by the Anti-Terrorism Court No.II, Karachi in Special Cases No.37 of 2021 arising out of Crime No.475/2020 u/s. 353/324/34 PPC along with 7 ATA 1997 registered at PS Soldier Bazar, Karachi, No.37-A of 2021 arising out of Crime No.477/2020 u/s. 23(1) SAA registered at PS Soldier Bazar, Karachi, No.37-B of 2021 arising out of Crime No.478/2020 u/s. 23(1) SAA registered at PS Soldier Bazar, Karachi, No.37-C of 2021 arising out of Crime No.479/2020 u/s. 23(1) SAA registered at PS Soldier Bazar, Karachi and No.37-D of 2021 arising out of Crime No.480/2020 u/s.395/458/397 r/w section 7 ATA, 1997 registered at PS Soldier Bazar, Karachi whereby the appellants were convicted and sentenced as under:-

1. Appellants Muhammad Sadiq s/o Ikhlas, Toor Jan s/o Muhammad u/s.397 PPC to undergo R.I. for 10 years.
2. Appellants Muhammad Sadiq s/o Ikhlas, Toor Jan s/o Muhammad u/s. 478 PPC 14 years R.I. each with fine of Rs.1,00,000/- One Lac each and in default of payment of fine they shall undergo to SI for six months.
3. Appellants Muhammad Sadiq s/o Ikhlas, Toor Jan s/o Muhammad u/s. 395 PPC 05 years R.I. each with fine of Rs.1,00,000/- One Lac each and in default of payment of fine they shall undergo to SI for six months.
4. Appellants Muhammad Sadiq s/o Ikhlas, Toor Jan s/o Muhammad u/s. 6(2) (ee) of ATA 1997, punishable u/s.7(c) to undergo 10 years R.I. each with fine of Rs.1,00,000/- One Lac each and in default of payment of fine they shall undergo to SI for six months.
5. Appellants Muhammad Sadiq s/o Ikhlas, Toor Jan s/o Muhammad u/s. 353 PPC for assault and using the force on police party to undergo 02 years R.I.
6. Appellants Muhammad Sadiq s/o Ikhlas, Toor Jan s/o Muhammad u/s. 324 PPC to undergo 07 years R.I. each with fine of Rs.50,000/- each and in default of payment of fine they shall undergo to SI for three months.
7. Appellants Muhammad Sadiq s/o Ikhlas, Toor Jan s/o Muhammad u/s. 23(i)-A SAA to undergo R.I. for 07 years with fine of Rs.50,000/- each and in case of failure to pay fine they shall undergo to SI for three months.

All the sentences were ordered to run concurrently.

2. The brief facts of the case as narrated in the FIR No.475/2020 are that on 22.12.2020 ASI Nasir was on illaqa gasht alongwith his police party in Govt. Mobile No.SPD-314 when at about 0450 hours had received information through wireless from 15 Madadgar that in Bungalow No.245, Catholic Colony No.1, United Costal Church, M.A Jinnah Road, Karachi dacoits had entered in the said Bungalow; considering this information to be true; ASI alongwith his police party reached at the pointed place and had also called another Mobile No.SPE-248 and surrounded the bungalow; when at about 0500 they saw that six accused persons are coming out of the said Bungalow and are trying to escape; seeing the police party the accused persons started firing at the police party and went inside adjacent Bungalow No.250. ASI with the help of police party went inside the bungalow and ordered to PC Saleemuddin and PC Moeenuddin to retaliate and fired back upon which four accused persons got injured whereas two accused persons had succeeded to escape from the scene of crime. ASI with the help of police party apprehended the accused persons. One accused namely Asad who was coming down from the stairs had received bullet injury on his left shoulder who later on succumbed to his injuries; from his right hand was recovered pistol 30 bore black in colour rubbed magazine one bullet in chamber and one in magazine on further search was recovered one Camera, Rs.5000/-, and one testing sugar machine. The other accused disclosed his name as Sadiq s/o Ikhlas who has received bullet injury on his right shoulder which went through and from his left hand was recovered 30 bore pistol rubbed number silver and black but on the body it was writing Muhafiz loaded magazine one in chamber and two bullet in magazine. The other accused disclosed his name as Muhammad Sadiq, he had received bullet injury on his right leg and from his right hand was recovered 30 bore pistol black in colour one bullet in chamber and three bullet in magazine and on further search was recovered Kodak Camera. The third accused disclosed his name as Tor Jan who had received bullet injury on his left leg and from his right hand was recovered one 30 bore pistol without number, one bullet in chamber and one in magazine. On further search was recovered one Afghan Citizen Card and Rs.150/-. The arrested accused disclosed the name of escaped accused as Sangeen and Abdur Rehman, from the place of incident SHO of the PS Soldier Bazar was informed and the accused persons were informed of the crime committed by them. ASI

had sent the injured accused Asad and Saidq alongwith IIC Muhammad Sadiq, PC Saleemuddin and PC Saleem Niazi in Govt. Mobile 2 to the Hospital and injured accused Abdullah and Tor Jan were sent with ASI Muhammad Khan in 15 Madadgar for treatment. The fire arms and ammunition were seized and they were separately sealed, from the place of incident were seized 7 empties of SMG, 13 empties of 30 bore pistol and two empties of 9mm pistol. They were separately sealed, by the firing the people around were terrorized and had not come out of their houses. Since private witnesses were not available PC Mohammad Ramzan and PC Akram were made the witnesses of mushirnama of arrest and recovery. Thereafter, they came back at the Police Station and registered the FIRs.

3. After usual investigation the cases were challaned and the appellants were sent up to face their trial. They pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 11 PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. whereby they claimed that they were innocent and falsely implicated in these cases. They did not give evidence on oath or call any witness in support of their defence.

5. After hearing the parties and appreciating the evidence on record, the learned trial Court convicted and sentenced the appellants as set out earlier in this judgment and hence, the appellants have filed these appeals against their convictions and sentences.

6. The evidence led before the trial Court has been reproduced in detail in the impugned judgment and as such there is no need to reproduce the same so as to avoid any unnecessary repetition and duplication.

7. Whilst the evidence was being read out by the learned counsel for the appellants, it was noted in the impugned judgment that no points for determination had been set out. When we asked the learned counsel for the appellants and learned Addl. Prosecutor General Sindh what legal consequences this would have in respect of the impugned judgment, they all agreed that Section 367 of the Cr.P.C. had been violated which was a

mandatory requirement and was not curable and as such the case be remanded back to the learned trial Court in order to re-write the judgment by setting out in that judgment the points for determination.

8. we agree with the contentions of the learned counsel for the appellants as well as learned Addl. Prosecutor General Sindh and in this respect reliance is place on 2004 SCMR 1. As such the impugned judgment is set aside and the case is remanded back to the Administrative Judge, Anti-Terrorism Courts, Karachi along with R&PS who shall place this case before another Anti-Terrorism Court who shall comply with this order and render a fresh judgment within three months form the date of this order. During this period appellants shall remain in custody although they shall have right to apply for bail, if so advised.

9. The captioned appeals are disposed of in the above terms.