

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi,
Mr. Justice Adnan-Ul-Karim Memon,

1. Cr. Appeal No.D- 126 of 2017
Taimoor Badshah and others
Versus
The State

2. Cr. Appeal No.S- 290 of 2017
Taimoor Badshah
Versus
The State

3. Cr. Appeal No.S- 292 of 2017
Khurram Shahzad
Versus
The State

Appellants : Taimoor Badshah, Turab Khan and Khurram Shahzad in Cr. Appeal No.D-126/2017 and Khurram Shahzad in Cr. Appeal No.S- 292/2017	Through Mr. Masood Rasool Babar, Advocate
Appellant : Taimoor Badshah in Cr. Appeal No.S-290/2017	Through Mr. Masood Rasool Babar, Advocate, who filed his Vakalatnama today during course of the arguments
Appellants Taimoor Badshah and Khurram Shahzad have been produced by jail authorities in custody.	
Respondent : The State	Through Miss Safa Hisbani, A.P.G. Sindh

Date of hearing and order	06.10.2020
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ORDER

ABDUL MAALIK GADDI, J.- By this common order we intend to decide all three captioned criminal appeals together, as they arise out as a result of one and same incident and mashirnama of arrest and recovery, involving common question of law and facts as well as the impugned judgments passed by the learned trial Court on same date i.e. 06.11.2017.

2. Through aforementioned criminal appeals, appellants Taimoor, Turab Khan and Khurram Shahzad have assailed the legality and propriety of the impugned judgments dated 06.11.2017, passed by learned Judge (N) / Sessions Judge, Jamshoro whereby they have been convicted and sentenced in the following terms:-

1. **Cr. Appeal No.D-126 of 2017.** Appellants Taimoor Badshsh, Turab Khan and Khurram Shahzad have been convicted u/s 9(c) Control of Narcotic Substances Act, 1997 and sentenced to suffer Rigorous Imprisonment for life each and to pay fine of Rs.100,000/- each, in case of default they shall further undergo S.I for 06 months each. However, benefit of section 382-B was extended to them.
2. **Cr. Appeal No.S-290 of 2017.** Appellant Taimoor Badshah has been convicted u/s 23(1)(a) of Sindh Arms Act, 2013 and sentenced to suffer Rigorous Imprisonment for 03 years and to pay fine of Rs.5000/-, in default whereof he shall further undergo S.I for 03 months with benefit of section 382 Cr.P.C.
3. **Cr. Appeal No.S-292 of 2017.** Appellant Khurram Shahzad has been convicted u/s 23(1)(a) of Sindh Arms Act, 2013 and sentenced to suffer Rigorous Imprisonment for 03 years and to pay fine of Rs.5000/-, in default whereof he shall further undergo S.I for 03 months with benefit of section 382 Cr.P.C.

3. As per prosecution case, on 17.06.2016, Complainant / SIP Nusrat Ali Baloch alongwith his subordinate staff was on patrol duty in their jurisdiction and upon receiving direction from Jahangir Jamshoro (High-ups) for checking two suspicious cars coming towards Jamshoro on Super Highway they reached at Bolahri Link Road, near Railway Crossing and saw that two cars were coming from Super Highway side, out of them one was turned down and other one was got stopped. Thereafter, two persons alighted from the car which was got stopped, while making firing from pistols, carrying by them. In retaliation, police party also fired; thereafter, both persons while raising their hands surrendered. Police arrested them alongwith respective pistols. On inquiry, both persons disclosed their names as Taimoor Badshah and Turab Khan. Police also apprehended the third accused who was driving the turned over car and secured one pistol from his possession. On inquiry, he disclosed his name as Khurram Shahzad. Thereafter, police took search of the said cars and secured 80 packets and 64 packets respectively, which on opening were found contained total 180 kilograms of charas. Police also secured cash amount of Rs.3200/- from accused Taimoor Badshah, Rs.7060/- as well as CNIC and driving license from accused Turab Khan and Rs.4600/- from accused Khurram Shahzad; however, all accused have failed to produce licenses of their respective pistols. Thereafter, the accused were arrested and secured properties were sealed separately under one and same mashirnama. Thereafter, arrested accused and properties were brought at Police Station where separate F.I.Rs with regard to recovery of narcotic substances and pistols were registered against them.

