

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Shamsuddin Abbasi.

Spl. Crl. Anti-Terrorism Appeal No.75 of 2019

Appellants

1. Amanullah son of Phulail;
2. Tariq Mehmood son of Khayal Munawar Khan; and
3. Hanif Khan son of Abdul Mohsin through M/s Muhammad Farooq, Jamshed Iqbal and Iqbal Shah, Advocates.

Respondent

The State
through Mr. Abrar Ali Khichi, DPG.

Spl. Crl. Anti-Terrorism Appeal No.76 of 2019

Appellant

Amanullah son of Phulail
through Mr. Muhammad Farooq,
Advocate.

Respondent

The State
through Mr. Abrar Ali Khichi, DPG.

Spl. Crl. Anti-Terrorism Appeal No.77 of 2019

Appellant

Tariq Mehmood son of Khayal
Munawar Khan through Mr. Iqbal
Shah, Advocate.

Respondent

The State
through Mr. Abrar Ali Khichi, DPG.

Dates of hearing

01.09.2020, 15.09.2020 and
01.10.2020

Date of short order

01.10.2020

Date of detailed reasons

13.10.2020

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JUDGMENT

Shamsuddin Abbasi, J:-

Through captioned appeals, appellants Amanullah son of Phulail Khan, Tariq Mehmood son of Khayal Munawar Khan and Hanif Khan son of Abdul Mohsin have challenged the vires of the judgment dated 28.02.2019, penned down by learned Anti-Terrorism Court No.X, Karachi, in Special Case No.B-666 of 2014 {The State v Amanullah & others}, arising out of FIR No.331 of 2014 for the offences punishable under Sections 302, 324 and 34, PPC read with Section 4/5 of Explosive Substances Act, 1908 read with Section 7 of Anti-Terrorism Act, 1997, Special Case No.B-

667 of 2014 {The State v Tariq Mehmood}, arising out of FIR No.373 of 2014 for the offence punishable under Section 23{1}{A} of Sindh Arms Act, 2013 and Special Case No.B-50 of 2015 {The State v Amanullah}, arising out of FIR No.334 of 2014 for the offence punishable under Section 23{1}{A} of Sindh Arms Act, 2013 registered at P.S. Shahrah-e-Noor Jehan, Karachi, through which they were convicted and sentenced as follows:-

- {01} *“Accused Amanullah S/o Pulail Khan is “Convicted” u/s 7{a} of ATA, 1997 R/w Section 302, PPC and is sentenced to undergo “Life Imprisonment” with fine of Rs.500,000/-. In default in payment of such fine, he shall suffer further R.I. for “01” year more.*
- {02} *I, further “Convict” the accused Amanullah for the offence U/s 23{1} A SAA, 2013 and he is sentenced to undergo R.I for “07” years with fine of Rs.100,000/-. In default of payment of such Fine, he shall suffer further R.I for “06” months more.*
- {03} *Accused Tariq Mehmood S/o Khayal Munawar is “Convicted” u/s 7{a} of ATA, 1997 R/w Section 302 PPC and is sentenced to undergo “Life Imprisonment” with fine of Rs.500,000/-. In default in payment of such fine, he shall suffer further R.I. for “01” year more.*
- {04} *I, further “Convict” the accused Tariq Mehmood for the offence U/s 23{1}A SAA, 2013 and he is sentenced to undergo R.I for “07” years with fine of Rs.100,000/-. In default of payment of such Fine, he shall suffer further R.I for “06” months more.*
- {05} *Accused Hanif Khan S/o Abdul Mohsin is “Convicted” for the offence U/s 7{b} of ATA, 1997 R/w Section 324 PPC and is sentenced to undergo R.I, for “10” years with fine of Rs.200,000/-. In default in payment of such Fine, he shall suffer further R.I. for “01” year more.*
- {06} *I, further “Convict” the accused Hanif Khan for the offence U/s 7{ff} of ATA, 1997 R/w S. 4/5 Explosive Substances Act and he is sentenced to undergo R.I. for “14” years.*

The learned trial Court, while awarding convictions as aforesaid, ordered all sentences to run concurrently and also extended benefit in terms of Section 382-B, Cr.P.C. in favour of the appellants and kept the case against absconding accused namely, Zafar Afridi son of Ghulam Hussain, Life Khan son of Khan Noor, Inayat Khan son of Khan Noor, Sajid son of Ghulam Hassan and Irfanullah Khan son of

Inayat Ali on dormant file till their arrest as well as ordered issuance of perpetual warrants till their arrest.

