

# IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

*Cr. Appeal No.D-129 of 2017*

*Cr. Appeal No.D-134 of 2017*

**PRESENT:**

*Mr. Justice Naimatullah Phulpoto*

*Mr. Justice Shamsuddin Abbasi*

*Date of Hearing:* 10.04.2018

*Date of Judgment:* 10.04.2018

*Appellant/accused:* Ashfaque Ali S/o Muhammad Ishaque  
Halepoto through Mr. Afzal Karim Virk,  
Advocate.

*The State:* Through Syed Meeral Shah Bukhari,  
Additional Prosecutor General, Sindh.

## **J U D G M E N T**

**SHAMSUDDIN ABBASI, J :-** By this common judgment,

we intend to dispose of the aforesaid criminal appeals, whereby appellant Ashfaque Ali has assailed the judgment dated 05.12.2017 passed by the learned 1<sup>st</sup> Additional Sessions Judge / Special Judge, Anti-Terrorism Court, Mirpurkhas, in Special Case No.02 of 2016, emanated from Crime No.16 of 2016 of P.S Talhi and amalgamated Special Case No.03 of 2016, emanated from Crime No.17 of 2016 of P.S Talhi, whereby the appellant / accused has been convicted in different offences with direction to run the sentences concurrently with Benefit of Section 382-B Cr.P.C, the detail whereof has been given as under, whereas accused Raja Pir Muhammad and Tarique Ali extending benefit of doubt were acquitted of the charge.

| <b><i>Offence in which accused has been convicted</i></b> | <b><i>Sentences</i></b>   |
|---|---|
| <i>Under Section 324 &amp; 34 PPC</i>                     | <i>To suffer R.I for 10 years and to pay fine of Rs.50,000/-, in default whereof to suffer S.I for 04 months.</i>             |
| <i>Under Section 353 &amp; 34 PPC</i>                     | <i>To suffer R.I for 02 years and to pay fine of Rs.20,000/-, in default whereof to suffer S.I for 02 months.</i>             |
| <i>Under Section 337-F(iii) &amp; 34 PPC.</i>             | <i>To suffer R.I for 03 years as Ta'zir and to pay daman of Rs.100,000/- to each injured Aftab Ahmed Memon and Anwar Ali.</i> |
| <i>Under Section 7(h) of ATA, 1997</i>                    | <i>To suffer R.I for 07 years and to pay fine of Rs.50,000/-, in default whereof to suffer S.I for 04 months.</i>             |
| <i>Under Section 25 of Sind Arms Act, 2013</i>            | <i>To suffer R.I for 07 years and to pay fine of Rs.50,000/-, in default whereof to suffer S.I for 04 months.</i>             |

2. Brief facts of the case as unfolded in the FIR are that SIP Aftab Ahmed Memon of P.S Talhi was conducting the investigation in case Crime No.15 of 2016 under Sections 365-B, 382 & 34 PPC registered at P.S Talhi. On 20.07.2016 at 1530 hours SIP Aftab Ahmed Memon left P.S alongwith complainant Muhammad Siddique Jamali and other subordinate staff vide roznamcha entry No.7 on police mobile for investigation. At about 05:00 p.m. SIP Muhammad Uris Sahar received telephonic message from H.C Khuda Bux, who informed him that when they reached at the house of the accused situated in Deh Haidoo Talhi, where accused Raja Pir Muhammad alongwith co-accused Faheem were present armed with guns and pistol, who in furtherance of common object attacked the police party with intention to kill them and caused fire arm injuries to SIP Aftab Ahmed Memon and PC Anwar Ali and in retaliation the police party also fired in the air, in their defense. The accused deterred the police party from discharge of lawful duty and created fear

and sense of insecurity in the vicinity. It is alleged that accused succeeded to run away from the place of incident. He further informed that they had shifted the injured to hospital. Thereafter, SIP Muhammad Uris kept such entry at P.S and left to the hospital, where he recorded statements of injured SIP Aftab Ahmed Memon and PC Anwar Ali and also arrested accused Ashfaque in injured condition from the hospital. He prepared mashirnama of arrest of accused Ashfaque and returned back at P.S where he lodged FIR of the incident on behalf of the State vide Crime No.16 of P.S Talhi under Sections 324, 353, 337-F(iii), 34 PPC r/w Section 7(h) of ATA, 1997.