4. On conclusion of investigations, challans against the accused were submitted. Thereafter, the trial court framed charge(s) against all accused, to which they pleaded not guilty and claimed to be tried. At trial, in order to prove its case, prosecution examined its witnesses and thereafter closed its side.

5. Thereafter, statements of accused were recorded u/s 342 Cr.P.C. wherein they denied the prosecution allegations and claimed their false implication in the respective case(s).

6. Learned trial Court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellants as stated in introductory para(s). Hence these appeals.

7. During the course of arguments, the learned counsel for the appellants in all captioned appeals as well as learned APG has contended that the charge framed by the trial Court are defective because as per the F.I.R. at the time of incident all accused / appellants were boarded in two separate cars; however, in the charge neither registration numbers nor descriptions of the said cars or details of the pistols recovered from the possessions of appellants were mentioned; so also in the statements of all accused recorded under section 342 Cr.P.C. material questions with regard to said cars as well as pistols were not put to them; that in the said statements question with regard to positive report received from Chemical Analyzer has also not been mentioned. They further submit that while recording the evidence before the trial Court complainant also produced carbon / photostat copy of the mashirnama of arrest and recovery which has also caused defect in the prosecution case. They also submit that when the charge as well as the statements under section 342 Cr.P.C. are apparently defective then the entire process i.e. recording of evidence of prosecution witnesses, statements of accused u/s 342 Cr.P.C as well as delivering judgments by convicting and sentencing the appellants in the terms as mentioned in the said judgments, has become futile. Therefore, under these circumstances, the learned counsel for appellant as well as learned APG jointly prayed that the cases be remanded to the trial Court for *de novo* trial from the stage of framing charge. While making such prayer, both learned counsel have referred the section 232 Cr.P.C, which reads as under:-

“ **232. Effect of material error.** (1) If any Appellate Court or the High Court, or the ¹⁵[Court of Session] in the exercise of its powers of revision or under Chapter XVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge by any error in the charge, it shall direct a new trial to be held upon a charge framed in whatever manner it thinks fit.

(2) If the Court is of opinion that facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.”

8. Learned counsel for appellants also submits that the impugned judgments may be set-aside and the cases be remanded to the trial court for de novo trial from the stage of framing fresh charge considering all the facts involved in the case and thereafter parties may lead evidence in accordance with law.

9. In view of above, by consent of the parties, all captioned criminal appeals are disposed of, the impugned judgments dated 06.11.2017, passed by learned Judge (N) / Sessions Judge, Jamshoro in (1) Special Case No.47/2016 (Crime No.234/2016, P.S Kotri, U/s 9(c) of CNS Act, 1997), (2) Sessions Case No.174/2016 (Crime No.235/2016, P.S Kotri, u/s 23(1)(a) Sindh Arms Act, 2013) and (3) Sessions Case No.176/2016 (Crime No.237/2016, P.S Kotri, u/s 23(1)(a) Sindh Arms Act, 2013) are set-aside and the cases are remanded to the learned trial Court for *de novo trial* from the stage of framing fresh charge considering all the facts involved in the case and then both parties would be at liberty to lead their evidence afresh; thereafter the trial Court shall record the statements of the accused u/s 342 Cr.P.C. by putting all material aspects of the case(s) in order to confront the same by each accused and then decide the case(s) in accordance with law.

10 It is made clear that the crime pertains to year 2016, therefore, the trial Court is directed to conclude the trial of all cases and decide the same in accordance with law including the bail application(s), if moved on behalf of the accused / appellants, within a period of 02 months from the date of receipt of this order and shall ensure that no unnecessary adjournment be granted to either party.

11. All captioned appeals stand disposed of alongwith pending application(s), in above terms.

JUDGE

JUDGE