2. Shortly the facts of the prosecution case are that on 10.10.2014 complainant Muhammad Imran son of Muhammad Anwar made a report that on 09.10.2014 while he was present near his house, his brother Farooq informed him through a call on his cell phone that their brother-in-law SIP Haider Ali Bhatti has been shot dead by some unknown persons whereupon he rushed to Abbasi Shaheed Hospital and saw the dead body of his brother-in-law lying in mortuary on a stretcher. The people present over there informed him that two unknown persons riding on motorcycle have killed SIP Haider Ali Bhatti by firing on him and due to their firing another person namely, Attaullah son of Lal Sher also killed as well as one Irfan son of Inayat sustained fire-arm injuries and while leaving the place they also threw a ball cracker which could not explode.

3. The duty officer SIP Abdul Hameed, on receipt of information went to Abbasi Shaheed Hospital vide entry No.30, where he completed 174, Cr.P.C. proceedings of two dead bodies separately, prepared inquest reports and sealed the parcels for chemical examination. The MLO conducted post-mortems of both bodies and declared cause of death due to fire-arm injuries. Meanwhile, with reference to entry No.30 he received an information that one injured Irfan son of Inayat relating to same incident of firing has been brought at Civil Hospital, Karachi, so he went there and sought permission from MLO to record his statement but he was informed that the injured is in coma as such he returned back to P.S. and brought all facts into the notice of SHO and then proceeded to the house of deceased SIP Haider Ali Bhatti where he recorded 154, Cr.P.C. statement of deceased's brother-in-law Muhammad Imran son of Muhammad Anwar and later on it was incorporated in FIR Book vide FIR No.331 of 2014 under Sections 302, 324 & 34, PPC read with Section 4 of Explosive Substances Act, 1908 and Section 7 of Anti-Terrorism Act, 1997, on behalf of the State.

4. Pursuant to the registration of FIR, the investigation was followed by SIP Mehmood Khan, who conducted site inspection,

secured blood-stained earth and five empties and got the same deposited in the offices of Forensic Division and Chemical Lab as well as sent the ball cracker to the office of CPO. He interrogated accused Amanullah, already in custody of P.S. Shahrah-e-Noor Jehan in Crime No.334 of 2014 under Section 23{1}{A} of Sindh Arms Act, 2013, for recovery of unlicensed 9 MM pistol from his possession. During interrogation he confessed the commission of Crime No.331 of 2014 and disclosed that on 09.10.2014 at the instigation of his uncle Life Khan, he alongwith his accomplices namely, Aslam @ Pakorra, Tariq, Sajid, Zafar Afridi and Inayat made a plan and killed SIP Haider Bhatti and Attaullah as well and inflicted injuries to Irfan by firing from 9MM pistol and also threw a ball cracker. He further disclosed that since SIP Haider Ali Bhatti had arrested his father from Kohat as such he alongwith his accomplices committed his murder. On such disclosure, SIP Mehmood Khan arrested accused Amanullah in the present crime and thereafter the investigation was entrusted to Inspector Muhammad Muqem of P.S. Azizabad and then to Inspector Syed Mohsin Hussain Zaidi. He further interrogated accused Amanullah, who disclosed that injured Irfan was one of their accomplices and came in the range of their firing. He also interrogated injured Irfan, who admitted his involvement in the commission of offence and arrested him in Crime No.331 of 2014 on 20.10.2014. He also interrogated accused Tariq Mehmood son of Khayal Munawar Khan, already in custody of P.S. Manghopir in connection with Crime No.212 of 2012 under Section 302 & 34, PPC, who also confessed the commission of offence and based on his admission arrested him in Crime No.331 of 2014 on 03.11.2014. During interrogation accused Tariq Mehmood further disclosed that 9 MM pistol was given to him by accused Sajid and after using the same in the commission of crime he thrown the same in a tank of an open plot and got it recovered on his pointation. After completing the usual formalities, Inspector Syed Mohsin Hussain Zaidi submitted challan before the Court of competent jurisdiction, whereby the appellants were sent-up to face the trial under the above referred Sections while other co-accused were shown as absconders under Section 512, Cr.P.C. whereas separate challans pertaining to Crimes No.334 and 373 of 2014 for recovery of unlicensed arms were also submitted against appellants Amanullah and Tariq Mehmood.

