

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No.81 of 2020

Present: Mr. Justice Nazar Akbar
Mr. Justice Zulfiqar Ahmad Khan

Appellant : Muhammad Javed son of Muhammad Esa alias Essal Khan through Mr. Fawad Ali Khichi, Advocate
Respondent : The State through Ms. Rubina Qadir, Deputy Prosecutor General Sindh
Date of hearing : 04.12.2020

J U D G M E N T

NAZAR AKBAR, J.--- Appellant Muhammad Javed was tried by learned Judge, Anti-Terrorism Court-XVI, Karachi in Special Cases Nos.353/2019 and 353-A/2019, arising out of FIRs **Nos.299/2019**, under sections 353, 324, 34, PPC and **300/2019**, under section 23(1)(a) of the Sindh Arms Act, 2013, registered at P.S. Surjani Town, Karachi. After conclusion of trial, vide judgment dated **30.01.2020**, the appellant was found guilty of the charge and convicted and sentenced as under:

- (i) The accused Muhammad Javed S/o Muhammad Esa alias Essal Khan is hereby convicted for the offence u/s 324 PPC and is sentenced to the simple imprisonment for 07 years with fine of Rs.50,000/- and in case of failure to pay the fine, he shall serve SI for six months more.
- (ii) The accused is hereby also convicted for the offence u/s 353 PPC and is sentenced to simple imprisonment for 02 years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall serve SI for three months more.
- (iii) The accused is hereby also convicted for the offence u/s 23(1)(a) of the Sindh Arms Act, 2013, and is sentenced to simple imprisonment for seven years with fine of Rs.50,000/ and in case of failure to pay the fine, he shall suffer SI for three (03) months more.

All the sentences were ordered to run concurrently. Benefit of Section 382-B, Cr.PC was extended to the accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 06.05.2019 ASI Imran Rasheed while on patrolling along with his subordinate staff received information from public at 2130 hours about robbery by four persons on two motorcycles at Kaneez Fatima Society, Sector 4/D near Raheem Goth, Karachi. In half an hour at 2155 as they reached at the pointed place, the accused persons started firing upon the police, the police also fired in retaliation, resultantly two persons received firearm injuries and died on the spot. Police arrested accused Javed and the fourth accused Younus made his escape good. The police recovered from accused Muhammad Javed one TT pistol black colour, loaded with three rounds in magazine and three snatched mobile one Rivo touch mobile, one simple Q Mobile and one simple Nokia, one purse containing CNIC in the name of Muhammad Afzal, cards and cash Rs.1500/- whereas from dead accused Khan, the police recovered one TT pistol silver colour without number loaded with two rounds in magazine and on further body search the police also recovered one ladies purse containing CNIC of Shah Jahan Begum, cash Rs.450/- one simple grey colour Rivo and one white ITEL simple mobile. On the pointation of accused the police also recovered from bushes one ladies purse containing one small ladies purse, red colour containing cash Rs.360/-, one CNIC of Syed Yasir Hussain Rizvi, one touch mobile and other cards etc. Accordingly, ASI Imran Rasheed on behalf of State registered four FIRs against the accused persons one bearing FIR No.299 of 2019 under Section 353/324/34 PPC r/w 7-A.T.A, 1997 and three FIRs bearing 300, 301 & 302 of 2019 for an offence under Section 23(1)(A) of the Sindh Arms Act, 2013. Out of three FIRs for offences u/s. 23(1)(A) of Sindh Arms Act, 2013, one was against the appellant and two others were

registered against the dead persons who have died even before their personal search by ASI Imran Rashid.

3. The prosecution after usual investigation on **01.06.2019** submitted challan against accused persons showing one accused Murtaza alias Yousuf son of Din Muhammad absconder and to our utter surprise two dead persons accused Ghulam Rasool alias Khan and Ghulam Shabeer alias Ali were also been mentioned in column No.2 as if the I.O had been trying to arrest them and they managed to escape, therefore, he would obtain warrant of arrest of these accused from the Court. The present appellant Muhammad Javed was named in column No.3 of challan as accused in custody. Trial Court amalgamated both the offences in crime No.299 and 300 of 2019 under Section 21-M of the Anti-Terrorism Act, 1997 at Ex.4 and framed charge against the appellant on **23.07.2019** at Ex.5. The accused pleaded not guilty and claimed to be tried.

