

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mrs. Justice Kausar Sultana Hussain

SPL. CR. AT APPEAL NO.161 OF 2020

SPL. CR. AT APPEAL NO.162 OF 2020

Appellant: Rashid Hussain son of Ali Faqeer, through
Mr. Shah Imroze Khan, Advocate

Respondent: The State through Mr. Ali Haider Saleem,
Additional Prosecutor General, Sindh.

SPL. CR. AT APPEAL NO.193 OF 2020

SPL. CR. AT APPEAL NO.194 OF 2020

SPL. CR. AT APPEAL NO.195 OF 2020

Appellant: Shahvaiz son of Asif Khan through
Mr. Farrukh Sharif, Advocate

Respondent: The State through Mr. Ali Haider Saleem,
Additional Prosecutor General, Sindh.

Date of Hearing: 22.10.2021

Date of Announcement: 27.10.2021

J U D G M E N T

Mohammad Karim Khan Agha, J. We intend to dispose of all the above captioned five appeals by one common judgment. The Appellants Rashid Hussain and Shahvaiz were convicted by the learned Judge, Anti-Terrorism Court No.XII, Karachi in Special Cases No.1215 of 2018 in Crime No.157 of 2018 under Sections 353/324/34 PPC r/w Section 7 ATA 1997, PS Mauripur, Karachi, No.1215-A of 2018 in Crime No.158 of 2018 under Sections 4/5 Explosive Substances Act, r/w Section ATA 1997, PS Mauripur, Karachi, No.1215-B of 2018, Crime No.159/2018 under Section 23(I)-A SAA, PS Mauripur, Karachi, and No.1215-C of 2018 in Crime No.160 of 2018 under Sections 23(i)-A SAA, PS Mauripur, Karachi vide Judgment dated 31.10.2020 which sentenced accused Shahvaiz s/o. Asif Khan and Rashid Hussain s/o Ali Faqeer u/s.265-H(II) Cr.PC in Special Case No.1215 of 2018 u/s.353/34 PPC for 02 years of R.I. Accused

Shahviaz was further convicted u/s.4 Explosive Substance Act 1908 and accordingly sentenced to 07 years R.I. Accused Shahvaiz s/o Asif Khan was also convicted u/s.265-H(II) Cr.PC in Special Case No.1215-B of 2018 and sentenced u/s.23(I)-A SAA of 2013 for 10 years R.I. and fine of Rs.50,000/- in case of non-payment of fine, he shall suffer 06 months S.I. more. Accused Rashid Hussain was further convicted u/s.265-H(II) Cr.PC in Special Case No.1215-C of 2018 and sentenced u/s.23(I)-A SAA of 2013 for 10 years R.I. and fine of Rs.50,000/- in case of non-payment of fine, he shall suffer SI for 06 months more.

2. The brief facts of the case are that on 14.11.2018 at about 0030 hours, police party headed by ASI Allah Bux along with his subordinate staff boarded in police mobile No.III, of PS Mauripur Karachi and during patrolling in the area of Aamir Kanta, Main Hawks Bay Road saw accused persons in suspicious condition, to whom police party tried to arrest, but accused on seeing police party started firing with intention to commit their murder. During exchange of firing, police apprehended the accused persons, who upon query disclosed their names as Shahvaiz s/o Asif Khan and Rashid Hussain s/o Ali Faqeer. Due to non-availability of private witnesses and in presence of official mashirs, accused persons were searched and recovered from right hand of accused Shahvaiz one pistol of 30 bore unnumbered along with magazine loaded with three live rounds, whereas upon his search of pant from left side one hand grenade was recovered. Whereas from right hand of accused Rashid Hussain one pistol of 30 bore along with loaded magazine three rounds unnumbered, was recovered. The accused failed to produce valid license of recovered weapons. Hence, these FIR/Cases under Section 353, 324, PPC u/s. 4/5 Explosive Substances Act, r/w Section 7 ATA 1997 and u/s. 23(I)-A SAA 2013 were registered against the accused.

3. After usual investigation the appellants were challaned and sent up to face trial. The appellants pleaded not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 05 PWs and exhibited various documents and other items. The statements of both the accused were recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them and claimed false implication at the hands of the police. However neither of the appellants gave evidence on oath or called any witness in support of their defence. After appreciating the evidence on record the trial court convicted the appellants and sentenced them as set out earlier in the impugned

judgment. Hence, the appellants have filed these appeals against their convictions and sentences.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 31.10.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. Learned counsel for appellants contended that the appellants were completely innocent and had been falsely implicated in this case by the police; that no reliance could be placed on the prosecution witnesses who were all police officers as their evidence suffered from material contradictions and that one of the police witnesses had even been declared hostile; that there was no encounter with the police; that the grenade and pistols had been foisted on the appellants and that for any or all of the above reasons both the appellants should be acquitted from all charges by extending the benefit of the doubt to them.

7. On the other hand learned APG has fully supported the impugned Judgment.

8. Learned counsel for the appellants have read out the entire evidence and we have gone through the same with their able assistance. We have also heard learned counsel for the parties and perused the record.

9. We find that the prosecution has failed to prove its case against the appellants beyond a reasonable doubt for the following reasons;

- (a) That despite during the encounter between the police and the appellants allegedly the police fired at least 20 rounds and the appellants at least 6 rounds according to the empties which were recovered at the scene yet neither of the appellants nor any police officer was wounded and no bullet hole was found on the police mobile or any wall or any other place which is surprising keeping in view how many rounds were fired and tends to cast doubt on the encounter actually taking place.
- (b) That one of the police PW's who was allegedly present at the time of the encounter and arrest of the accused on the spot was declared hostile as during his evidence in chief he wrongly named one of the appellants as being arrested on the spot which when read in conjunction with the other prosecution evidence casts further doubt on the prosecution case.

5

(c) That no independent mashir was associated with the arrest and recovery of and from the appellants in violation of S.103 Cr.PC which gains further significance when read in conjunction with the other prosecution evidence.

(d) That crucially when the allegedly recovered pistols were sent for FSL report it was revealed that one pistol was out of order and as such could not have discharged any round during the encounter and none of the empties recovered at the scene which were of 30 bore matched the other pistol which suggests that this pistol was not used at the time of the encounter and its recovery from the appellant on the spot therefore becomes doubtful.

(e) That the recovered hand grenade had no detonator.

10. It is a cardinal principle of criminal law that the prosecution must prove its case beyond a reasonable doubt and if any doubt arises in the prosecution case this must go to the benefit of the accused. For the reasons mentioned above we find many doubts in the prosecution case and as such we acquit the appellants of the charge, allow the appeals and set aside the impugned judgment. The appellants shall be released from jail unless wanted in any other custody case.

11. The appeals are disposed of in the above terms.

disposed in open Court on 27/10/2021