

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Nazar Akbar

Mr. Justice Zulfiqar Ahmad Khan

Special Cr. Anti-Terrorism Jail Appeal No.349 of 2019

Appellants : Mehtab alias Kala s/o Ali Muhammad Qureshi and Naveed alias Nao s/o Gulzar are in jail custody.

State : Through Ms. Rahat Ahsan, Additional Prosecutor General, Sindh.

Date of Hearing : 01.12.2020

Date of Judgment : 01.12.2020

J U D G M E N T

Zulfiqar Ahmad Khan, J:- Appellants Mehtab and Naveed were tried by learned Judge, Anti-Terrorism Court-XX, Karachi in Special Case No. 62/2019, [Crime No. 01/2019 under sections 353/324/34 PPC read with Section 7 of ATA 1997], Special Case No. 62-A/2019 [Crime No. 02 of 2019 under section 23(1) (a) of the Sindh Arms Act, 2013] and Special Case No. 62-B/2019 under section 23(1) (a) of the Sindh Arms Act, 2013] registered at P.S. Steel Town, Karachi. On conclusion of the trial, vide judgment dated 30.09.2019, the appellants were convicted and sentenced under section 265-H Cr. P.C. as under:-

- a. For the offences under Sections 324 PPC read with Section 7(h) of ATA, 1997 and sentenced to undergo for five years with fine of Rs.20,000/-. In default in payment of such fine, he shall suffer further R.I. for six months more.
- b. For the offences under Section 353 PPC and sentenced to undergo R.I. for one year.
- c. For the offences under Section 23(1)(a) of Sindh Arms Act, 2013 and sentenced to undergo R.I. for five years with fine of

Rs.20,000/-. In default in payment of such fine, he shall further suffer R.I. for six months.

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

2. The prosecution story unfolded in the crime report is that on 01.01.2019 complainant ASI Asdullah was on patrolling duty and at about 0010 hours near Kacha Ravenda Road Soomar Goth Near Al-khiddmat Hospital Malir they signaled to stop the culprits who were coming on a motorcycle from the side of Gulshan-e-Hadid, but they started firing at police party and in retaliation one of them got injured and were arrested and disclosed their names as Mehtab alias Kala, who was having a T T Pistol of 30 bore loaded with four live bullets in its magazine and one live bullet in its chamber, which was secured by the police from his possession alongwith one cellular Nokia phone, copy of his CNIC and 500 cash while they secured from other accused namely Naveed alias Nao one T T Pistol of 30 bore alongwith magazine loaded with three live bullets and one live bullet in its chamber; while they failed to produce any license of the weapons. Motorcycle bearing No. KJT-6264 was also seized by the police at the spot. Hence the FIRs.

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 29.1.2019.

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 Exhs. 12 & 13, wherein the accused denied all the incriminating pieces of prosecution evidence brought against them on record and claimed false implication in these cases. Accused Mehtab stated in reply to a question that he was picked by police on 01.01.2019 at about 06.30 p.m. when he was returning back to his home from the garment factory where he was working as Operator, and took him to P.S. Steel Town and demanded bribe from him of Rupees One lac and on refusal they took him to P.S. Gulshan-e-Hadid area and shot at his right thigh at about 11.0 p.m. and sent him to Jinnah Hospital for treatment. Whereas accused Naveed replied that on 01.01.2019 at about 3.00 p.m. when he was returning from the cattle form, where he was working, he was picked by police of P.S. Steel Town and demanded bribe of Rupees Fourty thousand. On failure to fulfill their demand they implicated them in these false cases and further stated that they are innocent and prayed for acquittal.

7. Trial Court after hearing the learned counsel for the parties and assessment of evidence, by judgment dated 30.09.2019 convicted and sentenced the appellants as stated above. Hence this appeal.

8. The grounds taken in the appeal are that the impugned judgment is illegal, unlawful, arbitrary and is unwarranted by law and that the 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 by foisting arms upon them and the FIRs of encounter was lodged by the complainant falsely, none from the police officials sustained bullet injury and according to prosecution, from the possession of the accused persons police recovered T.T. pistols of 30 bore without number while in FSL examination it is mentioned as "rubbed number" and the official

weapons of police were not sent for FSL which makes the whole story doubtful and the alleged recovered weapons were sent for FSL with inordinate delay without any explanation and 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 appellants is illegal and the same is result of mis-reading of facts and evidence on record and they are innocent and have falsely been implicated in these managed cases of encounter and pistols by the police and that appellants/accused were booked by the police in these cases falsely by foisting arms upon them and the learned trial Court has miserably failed to appreciate the evidentiary value of evidence and also failed to prove the case beyond the shadow of doubt and only one accused has sustained bullet injury and no police official or mobile was hit by any bullet which sole ground is sufficient to create doubts in the prosecution story. Lastly, the appellants in their appeal have prayed for acquittal.