4. Prosecution examined in all 7 witnesses, in which 03 witnesses are private persons, namely, PW:01 Mohammad Afzal, a rickshaw diver; PW:03 Mohammad Nadeem; PW:04 Yasir Hussain; and four officials, namely, PW:02 complainant P.C Imran Rasheed; PW:05 P.C Mohammad Arif; PW-6 Dr. Shahid Nizam, Additional Police Surgeon and PW-07 Inspector Mohammad Sadiq. Thereafter, on **17.12.2019** prosecution side for evidence was closed at Ex.13.

5. Statements of accused/appellant was recorded under Section 342 Cr.PC at Ex.14. Accused denied all the incriminating pieces of prosecution evidence brought against him. Accused did not examine himself on oath nor did he lead any evidence in his defence.

6. Trial Court after hearing the learned counsel for the parties, assessment of evidence and perusal of record, by judgment dated **30.01.2020**, convicted and sentenced the appellant as stated above. The appellant, therefore, has filed the instant appeal from Jail through Superintendent, Central Prison, Karachi. Since he was unable to engage a counsel, we by order dated **30.11.2020** appointed Mr. Fawad Ali Khichi, Advocate to assist the Court on behalf of the appellant.

7. Mr. Fawad Ali Khichi, learned counsel for the appellant has mainly contended that there was an allegation against the accused with regard to committing robbery and upon receipt of such information police party headed towards that location which was at a distance of 03 kilometers. There is a complete blackout that how such information was received or any private person has complained he was robbed. PW-02 P.C Imran Rasheed in examination-in-chief has stated that such information was received at 2130 hours and police party reached at the place of incident at 2155 hours and in his cross he stated that it was dark, the distance between the place of information and place of incident was 03 KMs. The encounter took place for hardly 2/3 minutes and public had gathered at the spot but admittedly no one from the public was made mashir of encounter, recovery and arrest. Learned counsel further contended that no policemen sustained any injury in the encounter nor even from the public which gathered there was hit. He further contended that despite the fact that the incident took place in darkness, no identification parade of accused was held before the Judicial Magistrate concerned; there are major contradictions with regard to arrest of the accused between private witnesses PW-3 and PW-4 during the evidence at trial; there is unexplained delay of three days in sending the recovered weapon to the FSL, safe custody of the same during the said period is thus

questionable; as per recovery memo the recovered pistol from the appellant was without number whereas as per FSL report it turned out to be the one with a rubbed number. Lastly, it was asserted that in a fake encounter, police officials committed murder of two innocent persons and additionally implicated the present appellant in the instant false case. In support of his contentions learned counsel for appellant placed reliance upon the following cases:

- (1) 2002 SCMR 857 (*Muhammad Imran vs. The State*)
- (2) 2019 YLR 613 (*Abid and another vs. The State*)
- (3) 2017 YLR 1097 (*Muhammad Umair vs. The State*)
- (4) 2019 PCr.LJN 108 (*Syed Maroof Shah vs. The State*)
- (5) 2018 MLD 1897 (*Muhammad Shahid vs. The State*)
- (6) 2019 YLR 1117 (*Anwar Hussain versus The State*)
- (7) 2019 PCr.LJN 64 (*Zulqarnain alias Suleman vs. The State*)
- (8) 2019 PCr.LJN 160 (*Tasaddaq Hussain alias Idnan vs. The State*)
- (9) 2019 YLR N 94 (*Haji Noor Muhammad vs. The State*)
- (10) 2019 YLR N 31 (*2019 YLR Mulauddin and another vs. The State*)

8. Ms. Rubina Qadir, learned Deputy Prosecutor General Sindh, argued that accused was arrested at the spot during police encounter in which two accused persons were shot dead; crime weapon was recovered from the possession of the accused and report of ballistic expert was positive. She has further argued that evidence of police officials was trustworthy and confidence inspiring; they had no enmity to falsely implicate the accused, all the prosecution witnesses have fully implicated the accused in the instant case. Learned D.P.G. fully supported the impugned judgment and prayed for the dismissal of the appeal.

