

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Nazar Akbar

Mr. Justice Zulfiqar Ahmad Khan

Special Cr. Anti-Terrorism Appeal No.305 of 2019
Special Cr. Anti-Terrorism Appeal No.306 of 2019
Special Cr. Anti-Terrorism Appeal No.307 of 2019
Special Cr. Anti-Terrorism Appeal No.308 of 2019
Special Cr. Anti-Terrorism Appeal No.309 of 2019

Appellant in Special
Cr. ATA Nos.305 to 307/2019 : Ubaid Ali @ Langra
through Syed Lal Hussain Shah,
Advocate.

Appellant in Special
Cr. ATA Nos. 308 & 309/2019 : Muhammad Waseem Bandhani.

State : Through Syed Meeral Shah Bukhari,
Additional Prosecutor General, Sindh.

Date of Hearing : 26.11.2020

Date of Judgment : 26.11.2020

J U D G M E N T

Zulfiqar Ahmad Khan, J:- Appellants Ubaid Ali @ Langro son of

Hanif Murad and Muhammad Waseem Bandhani son of Muhammad Rafique Bandhani were tried by learned Judge, Anti-Terrorism Court-I, Karachi in Special Cases Nos.368, 368-A, 368-B and 368-C of 2019 [Crime Nos.130 to 133 of 2019, under sections 353/324/34 PPC read with Section 7 of ATA 1997, under section 4/5 of Explosive Substance Act read

with Section 7 of ATA, 1997 and under section 23(1)(a) of the Sindh Arms Act, 2013], registered at P.S. Liaquatabad, Karachi. On conclusion of the trial, vide judgment dated 30.10.2019, the appellants were convicted and sentenced under section 265-H Cr. P.C. as under:-

- a. For the offence punishable under Section 7(ff) of Anti-Terrorism Act, 1997 and sentenced to undergo R.I. for 14 years each.
- b. For the offence punishable under Section 5 of Explosive Substance Act, 1908 and sentenced to undergo R.I. for five years each.
- c. For the offence punishable under section 7(b) of Anti-Terrorism Act, 1997 and sentenced to undergo R.I. for ten years each with fine of Rs.30,000/- each. In case of non-payment of fine, they shall suffer S.I. for three months more.
- d. For the offence punishable under section 324 PPC and sentenced to undergo R.I. for five years each with fine of Rs.20,000/- each. In case of non-payment they shall suffer S.I. for two months more.
- e. For the offence punishable under section 7(h) of Anti-Terrorism Act, 1997 and sentenced to undergo R.I. for five years each with fine of Rs.20,000/- each. In case of non-payment of fine they shall suffer S.I. for two months more.
- f. For the offence punishable under section 353 PPC and sentenced to undergo R.I. for one year each with fine of Rs.5000/- each. In case of non-payment of fine they shall suffer S.I. for one month more.
- g. For the offence punishable under section 23(1)(a) of Sindh Arms Act, 2013 accused Ubaid Murad @ Langra was sentenced to undergo R.I. for five years with fine of Rs.20,000/-. In case of non-payment of fine, he shall suffer S.I. for two months more.

All sentences were ordered to run concurrently. Benefit of Section 382-B, Cr. P.C. was also extended to accused.

2. The prosecution story unfolded in the crime reports (Exh.6/C-6/F) are that on 11.05.2019, complainant ASI Faheem Chisti registered above said FIRs at police station Liaquatabad, Karachi, wherein in he has stated that he along with subordinate staff was on patrolling duty. During patrolling at about 0330 hours, when they reached at River Bank

