

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Appeal No.50 of 2019
Special Criminal Anti-Terrorism Appeal No.51 of 2019
Special Criminal Anti-Terrorism Appeal No.52 of 2019
Special Criminal Anti-Terrorism Appeal No.53 of 2019

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi.

Appellants : 1. Jilani @ Javed s/o Duwa Khan
2. Shahzada @ Dilawar Khan s/o Gulab Khan
3. Muhammad Hassan s/o Atta Muhammad
through Mr. Ajab Khan Khattak, Advocate

The State : Through Mr. Muhammad Iqbal Awan,
Deputy Prosecutor General, Sindh

Date of Hearing : 21.04.2020
Date of Judgment : 07.05.2020

J U D G M E N T

ZULFIQAR ALI SANGI, J:- Accused Jilani @ Javed s/o Duwa Khan, Shahzada @ Dilawar Khan @ Khalid s/o Gulab Khan and Muhammad Hassan s/o Atta Muhammad, were tried by the learned Judge, Anti-Terrorism Court No.XVI, Karachi in Special Case No.419/2018 (New Special Case No.31/2018), arising out of Crime No.119/2018, U/s. 395/353/324/34 PPC r/w Section 7 of ATA, 1997, registered at P.S. Darakshan, Karachi, Special Case No.420/2018 (New Special Case No.32/2018), arising out of Crime No.120/2018, U/s. 23(i) A Sindh Arms Act, 2013, registered at P.S. Darakshan, Karachi, Special Case No.421/2018 (New Special Case No.33/2018), arising out of Crime No.121/2018, U/s. 4/5 Exp. Substances Act, r/w 7 Anti-Terrorism Act, 1997, registered at P.S. Darakshan, Karachi, Special Case No.422/2018 (New Special Case No.34/2018), arising out of Crime No.122/2018, U/s. 23(i) A Sindh Arms Act, 2013, registered at P.S. Darakshan, Karachi, Special Case No.423/2018 (New Special Case No.35/2018), arising out of Crime No.123/2018, U/s. 4/5 Exp. Substances Act, r/w 7 Anti-Terrorism Act, 1997, registered at P.S. Darakshan, Karachi, Special Case No.424/2018 (New Special Case No.36/2018), arising out of Crime No.124/2018, U/s. 23(i) A Sindh Arms Act, 2013, registered at P.S. Darakshan, Karachi, and Special Case No.425/2018 (New Special Case No.37/2018), arising out of Crime No.125/2018, U/s. 4/5 Exp. Substances Act, r/w 7 Anti-Terrorism Act, 1997, registered at P.S. Darakshan,

Karachi. After trial vide judgment dated 26.01.2019 the appellants named above were convicted and sentenced as under:-

1. Convicted accused 1. Jillani @ Javed s/o Duwa Khan, 2. Shahzad @ Dilawar Khan @ Khalid s/o Gulab Khan and 3. Muhammad Hassan s/o Atta Muhammad for offence u/s 395/34 PPC and they are sentenced to suffer rigorous imprisonment for 08 years with fine of Rs.30,000/- each and in case of failure to pay the fine, they shall serve SI for four (04) months more.
2. Convicted accused Jillani @ Javed s/o Duwa Khan for offence u/s 23(I) A SAA 2013 and sentenced him to suffer simple imprisonment for ten years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall suffer SI for three (03) months more.
3. Convicted accused Shahzad @ Dilawar Khan @ Khalid s/o Gulab Khan for offence u/s 23(I) A SAA 2013 and sentenced him to suffer simple imprisonment for five years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall suffer SI for three (03) months more.
4. Convicted accused Muhammad Hassan s/o Atta Muhammad for offence u/s 23(I) A SAA 2013 and sentenced him to suffer simple imprisonment for five years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall suffer SI for three (03) months more.

All the sentences were ordered to be run concurrently. The Benefit of Section 382(B) Cr.P.C. was extended to them.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.XVI, Karachi, the aforesaid appeals have been preferred by the appellants against their convictions.