9. We have heard the learned counsel for the parties and carefully perused the evidence. To appreciate the truthfulness in the story of encounter by police we first discuss the evidence from the scene of the encounter and evidence.

10. Admittedly in the encounter, only two shots were fired by four accused persons moving on motorcycles bearing registration Nos.KID-2062 and KJJ-0390. In retaliation, police also fired three shots from their official weapons. Two shots hit one each in the head of two accused and both were succumbed to the injuries on the spot within 5 minutes. However, the appellant was not even injured when he was arrested by the police. And fourth accused managed to escape.

11. The ocular evidence of private witnesses has totally negated the possibility of encounter. PW-03 Muhammad Nadeem and PW-04 Yasir Hussain both have stated that *"I did not see the accused firing at the police"*. Therefore, both are not witnesses of any encounter. Another setup witness, PW-01, a rickshaw driver, namely, Muhammad Afzal also has not seen the encounter. In his examination-in-chief he stated that *"we were standing helpless at the point of robbery while we heard some fires. While we were standing helpless at the point of robbery one passerby was crossing whom I asked about the firing, he replied that the police encounter has taken place in which two dacoits have been killed, so I thought to see the place of encounter. When I reached I found two dacoits dead which were same including the dacoit who had kept gun on my head whereas one dacoit was caught by public and police."*

12. The evidence of the private witnesses discussed above confirms that they have not seen the encounter. The question is how and when such a serious threat was felt by the police to kill two persons in retaliation of their firing on the police. The brutality of police in firing on the fleeing accused party can be appreciated from the evidence of doctor, who examined the dead bodies. PW-6 Dr. Shahid Nizam, Additional Police Surgeon, Abbasi Shaheed Hospital, reported that he found dead bodies were fresh, general

features identifiable and there was no sign of petrification and decomposition. In both postmortem reports, the findings of MLO on duration of injuries to death and death to postmortem were same and internal examination of head and opinion was also identical. It is reproduced below:-

Surface wound and injuries:

Lacerated penetrating wound 0.6 cm x 0.5 cm in diameter from left **occipital region** with inverted margin and wound of exit is 1 cm x 1cm in diameter from right **maxillary region** below right eye.

Duration of injuries and death

Within 5 minutes.

Duration of death and Post-Mortem

03 to 04 hours

Internal Examination of Head

Multiple fractures noted in skull bone and brain matter severally damaged.

Opinion: Cause of death was canto respiratory arrest secondary to neurogenic shock due to firearm injuries.

The words "Occipital Region" means "*the back of the head or skull*" and the word "Maxillary Region" means "*the jaw or jawbone, esp. the upper one*". It means according to the medical report the accused were fleeing that is why the bullet hit at the back of head and went through the face below right eye. In his cross-examination MLO stated that, "*The Injuries on each dead were through and through. Each dead body had one firearm injury. Since there was no blackening on the injuries, I can say that injuries sustained were from the distance of more than two feet. As there was extensive injury the firearm may be caused with very high velocity weapons.*"

13. The record shows that only three shots were fired by the four accused; one each by two deceased and one by the appellant, whereas police has alleged recovery of three TT pistols and three empties of TT pistols and three

shells of SMG. The FSL report available at pae-221 Ex:12/I again belied the story of encounter. The FSL report shows that out of three empties of 30 bore pistol marked as C-1, C-2 and C-3, one empty marked as C-3 was not fired from any of the three TT pistols allegedly recovered by the police. It means that out of four accused, at least two of the accused have not even fired at the police. The police claimed to have fired three shots with their official weapon and out of them, two hit (one each) the two deceased in their head respectively. The FSL report shows that Inspector Muhammad Sadiq, as Investigating Officer has only sent three allegedly recovered pistols and empties after four days to the forensic laboratory, without any explanation. In the FIR the time of incident is shown as 2155 hours on **05.5.2013** and the recovered weapon and empties were sent on **09.5.2013** after four days. He has not sent SMGs of police officials, which were used in the encounter.