Road, adjacent "A" Area, Liaquatabad, Karachi, they saw two suspects while coming on motorcycle, as such, they signaled them to stop, but accused persons started firing upon the police party in order to deter them from performing their lawful duties and to commit their murder. The complainant also made aerial firing in their defence and both accused were apprehended by the police. On inquiry, they disclosed their names Muhammad Waseem Bandhani son of Muhammad Rafiq Bandhani and Ubaid Murad @ Langra son of Hanif Murad. On their personal search, police recovered one 9mm pistol with four bullets, one rifle grenade, Rs.1000/- and one broken wrist watch from accused Ubaid Murad @ Langra and one rifle grenade, Rs.1200/-, one touch mobile Samsung and one wrist watch Citizen golden colour were recovered the accused Waseem Bandhani. Complainant also secured two empty bullets of 9 mm pistol fired by the police and four empty bullets of 9 mm pistol fired by accused. The motorcycle of accused bearing registration No.DUA-3605, black colour of 70 was taken into custody under section 550 Cr. P.C. Accused failed to produce license of pistol, as such, they were arrested under memo of arrest and recovery in presence of mashirs. After completion of legal formalities these FIRs were registered.

3. After usual investigation, challan was submitted against the accused under the above referred sections. All the cases were amalgamated by the trial court under section 21-M of the Anti-Terrorism Act, 1997, vide order dated 30.07.2019 at Exh.02.

4. Trial court framed charge against the accused at Exh.04 in all the cases, to which accused pleaded not guilty and claimed to be tried.

5. At trial, prosecution examined five witnesses. Thereafter, prosecution side was closed.

6. Statements of accused under Section 342 Cr. P.C were recorded at Exh.10 and 11, wherein the accused denied all the incriminating pieces of prosecution evidence brought against them on record and claimed false implication in these cases. Accused Ubaid Ali @ Langro raised plea that he was acquitted in Crime Nos. 101 and 102 of 2017, registered at Pak Colony by this Court on 14.03.2019. In a question what else you have to say, he replied that he is innocent and he was arrested by the Rangers Personnel on 17.04.2019 and in this regard his father namely Riaz Ahmed sent application about his illegal arrest through TCS to high authorities. Whereas, accused Muhammad Waseem Bandhani has stated that he is innocent and he was arrested by the Rangers Personnel on 03.05.2019 from his Pan Shop, situated near Baloch Hotel and kept him with them for about eight days and thereafter they handed over him to the police who involved him in the present false cases, nothing was recovered from his possession and he did not know co-accused Ubaid Ali @ Langra. However, Riaz Hassan, father of accused Ubaid Murad @ Langra was also examined in defence and they declined to give statement on oath in disproof of prosecution allegation.

7. Trial Court after hearing the learned counsel for the parties and assessment of evidence, by judgment dated 30.10.2019 convicted and sentenced the appellants as stated above. Hence these appeals.

8. Learned counsel for the appellant contended that on 11-05-2019 at about 0330 hours the appellant along with co accused Muhammad Waseem was arrested by ASI Faheem Chisti at PS Liaquatabad, Karachi who registered the FIR Nos. 130/2019, 131/2019, 132/2019 and 133/2019, under sections 353/324/34 PPC, under sections 4/5 Explosive Act and under sections 23(i)a of Sindh Arms Act, 2013 and on 30-08-2019 the learned ATC Court No. I at Karachi was pleased to frame the charge against the accused and accused pleaded not guilty, thereafter the

learned trial Court pleased to issue the summons to the prosecution witness to prove their case against the accused. He further contended that the prosecution examined the PW-1 Abid Farooqui of BDU and this witness in his cross examination admitted that **“It is correct to suggest that the rifle grenade cannot fire without launcher”**, this witness also admitted that **there is no laboratory situated in Sindh Province to test any grenade**, this witness also admitted that **“I had not sent the grenade to any laboratory for examination”**, this witness also admitted that **“it is also correct to suggest that it is not mentioned in the clearance certificate Ex. 5-D that the rifle grenade is harmful or dangerous”**. The prosecution witness PW-2 Faheem Chisti admitted before the learned trial Court that, **“in the said police encounter nobody received injury from each side”**. This witness also admitted that **“they have not sent weapon of police which was used in encounter for FSL”** and **“the motorcycle in question was not produced before learned trial Court”**. This witness also admitted that he had not made any entry in Register No.19. PW-3 Shahrukh who is mashir of arrest and recovery also admitted that **“in the said police encounter nobody from each side received any injury”** and PW-4 Aziz Ahmed who submitted the challan before the learned trial Court and prepared the memo of site inspection and sent the above pistol for FSL are all police officials, no private persons was cited by the police and the applicant/accused was arrested on 17.04-2019 by the Rangers officials from his house and in this regard the father of the accused, namely, Hanif Murad sent application for illegal arrest of his son to the higher authorities and the appellant/accused were illegally detained by the police from 17-04-2019 to 10-05-2019 and subsequently the police involved the appellant /accused in these false cases and there is no recovery of any weapon and rifle grenade from the appellant/accused. Learned counsel for the appellants contended that the impugned

