

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Jail Appeal No. D-31 of 2015.
Crl. Jail Appeal No. D-32 of 2015.
Const. Petition No. D-1033 of 2017.

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For Regular Hearing.

Present:

**Mr. Justice Abdul Rasool Memon &
Mr. Justice Aftab Ahmed Gorar.**

Mr. Irshad Hussain Dharejo Advocate for appellants in both appeals.
Mr. Iftikhar Ali Arain for petitioners in C.P.No.1033 of 2017.
Mr. Zulfiqar Ali Jatoy, Additional Prosecutor General.

Date of hearing: 10-08-2017.
Date of Judgment: 10-08-2017.

J U D G M E N T

Aftab Ahmed Gorar J. Crl. Jail Appeals Nos. 31 of 2015 (filed by appellant Aijaz Lashari), 32 of 2015 (filed by appellant Waheed) and Const. Petition No. 1033 of 2017 (seeking release of both appellants on bail by suspending the operation of impugned judgment) are being decided by this single order due to commonality of the impugned judgment.

2. The facts of the prosecution case are that on 09.07.2013 at 1315 hours, complainant SIP/SHO Ghulam Sarwar Dreho reported the incident at P.S. Kotdiji alleging therein that on the aid date at 1100 hours, both appellants alongwith dead accused Shahid Nadeem, duly armed with deadly weapons made direct firing upon

police party headed by SIP Ghulam Sarwar Dreho with intention to commit their murders and also deterred them from performing their lawful duties and during encounter, accused Shahid Nadeem alias Shahido sustained firearm injuries and died. Due to said firing, ASI Rahmatullah Solangi sustained fire arm injury and police mobile also damaged. It is further alleged that during encounter, appellant Aijaz in injured condition and appellant Waheed were apprehended at old National Highway and unlicensed TT pistols of .30 bore were recovered from the possession of both appellants. Thereafter, complainant referred the dead body of deceased accused to hospital for postmortem so also injured ASI Rehmatullah was also referred for medical treatment and certificate. Consequently, after fulfillment of required formalities at the spot, both appellants were brought at P.S, where separate FIRs were registered.

3. During trial the prosecution examined as many as eight witnesses. The appellants when examined under section 342 CrPC denied the prosecutor story and submitted that they are innocent and have falsely been implicated by the police. Both appellants did not examine themselves on oath in disproof of charge so also declined to record statements of defence witnesses.

4. Learned trial court after hearing learned counsel for parties by judgment dated 31.3.2015 appellants were convicted for offence under section 324 PPC and sentenced to RI for ten years with fine of Rs. 50,000/- each and in case of default, they were ordered to further

undergo R.I for six months. For offence under section 353 PPC, they were also sentenced to suffer R.I for two years. For offence under section 23(i) A of Arms Ordinance, both appellants were convicted to suffer R.I for five years with fine of Rs. 5000/- so also for offence under section 7 ATA, 1997, appellants were sentenced to suffer R.I for ten years and fine of Rs. 50,000/- and in case of default, they were further to suffer R.I for six months. All the sentences were ordered to run concurrently with benefit of section 382-B CrPC was extended to appellants.

5. Learned counsel for appellants mainly contended that appellants are innocent and have been falsely implicated in the case by police. It is further contended that trial court has not properly assessed the evidence of prosecution which is insufficient to warrant conviction against the appellants. He further contended that PW-6 P.C Fazal Kareem, who is mashir of place of wardhat, inspection of injuries of injured Rehmatullah, in his cross-examination has deposed that he was all along present at police station, where all the mashirnamas were prepared. Lastly, learned counsel for appellants submits that appellants are previous non-convict and there is no other instance of appellants' involvement in any case, therefore, he prayed for reducing the sentence of the appellants to that of already undergone as the appellants have served out their major portion of sentence in jail.

6. Learned Additional P.G conceded to the reduction of sentence of appellants to that of already undergone.

7. We have carefully heard the learned counsel for the parties and scanned the entire evidence.

8. On scanning the evidence of prosecution witnesses, it transpires that PW-6 PC Fazal Karim in his cross-examination has deposed that all the Mashirnamas of place of wardhat, inspection of injuries to injured ASI Rehmatullah were prepared at police station where he was all along present. Furthermore, PW-4 ASI Rehmatullah, who is injured in this case, in his cross-examination, has deposed that no bullet hit to his private car nor any sort of scratch received to his car and he has not mentioned in the mashirnama or in the FIR about private car.

9. As per jail roll dated 10.8.2017, both the appellants have served out their sentence for 04-years and 01-month with remissions of 06-months and 18-days, as such they have served out their major portion of sentence inside jail.

10. For the foregoing reasons and looking to the previous conduct of the appellants so also while following the dictum laid down in case of **Niaz-ud-Din v. The State (2007 SCMR 206)**, while dismissing the both Crl. Jail Appeals, we are persuaded to reduce the sentence of imprisonment of both appellants to that of already undergone

including the sentence of fine amount. Both appellants are in jail. They be released forthwith, if they are not required in any other case.

11. The constitution petition No.D-1033 of 2017 seeking suspension of sentence by releasing the appellants on bail stands dismissed as not pressed being infructuous.

JUDGE

JUDGE

Ahmed