14. The evidence reveals that the empties and pistols purportedly recovered from the deceased accused and the appellant were not sealed on the spot. Likewise other items claimed by the planted witnesses to be their robbed articles were also not sealed on the spot. We have read Ex:7-B (memo regarding arrest and seizure) and confronted to learned Prosecutor. She has also conceded that there is no details of sealing and manner of sealing of the case property nor anybody has been identified to have signed the sealed the seized property as Mashir of seizure. It is not even mentioned in the seizure memo that the property was sealed on the spot. In the cases of encounter and arrest of culprits on the spot, FIRs are always registered subsequent to the arrest and seizure of weapons and, therefore, details of seizures are always mentioned in the FIRs. The perusal of contents of (Ex:7-D) FIR shows that facts about sealing of the property on the spot was not mentioned in it. Therefore, the failure of the Investigation Officer to seal the case property on

the spot coupled with the delay of four days in sending the weapons and empties to the forensic laboratories has destroyed the case of the encounter. In this context reliance is placed on the case of Mohammad Hayat and 3 others vs. the State (2018 P.Cr.L.J Note 61) wherein it was observed that:-

15. Admittedly, in the cases in hand arrival and departure entries were not produced before the trial Court in order to prove that police party, in fact proceeded to the place of occurrence and recovered two abductees and arrested accused Muhammad Hayat with Kalashnikov. Roznamcha entries of second episode of arrest of co-accused and recovery of weapons have also not been produced. This lapse on the part of prosecution has cut the roots of the prosecution case, thus, rendered entire episode shrouded by doubt. This omission by itself was enough to disbelieve the evidence of police officials. **It is also admitted fact borne out from the record that Kalashnikovs allegedly recovered from the appellants were neither sealed at spot nor the same were sent to Ballistic Expert for report.** Conviction under section 13(d), Arms Ordinance, 1965 could not be maintained unless weapons allegedly recovered were sealed at spot and opinion of Ballistic Expert was produced in order to prove that weapons so recovered were infact functional. Appellants were not confronted with every incriminating piece of evidence brought on record against them in their statements under section 342, Cr.P.C. unless accused are confronted with material available in evidence against them, legally conviction cannot be sustained. Private witnesses abductees Ladik Mal Hindu and Zaheer Hussain Rind have also not supported the case of prosecution as such, cases in hand were not proved beyond any shadow of doubt. Reliance is placed upon the case of Abdul Sattar and others v. The State (2002 PCr.LJ 51).

15. The prosecution has failed to bring on record the nature of urgency and the seriousness of life threat received from the fleeing accused party to permit fatal injury on their heads in the name of retaliation with their high velocity weapons, that too, from a distance of just two feet or so. As already stated none of the two bullets purportedly fired by the accused party have caused any injury to any policemen nor hit any passerby or police mobile etc, meaning thereby there was no rapid firing from the opposite party. Therefore, in our humble view there was no occasion for killing of two persons from a point blank range even if they had fired at the police party.

The record does not show that any CRO of the deceased accused or the appellant. The prosecution has not mentioned any criminal record of the appellant and the deceased in the challan submitted on **25.5.2019**, nor even before this Court any impression has been given that the accused persons were hardened criminals and, therefore, their immediate kill could be justified by the police.