3. The brief facts of the prosecution case are that on 08.03.2018 at about 0320 hours ASI Rafique Shah while on patrol along with staff received a wireless message from 15 that some dacoits have entered in Bungalow No.96, main Khayaban-e-Bukhari, Phase-6, DHA, Karachi and he therefore rushed there and entered into the said bungalow with the assistance of other police staff of police station Darakshan. Upon entering the bungalow an encounter between the police and accused took place, however the police succeeded in arresting three accused. One Nadeem Khan complainant/owner of the house informed police that while he was sleeping with his family he was woken up by three accused who locked them in one room and looted cash Rs.100,000/- and jewelry from the almirah. Meanwhile, the police party reached there. During body search police recovered from accused 1. Jillani one 9mm pistol loaded with five rounds in the magazine and one in the chamber and one rifle grenade, from accused 2. Shahzada one 30 bore rifle loaded with five rounds in the magazine and one in the chamber and one rifle grenade and from accused 3. Muhammad Hassan one 30 bore pistol loaded with two live rounds in the magazine and one in the chamber and one rifle grenade along with cash

amount of Rs.100,000/-. The arrested accused disclosed the names of their companions namely 1. Jhagal Bari, 2. Imran, 3. Garan who succeeded to make their escape good along with looted almirah jewelry. The police brought the accused in the police station and lodged separate FIRs, weapons, and rifle grenades whereas the main FIR bearing Crime No.119/2018 regarding dacoity was lodged against all of them.

4. After completion of the investigation, the investigation officer submitted the challan before the competent court of law and after completing the legal formalities the charge against the accused persons was framed to which they pleaded not guilty and claimed trial of the case.

5. The prosecution to prove its case against the appellants examined 04 prosecution witnesses and exhibited numerous documents and other items in support of its case and thereafter the side of the prosecution was closed. Statements of the accused under section 342 Cr.P.C were recorded in which they denied all the allegations leveled against them and pleaded false implication.

6. Learned Judge Anti-Terrorism Court No.XVI, Karachi after hearing the learned counsel for the parties and assessment of the evidence available on record, vide the impugned judgment date: 26-01-2019, convicted and sentenced the appellants as stated above which judgment has been assailed by them through instant appeals.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 26.01.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Mr. Ajab Khan Khattak learned counsel for the appellants has contended that the appellants are innocent and have falsely been involved; that there are material contradictions in the evidence of the prosecution witnesses and the same were not considered by the trial court while passing the impugned judgment; that appellants were acquitted from the cases registered under the Explosive Substances Act; that appellants were arrested on 25-2-2018 and

thereafter police demanded Rs.5000000/= from them for their release and on refusal they were booked in these false cases; that appellants were booked on the behest of Inspector Aurangzeb who managed the false story; that no encounter took place nor the appellants were arrested at the spot as alleged by the prosecution and as such for any of the above reasons they should be acquitted by extending to them the benefit of the doubt. He relied upon the cases of **Siddique Ali Khan and another V. The State** (2017 YLR Note 273), **Mumtaz alias Laloo V. The State** (2015 MLD 1117), and Judgment dated: 03-09-2019 passed by this court in **Spl. AT Jail Appeal No. D- 94 of 2019. (Unreported).**

9. On the other hand, Mr. Muhammad Iqbal Awan learned Deputy Prosecutor General has fully supported the impugned judgment and contended that the prosecution proved the case against the appellants beyond a reasonable doubt; that they were arrested at the spot during the encounter and the weapons and robbed money was recovered from their possession; that complainant is a private person and, no enmity whatsoever has been suggested for false implication. Lastly, he prayed that the appeals filed by the appellants may be dismissed.

10. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

11. On our reassessment of evidence, we have found that the prosecution has proved its case beyond a reasonable doubt against all the appellants by producing reliable, trustworthy, and confidence inspire evidence.