judgment is illegal, unlawful, arbitrary and is unwarranted by law. He further contended that learned trial Court did not consider the improvements, discrepancies, and contradictions in the statements of PWs while deciding the case, that appellants/accused were booked by the police in these cases falsely. He also contended that the learned trial Court has erred in holding that the prosecution has proved the case against the appellants while there was contradictory evidence which is not trustworthy due to material contradictions and conviction handed down to the appellant is illegal and the same is result of mis-reading of facts and evidence on record. Lastly, learned counsel placed reliance on the cases of (1) **MUHAMMAD MANSHA V. THE STATE (1995 SCMR 1414)**, (2) **ABDUL KARIM alias PATNI and another V. THE STATE (2018 P. Cr. L.J 1358)**, (3) **ZUBAIR AHMED alias LADU V. THE STATE (2018 YLR Note 160)**, (4) **HASHIM V. THE STATE (2019 YLR 552)**, (5) **ASIF KHAN V. THE STATE (2018 YLR 661)** and (6) **MUHAMMAD IMRAN AFRIDI V. THE STATE (2018 YLR 2394)**.

9. Conversely, learned Additional Prosecutor General also contended that the impugned Judgment dated 30-10-2019 could not be sustained on the grounds that the I.O. failed to send the grenade for examination to laboratory for FSL report and so far as empties are concerned, secured by the ASI from the place of incidence, four empties of 9mm from the accused marked as "C1 to C4" turned out to be positive while two empties of 9mm marked as "C5 81 C6" fired by police did not match as per FSL report dated 23-05-2019 and during encounter as per prosecution story neither accused nor any member of police party sustained any bullet injury and it is admitted position that the number of official pistol which was used in encounter is not mentioned in the FIR nor in the memo of arrest/recovery and the recovered currency notes numbers were not mentioned in FIR or in the memo of arrest/recovery.

Learned Additional Prosecutor General does not support the impugned judgment.

10. We have carefully heard the learned Counsel for both the parties and scanned the entire evidence available on record.

11. At the trial, prosecution examined P.W.1 Sub-Inspector Abid Farooq has deposed that on 11.05.2019, he was posted at Bomb Disposal Unit West zone, Karachi, his duty hours were from 0800 hours to 2000 hours. At about 3.55 a.m., he received entry No.16 about the recovery of grenades, as such, he along with PC Ilyas Ahmed left his office at about 1345 hours under entry No.18. he produced both the entries respectively at Ex. 05/A and Ex. 05/B to be true and correct. On his arrival ay P.S Liaquatabad, he made entry No. 12 in the station diary, which he produced at EX.05/C to be true and correct. One rifle grenade No VMG-K2007 33 involved in FIR No. 132/2019, u/s 4/5 explosive Substance Act, was checked by him and kept it safely in the plastic Jar and issued such clearance certificate. P.S Liaquatabad and his office located in a building. During his cross-examination he has admitted that **“entry No.12 was without signature of any police official or official seal and rifle grenade cannot be fired without launcher and he had not sent the grenades to any laboratory for examination”** and further admitted that **“it was not mentioned in the clearance certificate Ex.5/D if rifle grenades were dangerous or harmful and he had checked the rifle grenades in a room, situated near office of duty officer and this fact was not mentioned in clearance certificate and entry No. 15 was also without signature or official seal and the plastic bottle and other material for keeping the grenade safely was provided by the official of P.S Liquatabad”** and he had handed over the rifle grenades to the complainant ASI Faheem and had issued final report on

the basis of clearance certificate and he had not produced any entry with regard to his duty. I.e. 08.00 a.m. to 08.00 p.m.

