

IN THE HONOURABLE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. D-

of 2015

26-03-2015

Master Saeed Ahmed S/o Muhammad Yousaf Narejo,

Now confined in Central Prison Sukkur

Applicant.

Through: Superintendent, Central Prison Sukkur.



CRIMINAL JAIL APPEAL OF CONVICTED PRISONER AGAINST THE
CONVICTION PASSED BY THE HONOURABLE ANTI TERRORISM
COURT KHAIRPUR MIR'S, ON 25-03-2015 IN SPL. CASE NO. 16/2013,
U/S 324, 327, 148, 149 PPC & 7 ATA CR.NO. 22/2013 PS. PHULLU
DISTRICT KHAIRPUR.

Honourable Sir

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Cr. Jail A. No. D-29 of 2015

Date	Order with signature of Judge
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For regular hearing

Date of Judgment 05-04-2018

Mr. Muhammad Aslam Gadani Advocate for appellant
Mr. Zulfiqar Ali Jatol APG

IRSHAD ALI SHAH J. The instant appeal is preferred by the appellant against judgment dated 25.3.2015 of learend Judge Anti-Terrorism Court Khairpur, whereby he was convicted and sentenced as under:

"Appellant is convicted and sentenced to suffer R. I for three years and to pay fine of Rs.5000/- and in case of default in payment of fine, he shall suffer further R. I for two months. He was further convicted for the offence punishable u/s 324 r/w Section 149 PPC and sentenced to suffer R. I for ten years and to pay fine of Rs.50,000/-, in case of default in payment of fine he shall further suffer R. I for six months and for the offence u/s 427 r/w Section 149 PPC and sentenced to suffer R. I for two years and to pay fine of Rs.5000/- and in case of default in payment of fine he shall further suffer R. I for two months."

2. The facts in brief necessary for disposal of instant appeal are that appellant with rest of the culprits after having formed an unlawful in prosecution of their common object being armed with rocket launchers and washnikovs fired at house of complainant Mazhar Ali with intention to commit his murder and that of his witnesses, in that way created harassment and insecurity amongst general public, for that he was booked and challaned in the present case.



3. At trial, prosecution examined complainant Mazhar Ali, at Ex.8, produced through him FIR of the present case, PW Altaf Hussain at Ex.9. Mashir HC Ghulam Qadir at Ex.10, produced through him mashirnama of arrest of the present appellant at Central Prison-1 Sukkur. SIO/ASI Mashooq Ali at Ex.11, produced through him certificate of Assistant Superintendent Central Prison-1 Sukkur. SIO/SIP Pervaiz Ali Shah at Ex.12. PW Muhammad Idrees at Ex.13. Mashir Aijaz Narejo at Ex.14, produced through him mashirnama of place of incident and recovery of empties. SIO/SIP Muhammad Ameen at Ex.15 and then closed the side.

4. The present appellant during course of his examination u/s 342 Cr.PC before learned trial court, denied the prosecution allegation by pleading innocence by stating that the complainant party has involved him in this case falsely only to usurp his landed property. He did not examine anyone in his defence or himself on oath in terms of Section 340(2) Cr.PC.

5. Learned trial court on conclusion of the trial, convicted and sentenced the appellant as stated above.

6. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the complainant party only to settle their dispute with him over landed property, the identity of the appellant at night time, that too under search light was weak piece of evidence, the evidence which the prosecution produced before trial court was inconsistent same ought not to have been relied upon by learned trial court. By contending so, he sought for acquittal of the appellant. In support of his contentions, he relied upon case of Jehangir vs. Nazar Muhammad and others, which is reported at 2002 SCMR 1986, and case of Muhammad Ashraf Javed vs. Muhammad Umar & others, which is reported at 2017 SCMR 1999.



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7. Learned APG has supported the impugned judgment.