12. The complainant Nadeem Khan was examined as **PW-1** who fully supported the prosecution case and was a private person having no ill-will against the appellants for false implication and deposed that on 08-03-2018 he along with his family members were sleeping and were woken up by the accused persons who emerged in the room and demanded keys for the cupboard and then started the search of the house. He deposed that accused

took jewelry and cash amount of Rs.100000/= meanwhile he heard the siren of a police mobile. On hearing sirens the accused panicked and thereafter he heard firing and the accused also started firing. Police entered in the bungalow and arrested three accused persons while two made their escape good. ASI Rafique Shah made recovery from them and interrogated about their names who disclosed as Jeelani, Shahzada and Hassan and from Jeelani recovered one mobile cell, one 9 MM pistol and one rifle grenade, from Shahzada, recovered shotgun of 30 bore and one rifle grenade and from Hassan recovered one mobile cell, one 30 bore pistol, one rifle grenade and cash of Rs.100000 (one hundred thousand rupees) which were robbed by them from the bungalow of the complainant. ASI called BDU expert and sealed weapons separately while grenades were taken into shopper separately. He deposed that police recorded FIR and then visited place of wardat and recovered one mobile cell without battery with two Sims which were found to belong to Afghanistan. ASI Rafique Shah also secured three empties of 9 MM and 07 empties of SMG and 05 empties of 30 bore. He was cross-examined by the defence counsel but we do not find any material contradiction in his evidence. No enmity was suggested against this witness and only during the cross-examination it was suggested that the weapons were foisted upon the accused persons by the SHO Aurangzeb and they were also booked by him in the false case for which this witness negated the suggestions.

13. ASI Rafique Shah was examined as **PW-2** who deposed that he was on patrolling duty along with HC Mudasir Nazir, PC Muhammad Hanif, HC Sikandar Ali and driver Naeem and received information on 15 from one Raja that some dacoits have entered in the house No.96 in Khayaba-e-Bukhari. Such information he shared with duty officer of PS and asked him to reach along with some police officials at the pointed place. They all reached at said bungalow and encircled it. He deposed that as soon as they entered in the bungalow accused started firing from different angles upon them and after an encounter they arrested three accused and thereafter called the owner of the house and informed him about the arrest of three accused who also disclosed that accused were five in number and two have escaped. He deposed that accused disclosed their name as Jillani @ Javed, Shahzada, and the third one

was Hassan. After associating HC Mudasir and PC Muhammad Hanif and owner of the bungalow Nadeem recovered one mobile cell, one 9 MM pistol and one rifle grenade from accused Jeelani, recovered shotgun of 30 bore and one rifle grenade from accused Shahzada and recovered one mobile cell, one 30 bore pistol along with 03 rounds in the magazine and one round in the chamber, one rifle grenade and cash of Rs.100000 (one hundred thousand rupees) from accused Hassan to which complainant disclosed to him that the said amount was taken by accused from the cupboard. He arrested the accused persons at the spot sealed the pistols and recovered amount was also taken into possession thereafter he prepared the memo and the sketch and for grenades contacted with BDU expert. He deposed that police secured 07 SMG empties, 03 9MM empties, and 05 empties of 30 bore and were sealed at the spot. He further deposed that statements under section 154 Cr.P.C of the complainant was recorded and thereafter he registered a separate FIR for the recovery of weapons and grenades. He deposed that property was kept in safe custody in the malkhana and he along with the investigation officer visited the place of wardat where the memo was also prepared by inspector Aurangzeb. He was cross-examined by the defence counsel at length but we do not find any material contradiction which supports the case of the appellants or which could create doubt on his evidence.

14. **PW-3** Muhammad Amir from the BDU was examined and deposed that on 08-03-2018 he was incharge South Zone when at about 0335 hours operator HC Ghulam Qadir from Akbar Base South got noted that three accused have been arrested along with three grenades within the jurisdiction of PS Darkhashan for which BD Team is required for defusing the same. He deposed that he along with HC Hameedullah left for PS Darkhashan and met HM ASI Rana Ajmal who handed over to him three rocket grenades concerning with crime No. 121,123 and 125 of 2018 for inspection and the inspection of the grenades was carried out and were packed and sealed separately and handed over to HM. He deposed that the grenades were multi-shade silver/green colour with the border of black colour on them and he issued a clearance certificate and thereafter issued a final report on 14-03-2018. This

witness was cross-examined and the defence counsel could not shatter his evidence.