5. Joint trial was ordered in terms of Section 21-M of Anti-Terrorism Act, 1997.

6. The learned trial Court took Oath as prescribed under Section 16 of Anti-Terrorism Act, 1997.

7. A charge in respect of offences punishable under Sections 302, 324 and 34, PPC read with Section 4/5 Explosive Substances Act, 1908 read with Section 7 of Anti-Terrorism Act, 1997 and Section 23{1}{A} of Sindh Arms Act, 2013, was framed against appellants and co-accused Irfanullah Khan. All of them pleaded not guilty to the charged offence and claimed to be tried.

8. At trial, the prosecution has examined as many as fifteen {15} witnesses namely, complainant Muhammad Imran as PW.1 Ex.6, ASI Nazar Muhammad Khan as PW.2 Ex.7, SIP Mehmood Khan as PW.3 Ex.11, SMLO Dr. Nadeemuddin as PW.4 Ex.12, ASI Muhammad Imran as PW.5 Ex.13, HC Muhammad Asif as PW.6 Ex.16, Mukhtiar Gul as PW.7 Ex.17, PC Zafar Siddiqui as PW.8 Ex.20, SIP Abdul Hameed as PW.9 Ex.21, SIP Muhammad Rafiq as PW.10 Ex.23, SIP Muhammad Ayoub as PW.11 Ex.24, SIP {Retd} Abdul Hameed as PW.12 Ex.26, PC Nadeem Suleman as PW.13 Ex.27, I.O. Inspector {Retd} Syed Mohsin Hussain Zaidi as PW.14 Ex.28 and SIP Abid Farooq as PW.15 Ex.29. All of them have exhibited number of documents in evidence. Vide statement Ex.30 the prosecution closed its side of evidence.

9. During trial co-accused Irfan Khan jumped off bail and absconded away and after completing legal formalities he was declared as proclaimed offender.

10. Appellants Amanullah Khan, Hanif Khan and Tariq Mehmood were examined under Section 342, Cr.P.C. at Exs.31, 32 and 33 respectively. All of them have denied the prosecution case and professed their innocence. Appellant Tariq Mehmood opted not to examine himself on Oath under Section 340{2}, Cr.P.C. and did not adduce any evidence in his defence while appellant Hanif Khan examined DW.1 Amjad Khan and DW.2 Azam Khan at Exs.34 and 35 respectively in his defence and appellant Amanullah Khan produced Muhammad Shakoor {Ex.36} in his defence. Both of them opted not

to examine themselves on Oath under Section 340{2} Cr.P.C. and then closed their side.

11. The learned trial Court, on conclusion of trial and after hearing the learned counsel for the parties as well as assessing evidence on record, convicted the appellants as detailed in para-1 {supra} vide judgment dated 28.02.2019, impugned herein. Feeling aggrieved by the convictions and sentences, referred herein above, the appellants have preferred the captioned appeals.

12. Since the appeals are interconnected and outcome of a common judgment, therefore, we deem it appropriate to decide the same together through a single judgment.

13. It is jointly contended on behalf of the appellants that they are innocent and have been false implicated in this case by the police with malafide intention and ulterior motives. It is next submitted that the prosecution has failed to prove its case against the appellants beyond any shadow of doubt. The incident is unseen and the prosecution has failed to produce any direct evidence against the appellants to establish their guilt. Nothing incriminating has been recovered from the possession of appellants and the alleged recoveries are foisted upon them. The prosecution has failed to produce any evidence either trustworthy or confidence inspiring against the appellants and in absence thereof the reports of FSL are unsafe to rely upon. There is inordinate delay in lodging of FIR without furnishing any explanation as such the possibility of consultations and due deliberations cannot be ruled out. It is also submitted that witnesses have contradicted each other and made dishonest improvements in order to bring the case in line with medical evidence. The prosecution has not been able to produce any iota of evidence in support of its case as such the convictions and sentences are not sustainable in the eyes of law. The prosecution has based its case on the extra judicial confessions of appellants before police which is inadmissible piece of evidence and unsafe to rely upon. The convictions and sentences recorded by the learned trial Court are bad in law and facts and without application of a judicial mind to the facts and surrounding circumstances of the case. The matter needs sympathetic

consideration with regard to innocence of appellants more particularly when they are facing the charges of capital punishment. The learned trial Court has not properly evaluated the evidence brought on record as well the contradictions and discrepancies on material aspects of the matter which has demolished the whole case of the prosecution. The learned counsel while summing up their submissions have prayed that the prosecution has miserably failed to prove the guilt of the appellants and, thus, according to them, under the abovementioned facts and circumstances of the case the impugned judgment may be set-aside and the appellants may be acquitted of the charge by extending them the benefit of doubt.