8. We have considered the above arguments and perused the record.

9. It was stated by complainant Mazhar Ali, PWs Altaf Hussain and Muhammad Idrees before learned trial court during course of their examination that on 01.05.2013 they after taking meal when were sleeping, at their house, they at about 2115 hours woke up on fires of rocket launchers, they under search light found ten culprits there. They were identified by them to be the present appellant, Nazir Ahmed, Shafiq Ahmed, Qurban, Raja, Irshad Ali, Ayaz Hussain, Fayaz Hussain all by caste Nareja and two unknown culprits. It was further stated by them that the said culprits fired at them indiscriminately with intention to commit their murder. It was further stated by them that, on fire shot reports and on their cries, the co-villagers came running there, the culprits then went away. No co-villager is cited as a witness by them, which has made their version to be one which is lacking independent corroboration. It was further stated by them that they narrated the incident to their 'Nekmard' Ghulam Asghar, on his advice lodged report of the incident with the police on 03.05.2013. It was 3rd day of the incident. Nekmard Ghulam Asghar was not examined by the prosecution at trial to prove the fact that the FIR of present incident was actually lodged by the complainant at his advice. The FIR which is lodged with unexplained and unpalusible delay obviously looses its credibility. It was further stated by the complainant and his witnesses that the appellant and rest of the culprits were identified by them under the search light. The identity of the culprits at night time under search light is weak piece of evidence. No search light even otherwise was secured by the police during course of investigation. It was stated by the complainant during course of his cross examination that that the culprit fired at him and others from distance of half furlong. He in that respect was belied by PW Altaf Hussain as according to him he and others were fired at from distance of one furlong. The inconsistency in between the evidence of the complainant and PW Altaf Hussain as is pointed above,



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could not be lost sight of. Indeed it is making their version to be doubtful one. Neither complainant nor any of his witnesses sustained any fire shot injury as a result of above firing, those fires allegedly hit to wall and tower of the house of the complainant party, as such the firing allegedly made at the complainant and his witness could hardly be said to have been made upon them with intention to commit their murder. Complainant party admittedly is disputed with the appellant. In that situation, the involvement of the appellant in this case falsely by the complainant party only to settle their above said dispute with him, could not be ruled out. Evidence of SIO/ASI Mehboob Ali and that of HC Ghulam Akbar is only to the extent that they apprehended the appellant with preparation of mashimama of arrest at Central Prison-1 Sukkur. If their evidence is believed to be true, even then it is of no help to the case of the prosecution. Evidence of SIO/SIP Pervaiz Ali Shah is only to the extent that he recorded FIR of the present case at verbatim of the complainant. His evidence if is believed to be true even then it is of no help to the case of prosecution. Evidence of SIO/SIP Muhammad Ameen and PW mashir Aljaz Ali Narejo is to the extent that empties were secured by them from the place of incident with preparation of such mashimama. If their evidence is believed to be true, even then it is not enough to maintain the conviction and sentence recorded against the appellant by learned trial court. In these circumstances, it could be concluded safely that the prosecution was not able to prove its case against the appellant beyond shadow of doubt.



10. In case of *Ashraf Javed vs. The State*, the benefit of doubt was extended to the accused on account of failure of police to recover bulb being source of identity. In the instant case, search light being source of identity of the appellant is not secured by the police as such he is appearing to be entitled to that benefit.

11. In case of *Jehangir vs. NazarFareed*, the benefit of unexplained delay in lodging of the FIR was extended to the accused. In the

instant case, the appellant is also appearing to be entitled to benefit in delay in lodging of the FIR which obviously is not explained.

12. The plea of innocence with the present appellant taken at trial and during course of his examination u/s 342 Cr.PC could not be lost sight of in the circumstances of the present case.

13. In view of the facts and reasons discussed above, the conviction and sentence which are recorded against the appellant by way of impugned judgment cannot be sustained. It is set aside. Consequently, the appellant is directed to be released forthwith in the present case.

Above are the reasons of our short order dated 5.4.2018 whereby the instant appeal was allowed and appellant was acquitted of the offence for which he was charged, tried and convicted by learned trial court.



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COMPILED BY

READ BY

ASSISTANT REGISTRAR

Sd/-12/4
IRSHAD ALI SHAH,
JUDGE.

Sd/-
ABDUL RASOOL MEMON,
JUDGE.