15. The investigation officer Aurangzeb was examined as **PW-4**. He deposed that on 08-03-2018 he was SHO PS Darkhashan and entrusted the investigation of FIR No. 119 of 2018 and connected FIRs along with relevant papers. He visited the place of wardat during the inspection he recovered one Nokia mobile set white colour without battery with two Sims inserted in it belonging to Afghanistan so also secured two photocopies of CNICs in the name of one Saeedullah and Jumma Khan and prepared the memo and the sketch in presence of witnesses. He deposed that he recorded statements under section 161 Cr.P.C of the witnesses and moved the application for FSL so also CRO, and thereafter he received an FSL report so also CRO of one accused Javed @ Jillani. He further deposed that accused Jillani confessed before him that they committed such robberies in houses at different places thereafter his custody was taken by the police of different police stations for investigation and lastly he obtained the permission and submitted the challan against the accused persons. This witness was cross-examined and the defence was taken by the appellants that they were already arrested by him and were in wrongful confinement and some of them were booked in other FIRs and the present appellants were booked in the present cases.

16. We have also carefully examined the statements under section 342 Cr.P.C of the appellants where they took defence that they were arrested by the SHO Aurangzeb along with other persons on 25-02-2018 from the seaside and demanded Rs.5000000/= for their release but they could not pay and then one of them was killed in fake encounter and others were booked in the FIR NO. 59 of 2018 at PS Nazimabad and also booked in the present FIR. We do not find any substance in their defence as they or their relatives and their friends etc have not moved any application against the police for their illegal detention nor anybody moved against the FIR No.59 of 2018 registered at police station Nazimabad where according to the appellants one of their co-workers was killed who was also arrested with them from the seaside. We also do not find the same defence was put to other witnesses during the cross-examination, therefore, we of the view that the defence was nothing but a

concocted story managed by the appellants to save their skin from the clutches of the law.

17. It is also settled by now that the cases of like nature where accused entered in the houses of the innocent peoples for robbery and creating terror are to be dealt with iron hands and even if there were minor discrepancies and deviation in evidence or minor shortfalls on part of the investigation agency, the courts were always to be dynamic and pragmatic in approaching facts of the case and drawing correct and rational inference and conclusion arising out of facts and circumstances of each case.

18. After our reassessment of the evidence as discussed above, we find that the prosecution has proved its case against the appellants beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence; the FIR was registered promptly within two hours after the incident as the incident took place on 08-03-2018 at 0320 hours and the FIR was registered on 08-03-2018 at 0515 hours wherein the appellants were nominated with specific roles and thus there was no chance of false implication. All three appellants were arrested at the spot during the encounter with the police while committing robbery in the bungalow of complainant Nadeem Khan who had no enmity or ill-will which would lead him to falsely implicate the appellants; the police recovered from appellant Jeelani one mobile cell, one 9 MM pistol along with bullets and one rifle grenade, from appellant Shahzada police recovered shotgun of 30 bore along with bullets and one rifle grenade whereas from the possession of appellant Hassan significantly the police recovered one mobile cell, one 30 bore pistol, one rifle grenade and **cash of Rs.100000 (one hundred thousand rupees)** which was robbed by them from the bungalow of the complainant and as such the above evidence establishes that the appellants were involved in a heinous offence and are not entitled to any leniency. The trial court has already taken a lenient view while awarding conviction to the appellants.

19. Thus, based on the particulars facts and circumstances of this case keeping in view the brutality of the crime which is increasing day by day and the complete lack of mitigating circumstances and in fact the presence of aggravating circumstances as mentioned above and the need to discourage the

offences of like nature which regrettably were most common at the time when these offences were committed and remain so we are of the view that a deterrent sentence is the appropriate one. We, therefore, uphold all the sentences for each offence in the impugned judgment whilst dismissing the appeals filed by the appellants.

20. The appeals are therefore disposed of in the above terms

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