

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No.364 of 2018

Special Criminal Anti-Terrorism Jail Appeal No.366 of 2018

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

Appellants : None present for Imran Soomro son of Zaffar and Shoaib Qureshi son of Abdul Majeed

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

Date of hearing : 10.12.2020

J U D G M E N T

NAZAR AKBAR, J.--- Appellants Imran Soomro son of Zafar and Shoaib Qureshi son of Abdul Majeed were tried by learned Judge, Anti-Terrorism Court-XVIII, Karachi in Special Cases Nos.166, 167 and 168 of 2017, arising out of FIRs Nos.2, 3 and 4 of 2017, for offences under sections 353, 324, 34, PPC r/w Section 7 of Anti-Terrorism Act, 1997 and section 23(1)(a) of the Sindh Arms Act, 2013, registered at P.S. Azizabad, Karachi. After conclusion of trial, vide judgment dated 28.11.2018, both the appellants were found guilty of the charge and convicted and sentenced as under:

- (i) For offence under Section 353, PPC sentenced to R.I. for 2 years.
- (ii) For offence under section 324, PPC sentenced to R.I. for 10 years and fine of Rs.25,000/-, in default thereof, to undergo S.I. for 3 months more.
- (iii) For offence under section 7(1)(c) of the Anti-Terrorism Act, 1997 sentenced to R.I. for 10 years and fine of Rs.25,000/-, in default thereof, to undergo S.I. for 3 months more.
- (iv) For offence under section 23(1)(a) of the Sindh Arms Act, 2013 sentenced to R.I. for 7 years and to pay fine of Rs.5000/-, in default thereof, to undergo S.I. for 3 months more.

All the sentences were ordered to run concurrently, except payment of fine. 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 01.01.2017 at about 2005 hours complainant ASI Mujahid Hussain of P.S. Azizabad lodged above referred FIRs, stating therein that on the said day he left the police station along with his subordinate staff namely PC Tanveer, PC Usman Khan and driver PC Abdul Hakeem in police Mobile-II, bearing Registration No.SPB-354 and other police officials on Government motorcycles for patrolling. During patrolling, when they reached behind street of Okhai Memon Masjid, Block-3, FB Area, Karachi, he received information from a person that two young boys duly armed with weapons are looting the public at Khatoon-e-Jannat Park, near Ronak-e-Islam School. On such information, police party reached at the pointed place at about 1900 hours, where they saw that two young boys on motorcycle who, on seeing the police party coming towards them, tried to escape. Police party chased them, accused sitting on the back side of motorcycle started straight firing on police party in order to deter their arrest. Police also retaliated in their self-defence. The motorcycle of accused hit the wall of Ronak-e-Islam School and they fell down. Accused received injuries on their heads due to dashing with the wall. Public arrived at the spot who maltreated the accused. Both the accused were arrested. On inquiry, they disclosed their names as Shoaib Qureshi son of Abdul Majeed and Imran Soomro son of Saleem. Complainant conducted personal search of accused Shoaib Qureshi and recovered **one TT pistol 30 bore bearing No.A-5499 with loaded magazine, containing one live bullet** as well as Rs.200/-, and upon personal search of accused Imran Soomro recovered of **one TT pistol 30 bore loaded with magazine, containing 04 live bullets** and cash Rs.100/-. On demand both the accused failed to produce licenses of arms and ammunitions. Complainant sealed the case property and prepared memo of arrest and

recovery at the spot. He brought the accused persons as well as recovered articles at Police Station, where he registered the above referred FIRs against them including FIRs of offshoot cases on behalf of the State.

3. After usual investigation, challan was submitted against the accused before learned Administrative Judge, ATCs, under above referred sections. Learned trial court on application of ADPP amalgamated all the cases in terms of Section **21-M** of the Anti-Terrorism Act, 1997, for joint trial, vide order dated **08.05.2017** and framed joint charges against the accused on **08.05.2017** at Ex.4. Accused pleaded not guilty and claimed to be tried.