14. In contra, the learned DPG has argued that the prosecution has successfully proved its case against the appellants beyond shadow of reasonable doubt. The story set-forth in the FIR is natural and believable. The ocular account furnished by the prosecution has been corroborated by medical evidence. There is positive report of Forensic Division showing that the empties secured from the place of incident were matched and fired from the same weapons recovered from the possession of appellants Amanullah and Tariq Mehmood. The witnesses in their respective statements have supported the case of the prosecution and implicated the appellants with the commission of offence and the minor discrepancies and contradictions are of no significance. The medical evidence is in line with the ocular account furnished by the prosecution coupled with the circumstantial evidence, which successfully proved the case of the prosecution. Lastly submitted that the impugned judgment is based on fair evaluation of evidence and no interference is called-for. He, therefore, prayed for dismissal of appeals.

15. We have given anxious consideration to the submissions of learned counsel for the appellants and the learned DPG for the State and scanned the entire material available before us with their able assistance.

16. As regard unnatural death of deceased SIP Haider Bhatti and Attaullah is concerned, PW Dr. Nadeem-u-ddin {Ex.12} has deposed that on 09.10.2014 he was Medical Legal Officer at Abbasi

Shaheed Hospital, Karachi. It was about 7:20 pm a dead body of Haider Bhatti was brought at hospital by Imran son of Muhammad Anwar and Muhammad Ashraf son of Muhammad Anwar from the jurisdiction of P.S. Shahrah-e-Noor Jehan, Karachi. He conducted post mortem and noted four injuries and issued a post mortem report and death certificate {Ex.12/A and Ex.12/B} as well as declared cause of death due to irreversible shock leading to cardio respiratory failure as a result of fire-arm injuries on head, neck and chest and deposed that injuries No.1 and 2 were sufficient to cause death in normal course of nature. He further deposed that on the same day at about 6:30 pm a dead body of Attaullah son of Lal Sher, aged about 50 years, was brought at Abbasi Shaheed Hospital, Karachi, from the jurisdiction of P.S. Shahrah-e-Noor Jehan, Karachi. He conducted post-mortem and noted two injuries and issued a Certificate and a post-mortem report {Ex.12/C and Ex.12/D} and declared cause of death due to shock leading to cardio respiratory failure as a result of chest injuries and deposed that injury No.1 was sufficient to cause death in normal course of nature. He was subjected to cross-examination by defence, but nothing adverse to the prosecution story has been extracted that death of both deceased occurred from any other cause other than fire-arm injuries. Thus, the factum of death of deceased Haider Bhatti and Attaullah has been independently established through strong and convincing evidence adduced by the Medical Officers as a result of shock leading to cardio respiratory failure due to fire-arm injuries.

17. It is an undisputed fact that the appellants are not named in the FIR, which has been lodged against unknown persons claiming therein that two unknown persons, who were on motorcycle, committed murder of complainant's brother-in-law SIP Haider Ali Bhatti and Attaullah and inflicted injuries to one Irfan by firing upon them with fire-arms. Occurrence alleged to have taken place on 09.10.2014 at 6:00 pm and the FIR has been lodged on 10.10.2014 at 11:30 pm i.e. after about twenty nine and half hours of the incident. According to PW SIP Abdul Hameed while he was duty officer at P.S. Shahrah-e-Noor Jehan, the MLO of Abbasi Shaheed Hospital informed him about arrival of a dead body of one

