

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Jail Appeal No. 178 of 2020

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellants: Sher Zaman son of Haji Nazeer Hussain through
Barrister Iftikhar Ahmed Shah.

Respondent: The State through Muhammad Iqbal Mahar,
Additional Prosecutor General.

Date of hearing: 08.02.2022

Date of announcement: 16.02.2022

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- Through captioned appeal, the appellant Sher Zaman has challenged the judgment dated 06.03.2020 (*impugned judgment*), passed by the Anti-Terrorism Court-XIX Karachi in Special Case No. 38 and 38-A of 2018, culminated from FIRs Nos. 36 and 37 of 2017 registered with Police Station Bilal Colony Karachi for the offences punishable u/s 353, 324 and 34 Pakistan Penal Code (*PPC*) r/w S. 7 of the Anti-Terrorism Act 1997 (*ATA*) and u/s 23(i)(a) Sindh Arms Act (*SAA*). Through impugned judgment, the appellant was convicted and sentenced to suffer rigorous imprisonment for five (05) years with fine of Rs.105,000/- (*one lac and five thousand only*), in default in payment whereof he was ordered to suffer further simple imprisonment for one year more. All the sentences were ordered to run concurrently and benefit of Section 382-B was also extended to him.

2. Precisely, facts of the prosecution case are that on 04.02.2017, complainant Sub-Inspector Muhammad Sadiq was on patrol and reached Sindhi Hotel in Sector 5-J of Fish Market and noticed two individuals on a motorbike, whom they signalled to stop, but the bike riders accelerated away while firing at the police party.

During this exchange, PW-injured Wahid Pervaiz who was accompanying the complainant on patrol received a firearm injury on his left arm while which had crossed through the police mobile. Two more bullets hit the police mobile. In retaliation, police opened fire at the bike riders, hitting one of the assailants (*present appellant*) three times who then fell off, leaving enough time for his companion to escape on foot due to the odd hours of night. A .30 bore T.T pistol was recovered from the appellant alongside 3 bullets in the magazine and one in the chamber. 4 empties of .30 bore pistol and 5 empties of SMG were also secured from the spot. Case property was sealed on the spot and the appellant alongside the case property was brought back to the police station where separate FIRs were registered.

3. After registration of FIRs, investigation was conducted by the Investigating Officer (IO) who visited the place of incident at 5 a.m. on the same day and on completion of the investigation, challan was submitted before the Court of law against the appellant. After compliance with section 265-C Cr.P.C, a charge was framed against the appellant to which he pleaded not guilty and claimed to be tried. At trial, prosecution examined as many as 5 PWs namely PW-1 **SIP Muhammad Sadique**, PW-2 **PC Wahid Pervaiz**, PW-3 **Dr. Muhammad Saleem**, PW-4 **ASI Ali Nawaz Pitafi** and PW-5 **Inspector Muhammad Akram** who produced various documents and other items duly exhibited. Thereafter, prosecution side was closed. Statement of accused was recovered u/S 342 Cr.P.C wherein he denied the prosecution case in toto and pleaded his innocence while alleging false implication. He did not examine himself on oath in disproof of charge nor examined any witness in his defence.

4. After hearing learned counsel for the respective parties, learned trial Court convicted and sentenced the appellant through impugned judgment as stated supra.

5. Learned counsel for the appellant has contended that the appellant was falsely implicated in the case by the police due to his

refusal to pay bribe; that the medico-legal Officer noted blackening around the wound of the injured PW which can only be caused when an injury is received from close range; that the investigating officer failed to collect blood stained earth from the place of incident; that the appellant was arrested from Yousaf Goth near a mosque; that all the prosecution witnesses involved in the arrest and recovery are police officials and not a single independent witness was called to act as mashir despite the place of incident being a thickly populated area; that there are material contradictions in the evidence of the PWs; that the prosecution has failed to prove the guilt of the appellant beyond reasonable shadow of doubt. He has placed his reliance on the case law reported as *JAHAN KHAN and another v. The STATE and others* (1987 SCMR 351), *MAKHMOOD HUSSAIN and 3 others v. The STATE* (1989 SCMR 778), *ZEESHAN alias SHANI v. The STATE* (2012 SCMR 428), *MUHAMMAD AYOUB v. The STATE* (2020 YLR 2367) and an unreported judgment of the Hon'ble Supreme Court dated 29.11.2021 passed in **Criminal Appeal No. 348 of 2020** titled *HADI BUX and others v. The STATE*.