12. PW-02 ASI Faheem Chishti has deposed that on 10.05.2019, he was posted at P.S Liaquatabad, Karachi, he left P.S along with subordinate staff at about 8.00 p.m. for patrolling under entry No.22 and produced copy of said entry at Ex.06/A to be true and correct. During patrolling they found two suspects coming on motorcycle at River Bank, A Area, Liaquatabad. They issued them to single to stop, but they started firing on place party and they also fired in their defense. They apprehended both the accused. On inquiry they disclosed their names as Ubaid Murad @ Langra son of Hanif, one 9.mm pistol and four bullets, one Rifle grenade No.19 07 (Awan Bomb) was recovered from pocket of his pant, Rs.1,000/- and one broken wrist watch were also recovered from him. Second accused disclosed his name Waseem Bandhani son of Rafiq Bandhani, on his personal search, one rifle grenade No.VMG K 33 20 07 (Awan Bomb), Rs.1,200/-, one touch mobile phone Samsung and one wrist watch Citizen golden color were recovered from his possession and secured two empties of 9.mm pistol fired by him and four empties of 9.mm pistol fired by accused were also secured from place of incident. During his cross-examination he stated that he checked 8/10 persons during patrolling and with regard entry Ex. 06/A, he stated that “neither it was original nor it was carbon copy, but same was computerized copy and admitted that same entry was without any signature and this fact was not mentioned in entry No. 22” and “neither accused nor any member of place party sustained any bullet injury due to firing” and “it was not mentioned in the FIR specifically that he secured two empties of 9.mm pistol and secured four empties of 9.mm pistol from the place from where accused had fired” and he himself had prepared memo of arrest and recovery and “he did not

prepare sketch of the empties” and further admitted that “description of pistol particularly three holes appear over it were not mentioned in the memo of arrest and recovery or its sketch”. He prepared memo of arrest and recovery while putting paper on the bonnet of police mobile and he himself registered FIRs and had also made entries in his own handwriting and he had not made entry in register No.19 and saw seal cover of pistol, which did not bear number of pistol and the entry under which they left P.S was not mentioned in the memo at Ex. 06/B so also “in the FIR and pistol through which he had fired upon accused persons has not been made as case property and same was not produced by him in the evidence” and “number of his official pistol was not mentioned in the FIR” and denomination of currency notes or its numbers were not mentioned in the memo or in the FIR and he did not know, if accused was taken away by the Rangers personnel on 03.05.2019 and later on handed over to the police for booking him falsely in this case.

13. PW-03 PC Shah Rukh has deposed that on 10.05.2019 complainant left P.S along with him and other staff for patrolling. During patrolling they found two persons coming on motorcycle at the bank of river and on seeing them, complainant signaled them to stop, but they started firing upon police party and police also fired in their defense. “Accused thereafter raised their hands up and surrendered them before police”. Accused were apprehended and on inquiry, they disclosed their names Waseem Bandhani and Ubaid Murad. One Awan Bomb bearing No. VMG K 33 20 07, one Samsung mobile phone, one wrist watch of golden color and Rs.1, 200/- were recovered from accused Waseem Bandhani. One Awam Bomb, one 9mm pistol with four bullets, one wrist watch and Rs.1.000/- were recovered form accused Ubaid Murad. One motorcycle bearing registration No.DUA-3605 was also seized. Four empties of 9.mm

pistol fired by accused persons and two empties of 9.mm pistol fired by the police were also recovered. **“Police mobile had also sustained bullet mark due to firing of accused”**. During his cross-examination he stated that **“he saw memo and say that it was not mentioned in the same that police mobile had received any bullet mark and he did not fire during encounter and only the complainant had fired from his pistol, they had seen the accused at the distance of 20 paces and it was also not mentioned in the memo of place of incident that how many empties were secured by the complainant. He further stated that **“the sketch of empty bullets was not prepared in my presence”**”**.