16. We have tried to lay our hands on police rules and regulations or any circular under the Police Rules, 1934 which could permit police party to go to the extent of killing of a criminal from point blank distance instead of arresting him alive. However, we have find one case law on the subject of use of force by police in retaliation from the jurisdiction of the Hon'ble Supreme Court reported as Ch. Muhammad Yaqoob and others vs. the State (**1992 SCMR 1983**). Relevant observations of Hon'ble Supreme Court from para-10 of the judgment are reproduced below:-

On the basis of the above authorities, one can urge that once the right to exercise private self-defence is established, the same cannot be defeated lightly, but at the same time, the force used must be in proportion to the injury to be averted and must not be employed for the gratification of vindictiveness or malicious feeling. The right of private self-defence is to be used as a shield to ward off an unwarranted attack to person or property but it cannot be used as a vehicle for provoking an attack. In other words, it is to be exercised as a preventive measure and not for launching an attack for retaliatory purpose. **The Court will have to examine the above question with reference to the facts of each case and keeping in view the state of mind of the person placed in the position of the person attacked, who exercises the right of private defence.** The Court, while examining the above question, will not measure his action in golden scales but would extend due concession on account of human error of judgment in such a situation. Since, in the present case, we have held that there was no police encounter, the question of exercising right of private self-defence by the convicts did not arise. We may observe that Mr. Minto, learned counsel for the appellants, has not been able to point out any provision of law whereby the police personnel can exercise right of private self-defence more than what has been provided for in sections 96 to 106, P.P.C. In this view of the matter, simpliciter, **an encounter**

will not entitle a police party to kill indiscriminately the persons who are allegedly involved in the encounter as the basic requirement provided inter alia in section 99, P.P.C., namely, "the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence", will be very much applicable. Secondly, the police personnel themselves cannot be the sole arbiter on the question, whether the killing of certain persons in an alleged encounter was warranted by the facts of the case but it is for the competent Court of law to decide the above question. We may further observe that Article 9 given in Chapter I of the Constitution of the Islamic Republic of Pakistan containing the Fundamental Rights guarantees that "no person shall be deprived of life or liberty save in accordance with law" and, therefore, the public functionaries like police force, are to act in aid of the enforcement of the above Constitutional provision rather than to violate the same and expose themselves to criminal prosecution.

17. The facts of the case in hand appear to be similar to the above cited case law on the point of police encounter taking lives of two accused. The police party had reached on the spot in police mobile and on seeing the police the alleged accused party on two motorcycles tried to escape and may be one or two shots were fired by them to slow down the chasing police party. Unfortunately even two shots fired by them (the accused) on the police party have not been proved. Even no damage to police mobile or public property has been claimed. If at all, two fires were really shot by the accused with intention to kill the police officials then at least police mobile must have been hit by the bullet. The faces of accused were not towards the police but were in the opposite direction and, therefore, they were not extending any life threat to the police. The planted witnesses have even further damaged the case of prosecution PW-03 Mohammad Nadeem in his examination-in-chief has stated that "my statement under section 161 of the Cr.,P.C was recorded on 7.5.2019 (after two days of incident dated 5.5.2019) my mobile and cash was recovered from the accused and was returned to me at the police station on my request". The very fact that purported robbed articles after two

days were returned to the victim of robbery by police from the police station confirms that nothing was sealed on the spot. In view of the above evidence, we reached to an irresistible conclusion that it was not a case of merely firing in retaliation or self defence, rather it was blatant, point blank brutal murder of two individuals by the police officials.

18. Beside the above, the other criminal negligence of police officials in inquiry and investigation of the case in hand as noted by us is that there are no details of two motorcycles taken into possession by the police after the encounter. Investigating Officer has not made any inquiry about ownership of the said motorcycles from excise and taxation department to ascertain ownership nor did they check status of the said motorcycles from the records of CPLC. The appellant in his statement under **Section 340(2)** of the Cr.P.C in reply to question No.6 has stated that motorcycle is his but not registered in his name. He was arrested while selling biscuits on motorcycle. These motorcycles were not even produced in the trial Court nor there is any order of the trial Court in terms of **Section 517** of the Cr.P.C for disposal of these two motorcycles. We are sure that it was not supposed to be booty (مال غنيمت) for the police involved in the encounter to become its owner. The willful failure of the Investigating Officer to find out details of ownership of motorcycles and more importantly his failure to send the official SMGs to Forensic Laboratory for its examination, by all means was deliberate and with ulterior motives. The ulterior motives are that motorcycles, as generally believed, are in use of police official, and sending weapons for forensic may expose the person/policeman who actually killed the victim and in case of fake encounter, nobody should be identified as killer(s) of two citizens through scientific evidence. We have also noted with regret that in every FIR of police encounter there is hardly any reference to the record of official