6. Conversely, learned Additional Prosecutor General for the State has argued that the prosecution has examined five witnesses who have fully supported the prosecution case; that the appellant was caught red handed from the place of incident; that both the parties received injuries during the encounter which is also supported by the medical evidence; that the FSL report with regard to the .30 bore pistol recovered from the police is also positive. In support of his contentions, he has cited the case law reported as *HAKIM KHAN v. The STATE* (2013 SCMR 777) and *ASIF and others v. The STATE* (2020 SCMR 610).

7. Perusal of the record shows that the prosecution's prime witnesses are PW-1 SIP Muhammad Sadique who is the complainant and PW-2 PC Wahid Pervaiz who was injured as a result of the exchange of fire between the police and the assailants. Their depositions, parallel in nature, disclose that they had spotted the

appellant along with the escaped fugitive on a motorbike and when they were signalled to stop, they accelerated while opening fire at the police party which resulted in PC Wahid Pervaiz received fire-arm injuries and the police mobile taking shots on its body too, eventually the appellant, after receiving 3 bullet wounds, fell down and was apprehended. The appellant was then arrested and from his possessions a .30 calibre pistol was recovered. The pistol and ammunition alongside empties were seized, sealed on the spot and complainant/PW-1 Muhammad Sadique prepared such memo of arrest and recovery on the spot. The recovered weapon and empties, duly sealed, was also found in working condition by the Ballistic Examiner who also opined that *"The above mentioned pistol is in working condition at the time of examination. Two 30 bore crime empties marked as C1 and C2 were fired from the above mentioned 30 bore pistol, rubbed number in question, in view of the fact that major points i.e. striker pin marks, and breech face marks are similar"*. The Ballistic Examiner while examining the police mobile also noted that *"The holes marked as ENT-1 and ENT-2 [left side on the hood (crossed inner side)] and caused due to the passage of fired projectile of fire arm."* With regard to the safe custody of the case property, the recovered case property was dispatched within 72 hours i.e. 06/02/2017 and the Ballistic Examiner notes under General Remarks in his report that he received *"sealed parcels"*. The investigation officer also deposed that *"I also received case property viz. pistol in sealed condition"* In this respect, reliance is placed on the case of **ZAHID and ANOTHER v. THE STATE (2020 SCMR 590)**. As far as the non-association of private/independent mashirs is concerned, the incident had taken place at 2.00 a.m. whereas the investigation officer examined the place of incident at 5.00 a.m., the hours being very late have the general presumption that despite the area being thickly populated, not a lot of people would be present given the timing. Even otherwise, in absence of any animus, infirmity or flaw in the evidence of official witnesses, testimony of police officials can be relied on without demur especially when it is so straight-forward that no other

presumption could exist other than the guilt of the accused. We are fortified in our view by the case of *HUSSAIN SHAH and OTHERS v. THE STATE (PLD 2020 Supreme Court 132)* and *ASIF and others v. The STATE (2020 SCMR 610)*. Ocular account of the case also finds reinforcement by the medical evidence. The MLO was examined as PW-3 who had examined both the injured; the injured PC Wahid Pervaiz and appellant Sher Zaman. He found one firearm injury on the left arm of PC Wahid which is what was deposed by the complainant and the injured himself and he also found three injuries on the lower body of the appellant which is also in line with the depositions of the prosecution witnesses. No specific contradictions were pointed out by the appellant's counsel and on our own perusal, we found that evidence of all the P.Ws is consistent on all material particulars of the case, although there are minor contradictions in the evidence of the PWs, but the same are not material and cannot be taken to be a ground to reject the prosecution evidence. Reliance, in this respect, is placed upon *ZAKIR KHAN vs. The STATE (1995 SCMR 1793)*. As such, prosecution has proved its case against the appellant beyond reasonable shadow of doubt.

8. For what has been discussed above, we being of the opinion that the guilt of the appellant has been proved beyond reasonable doubt by the prosecution uphold the conviction and sentence awarded to the appellant Sher Zaman vide impugned judgment. Resultantly, instant Special Criminal Anti-Terrorism Jail Appeal No. 178 of 2020 is hereby dismissed. As per jail roll, the appellant has already been released after serving out his sentence and paying fines, as such no order in that regard is needed.

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