14. PW-04 Inspector Aziz Ahmed has deposed that on 11.05.2019, he was posted as SIO at P.S Liaquatbad, Karachi and received papers, case property and accused for investigation from Duty officer under entry No.14, he produced said entry at Ex.08/A and received letter addressed to the MLO for treatment and certificate of accused Ubaid Murad @ Langra and produced said letter and medico legal certificate respectively at Ex.08/B and Ex.08/C. He also received clearance certificates of rifle grenades. During his cross-examination he admitted that **“he had not kept the entry about receiving case property in register 19”** and the property was deposited in the Malkhana after inspection by the Bomb Disposal Unit official and the property was deposited in the Couth of P.S on 13.05.2019, the pistols and bullets were referred to the FSL, further admitted that **“neither in the FIR nor in the memo of arrest and recovery was mentioned about the bullet marks at the hood of police mobile”** and the police mobile was taken by him to FSL for examination and **“he had not produced any entry to disclose this fact and accused had not sustained injury during encounter, but he was referred to the MLO for examination and obtaining certificate as he had met with an accident, as such his one**

leg was old fracture” and entry No. 24 under which he had left P.S for visiting place of incident was “not mentioned in the memo of place of incident and names of mashirs in whose presence place of incident was inspected were not mentioned in entry No.24” and he had taken photographs of place of incident through his mobile phone and printed out through computer of police station.

15. In defence DW-1 Riaz Hassan, father of accused Ubaid Ali @ Langra has deposed that “on 17.04.2019, accused had gone to visit his sister at her house, situated at Purana Goli Mar and his sister informed him through mobile phone that accused was taken away by the Rangers Personnel and on 18.04.2019, he sent application to the D.G. Rangers through courier service, but he was not released and produced application and its receipt respectively at Ex. 12/ and after 26 days, he was informed from P.S Liaquatabad about the arrest of accused, he went there, where he came to know that accused was falsely involved in these cases”. During his cross-examination he admitted that application at Ex. 12/a produced by him did not bear date of its dispatch and he had not produced any receiving of application from official of D.G Rangers and evidence of his sister has not been recorded as a defense witness.

16. Record reflects that recovered weapon viz. (i) one 9mm bore pistol No.T0620-10H06 with magazine and four 9mm bore live cartridges, (ii) four 9mm bore crime empties (marked as C1 & C4) and (iii) two 9mm bore crime empties (marked as C5 and C6) were recovered from the possession of the appellants on 11.05.2019, which were received by the Ballistic Expert on 13.05.2019 for examination, who opined that the above mentioned weapon was in working condition and two 9mm bore crime empties marked as “C5 and C6” were ‘not fired’ from the above mentioned 9mm bore pistol No.T0620-10406 in question in view of the

fact that major point i.e. striker pin marks, breech face marks are 'dissimilar' (fired by the police). Whereas rifle grenades recovered from the possession of the accused were also inspected by PW-01 SIP Abid Farooq, Bomb Disposal Unit, West Zone, Special Branch, Karachi, who has furnished his report on 30.05.2019 and observed as follows:-

“As per possible and readable observation that the above mentioned Rifle Grenade is complete EOD Device (Explosive Ordinance Device), if it use fire by launcher. It gives loss of life and damage property. The said Rifle Grenade made properly safe, pack and seal in plastic jar and handed over to ASI Faheem Chishti of PS Liaquatabad, Karachi along with clearance certificate signed by BD team and with the advice for safe handling.”

As per above report of Ballistics Expert two 9mm bore crime empties marked as “C5 and C6” were not fired from 9mm bore pistol No.T0620-10406, so also, two rifle grenades have not been sent for FSL report, which creates serious doubt in the prosecution case. No evidence of modern devices to that extent has been produced by the prosecution before the trial court. The fact that official weapons were not sent for FSL gives jolts to the case of the prosecution.