3. After completion of the investigation, challan was submitted against accused Ashfaque Ali, Raja Pir Muhammad and Tarique Ali before the Anti-Terrorism Court, Mirpurkhas. However, during investigation, accused Faheem was let off by the Investigating Officer.

4. It is pertinent to mention here that the learned trial Judge amalgamated Special Case No.03 of 2016 arising out of subsequent Crime No.17 of 2016 with the main Special Case No.02 of 2016 arising out of Crime No.16 of 2016, being offshoot of the main case.

5. The learned trial Court framed the charge against all the accused at Ex-6, but the accused did not plead guilty and claimed to be tried.

6. The prosecution in support of its case had examined P.W-1 Complainant Inspector Muhammad Uris at Ex-7. He produced copy of FIR No.16 of 2016 at Ex-7/A, mashirnama of arrest of accused Ashfaque Ali in Crime No.15 of 2016 at Ex-7/B, copy of departure and arrival entries of

roznamcha at Ex-7/C, copy of FIR No.17 of 2016 at Ex-7/D and mashirnama of site inspection of Crime No.17 of 2016 at Ex-7/E. P.W-2 Mashir PC Ghulam Mustafa was examined at Ex-8. He produced mashirnama of recovery of Crime No.16 of 2016 at Ex8/A, and case property i.e. SBBL gun at Article 01. P.W-3 Mashir PC Muhammad Islam was examined at Ex-9. He produced mashirnama of arrest of accused Ashfaque Ali in Crime No.16 of 2016 at Ex-9/A, mashirnama of injuries of injured persons at Ex-9/B, mashirnama of securing uniform and cloths of injured persons at Ex-9/C and case property i.e. uniform and cloths of injured persons at Article 02. P.W-4 Mashir PC Aijaz Ali was examined at Ex.11. He produced mashirnama of site inspection at Ex-11/A and case property i.e. empties at Article 6 to 29 respectively. Thereafter, prosecution examined P.W-5 SIP Aftab Ahmed Memon at Ex-12, who produced his statement u/s. 162 Cr.P.C at Ex-12/A. P.W-6 PC Anwar Ali was examined at Ex-13. P.W-7 PC Muhammad Essan, P.W-8 HC Khuda Bux, P.W-9 Mashir HC Muhammad Ishrat were examined at Exs.14, 16 & 17 respectively. Prosecution also examined P.W-10 M.O Dr. Omparkash at Ex-18, who produced police letter for examination of injured persons at Ex-18/A, provisional and final medical certificates of injured persons at Exs-18/B to Ex-18/E respectively. Lastly, he prosecution examined P.W-11 Inspector Tasawar Hussain, I.O of the case, at Ex-19, who produced report of Ballistic Expert at Ex-19/A and copies of roznamcha entries at Ex-19-A/1 to Ex.19-A/28 respectively. Thereafter, the prosecution closed its side.

7. The learned trial Court recorded the statements of accused under Section 342 Cr.P.C at Exs-21 to 23, wherein the accused denied the allegations made by the prosecution. Accused Raja Pir Muhammad

further stated in his statement that on the day of incident he was present at Karachi, where he solemnized marriage. Accused Tarique Ali also stated in his statement that at the time of incident he was doing his job at Siddique & Sons Factory at Hub Chowki, Karachi. Accused did not examine themselves on oath and also declined to lead any evidence in their defense.

8. The learned trial Court after hearing learned Counsel for parties and examining the evidence on record by judgment dated 05.12.2017, convicted accused Ashfaq Ali and sentenced him as referred in the foregoing paragraph. Whereas, accused Raja Pir Muhammad and Tarique Ali by extending benefit of doubt were acquitted of the charge, hence the present appeal filed by appellant / accused Ashfaq Ali.