weapons assigned to each police officer who are generally on patrolling duties in police mobiles. Inspector Muhammad Sadiq as Investigation Officer during inquiry and investigation of an offence under **Section 353 PPC** in which police officials themselves claimed to have used official weapon was under an obligation to inquire and check the official register of distribution of arms according to **Rule 6.8** of the Police Rules, 1934 which is reproduced below:-

6.8 (1) The distribution and movement of individual arms on charge, shall be recorded in **Part I of the Arms Distribution Register** (Form 6.8) to be kept by the kot head constable under the supervision of Lines officer. In this register shall be shown only actual arms and those accessories which are issued with them, and the register shall be divided so that a record of each item may be kept separately__ *vide* instructions in the form.

Columns 3 and 4 of the form shall be balanced daily, the balance being shown in red ink, provided that no balance need be struck on any day when no transaction has taken place. The normal transaction is an issue from one sub-column of column 3 balanced by a receipt in another, the district, total being unaffected; whenever an entry affecting the latter is made, e.g., the return of a musket to the arsenal or the transfer of a bayonet scabbard to condemned stock---an explanatory entry shall be made in column 5. **Care must be taken that when a weapon is moved, the necessary entries are made respecting any accessory moved with it. The Lines officer shall check this register at frequent intervals.**

(2) In Part II of the register shall be maintained a nominal roll of the **distribution of revolvers** on charge in the district.

(3) A separate register in **form 6.8(3)** shall be maintained by the Kot Head Constable under the supervision of the Lines Officer, in which history sheet of each weapon on charge in the district be entered.

It was an obvious duty of Investigating Officer to check the aforementioned register. Again the failure of I.O to find out which official weapon was used by whom in the police encounter coupled with deliberate failure to send SMGs for forensic examination leads us to believe that the official weapon(s) was not even used during the police encounter and the accused were killed

by the police with some other (probably private) weapon. Thus the investigation of the case was not done in accordance with **The Police Rules, 1934**. It is a classical example of extrajudicial killing by police, which produces "Encounter Experts" in the police force.

19. In view of the above circumstances, by a short order dated **04.12.2020** we had allowed the instant appeal. Consequently, appellant Muhammad Javed son of Muhammad Essa was acquitted of the charge. The above discussion of facts and evidence are the reasons for the short order reproduced below:-

"Arguments heard. We have gone through the entire record of the trial Court and evidence. It has clearly surfaced that the Police Officials, namely, (1) **ASI Imran Rasheed**, (2) **P.C/7060 Muhammad Arif** (3) **driver H.C/2639 Sajjad Hussain**, (4) **P.C/11682 Waqar Hussain** and (5) **P.C/2384 Fahad Ali** have brutally murdered two victims, namely, Ghulam Shabbir @ Ali and Ghulam Rasool @ Khan in the vicinity of Kaneez Fatima Society, Karachi in the name of alleged encounter with the four dacoits moving on two motorcycles. Further, we have noted the following points which show that the case of prosecution is not trustworthy and there are several dents in the prosecution story:

- i. In their own evidence, the police officials stated that in the alleged encounter they have used official SMGs in retaliation to the firing from the two deceased victims and their accomplices including the appellant.
- ii. Only (03) three empties of SMG were secured from the spot and (03) three empties of 30 bore pistol said to have been fired by the accused party were secured, though no injury was caused to any police official or passerby or any police mobile. Out of three empties of 30 bore pistol, one was not even matched with the so-called pistol said to have been recovered either from the deceased or the appellant before this Court.