Atta, brought by one Mukhtiar, at 6:40 pm so he rushed there and after obtaining permission from MLO completed 174, Cr.P.C. proceedings and then went to mortuary where another dead body of SIP Haider Bhatti was also brought from the jurisdiction of P.S. Shahrah-e-Noor Jehan in his presence and after obtaining permission from MLO he conducted 174, Cr.P.C. proceedings and then inspected the dead bodies and prepared inquest reports in presence of Mukhtiar Gul and Gul Rehmat and meanwhile through entry No.32 from P.S. Shahrah-e-Noor Jehan, he was informed about arrival of an injured Irfan at Civil Hospital, Karachi, relating to same incident as such he went there but before his reaching at hospital the injured person fled away from hospital as informed to him by the Doctor. According to this witness, he asked the relatives of both deceased to come forward and record 154, Cr.P.C. statement in respect of crime offence but they declined to record such statement and stated that they would come to P.S. later. He then returned back to P.S. and on 10.10.2014 at about 6:00 to 6:30 pm went to Korangi Industrial Area and recorded 154, Cr.P.C. statement of Imran, brother-in-law of deceased SIP Haider Bhatti and incorporated the same in FIR Book. Surprising to note that neither any entry has been produced by PW SIP Abdul Hameed with regard to his arrival at P.S. from hospital nor he has disclosed the time of his arrival at P.S. in his deposition. He has also not produced entries either of his departure from P.S. to Korangi Industrial Area for recording 154, Cr.P.C. statement of complainant on 10.10.2014 or his arrival at P.S. after recording such statement as well as does not disclose the time of his arrival at P.S. in his deposition. Admittedly, the FIR has been lodged after twenty nine and half hours of the incident without furnishing any plausible explanation. Hence, presumption would be drawn that FIR has been lodged after due deliberations and consultations. Furthermore, it is a well settled principle of law that FIR is always treated as a cornerstone of the prosecution case to establish guilt against those involved in a crime, thus it has a significant role to play, hence if there is any delay in lodging of FIR and commencement of investigation, it gives rise to a doubt and benefit thereof is to be extended to the accused. Reliance may well be made to the case of *Zeeshan @ Shani v/s The State* {2012 SCMR 428}, wherein it has been

held by Hon'ble apex Court that delay of more than an hour in lodging of FIR give rise to an inference that occurrence did not take place in the manner projected by the prosecution and time was considered in making efforts to give a coherent attire to prosecution case, which hardly proved successful.

18. The incident is unseen and the prosecution has not been able to produce a witness within whose sight the incident occurred. Admittedly, the testimony of complainant Muhammad Imran is hearsay in nature. Firstly, we would like to refer the statement of complainant for the reason that his testimony touches the very roots of the case. Complainant, while appearing as PW.1 {Ex.6} has stated that on the day of occurrence he received a phone call from his brother Farooq, who informed him that Haider Bhatti has sustained fire-arm injuries due to firing of unknown persons and on receipt of such information he went to his house where his family members were crying that Haider Bhatti has become injured. He then went to Abbasi Shaheed Hospital and saw dead bodies of his brother-in-law and one Attaullah and heard through some sources that his brother-in-law has been killed by two Taliban. Complainant has further deposed that his brother-in-law in his lifetime had been receiving serious threats of which he informed his high-ups but he was not provided any security. Surprising to note that complainant has not disclosed these facts while recording his 154, Cr.P.C. statement. In his 154, Cr.P.C. statement, the complainant has stated that while he was present near his house, his brother Farooq informed him on phone that some unknown persons have fired on their brother-in-law SIP Haider Ali Bhatti so he went to Abbasi Shaheed Hospital and saw the dead bodies of his brother-in-law and one Attaullah lying supine in the pool of blood and the people present over there informed him two unknown persons, who were on motorcycle, committed their murder by firing on them and also caused injuries to one Irfan. The complainant has resiled from his earlier statement as recorded in 154, Cr.P.C. statement and made improvement while recording his evidence at trial as PW.4 Ex.6. This improvement, in our considered view, creates serious doubt with regard to veracity of his evidence that why he did not mention the above facts while recording his

154, Cr.P.C. statement. In his 154, Cr.P.C. statement, the complainant has stated that when he reached at Abbasi Shaheed Hospital, the people present over there informed him about two unknown persons allegedly involved in the commission of crime whereas in his deposition he stated that it came to his knowledge through some sources that two Taliban are involved in the commission of offence. Needless to say that complainant did not disclose the name of any person, who allegedly informed him about involvement of culprits in the commission of crime, rather he subsequently changed his version, which seems to be an embroidery work of the complainant just to cover an unseen occurrence. Similarly, during cross-examination, complainant has admitted that he has mentioned in his 161, Cr.P.C. statement that police has informed him about the arrest of accused persons involved in the commission of crime. The Hon'ble Supreme Court in *Akhtar Ali's* case {2008 SCMR 6} held that when a witness improves his version to strengthen the prosecution case, his improved statement subsequently made cannot be relied upon as the witness has improved his statement dishonestly, therefore, his credibility becomes doubtful on the well-known principle of criminal jurisprudence that improvements once found deliberate and dishonest cast serious doubt on the veracity of such witness. Likewise, in the case of *Farman Ahmad v Muhammad Inayat and others* {2007 SCMR 1825}, the Hon'ble Supreme Court has laid down the dictum about validity of statement of a witness improving his version subsequently to strengthen the prosecution case.