9. The learned Counsel for the appellant / accused contended that allegations against the accused were generalized in nature. He further contended that co-accused namely Raja Pir Muhammad and Tarique Ali have been acquitted by the learned trial Court on the same set of evidence, whereas the allegations against the present accused are that they have made fires upon the police party. He further contended that appellant Ashfaq had sustained injuries but the prosecuting had failed to examine any doctor in respect of the injuries sustained by appellant Ashfaq. He also contended that infact the appellant Ashfaq was a victim of half fry and the police arrested him and thereafter they caused him fire arm injuries on his leg, otherwise the prosecution story was not believable that appellant Ashfaq fled away from the scene of incident in injured condition and soon after their arrival at the hospital where appellant Ashfaq was also available. He further contended that after

having sustained injuries appellant Ashfaque was shifted to hospital by the Police. He further contended that the complainant himself is not the eye witness of the incident and that the weapon has been foisted upon appellant Ashfaque in order to strengthen the main case. He further contended that the alleged incident had taken place in a thickly populated area but the Police had not examined any independent witness of the incident. He further contended that there was no proof in respect of safe custody of the recovered crime weapon as neither the prosecution has examined any witness, nor produced any entry of the record, which could show that the weapon was kept in Malkhana.

10. On the other hand, the learned A.P.G states that in this incident SIP Aftab Ahmed and P.C Anwar Ali had received injuries during encounter with the accused party, which created sense of insecurity and fear in the public, therefore, this case was challaned at Anti-Terrorism Court. He further contended that there are general allegations against all the accused. He frankly admitted that prosecution neither examined any independent witness of recovery of gun, nor produced any evidence regarding safe custody of the recovered weapon. He supported the judgment passed by the trial Court.

11. Heard learned Counsel for the appellant as well as learned A.P.G and examined the material available on the record.

12. Before examining the evidence of the prosecution witnesses, we would like to highlight the facts of the case that, Mst. Shabana d/o Muhammad Ismail had contracted marriage with accused Raja Pir Muhammad, which caused much annoyance to the parents and relatives of Mst. Shabana and they got managed case bearing Crime No.15 of

2016 under Section 365-B, 382 & 34 PPC. It is a matter of record that Mst. Shabana had sworn affidavit of freewill, which is available on the record at Ex-20/A, in which she had stated that being *sui juris* has contracted marriage with Raja Pir Muhammad (accused) by exercising her right of freewill and Nikahnama of Mst. Shabana and Raja Pir Muhammad available at Ex-20/B. Therefore, it can be concluded that the present case was the result of the aforesaid marriage. Thereafter, the complainant party in order to implicate accused Raja Pir Muhammad and his near relatives alongwith the present appellant managed to lodge FIR bearing Crime No.15 of 2016.

13. We have examined the evidence of prosecution witnesses. P.W-5 SIP Aftab Ahmed Memon (Ex-12), who was Investigating Officer of Crime No.15 of 2016 lodged by complainant Muhammad Siddique Jamali. Prosecution story is surrounded by this P.W. Therefore, we have given preference in order to dig out the bone of contention in the present case. He has stated that on 20.07.2016, he was posted as SHO at P.S Talhi District Umerkot and at about 1100 hours complainant Muhammad Siddique Jamali arrived at the police station and disclosed the facts of the cognizable offence, hence, he registered FIR bearing No.15 of 2016 under Section 365-B, 382 & 34 PPC, whereafter he himself conducted investigation and left P.S alongwith his subordinate staff H.Cs Khuda Bux and Gul Muhammad, P.Cs Essan, Nadir Ali, informer Anwar Ali Shaikh, complainant Muhammad Siddique Jamali and driver P.C Abdul Mutalib vide roznamcha entry No.7 for investigation purpose. He further stated that at about 1530 hours, they reached at the house of accused Raja Pir Muhammad Halepoto, where accused Raja Pir Muhammad Halepoto was armed with gun, Ashfaque Halepoto, armed with gun, Tarique and