- iii. The statement of MLO shows that the deceased were shot dead from the distance of about two feet with single bullet injury in their heads with a very high velocity weapon.
- iv. The allegation of robbery and the encounter come on the record at least in this case cannot be proved because the memo of seizure and arrest does not show that any empty of 30 bore pistols or any other pistol and the so-called robbed articles were sealed on the spot. The failure of seizure of the property on the spot can only lead to believe that nothing was recovered from the deceased and the present appellant.
- v. The story of robbery has been an obvious afterthought that is why the case of robbery has not been tried by the ATC Court and no application under Section 21-M of the Anti-Terrorism, Act, 1997 for joint trial has been filed by the I.O. Learned D.P.G says that may be the said case is still pending before the trial Court.

In view of the above, for the reasons to be recorded later on, the instant Spl. Crl. A.T.J. Appeal is allowed and the impugned judgment of conviction and sentence awarded to appellant Muhammad Javed son of Muhammad Esa @ Essal Khan in Special Case Nos.353/2019 and 353-A/2019, arising out of FIRs Nos.299/2019 and 300/2019 under Sections 353/324/34 PPC r/w section 7 ATA, 1997 and 23(1)(a) of Sindh Arms Act, 2013, registered at P.S Surjani Town, Karachi is set aside. In result thereof, the appellant Muhammad Javed son of Muhammad Esa @ Essal Khan is acquitted of the charge. He may be released forthwith if he is not required by any other Court in any other crime/offence."

Pending the detailed reasons in the instant appeal, the SSP West, Karachi is directed to immediately take disciplinary action against police officials, namely, **(1) ASI Imran Rasheed, (2) P.C/7060 Muhammad Arif (3) Driver/H.C/2639 Sajjad Hussain, (4) P.C/11682 Waqar Hussain and (5) P.C/2384 Fahad Ali** and register FIR against them for committing murder of two persons, namely, Ghulam

Shabbir @ Ali and Ghulam Rasool @ Khan **within (03) three days** and submit report to this Court for perusal in Chamber. Copy of this order be sent to the SSP, West, Karachi through fax forthwith.

FIR No.1033 of 2020 at P.S Surjani Town has been registered in compliance of the above order.

20. Before parting with this judgment, it is pertinent to note that every FIR of an offence under **Section 353 PPC** does identify the name of the police officer incharge of mobile and staff on duty with him as well as the entry showing the time of departure from the Police Station in first few lines of FIRs. However, it seems that purposely details of distribution and movement of weapon/arms from Kot register required under **Rule 6.8** of the Police Rules, 1934 are not mentioned in the FIR. In several cases we noticed that injuries caused by police to the accused in the name of police encounter when examined by the police surgeon, such injuries were not found to have been inflicted by official weapon. Encounter means fight between the two parties and, therefore, the FIR of encounter should contain the details of ammunition used by both sides and names of the police officers who took part in the encounter and the details of weapon/ammunition used by each one of them. Therefore, in order to curb the menace of extrajudicial killing by police officials proudly called "**experts of encounter**", we direct that each and every SSP throughout Sindh to strictly discharge their duties as envisaged in **Rule 25.17** of the Police Rules, 1934 and ensure that I.Os should also strictly follow the basics of inquiry and investigation and nobody should fail to take note of the following steps as mandatory in investigation of cases of police encounters:-

1. In every FIR of police encounter with criminals during patrolling or otherwise, the author of FIR, amongst other details, should also

clearly mention in the said FIR relevant entries of **Form** maintained under **Rule 6.8** of the **Police Rules, 1934**, regarding the weapon and ammunition carried by the police officials, otherwise in case of failure of incorporating these entries in the FIR, the offence of police encounter would be deemed to have not proved;

2. All police officials on duty of investigation of cases of police encounter during patrolling duty or otherwise, should seize the official weapon(s) used in the encounter by police officials on the spot and send for forensic testing along with empty shells recovered from the crime scene without any delay;
3. In every case in which culprit has used any vehicle or motorcycle, a comprehensive inquiry about the vehicle/motorcycles should reflect in charge sheet/challan otherwise an obvious inference would be that either no such incident has taken place or the I.O has deliberately failed to implicate the facilitator of crime who has provided his vehicle/motorcycle to the culprit for offence.