17. Record further reveals that Motorcycle bearing registration No.DUA-3605 has not been produced before the trial Court. According to prosecution story, the encounter was took place but surprisingly no injury was caused to any party nor the general public, furthermore, PW-03 admitted that he did not fire during encounter and registration of motorcycle has also not been mentioned in Ex.06/K and even in the said memo it has not mentioned that how many empties were secured by the complainant. **PW-04/I.O. admitted that he received the case property without entry in Register 19 of P.S. and with the delay of three days the same was sent to the FSL and neither the FIR nor the memo of arrest and recovery speak about the bullet marks at the hood of**

police mobile and he has taken the police mobile for FSL but he had not produced any entry to disclose this fact and names of mashirs in whose presence place of incident was inspected were not mentioned in entry No. 24. Prosecution has also failed to show that despite being a well-populated area when police had sufficient time to associate any independent/private persons of the locality for making them as *Mushirs* of recovery but I.O./P.W.-04 Aziz Ahmed has failed to do so without justification and failed to explain that why such was not done, which cuts the roots of prosecution case. The above prosecution evidence shows glaring contradictions/ambiguity. This fact has totally been ignored by the learned trial Court while passing the impugned judgment.

18. Evidentially we have come to the conclusion that prosecution has failed to prove its case against the appellants beyond any reasonable doubt for the reasons that prosecution case appears to be highly unnatural and unbelievable. We have several reasons to disbelieve the prosecution case. It is the case of prosecution that accused were armed with rifle grenade/explosive substance and 9mm pistols. It is unbelievable that no attempt was made by the accused to use these rifle grenades/explosive substance at the time of their arrest in order to escape. It was against the conduct of the criminal minded persons to surrender without resistance when armed with deadly weapon. According to the case of prosecution, accused were coming on motorcycle, when police signaled to stop they started firing on police party but surprisingly no injury/scratch has been caused to any party. PW-03 ASI Faheem Chishti failed to explain that under what circumstances, he brought explosive substance safely at police station, has not come on record. Prosecution evidence is silent with regard to the safe custody of the rifle grenade/explosive substance at the police station and safe transit to the expert. Rifle grenades have not been sent

for forensic test. Delay in dispatch of recovered weapons to experts has not been explained by the prosecution. Accused have raised plea that they were arrested by the Rangers Personnel and father of accused Ubaid Murad @ Langro has sent an application through TCS to high authorities i.e. Hon'ble Chief Justice of this Court and D.G. Rangers etc. and both the accused were allegedly arrested by the Rangers Personnel on 17.04.2019 and 03.05.2019, respectively and thereafter their custody was handed over to the police and false cases were registered against them. Official witnesses have shown ignorance about the application moved by the father of accused Ubaid Murad @ Langra to the D.G. Rangers Sindh, Inspector General of Police Sindh and Honourable Chief Justice of Sindh High Court. Unfortunately, trial court failed to consider the defence theory. No doubt, application moved by the father of accused Ubaid Murad @ Langra to the high officials including Honourable Chief Justice of this Court. Trial court ought to have looked into it for reaching to any just decision of the case as a Court may take judicial notice of such documents, which were not produced in evidence but were the part of the judicial record to do substantial justice between the parties. In a criminal case, it is the duty of the Court to review the entire evidence that has been produced by the prosecution and the defence. If, after an examination of the whole evidence, the Court is of the opinion that there is a reasonable possibility that the defence put forward by the accused might be true, it is clear that such a view reacts on the whole prosecution case. In these circumstances, the accused are entitled to the benefit of doubt, not as a matter of grace, but as of right, because the prosecution has not proved its case beyond reasonable doubt. Reliance is placed on the case of **NADEEM-UL-HAQ and others vs. The STATE (1985 SCMR 510)**.