19. Appellant Amanullah has been shown arrested in this case on 13.10.2014 after four days of the incident by SIP Mehmood Khan on his admission for involvement in the commission of Crime No.331 of 2014 while he was already under arrest of same P.S. in other case whereas appellant Tariq Mehmood is said to be arrested on 03.11.2014 by Inspector Syed Mohsin Hassan Zaidi after he confessed his involvement in Crime No.331 of 2014 while in custody of P.S. Manghopir in other case, which means that he has been arrested after twenty five days of the incident. It is also the case of the prosecution that appellant Tariq Mehmood while in police custody voluntarily led the police party, headed by Inspector Syed

Mohsin Hussain Zaidi, and got recovered a pistol stained with mud, which was used by him in the commission of crime, from a tank of a vacant plot, near Madina Masjid after 11 days of his arrest. There is no direct evidence against the appellants and the main evidence which has been relied upon by the learned trial Court is confessions of appellants before police, which is absolutely inadmissible and hit by Article 39 of the Qanun-e-Shahadat Order, 1984. A confession before police is inadmissible in evidence in normal cases, but in cases where the accused is facing the charges of terrorism Section 21-H of the Anti-Terrorism Act, 1997, has made such a confession before police conditionally admissible with a condition that there should be some other evidence including circumstantial evidence, which must reasonably connect the accused with the alleged offence before a confession made by the accused before the police is accepted by a Court worthy of any consideration. Such conditional admissibility of a confession before police is contingent upon availability of some other evidence connecting the accused with the offence charged with, but in the present case, as discussed herein above, all the other pieces of evidence relied upon by the prosecution against the appellants have utterly failed to connect them with the alleged offence. In this view of the matter the case in hand is not a fit case wherein the Court could even consider the confessions before police attributed to the appellants. In order to give a cover to Article 40 of Qanun-e-Shahadat Order, 1984, the investigating officer got recovered a pistol alleged to be used in the commission of crime on the pointation of appellant Tariq Mehmood. We are conscious of the fact that after making such disclosure before the police no new fact has been discovered because it was already in the knowledge of police that on 10.10.2014 five empties of 9 MM bore were recovered while conducting site inspection. So the recovery of pistol on his pointation after the said disclosure is not a new fact which was not in the knowledge of police. Likewise, the memo of pointing out of the place from where the pistol alleged to be recovered is also irrelevant for positive report of FSL as the empties were recovered much prior to the disclosure and pointing out of the said place. It has been observed that the empties alleged to be secured on 10.10.2014 and pistols have been shown recovered on 13.10.2014 and 14.11.2014 and till recovery of the pistols the

empties were not sent to the ballistic expert. It is noteworthy that the weapon allegedly recovered from the possession of appellant Amanullah has been sent to ballistic expert for its matching with the crime empties and the same has been received in the office of Forensic Division on 16.10.2014 i.e. after three days of its recovery while the weapon allegedly recovered from the possession of appellant Tariq Mehmood has been sent to ballistic expert for its matching with the crime empties and the same has been received in the office of Forensic Division on 18.11.2014 i.e. after four days of its recovery. Delay in dispatch of the case property to the office of Forensic Division has not been explained. Neither the names of police officials, who had taken the case property to the office of Forensic Division, have been mentioned nor examined by the prosecution at trial in order to prove safe transit of the case property to the expert. In view of this background of the matter, two interpretations are possible, one that the alleged empties and pistol have not been tampered and the other that these were not in safe hand and have been tampered. It is settled law that when two interpretations of evidence are possible, the one favouring the accused shall be taken into consideration. Thus, the positive FSL report qua the crime empties and weapons being delayed without furnishing any plausible explanation, would not advance the prosecution case, therefore, has wrongly been relied upon by the learned trial Court. Even otherwise the prosecution has failed to substantiate the point of safe custody of case property and its safe transit to the expert through cogent and reliable evidence and the alleged recovery of crime weapons, on the face of it, seems to be doubtful. Reliance may well be made to the case of *Ikramullah & others v The State* {2015 SCMR 1002}, wherein Hon'ble apex Court has settled principle for keeping recovered narcotic substance in safe custody and proving its safe transit to the chemical examiner was emphasized in the following terms:-

“In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of the police official who had taken the samples to the office of the Chemical Examiner and

admitted no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substances had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit”.