Faheem, armed with pistols, encircled the police party and restrained them, upon which SIP Aftab Ahmed informed him that FIR has been lodged against them but accused party did not listen him and opened straight fires on police party with intention to kill them and on that they got down from the vehicle and started firing. He further stated that he and spy informer Anwar Ali Shaikh had sustained bullet injuries at the hands of accused persons. During exchange of fires, accused Ashfaque Ali had also received bullet injury. Thereafter, accused persons again fired directly upon police party to create terror and then they fled away towards jungle. SIP Aftab Ahmed and Anwar Ali were shifted to hospital for treatment. He further stated that SIP Uris arrived at hospital and recorded their statements, issued letter for treatment and thereafter FIR of the incident was lodged by SIP Muhammad Uris. He further states that he alongwith Anwar Ali was shifted to Civil Hospital, Hyderabad. He also stated that accused Faheem was let off from the charge by the Investigating Officer of this case. We have also examined cross-examination of SIP Aftab Ahmed, in which he has admitted the fact that complainant Muhammad Siddique Jamali of Crime No.156 of 2015 had registered the FIR against accused Raja Pir Muhammad regarding marriage of his daughter with co-accused Raja Pir Muhammad. Surprisingly, he has also admitted the fact that the complainant of Crime No.15 of 2016 was residing within the jurisdiction of P.S Umerkot (wherefrom the alleged girl Mst. Shabana was abducted). He further admitted that accused Raja Pir Muhammad was residing within the jurisdiction of P.S Talhi. He has also admitted that FIR No.15 of 2016 pertaining to the abduction of girl daughter of complainant of Crime No.15 of 2016 was lodged at P.S Talhi. He further admitted that abductee was residing within the jurisdiction of P.S Umerkot but FIR of here abduction



was lodged at P.S Talhi. This prosecution witness tried to justify the highhandedness on his part and stated that at the time of the incident the abductee was confined at the house of accused persons, though he denied the fact that he had lodged this FIR with malafide intention in collusion with the complainant of Crime No.15 of 2016. He further stated that he does not know whether FIR bearing No.15 of 2016 was quashed by the High court. He further stated that they stopped their police mobile at the distance of 20 paces away from the house of accused persons. He has made improvement in his deposition that on one hand he states that soon after place of incident the accused party had attacked over them but in cross-examination he states that after their arrival at the place of incident they exchanged talks with the accused and thereafter first firing was opened by accused persons namely Raja Helepoto and Ashfaque Halepoto.

14. The evident of P.W SIP Aftab Ahmed reveals that he had lodged FIR against accused party for abduction of a girl who was abducted from the jurisdiction of P.S Umerkot. This aspect of the case clearly shows that P.W Aftab Ahmed was mixed up with complainant Muhammad Siddique Jamali and FIR has been lodged by him without jurisdiction simply for the reasons behind by him in his evidence that accused party was residing within the jurisdiction of P.S Talhi. It also appears that in order to please the complainant party, a false FIR bearing No.15 of 2016 was managed by this P.W Aftab Ahmed against the appellant and co-accused Raja Pir Muhammad. The abducted girl Mst.Shabana had sworn affidavit of freewill and solemnized Nikah and got the FIR quashed before this Court, on the ground that neither she was abducted, nor was compelled for marriage but such marriage was

solemnized by her by exercising her right of freewill. As such, malafide on the part of SIP Aftab Ahmed is apparent, who has registered a false case against accused persons without justification. Another aspect of this case, which makes the whole case doubtful, is that on one hand the complainant party was comprising of six police officials, who were duly armed with sophisticated weapons and on the other hand there were four accused, who were armed with deadly weapons, both exchanged firing but surprisingly the complainant party received simple injuries, whereas, on the accused side, only appellant Ashfaque Ali had sustained mysterious bullet injury on his leg, particularly when co-accused Faheem armed with pistol was declared innocent during the investigation and was let off by the police. We have also gone through the further statement of SIP Aftab Ahmed recorded by SIP Muhammad Uris at P.S Talhi on 20.07.2016 available on the record at Ex-12/A, which reveals that SIP Aftab Ahmed has stated in the said statement that accused Raja Pir Muhammad restrained co-accused from directly firing at police party and it is a matter of record that learned trial Court had acquitted Raja Pir Muhammad from the charge and convicted the appellant, who was already victim in this case on same set of evidence.

15. We have also examined the evidence of P.W Anwar Ali (Ex-13), who was injured in this case, who has deposed on the same line as deposed by SIP Aftab Ahmed. This P.W is retired Police Constable and according to them now he is working as spy informer. We have also find out contradiction to the extent that SIP Aftab Ahmed has stated in his statement that they parked police mobile at the distance of 20 paces away from the house of accused, whereas this P.W Anwar Ali has stated that police mobile was parked at the distance of about 500 feet away from the

house and thereafter by feet they went to the house of accused persons. He further stated that accused persons first started firing upon police party from the distance of 200 / 300 feet away, whereas P.W SIP Aftab Ahmed states that before firing they exchanged talks with accused party and thereafter firing was started. This prosecution witness has admitted that during investigation one of the accused namely Faheem was declared innocent and he was let off by the police. He further stated that exchange of firing in between the accused and police party remained for about 15 / 20 minutes.

