

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Appeal No. D-22 of 2016
Crl. Jail Appeal No. D-25 of 2016
Const. Petition No.D-2544 of 2016

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. Shabir Ali Bozdar Advocate for appellants in Crl. Appeal No.D-22 of 2016 and for petitioners in C.P.No.D- 544 of 2016

Mr. Athar Iqbal Shaikh Advocate for appellant in Crl.J.A.No.D- 25/2016.

Mr. Abdul Rehman Kolachi, Deputy Prosecutor General.

Date of hearing: 30-08-2017.
Date of Judgment: 30-08-2017.

J U D G M E N T

Aftab Ahmed Gorar J., Crl. Appeal No. D-22 of 2016 (filed by appellants Khadim Hussain alias Khadim, Imam Bakhsh alias Imamo, Shahzado alias Shadoo and Shahzado alias Dadan alias Dado), Crl.Jail Appeal No.D-25 of 2016 (filed by appellants Abdul Karim, Khadim Hussain alias Khadim, Imam Bux alias Imamoo, Shahzado alias Shadoo and Shahzado alias Dadan alias Dado) and Const. Petition No.544 of 2016 (filed by petitioners Khadim Hussain alias Khadim, Imam Bakhsh alias Imamo, Shahzado alias Shadoo and Shahzado alias Dadan alias Dado seeking bail) are being decided by this single judgment due to commonality of the impugned judgment dated 01.02.2016, passed by learned Judge, ATC, Sukkur, whereby appellants were convicted and sentenced as follows:

- i. U/s 148 PPC, appellants were convicted to suffer RI for 03-years with fine of Rs.3000/-each and in case of default to suffer S.I for 02-months more.
- ii. U/s 302(b) PPC r/w section 149 PPC, appellants were sentenced to R.I for imprisonment for life with compensation of Rs. 100,000/-each to be paid to legal heirs of deceased and in case of failure, to suffer S.I 06-months.
- iii. U/s 324 PPC r/w section 149 PPC appellants were sentenced to R.I for 10-years each and fine of Rs.10,000/- each and in default to suffer R.I for 06-months.
- iv. U/s 353 PPC r/w section 149 PPC, appellants were sentenced to R.I for 02-years with fine of Rs. 2000/- and in case of default to suffer S.I for 02-months.
- v. U/s 399 r/w section 149 PPC, appellants were sentenced to suffer R.I for 10-years with fine of Rs. 5000/- each and in case of default to suffer S.I for 04-months.
- vi. U/s 402 r/w section 149 PPC, appellants were sentenced to R.I for 05-years with fine of Rs.3,000/- each and in default to suffer S.I for 03-months.
- vii. U/s 440 r/w section 149 PPC, appellants were sentenced to r.I for 05-years with fine of Rs.3,000/- each and in default to suffer S.I for 03-months.
- viii. U/s 13(e) A.O, appellant Abdul Karim was sentenced to R.I for 07-years with fine of Rs.5,000/- and in default to suffer S.I for 02-months.
- ix. U/s 7(a) ATA, 1997 r/w section 149 PPC, appellants were sentenced to suffer imprisonment for life with fine of Rs. 50,000/-each.
- x. U/s 7(h) ATA,1997 r/w section 149 PPC, appellants were sentenced to suffer R.I for 05-years with fine of Rs. 5000/-each and incase of default, to suffer S.I for 05-months.
- xi. All the sentences were ordered to run concurrently with benefit of section 382-B CrPC was extended to the appellants.

2. During trial, prosecution examined as many as three prosecution witnesses, namely, PW-1 complainant SIP Altaf Hussain at Exh.12, P

W-2 HC Aijaz Ali at Exh.15 and PW-3 Tapedar Dildar Ali at Exh.16. Thereafter side of prosecution was closed.

3. Statements of appellants were recorded in terms of section 342 CrPC, wherein they denied the prosecution story. However, appellants did not examine themselves on oath in disproof of charge so also declined to record statements of defence witnesses.

4. Learned counsel for appellants mainly contended that appellants are innocent and have falsely been implicated. They further contended that evidence adduced by the prosecution at trial was not properly assessed and evaluated by learned trial court. They also added that all the witnesses are police officials and no independent witness has been cited in the FIR. They also contended that are material contradictions in their evidence. They further contended that in the FIR, only appellant Abdul Karim is nominated, however, complainant has not identified the appellants, however, remaining appellants are not nominated in the FIR and no identification parade was held, as such case against the appellants is highly doubtful. They have also contended that the appellants have served out major portion of their sentence, therefore, they also prayed for reducing the sentence of the appellants to that of already undergone.

5. Learned Deputy P.G supported the impugned judgment, however, he conceded to the reduction of sentence of appellants to that of already undergone. On query, he admitted that appellants are not previous convicts.

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

7. Perusal of evidence of prosecution witnesses, it transpires that there are major contradictions in the evidence of the prosecution witnesses on material points. PW-1 complainant Altaf Hussain has deposed that P.C. Ghulam Sarwar disclosed one accused is Abdul Karim and five others. In cross-examination he deposed that there was distance of 150 feet between police and accused. He also admitted that fire only hit to H.C. Habibullah and other police constable did not receive any bullet so also police mobile also not hit by any bullet, however, when he was recalled and reaffirmed he deposed that he cannot say that remaining accused are same or not, whereas PW Ghulam Sarwar contradicted complainant by deposing that on the headlights of mobile they saw six persons armed with KKs to be Abdul Karim, Imam Bu x, Dadan, Shahzado, Naroo and Khadim. In cross-examination he deposed that he saw accused from the distance of about half k.m. He also voluntarily deposed that accused are his co-villagers. He also admitted to have not disclosed to I.O in his 161 CrPC statement that accused are his co-villagers. He further deposed that there are villages of Panhiyar and Kalati near the place of incident. He also admitted that none from said villagers came at the place of incident, but voluntarily stated that they came after the incident. Admittedly, the incident alleged to have taken place at odd hours of night implicating appellant Abdul Karim in FIR, however, after arrest of remaining appellants, no identification parade was held and the identification of accused on the headlight of mobile is doubtful. It is also an admitted position that only H.C. Habibullah received

firearm injuries during encounter which remained continued for 20-minutes, but police mobile also not hit any bullet. Furthermore, appellant Abdul Karim has served out his sentence for 06-years, 11-mnths and 19-days with remissions of 03-months and 27-days while other appellants have also served out some portion of their sentence.

8. Upshot of the above discussion is that the learned counsel for the appellants have made out a case for reduction in the sentence of appellants, therefore, while following the dictum laid down in case of **Gul Naseeb v. The State (2008 SCMR 670)** and **Niaz-ud-Din v. The State (2007 SCMR 206)**, the above CrI. Appeals of the appellants are partly allowed. Consequently, while maintaining the conviction of the appellants, the sentence of the appellants inflicted on them is reduced to that of already undergone including sentence of fine amount. Appellants are behind bars. They be released forthwith, if not required in any other case.

9. Const. Petition No.544 of 2016 seeking suspension of sentence by releasing appellants on bail stands dismissed as withdrawn being infructuous.

JUDGE

JUDGE