Even otherwise recoveries of fire-arms and empties are always considered to be corroborative piece of evidence and such kind of evidence by itself is not sufficient to bring home the charges against the accused more particularly when the other material put-forward by the prosecution in respect of guilt of the appellants has been disbelieved. It has been affirmed by the Hon'ble Supreme Court in case cited as 2001 SCMR 424 {*Imran Ashraf and 7 others v The State*} in the following manner:-

"Recovery of incriminating articles is used for the purpose of providing corroboration to the ocular testimony. Ocular evidence and recoveries, therefore, are to be considered simultaneously in order to reach for a just conclusion."

20. We, while sitting in appeal, are under heavy obligation to assess by thinking and rethinking, lest an innocent person falls a prey to our ignorance of facts and ignorance of law. The Court must not close its eyes to human conducts and behaviours while deciding criminal cases, failing which the results will be drastic and impacts will be far from repair. The cardinal principle of justice always laid emphasis on the quality of evidence which must be of first degree and sufficient enough to dispel the apprehension of the Court with regard to the implication of innocent persons along with guilty one by the prosecution, otherwise, the golden principle of justice would come into play that even a single doubt if found reasonable would be sufficient to acquit the accused, giving him/them benefit of doubt because bundle of doubts are not required to extend the legal benefit to the accused. In this regard, reliance is placed on a view held by the Hon'ble Supreme Court in the case of *Riaz Masih alias Mithoo v The State* {1995 SCMR 1730}

and *Sardar Ali v Hameedullah and others* {2019 P.Cr.LJ 186}. Likewise, it is a well settled principle of law that involvement of an accused in heinous nature of offence is not sufficient to convict him as the accused continues with presumption of innocence until found guilty at the end of the trial, for which the prosecution is bound to establish the case against the accused beyond any shadow of reasonable doubt by producing confidence inspiring and trustworthy evidence. The prosecution has not been able to bring on record any direct evidence against appellants to establish their involvement in the commission of murders of SIP Haider Ali Bhatti and Attaullah beyond shadow of reasonable doubt. Rather, there are so many circumstances, discussed above creating doubts in the prosecution case and according to golden principle of benefit of doubt one substantial doubt would be enough for acquittal of the accused. The rule of benefit of doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. Conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case, must be resolved in favour of the accused. The said rule is based on the maxim "it is better that ten guilty persons be acquitted rather than one innocent person be convicted" which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (PBUH) that the "mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent". Accordingly, we are of the humble view that the prosecution has not been able to prove the charges of murder and attempt to murder against appellants and the convictions and sentences awarded to them for offences under Sections 7{a}{b} of Anti-Terrorism Act, 1997 read with Sections 302 and 324, PPC are without appreciating the evidence in its true perspective, rather the same is packed with various discrepancies and irregularities, which resulted into a benefit of doubt to be extended in favour of the appellants, therefore, Special Criminal Anti-Terrorism Appeal No.75 of 2019 is liable to be allowed in terms of their acquittal on the principle of benefit of doubt.

21. Insofar as the cases against recovery of unlicensed arms from the possession of appellants Amanullah and Tariq Mehmood are

concerned, the prosecution has successfully proved its cases against them by producing PWs Zafar Siddique, ASI Muhammad Rafiq, PC Nadeem Suleman and Inspector Syed Mohsin Hussain Zaidi. PW.8 Zafar Siddique {Ex.20}, who is mashir of arrest of appellant Amanullah and recovery of pistol from his possession has deposed that on the day of incident he alongwith police party, headed by ASI Muhammad Rafiq, was on patrolling duty in the official mobile. It was about 2200 hours when they reached at Ship Owner Chowrangi, Block-R, North Nazimabad, Karachi, they saw a person in suspicious condition, who on seeing the police tried to run away, but they got him apprehended at spot, who disclosed his name as Amanullah and during his search one 9 MM pistol loaded with four live rounds in the magazine was recovered to which the accused failed to produce a license as such ASI Muhammad Rafiq arrested him and sealed the recovered pistol under a mashirnama {Ex.20/A} prepared at spot in his presence. He has been supported by PW.10 ASI Muhammad Rafiq {Ex.23}, who has recorded the same evidence as deposed by him. PW ASI Muhammad Rafiq has further deposed that after completing the legal formalities at spot, he brought accused and recovered property at P.S. where a case vide FIR No.334 of 2014 under Section 23{1}{A} of Sindh Arms Act, 2013 was registered against appellant Amanullah on behalf of the State. This witness has also deposed that on the same day at about 11:00 am he pointed out the place of incident to SIP Muhammad Ayub, who prepared memo of site inspection in his presence and in presence of HC Abid Ali. PW.13 PC Nadeem Suleman is the mashir of arrest of appellant Tariq Mehmood and recovery of pistol on his pointation. He deposed that on 14.11.2014 Inspector Syed Mohsin Hussain Zaidi interrogated accused Tariq Mehmood, already arrested in Crime No.331 of 2014, in his presence, who confessed his guilt and disclosed that he alongwith his companion Sajid committed murder of SIP Haider Bhatti by firing on him and due to their firing one of their accomplices namely, Irfan also become injured and after commission of offence he dumped his pistol in an open plot towards hill area and voluntarily led the police party to the pointed place and got recovered a pistol from gutter of the said plot on his pointation. He further deposed that Inspector Syed Mohsin Hussain Zaidi arrested the accused and sealed the