19. As highlighted above, prosecution has utterly failed to establish safe custody of the explosive substance at police station and its safe

transmission to the expert. It is interesting to note that PW-02 ASI Faheem Chishti in his cross-examination has admitted that he had not made entry in Register No. 19, so also, PW-04 also admitted that he had not kept the entry about receiving case property in Register 19. Furthermore, official weapons, which were used in the alleged encounter, have also not been sent for FSL report. Admittedly, Head *Mohrrar* of Police Station has not been examined. Sending the weapons to the forensic division with the delay of one day has also not been explained properly, as such no sobriety can be attached to the positive report, with regard to the safe custody of the weapon at police station and its safe transit, the Honorable apex court in the case of *Kamaluddin alias Kamala V. The State (2018 SCMR 577)* has held as under:

“As regards the alleged recovery of Kalashnikov from the appellant’s custody during the investigation and its subsequent matching with some crime-empties secured from the place of occurrence suffice to it to observe that Muhammad Athar Farooq DSP/SDPO (PW18), the investigating officer, had divulged before the trial court that the recoveries relied upon in this case had been affected by Ayub, Inspector in an earlier case and thus, the said recoveries had no relevance to the criminal case in hand. Apart from that safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory had never been proved by the prosecution before the trial court through production of any witness concerned with such custody and transmission”

20. Omissions are always fatal to the case of the prosecution and tempering with case property could not be ruled out where the same was not sealed or the same were sent for chemical examination with a delay. Lapse on the part of the police is clear and admitted. Wisdom behind sealing the weapons at the place of incident is to eliminate the possibility of manipulation of evidence after the recovery of the crime weapons. Sealing of weapons is essential, particularly in cases when it is alleged that weapon was used in the commission of crime and empties were secured from the *vardat*. In the circumstances at hand evidence of police officials does not appear to be trustworthy thus required independent corroboration, which is lacking in this case. Reliance is

placed on the case reported as **PLD 2004 Supreme Court 39** (*The State vs. Muhammad Shafique alias Pappo*), in which the Honourable Supreme Court has observed as under:-

“13. It has been established by the evidence of Muhammad Saeed Abid C.W. that the respondents were neither the owners of said house nor tenants. It being so, it is very hard to believe that they were occupying it B and were living therein. Learned High Court specifically noted that despite the fact that it was known to the prosecution that the house belonged to aforesaid witness, yet, no evidence was collected to show that the respondents were in its possession. Neither Chowkidar nor labourers nor neighbours were joined by the investigating agency to demonstrate that ever any of them was seen entering or coming out from it. The alleged recoveries of explosive substances, weighing about 30 k.gs. a kalashnikov with 25 live rounds loaded in the magazine from under the mattress of respondent Abdul Jabbar and a wooden box from under said bed of respondent Muhammad Shafique, containing 10 detonators 10 igniters, a T.T pistol loaded with six live rounds, do not inspire confidence, as so C much could not be concealed under said mattresses. Besides, Mashir of recovery namely, Muhammad Usman, as rightly held by High Court, was stock witness of the prosecution, as in the cases related to F.I.Rs. Nos. 58, 59, 61, 62, 68 of 1998 and 16 of 1999 he was cited as prosecution witness of recovery. It is a strong circumstance, which creates doubt about credibility of this witness, particularly when other witness Mushir Abdur Rehman was not examined.”

21. After careful reappraisal of the evidence discussed above, we are left with no amount of doubt that the prosecution has failed to bring home guilt to the accused as the evidence furnished at the trial is full of factual, legal defects and is bereft of legal worth/judicial efficacy. Therefore, no reliance can be placed on the same.

22. Prosecution failed to even prove that appellants assaulted or used criminal force to police officials to deter from discharge of their duty. In our view, appellants had been convicted under section 324, PPC without any evidence. From the prosecution evidence available on record, offence had no nexus with the object of Anti-Terrorism Act, 1997 as contemplated under sections 6 and 7 of the Anti-Terrorism Act, 1997. Therefore, evidence available on record makes it clear that encounter had not taken place hence, above stated circumstances created doubt about the very commencement of the encounter.