16. We have also examined the evidence of P.W-7 P.C Muhammad Essan (Ex-14), who is third eye witness of the incident. He has stated on the same line as stated by P.W-5 SIP Aftab Ahmed Memon and P.W-6 Anwar Ali Shaikh. However, during cross-examination he has admitted the important fact of the case that complainant of Crime No.15 of 2016 was also riding in his own white colour car alongwith them towards the place of incident. He has given third version regarding parking their vehicle at the distance of place of incident to the effect that they parked their vehicle at about 20 yards away from the house of the accused persons and he has contacted P.W SIP Aftab Ahmed and P.C Anwar Ali, whereas, SIP Aftab Ahmed states that they parked their vehicle at the distance of 20 / 25 steps away from the house of the accused persons and whereas P.C Anwar Ali has stated that they parked their vehicle at the distance of about 500 feet away from the house of the accused and now this P.W states that they parked their vehicle at about 20 yards away from the house of the accused. Another contraction which comes in the evidence of the prosecution witnesses is that, SIP Aftab Ahmed states that prior to firing they exchanged views with the accused and thereafter firing had taken place, whereas P.C Anwar Ali states in his deposition that

while seeing the police party first accused fired at police party and this P.W Muhammad Essan has given third version that the accused persons opened fires upon police party sitting in the hedge of their house. He further stated that hedge wall of the houses of the accused persons was about five feet high and first accused persons opened fires. This P.W has also contradicted to P.W Anwar Ali regarding duration of exchange of firing. P.W Anwar Ali states that firing was continued for about 15 / 20 minutes, whereas P.W Muhammad Essan states that firing remained continued 2 / 3 minutes.

17.           Thereafter, we have examined P.W-8 HC Khuda Bux (Ex-16). He has stated in his chief on the same line as stated by other P.Ws regarding incident. In his cross-examination, he has contradicted other P.Ws by stating that complainant Muhammad Siddique of Crime No.15 of 2016 arrived at police station in black coloured car. He has also contradicted the other P.Ws that accused went with them on his private car but this P.W states that complainant Muhammad Siddique went at the place of incident in police mobile. He has also made contradiction by stating that they stopped their police mobile at the distance of 15 / 20 feet away from the houses of the accused persons. Another contradiction being made by this P.W is that the accused persons after seeing police mobile came out from their houses and the accused persons were already known to them. Regarding time of encounter, he contradicted the other P.Ws that encounter remained continued up to 5 / 10 minutes. He further admits that the fire did not hit at police mobile. He also admitted the fact that they did not inform about the incident to their high-ups through wireless but he states that he informed at police station by mobile phone. He further states that no any person from the village had gathered at the

place of incident. This P.W also contradicted the other eye witnesses of the incident and states that nominated accused Raja Pir Muhammad, Ashfaque and Tarique did not implicate co-accused Faheem, who was shown armed with pistol at the scene of incident as per prosecution story. He further states that *"it is correct to suggest that no any other case was pending at P.S against the accused persons prior to this incident."* He further states that *"it is correct that he has not mentioned his telephone number in his statement recorded by the Police under Section 161 Cr.P.C."*

18. Thereafter, we have examined the evidence of P.W-10 Dr. Omparkash (Ex-18). He has examined injured SIP Aftab Ahmed and P.C Anwar Ali and issued medical certificate. He has stated that injured SIP Aftab Ahmed Memon had received 16 injuries on his person. He further stated that probably time of injuries and examination was 2 / 3 hours. He provided first aid to both the injured and referred them to LUHS Hyderabad for further treatment. Thereafter, he received report from Hyderabad and on the basis of such report he issued final medical certificate of SIP Aftab Ahmed. He declared the injuries which falls under Section 337-F(iii) PPC. He has also issued final medical certificate of injured Anwar Ali and declared both the injuries caused on his person which falls under Section 337-F(iii) PPC. He further admitted that as per his information fire was opened upon the injured from the distance of about 4 / 5 meters. He further admitted that he had not removed the pellets from the body of injured. The most important admission of this prosecution witness in the cross-examination that at the time of examination of inured, the blood was not found from the injuries. He further admitted that he do not know whether the doctor at Hyderabad