recovered pistol under a mashirnama {Ex.27/A} prepared at spot in his presence. He has been corroborated by PW.14 Inspector Syed Mohsin Hussain Zaidi {Ex.28}, who has recorded the same evidence as deposed by him. He prepared his 154, Cr.P.C. statement and sent it to P.S. Shahrah-e-Noor Jahan, Karachi, through ASI Sohail, which was incorporated in FIR Book and a case vide FIR No.373 of 2014 was registered against appellant Tariq Mehmood on behalf of the State. We are conscious of the fact that the witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the recoveries in clear cut manners. They were subjected to lengthy cross-examination by the defence where multiple questions were asked by the learned defence counsel, but could not extract anything from them, as they remained consistent on all material points whereas the appellants have failed to bring on record any material to show any animosity or ill-will with them, thus in absence thereof, the competence of these witnesses was rightly believed by the learned trial Court while recording sentences in the cases of recovery of unlicensed arms. Insofar as the contention of learned defence counsel that there are so many defects in the investigation benefit of which ought to have been given to the appellants, suffice it to say that a procedural formality cannot be insisted at the cost of completion of an offence and if an accused is otherwise found connected then mere procedural omission and even allegation of improper conduct of investigation would not help the accused. The prosecution, in our considered opinion, has led sufficient evidence to prove the recovery of unlicensed arms from the possession of appellants Amanullah and Tariq Mehmood beyond shadow of reasonable doubt and when once the burden of proof is discharged by the prosecution with cogent evidence then the appellants become heavily burdened to prove their innocence through reliable evidence. The appellants Amanullah and Tariq Mehmood did not opt to appear as their own witnesses under Section 340{2}, Cr.P.C. nor examine any witness to prove their innocence. There is no evidence on the record on behalf of the appellants that the prosecution witnesses have some grudge against them to falsely implicate them in the cases of recovery of unlicensed arms. We have noticed that in rebuttal to overwhelming prosecution evidence, the appellants have failed to produce any

tangible material to rebut the trustworthy and confidence inspiring evidence of the prosecution witnesses. Thus, the Special Criminal Anti-Terrorism Appeals No.76 and 77 of 2014, filed by appellants Amanullah and Tariq Mehmood, warrant dismissal on merits. However, keeping in view the mitigating circumstances and the undisputed fact that the appellants Amanullah and Tariq Mehmood are first offenders and not previously convicted having no criminal history as well as sole bread-earners of their families and served sentences of 03 years 11 months and 11 days and 05 years 03 months and 28 days respectively including remissions, therefore, the convictions and sentences awarded to them are deserved to be determined with leniency and reduced to one as already undergone.

22. Foregoing are the reasons for our short order dated 01.10.2020, whereby the captioned appeals were disposed of in the following terms:-

“For the reasons to follow, the appellants Amanullah, Tariq Mehmood and Hanif Khan are acquitted of the charge in Crime No.331/2014 u/s 302, 324 and 34 PPC, 4/5 Explosive Substances Act r/w section 7 ATA, 1997 registered at P.S. Shahra-e-Noor Jahan. However, conviction of appellants Amanullah and Tariq Mehmood in Crime No.334/2014 and 373/2014 u/s 23-1} Sindh Arms Act, 2013 registered at P.S. Shahra-e-Noor Jahan is maintained but their sentence is reduced to the period already undergone by them. The fine amount against them is also reduced to Rs.10,000/- each in default thereof, they shall suffer S.I for 10 days more. They shall be released forthwith if not required in any custody case on payment of fine amount or suffering imprisonment in lieu of that.

Office to place a copy of this order in connected matters”.

JUDGE

JUDGE

NAK/PA