

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Criminal Appeal No. S-123 of 2019

Appellant: Mujahid alias Bajo son of Ghazi Kharos through M/s. Ahsan Ahmed Qureshi and Ahmed Bux Abro, Advocates.

Acquitted accused Zulfiquar Ali and Shahazado alias Shado and Makhno through M/s. Ahmed Bux Abro and Ashique Hussain Kalhor, Advocates.

Respondent: The State through Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh.

Date of hearing: 21.09.2023

Date of judgment: 21.09.2023

J U D G M E N T

SHAMSUDDIN ABBASI, J.-. This appeal is directed against the Judgment dated 07.11.2019, passed by learned 1st Additional Sessions Judge/Model Criminal Trial Court, Shikarpur in Sessions Case No.04/2009, emanating from Crime No.85/2008 for offence punishable under section 302, 353, 148 & 149 P.P.C, registered at Police Station Dakhan, District Shikarpur whereby the learned trial Court had convicted the present appellant for offence under section 302 read with section 149 P.P.C and sentenced him to life imprisonment for the commission of murder of PC Sadruddin. The appellant was also convicted for offence punishable under section 353 PPC to suffer R.I for six months. Both offences were ordered to run concurrently with benefit of section 382-B P.P.C. Appeal was admitted, notice was issued to the learned Additional Prosecutor General and paper book was prepared.

2. The facts of the case depicted in para No.4 of the Judgment are as under:

“The complainant party comprised of ASI Muhammad Aslam Soomro of PS Dakhan accompanied with his sub-ordinate PC Samandar Ali, PC Wazir Ali, PC Ghulam Nabi, in uniform duly armed

with service ammunition in official vehicle SP-6112 with driver PC Sadaruddin (deceased) left PS Dakhan vide roznamcha entry No.18 at 1900 hours dated 12.10.2008, for patrolling in the jurisdiction. During patrolling from different places when they were going from Dakhan towards main road Hayat Wah and reached there at 0100 hours, at near village Garhi Sahib Khan where saw on the headlights of official vehicle six accused duly armed with Kalashnikovs whose faces were opened, suddenly emerged on road. Out of them, they identified on the headlights of official vehicle accused every one Mujahid @ Bajo, 2. Raheem Bakhsh, 3. Makhno, 4. Shahzado and two un-known accused if seen again would be identified who emerged on the road with intent to commit offence. They at once stopped the official vehicle, alighted from it and asked the accused to surrender themselves along with weapons but accused made straight fire shot from Kalashnikovs with intent to commit their Qatl-i-Amd, the complainant party fell down and ambushed and made firing upon the accused in right of their private defense. However, the accused while firing run away towards Dakhan Shakh. The complainant followed the accused and exchange of firing between the parties remained continue and when reached on the right top of Dakhan Shakh where driver PC Sadaruddin cried and said that he has received one bullet, saying so he fell down. They found one fire shot injury on his right side chest, which went through and through, the blood was oozing from his injuries and due to which driver PC Saddaruddin embraced martyrdom. Such information was given to SPO Garhi Yasin and SHO PS Dakhan through wireless. The accused ran away towards the side of village Mureed Kharoos, meanwhile SPO Garhi Yasin and SHO Dakhan with subordinates came there who followed the accused. The complainant took the dead body of deceased driver PC Saddaruddin at PS, where he lodged FIR to that effect. In the bottom of the FIR it is also stated that the exchange of firing was continued for 20 minutes, in which one accused also sustained firing shot injuries from the side of complainant party.”

3. After usual investigation challan was submitted before the learned Trial Court, who after full dressed trial convicted appellant Mujahid alias Bajo vide Judgment dated 07.11.2019, whereas co-accused Shahazado alias Shado, Makhno and Zulfiquar were acquitted vide Judgment dated 19.11.2012. During pendency of instant appeal, this Court has taken the cognizance of the fact that this matter pertains to Anti-Terrorism Court instead of Court of ordinary jurisdiction and in view of above position section 6(2)(n) of the Anti-Terrorism Act, 1997 is very much applicable. Since the case is exclusively triable by Anti-Terrorism Court and trial conducted by the Court of ordinary jurisdiction is *corum non-judice* and this Court passed an order dated 26.10.2020, which is reproduced as under:

“Before arguments, learned Additional Prosecutor General has pointed out that appellant has been convicted by the Trial Court under section 302 P.P.C as, case for murder of P.C Sadruddin was proved against him. Learned Additional Prosecutor General submits that in the view of Section 6(2)(n) of the Anti-Terrorism Act, 1997, the learned Judge/A.T.C had the exclusive jurisdiction to try this case and in this case trial held by the Court of the ordinary jurisdiction/Trial Court was *corum non-judice*. For ready reference Section 6(2)(n) of the A.T.A, 1997 reads as under:

“6.(2). *An “action” shall fall within the meaning of sub-section (1), if it:*

.....

(n). *.....
involves serious violence against a member of the police forces, armed forces, civil armed forces, or a public servant.”*

Learned counsel for the appellant seeks time to address the Court with regard to the jurisdiction of the Trial Court for conducting the trial in this case. Time is allowed.

To come up on 26.11.2020.”

On 26.11.2020, after hearing learned counsel for the appellant and Deputy Prosecutor General, notices were ordered to be issued to the acquitted accused namely Shahazado alias Shado, Makhno and Zulfiquar Ali through S.H.O P.S. Dakhan, District Shikarpur.

4. In compliance of order notices were issued to the acquitted co-accused Shahzado alias Shado, Makhno and Zulfiquar Ali. They appeared before this Court alongwith their counsels.

5. Today learned counsel for appellant Mujahid alias Bajo as well as learned counsel for acquitted accused Shahazado alias Shado, Makhno and Zulfiquar have jointly admitted the fact that deceased P.C. Sadruddin was killed in a police encounter and such F.I.R. No.85/2008 had been lodged at Police Station Dakhan District Shikarpur for offence under Sections 302, 353, 148 & 149 P.P.C and ordinary court has no jurisdiction for trial and jurisdiction lies before Special Judge, Anti-Terrorism Court and they recorded their no objection to send this case to the ATC for *de novo* trial.

6. In view of the above and no objection extended by the parties the impugned Judgments dated 07.11.2019 and 19.11.2012, passed by

learned 2nd Additional Sessions Judge, Shikarpur in Sessions Case No.04/2009 emanating from Crime No.85/2008 for offence under sections 302, 353, 399, 402, 148 & 149 P.P.C are set aside.

7. Accordingly, the case is remanded back to the learned Trial Court to decide the point of jurisdiction in accordance with law. After such deliberation, it shall decide whether to proceed with the case itself, if such jurisdiction is bestowed on it by the legislation or send the same to the Anti-Terrorism Court as the case may be. Since the co-accused Shahzado alias Shado, Makhno and Zulfiquar were acquitted, therefore, learned Trial Court is directed to consider their bail applications, if filed in accordance with law.

Judge

Manzoor