

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Cr. Appeal No.S-87 of 2016
Cr. Appeal No.S-93 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

16.11.2020.

Mr. Sachal R. Awan, Advocate for the appellant in Criminal Appeal No.S-87 of 2016.

Mr. Mazhar Ali Laghari, advocate for appellants No.1 & 3 in Criminal Appeal No.S-93 of 2016.

Mr. Ghulam Shabbir Mari, files Vakalatnama for the appellant No.2 in Criminal Appeal No.S-93 of 2016.

Mr. Shahzado Saleem Nahiyoon, Deputy Prosecutor General Sindh.

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Irshad Ali Shah J:- The appellants by way of preferring separate appeals have impugned judgment dated 18.05.2016 passed by learned IInd Additional Sessions Judge, Sanghar, whereby they have been convicted and sentenced as under;

“Hence, I convict all the accused persons U/s: 324 and awarded sentence for three years R.I. and to pay fine of Rs.10,000/-each and in case of default in payment of fine they shall suffer S.I for 15 days more and also awarded sentence for 1 year R.I. U/s: 324 PPC.”

2. The benefit of section 382-B Cr.P.C is extended to the appellants. However, it is not disclosed in the impugned judgment by learned trial Judge as to whether the conviction and sentence awarded to the appellants would run concurrently or consecutively, which appears to be surprising.

3. It is the case of prosecution that the appellants with the rest of the culprits after having formed an unlawful assembly and in prosecution for their common object deterred complainant SIP Ghazi Khan Rajar and his witnesses from discharging their lawful duty as a public servant by making fires at them with intention to commit their murder, thereby they committed mischief by causing damage to police mobile for that they were booked and reported upon.

4. At trial the appellants did not plead guilty to the charge and prosecution to prove it examined the complainant and his witnesses and then closed the side.

5. The appellants during course of their examination under Section 342 Cr.P.C denied the prosecution allegation by pleading innocence; however, they did not examine themselves on oath or anyone in their defence to disprove the prosecution allegation against them.

6. On evaluation of the evidence so produced by the prosecution, learned trial Court convicted and sentenced the appellants as is detailed above by way of impugned judgment.

7. At the very outset, it is stated by learned counsel for the appellants that on preferring separate appeal No.S-111 of 2016 appellant Muhammad Ali has already been acquitted by this Court in very case vide Judgment dated 23.10.2020. By stating so, they do not press the instant appeal in his respect. Order accordingly. So far the rest of the appellants are concerned, it is contended by them that their case is quite identical to co-accused

Samano and Dilbar Ali and Muhammad Ali as well. By contending so, they sought for their acquittal on point of consistency.

8. Learned D.P.G for the State was fair enough to say that co-accused Dilbar Ali and Samano have already been acquitted by this Court.

9. I have considered the above arguments and perused the record.

10. There is no independent witness to the incident. Neither complainant nor any of his witness had sustained fire shot injury during course of alleged encounter. Police mobile which is said to have sustained damage on account of hit of fire shot has never been produced at trial. As per report of Forensic Expert the crime weapons allegedly secured from the appellants were found *dissimilar* with the empties secured from the place of incident. Co-accused Dilbar Ali and Samano and even Muhammad Ali have already been acquitted by this Court. In these circumstances, the involvement of the appellants in this case is appearing to be doubtful and to such benefit they are entitled.

11. In case of *Tariq Pervaizvs the State (1995 SCMR 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.”

12. In view of the facts the and reasons discussed above, the conviction and sentence recorded against the appellants are set-aside, they are

acquitted of the offence for which they were charged, tried and convicted by learned trial Court, they have been released on bail, their bail bonds are cancelled and sureties are discharged.

13. The instant appeals are disposed of accordingly.

Judge

Muhammad Danish Steno*