4. At trial, prosecution examined **PW.1 PC** Adnan Majeed at Ex.6, **PW-2 ASI** Mujahid Hussain at Ex.9, **PW-3 PI/IO** Sohail Iqbal at Ex.10 and **PW-4** Dr. Muhammad Saeem, Additional Police Surgeon, Karachi at Ex.11. Thereafter, on **28.08.2018** prosecution side was closed at Ex.12.

5. Statements of accused were recorded under Section 342 Cr.PC at Ex.13 and 14. Both the accused denied all the incriminating pieces of prosecution evidence brought against them on record. Both the accused did not examine themselves on oath nor did they lead any evidence in defence.

6. Trial Court after hearing the learned counsel for the parties, assessment of evidence and perusal of record by judgment dated **28.11.2018**, convicted and sentenced the appellants as stated above, hence these jail appeals were filed.

7. Mr. Muhammad Iqbal Awan, learned Deputy Prosecutor General Sindh, argued that accused persons were committing robbery at a public place and after encounter both the accused were arrested at the spot; crime

weapons were recovered from possession of both the accused; report of ballistic expert was positive. He has further argued that evidence of police officials is trustworthy and confidence inspiring; they had no enmity with the accused persons to falsely implicate them, 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 dismissal of the appeals.

8. The appellants are unrepresented. Even paper book has not been prepared for the simple reason that despite notice to the P.G Sindh, the P.G office has failed to deposit cost of paper book. However, R&Ps in three parts are available, therefore, besides hearing learned DPG, we have also perused the evidence minutely with the assistance of learned Deputy Prosecutor General Sindh.

9. The case of prosecution is that PW-2 complainant ASI Mujahid Hussain with staff on police mobile-II left P.S for patrolling with four other police officials on two motorcycles in the area. At about 1845/1850 hours when they reached at Okhai Memon Masjid, Block-3, FB Area, Karachi, one person informed them that two accused riding on one motorcycle were committing robberies near Khatoon-e-Jannat Park, near Ronak-e-Islam School on the force of weapons. On such information, they reached at the pointed place at 1900 hours and saw two young persons sitting on motorcycle, on seeing police started straight fires upon them with intention to kill. He ordered his subordinates for counter firing, on which accused collided with the wall of Ronaq-e-Islam School and fell down. One bullet fired by accused hit police mobile at right side of the bonnet. They secured 2 empties of 30 bore and 3 empties of SMG from the spot. Pistols and empties were sealed in three separate parcels. Motorcycle of accused was without

registration number, he got motorcycle checked from CPCL through its chassis and engine numbers through phone on which it transpired that it was stolen from the jurisdiction of P.S. Garden on **01.12.2016**. The actual number of motorcycle was KIH-3839 Superpower, Model 2015. He prepared memo of arrest and recovery and then returned back to PS where above referred FIRs were registered vide Entries Nos.19, 20 and 21. Letter for treatment of accused was issued to the Hospital. Investigation was handed over to SIO Azizabad and then to SIO Joharabad PI Sohail Iqbal who visited the place of incident on 02.01.2017 at 1000 hours and prepared such memo. He produced departure and arrival entries Ex.9/A and 9/B, respectively. Case property was not produced from *Malkhana* due to fire incident. In his cross-examination PW-2, the complainant admitted that, *"I did not inquire the name from the person who informed them about the accused; none from either side including public was injured; about 20/25 people were beating the accused; no private witness was associated; public ran away upon reaching the police. It is correct to suggest that neither anybody complained to them regarding robbery committed by the accused nor any robbed article was recovered from the possession of the accused. It is correct to suggest that I have not produced any proof regarding bullet hit on the bonnet of the mobile. It is correct to suggest that recovery of weapon from the accused was not mentioned in roznamcha entries produced by me."*