Hospital removed the pellets from the body of both the injured persons or otherwise and the same facts have not been mentioned in the letter received from Hyderabad Hospital. Here the most important and crucial thing which comes from the mouth of doctor is that, probably the duration of injuries was 2 / 3 hours and he did not found blood from the injuries. The definition of Section 337-F(iii) PPC has been provided as "by lacerating the flesh, is said to cause *mutalahimah*". It appears that wounds / injuries sustained by the P.Ws are superficial but not incised wounds. This kind of injury would show that it was caused by firearm from a far distance. This aspect of the case is contradicted with the statement of P.W-10 Dr. Omparkash, who disclosed the distance in between the injured and the alleged gun as about 4 / 5 meters.

19. So far as the rest of the prosecution witnesses are concerned. Now, we would like to examine the evidence of P.W-1 Inspector Muhammad Uris, who received mobile phone call from P.W HC Khuda Bux regarding incident of the case, who kept such entry at the police station and went to the hospital where he recorded the statements of injured SIP Aftab Ahmed and Anwar Ali and also arrested accused Ashfaque from the hospital in injured condition and prepared mashirnama of arrest of accused Ashfaque and thereafter he returned back to police station where he lodged FIR of the incident. Thereafter, he handed over the case papers of this case to Inspector Tasawar Jat for investigation. He further states that on 26.07.2016 he was duty officer at police station when SIP Tasawar Jat arrived at police station and narrated the facts about the recovery of the weapon from the possession of accused Ashfaque. Thereafter, he registered FIR bearing Crime No.17 of 2016 under Section 25 of Sindh Arms Act, 2013 against the accused. He also

visited the place of recovery on the pointation of H.C Ishrat and prepared such mashirnama. It is a matter of record that when this prosecution witness had received information about the incident on 20.07.2016 but he has not registered the FIR of the incident at the moment. He further stated that instead of registration of FIR he kept entry in roznamcha and thereafter left police station to hospital but it is also matter of record that no entry has so far been produced by this prosecution witness, which crates doubt in our mind. The delay of three hours in lodging of FIR, despite of the fact that this P.W had received telephonic call from HC Khuda Bux and informed him the details of the incident but complainant did not register FIR and simply kept the entry at roznamcha book (which was also not produced by him in examination-in-chief) and left P.S to the hospital where he examined both the injured witnesses and arrested accused Ashfaque from the hospital in injured condition, appears to have been registered by the complainant after recording statements of injured under Section 161 Cr.P.C and it could not be ruled out that FIR of the incident had been lodged after consultation. This P.W has also produced mashirnama of arrest of accused Ashfaque from the hospital but neither any type of wound has been mentioned in the mashirnama, nor any record has been produced that he was referred to the hospital for medical examination. He further stated that after arrest the custody of accused Ashfaque was handed over to Inspector Tasawar for investigation alongwith case papers and on 26.07.2016 he had lodged FIR under Section 25 of Sindh Arms Act, 2013 against accused Ashfaque on the complaint of Inspector Tasawar.

20. We have also examined P.W-2 PC Ghulam Mustafa (Ex-08), who is mashir of recovery of gun. The alleged gun is also shown to have

been recovered from the house of accused Ashfaque but surprisingly he stated that no person from the locality was available there at the time of recovery. It is admitted fact that the house of accused Ashfaque is situated in thickly populated area but after their arrival the accused came at the place of recovery.

21. Thereafter, examination of P.W-3 PC Muhammad Islam is concerned. The police cited him as mashir of injuries of injured SIP Aftab Ahmed and Anwar Ali. He stated that SIP Aftab Ahmed had received 16 injuries of gunfire on his person while Anwar Ali received 03 injuries of gunfire on his body. He further stated that the mashirnama was prepared by him on the dictation of SHO. He further stated that injured SIP Aftab Ahmed was present in another room of the hospital and he cannot show definitely directions and places of the injuries caused on the body of SIP Aftab Ahmed. The case of the prosecution was based upon the evidence of four eye witnesses, who are highly interested witnesses on the ground that it has come from the mouth of SHO / SIP Aftab Ahmed that daughter of complainant in Crime No.15 of 2016 was abducted from the jurisdiction of P.S Umerkot. It has also come on the record that after registration of FIR without jurisdiction, SIP Aftab Ahmed investigated the case himself without obtaining permission / approval from the high-ups and went to the place of incident alongwith complainant party in Crime No.15 of 2016 in order to arrest the accused where this incident had taken place. It is a case of the prosecution that accused launched murderous attack on police party and got injured SIP Aftab Ahmed and Anwar Ali but their medical evidence suggests that all the injuries were not incised wound and were declared as *ghayr-jaifah mutalahhimah*. On the other hand, during the said encounter appellant Ashfaque received firearm injury at



