

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No.S-58 of 2016

Cr. Appeal No.S-68 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on MA-6838/19

26.08.2019.

Mr. Faisal Ali Raza Bhatti, advocate for appellant.

Mr. Shahid Ahmed Shaikh, D.P.G.

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Urgency granted.

The appellants by way of captioned appeals have impugned judgment dated 28.03.2016, whereby they by learned 6th Additional Sessions Judge, Hyderabad have been convicted and sentenced as under;

*“for an offence punishable U/s 324 PPC to undergo Rigor Imprisonment for **Five years(05 years)** each and to pay fine of **Rs.20,000/-** each and they are also sentenced for an offence punishable U/s 353 PPC to undergo R.I for **one year(01 year)** and to pay fine of Rs.5,000/-each. In case of failure in payment of fine, the accused shall suffer simple imprisonment for **three months(03 months).**”*

The facts necessary for disposal of instant appeals are that the appellants allegedly with rest of the culprits after having formed an unlawful assembly and in prosecution of their common object deterred the police party of PS Husri, led by ASI Allah Bux from discharging their lawful duty as a public servant by making fires at them with intention to commit their murder, for that they were booked and reported upon by the police to face trial accordingly.

At trial, the appellants and rest of the culprits did not plead guilty to the charge and prosecution to prove it examined complainant ASI Allah Bux and his witnesses and then closed the side.

The appellants in their statements recorded u/s 342 Cr.P.C, denied the prosecution allegations by pleading innocence, they did not examine anyone in their defence or themselves on oath in disproof of the prosecution's allegation.

It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the police without any lawful justification; there is no independent witness to the incident; no police personnel has sustained fire short injury as a result of alleged encounter and co-accused Naseer and Shoukat Ali have already been acquitted by this court vide judgment dated 19.05.2017. By contending so, he sought for acquittal of the appellants.

Learned D.P.G for the State has recorded no objection to acquittal of the appellants.

I have considered the above arguments and perused the record.

The police party admittedly went at the place of incident on advanced information yet it failed to associate with them any independent person to witness the incident. Neither any of the police personnel has sustained fire short injury nor has been caused any damage to police mobile on account of fires allegedly made by the appellants and others, which has made the allegation against the appellants of making fires at the police party with intention to commit

their murder to be doubtful. Admittedly, co-accused Naseer and Shoukat Ali have already been acquitted; their acquittal apparently has not been challenged by the prosecution. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt.

In case of ***Tariq Pervaiz vs the State (1995 SCMR page 1345)***.

It has been held by the Hon'ble Supreme Court that:-

“For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating reasonable doubt in a prudent mind about the guilt of accused, then he would be entitled to such benefit not as a matter of grace and concession but of right.”

In view of above, the captioned appeals are accepted, the impugned judgment is set aside; consequently, the appellants are also acquitted of the offence for which they were charged, tried and convicted by learned trial court, they are present in court on bail, their bail bonds are cancelled and surety discharged.

Captioned appeals are disposed of in above terms.

Judge