10. PW-1 PC Adnan Majeed almost repeated statement of PW-2. He, too, in his cross-examination stated that **"it is correct to suggest that no member of police party became injured during encounter; Vol. said one bullet fired by accused hit at right side of bonnet of mobile. About 20/30 people gathered at the spot, complainant asked them but they didn't cooperate to act as mashir, complainant did not issue notice in writing to any private**

person; no one complained (to) them regarding robbery committed by accused persons. PW.3 PI Sohail Iqbal was Investigation Officer and he, too, in his cross-examination stated that *"It is correct to suggest that I have no proof whether any bullet fired by accused had hit the police mobile. It is correct to suggest that I did not send the police mobile for FSL."* PW-1 PC Adnan Majeed in his cross-examination also admitted that he did not inquire the name from the person who informed them about the accused who were alleged robbing the general public on gunpoint.

11. PW-4 Dr. Muhammad Saleem, Additional Police Surgeon Karachi deposed that on 01.01.2017, ASI Rehan brought injured Shoaib and Imran with **history of beaten by public as alleged for examination and medico legal certificate**. He examined them and found following only one injury to accused Sohaib and two injures on accused Imran:

Accused Sohaib : Lacerated wound 07cm x 01cm bone exposed at vertex.

Accused Imran : (i) Lacerated wound 03cm x 0.5cm bone not exposed at left posterior parietal region. (ii) Lacerated wound 02cm x 0.5cm bone not exposed at left occipital region.

How is it possible that several people beat them up but there were only one and two marks of injuries.

12. According to prosecution story the appellants were allegedly committing robbery from the general public at the place of incident, however, admittedly no one came forward to complain regarding robbery by the appellants. It is also the case of the prosecution that the appellants' motorcycle collided with the wall of Ronak-e-Islam School, due to which they sustained injuries and 20/25 persons started beating the appellants in presence of police party but no action was taken by the ASI/complainant against the said 20/25 persons, in accordance with law, who unnecessarily

maltreated the appellants, if at all, at the place of incident. Dr. Muhammad Saleem stated that injured Shoaib and Imran the appellants with the **history of beaten by public for examination and medico legal certificate**. Such piece of evidence contradicted the evidence of police official. According to PW-4 the appellants sustained injuries at the hands of general public and not by colliding their motorcycle with wall of Ronak-e-Islam School, as alleged by the prosecution witnesses. We have also noted that admittedly despite availability of general public at the place of incident no effort was made by the complainant to associate any private person to act as mashir of alleged recovery and arrest thus there was a clear violation of **Section 103 Cr.PC** in respect of arrest of accused.

13. In addition to the above highly doubtful story, the prosecution has failed to prove safe custody of the crime weapons at the *Malkhana* of the police station and its safe transit to the chemical examiner. Neither Roznamcha entries of *Malkhana*, with regard to weapons were produced before the trial Court nor Incharge of the *Malkhana* on the point of safe custody of weapons has been examined by the prosecution. Delay of 3 days in sending weapons to the Forensic Division has also not been explained by the prosecution, as such, no sanctity can be attached to the positive report particularly when official weapon used in the encounter was not sent for forensic examination.

14. In view of the above discussion of facts and evidence, we hold that prosecution has miserably failed to prove its case against the appellant beyond any reasonable doubt. Resultantly, the appeals are allowed and conviction and sentences recorded by the trial Court in Special Cases Nos.166, 167 and 168 of 2017, arising out of FIRs Nos.2, 3 and 4 of 2017, for

offences under sections 353, 324, 34, PPC and section 23(1)(a) of the Sindh Arms Act, 2013, registered at P.S. Azizabad, Karachi, vide judgment dated **28.11.2018** are set aside and appellants Imran Soomro son of Zaffar and Shoaib Qureshi son of Abdul Majeed are acquitted of the charges. Appellants shall be released forthwith if not required in some other custody case.

15. The above are reasons of our short order **dated 10.12.2020**.

J U D G E

J U D G E

Karachi, dated
January 06, 2021

Gulsher/PS