the hands of police, who was neither examined by the doctor, nor such certificate was obtained from the medical officer in order to see the type of wounds sustained by injured accused Ashfaqe. This aspect of the case has created serious doubts in our mind to the extent that on one hand the police had sustained simple injuries and on the other hand the accused were seriously injured and accused Ashfaqe got injury on his right knee. The contention of the learned Counsel for the appellant appears to be reasonable that accused was victim of half fry as the place of seat of injury is knee where the police usually caused injuries in the cases of half fry.

22. We have examined the evidence of all the above four eye witnesses of the incident minutely. We feel that the prosecution has miserably failed to establish the case against the appellant / accused beyond reasonable shadow of doubt for the reasons that it is a case of the prosecution that two persons namely Raja Pir Muhammad and the present appellant Ashfaqe were shown to be armed with guns. It is also a case of the prosecution that all the accused persons had made firing upon police party and in retaliation the police party also made firing, however, no specific role has been assigned to any of the accused persons except the general allegation of firing upon police party. The learned trial Court had acquitted main accused Raja Pir Muhammad on the basis of evidence led by the prosecution and on the same set of evidence, convicted the appellant only on the basis of recovery of gun on his pointation but recovery of the said gun was highly doubtful as appellant Ashfaqe was arrested on 20.07.2016 in injured condition and gun was recovered on 26.07.2016 and the police, despite of the fact that accused was ready to produce the alleged gun at his house, had failed to

associate any independent person to witness the alleged recovery, even the place of recovery is situated in a thickly populated area. The prosecution has also failed to establish its case on the point of safe custody of the alleged gun as neither any entry has been produced, which may show that gun was kept in Malkhana, nor any independent witness was produced before the trial Court, who may state that the gun was really recovered from the appellant / accused or otherwise. Prosecution case was highly doubtful for the reason that no direct evidence had been produced at the trial in order to substantiate the charge that the alleged gun was recovered from the appellant / accused, therefore, this aspect of the case makes the prosecution story highly doubtful as the prosecution has failed to bring on record reliable and trustworthy evidence, which may compel this Court to maintain the conviction recorded by the trial Court. Defence plea appeared to be plausible, unfortunately trial Court ignored it without deep appreciation. It is well settled principle of law that if there creates some reasonable doubt in a prudent mind, the benefit thereof should go in favour of the accused as held in the case of TARIQ PERVEZ V/S. THE STATE, reported as 1995 SCMR 1345, wherein, the Honourable Supreme Court of Pakistan has maintained as under:

*“It is not necessary that there should be many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of any accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”*

23. In view of the above stated reasons, we have come to the conclusion that the prosecution has failed to prove its case against the appellant / accused beyond reasonable shadow of doubt and the benefit whereof has to be given to the appellant, therefore, vide short order dated 10.04.2018, the present criminal appeals were allowed, whereby the

appellant / accused was released, the contents of the said short order are reproduced hereunder:-

*“Heard arguments of learned Counsel for the parties. For the reasons to be recorded later on, Cr. Appeal No.D-129/2017 and Cr. Appeal No.D-134/2017 are allowed. Convictions and sentences recorded by the learned 1<sup>st</sup> Additional Sessions Judge / Judge Anti-Terrorism Court, Mirpurkhas vide judgment dated 05.12.2017 are set-aside. Appellant Ashfaque Ali S/o Muhammad Ishaque shall be released forthwith in Crime No.16/2016 and 17/2016 of P.S Talhi, if he is no more required in some other case. Pending applications also stand disposed of.”*

24. And these are the reasons for the aforesaid short order.

**JUDGE**

**JUDGE**

Shahid