21. In view of the police performance as noted above in this case and many other cases, we have also noted that the trial Courts have convicted the accused without looking into the quality of enquiry and investigation with particular reference to the proof of weapons used by the police in the encounter, and the vehicle allegedly used in the commission of offence by the accused, therefore, we hereby direct all the ATC Courts, seized of cases under **Section 353 PPC** and/or any other cases in which police has inflicted injuries on accused on the allegation of firing on the police by accused, the Court should take judicial notice of the following irregularities in investigation:-

- i. The Administrative Judge of the ATC Court before approving case for registration showing police encounter as one of the offences should ensure that the requirement of **Rule 6.8** of the Police Rules, 1934 has been fully explained by the I.O. in the charge sheet.

- ii. In all the cases of police encounter if the contents of FIR do not mention the entries of register of distribution of arms as required under **Rule 6.8** of the Police Rules, 1934, the challan of cases under **Section 353 PPC** should not be accepted for want of evidence.
- iii. In similar manner, if the investigating officer fails to give details about the ownership of the vehicle used by the accused party in commission of offence of police encounter in the charge sheet, the same would be deemed to have been a case of fake encounter for the simple reasons that lack of such evidence would led to inference that accused were not available at the place of incident.
- iv. If the official weapon used in the encounter is not sent to the FSL authorities and report does not confirm the use of official weapon by police in the encounter, then beside taking action against the delinquent officials under **Section 27** of ATA, 1997, the ATC Courts while acquitting the injured, should also recommend action as observed by the Hon'ble Supreme Court in the case of Saddam Hussain vs. The State (**PD 2020 SC 310**) in which case Inspector General of Police, Islamabad appeared before the Hon'ble Supreme Court in a case where police officials' negligence in investigation of crime was a subject matter and the Hon'ble Supreme Court held that:-

“2. At the same time we are sanguine that the IG Police, Islamabad shall take all measures to improve the quality of working of Islamabad Police, overall in general and in the matter of investigation in particular, and he shall also ensure that proper law and order situation prevails in Islamabad Capital Territory, and the life and properties of the people are safeguarded and protected, and the criminals are taken to task in accordance with law. No amount of negligence in this regard should be tolerated and if any body in police department is found neglecting his duties, he should immediately be dealt with and if found guilty, appropriate penalty be imposed upon him. **If any police official is found indulging in criminal activities, the criminal case shall also be registered against him, besides, taking departmental action against such police official.**”

In view of the above observations of the Hon'ble Supreme Court in the case-laws reported as **1992 SCMR 1983** (*supra*) and **PLD 2020 SC 310** (*supra*), we

recommend that the S.S.P, West Karachi should also take disciplinary actions against the delinquent officials in the case in hand.

22. While concluding, we must order about the disposal of the property, particularly two motorcycles bearing registration **Nos.KID-2062** and **KJJ-0390**. I.O is directed to hand over the said motorcycles along with copies of registration books to the Nazir of this Court within **seven days**. The Nazir is directed to locate the owners of the said motorcycles and handover the said motorcycles to them after proper verification.

Copy of this order should also be handed over to I.O in crime No.1033/2020, P.S Surjani Town, dated 09.12.2020. He is directed to send progress report of the proceedings of investigation and trial in crime No.1033/2020 to this Court on monthly basis through MIT-II for perusal in Chambers.

Copy of this order should also be sent to the Administrative Judge, Anti-Terrorism Courts with direction to forward copies to all the Presiding Officers of Anti-Terrorism Courts in Sindh to strictly comply with the observations contained in **para-21** above.

J U D G E

J U D G E

Karachi
December 18, 2020.

Ayaz Gul