23. It appears that the Investigation officer to conduct fair investigation in this case has failed as no independent person of locality was examined in order to ascertain the truth beyond any reasonable doubts. The above stated circumstances in our view created serious doubts about the very occurrence of the encounter. The standard of the proof in such a case should have been far higher as compared to any other criminal case when according to the prosecution it was a case of police encounter was an evening time incident. It was desirable that it should have been investigated by some other agency. Such dictum has been laid down by the Honourable Supreme Court in the case of ***Zeeshan alias Shani versus The State (2012 SCMR 428)***. Relevant portion is reproduced as under:-

“11. The standard of proof in this case should have been far higher as compared to any other criminal case when according to the prosecution it was a case of police encounter. It was, thus, desirable and even imperative that it should have been investigated by some other agency. Police, in this case, could not have been investigators of their own cause. Such investigation which is woefully lacking independent character cannot be made basis for conviction in a charge involving capital sentence, that too when it is riddled with many lacunas and loopholes listed above, quite apart from the afterthoughts and improvements. It would not be in accord of safe administration of justice to maintain the conviction and sentence of the appellant in the circumstances of the case. We, therefore, by extending the benefit of doubt allow this appeal, set aside the conviction and sentence awarded and acquit the appellant of the charges. He be set free forthwith if not required in any other case.”

24. We are unable to rely upon the evidence of the sole police officials with regard to police encounter for the reason that there was cross-firing but no injury/scratch was caused to the accused and/or police party. The distance between police officials and accused was 20 paces at the time of encounter and none from the police party sustained any bullet injury. Non-production of the arrival and departure entries of

police station also cut the roots of the prosecution case. Accordingly, the prosecution has failed to bring home guilt to the accused as the evidence furnished at the trial is full of factual, legal defects and is bereft of legal worth/judicial efficacy. Therefore, no reliance can be placed on the same, in all fairness.

25. Needless to mention that while giving the benefit of doubt to an accused, it is not necessary that there should be countless circumstances creating doubt, if there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of *Tariq Pervez v. The State (1995 SCMR 1345)*, *Ghulam Qadir and 2 others v. The State (2008 SCMR 1221)*, *Muhammad Akram v. The State (2009 SCMR 230)* and *Muhammad Zaman v. The State (2014 SCMR 749)*.

26. No doubt, the Sindh Arms Act, 2013 is enacted to curb the proliferation of arms and ammunitions and punishment for possession of any fire arm is extended to 14 years and with fine and rule for safe administration of criminal justice is "the harsher the sentence the stricter the standard of proof", therefore, for the purposes of safe administration of criminal justice, some minimum standards of safety are to be available so as to strike a balance between the prosecution and the defence and to obviate chances of miscarriage of justice on account of exaggeration by the investigating agency. Such minimum standards of safety are even otherwise necessary for safeguarding the fundamental rights of the citizens regarding life and liberty, which cannot be left at the mercy of police officers without production of

independent evidence. It is therefore held that it would be unsafe to rely upon the evidence of police officials without independent corroboration which is lacking in this case. Consequently, in view of our above discussion, we form a view that appellants were picked up earlier by the personnel of Pakistan Rangers and later implicated in these bogus cases. Hence, no sanctity can be attached to the prosecution case as well as the deposition of prosecution witnesses.

27. From the above discussion, it is evident that the investigation and inquiry carried out is neither satisfactory nor free from *malice* and the appellants' implication in these cases is not free from doubts. They thus could not be left at the mercy of Police. The review of the impugned judgment shows that essential aspects of the case have slipped from the sight of the learned trial Court which are sufficient to create shadow of doubt in the prosecution story.

28. For the above stated reasons, we reach to an irresistible conclusion that prosecution has utterly failed to prove its case against the appellants and trial court failed to appreciate the evidence according to settled principles of law. False implication of the appellants could not be ruled out. Resultantly, these appeals are allowed and conviction and sentence recorded by the trial Court vide judgment dated 30.10.2019 are set aside and appellants are acquitted of the charges. Appellants shall be released forthwith if not required in some other custody case.

29. These are the reasons for our short order dated 26.11.2020.

JUDGE

JUDGE