9. Learned Additional Prosecutor General has argued that the prosecution has examined five PWs and they have fully implicated the accused in the commission of offence. He further argued that police officials had no enmity to falsely implicate accused in these cases and trial court has rightly convicted the accused. He however completely showed in indifference with the assertions of the appellants that police arrested them as there were unable to grease their palms. Learned Additional Prosecutor General prayed for dismissal of the present appeal.

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 ASI Asadullah Gopang who deposed that on 31.12.2018 he was accompanied with HC Shafique, PC Raj Ahmed and PC Sain Bux who were patrolling in the area and had also setup a picket nearby Al-Khidmat situated at Gulshan-e-Hadid. At about 12.10 a.m. they saw two suspicious persons on a motorcycle and upon interruption they started firing upon them and during exchange of fire, one accused Mehtab received firearm injury and they apprehended both the accused and secured one T.T. Pistol 30 bore with three live bullets in magazine and one in chamber from accused Mehtab and one T.T. Pistol 30 bore with 3 live bullets in magazine and one in chamber from other accused Naveed.

12. PW-03 HC Shafiq ur Rehman has stated that on 01.01.2019 he left the P.S. under the supervision of ASI Asaddullah Gopang under entry No. 33 at about 11.00 p.m. and during patrolling when they reached at Al-Khidmat Hospital situated at Gulshan-e-Hadid, they started conducting snap checking, in the meanwhile they saw two suspicious persons riding a motorbike, upon signaled them to stop, they started firing on police party. In his cross-examination he admitted that they remained present at the place of incident for about 45 minutes and ASI Gulzar Ali reached at the place of incident within 15 minutes after receiving such information. The contents of memo of arrest and recovery were written by ASI Asadullahd Gopang and he also drew the sketch of pistol and bullets. The firing lasted for about five minutes where he made four fire shots.

13. PW-04 ASI Gulzar Ahmed in his examination-in-chief deposed that after receiving such information he left his P.S. at about 0018 hours viz. 01.01.2019 under the roznamcha Entry No. 32 and reached at the place of incident where ASI Asadullah Gopang was busy in formal proceedings.

14. PW-05 SIP Zulfiqar Ali Bajwa in his examination-in-chief has deposed that on 01.01.2019 at about 1405 hours he had gone to the place of incident alongwith the complainant ASI Asadullah, HC Shafiq ur Rehmen, P C Sain Bux, PC Raj Muhammad and PC Karim Dad under the roznamcha Entry No. 12 and he conducted inspection of place of incident on the pointation of ASI Asadullah Gopang and collected 05 empties of SMG and 04 empties of 30 bore pistol from the place of incident.

15. Record reflects that recovered weapons viz. two 30 bore pistols (one rubbed number and other having No. A3104), empties and live cartridges etc. were recovered from the possession of the appellants at the time of incident i.e. 01.01.2019, which were received by the Ballistic Expert for examination on 02.01.2019, who has opined that pistols are in working condition and two 30 bore crime empties were fired from each pistol.

16. The above report of Ballistics Expert shows that two 30 bore pistols (one rubbed number and other having No. A3104) allegedly had been recovered from the accused but their description has never been given in the entire evidence and in their 161 Cr. P.C. statements that the pistols were rubbed number, 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. Mashirnama of recovery does not disclose the number of recovered pistols but the report of Laboratory (FSL) discloses rubbed number of pistols, and such contradiction/infirmity has also created serious doubt in the prosecution case. There is no explanation of not sending the official SMG for forensic examination to identify whether the bullet hit the injured accused was fired from the official weapon or not.

17. Prosecution failed to 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 objects 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. Above stated circumstances created doubt about the very commencement of the encounter.

18. It appears that the Investigation officer to conduct fair investigation in this case has failed as no independent person 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. 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.”

19. According to the statements of accused under section 342 Cr. P.C., they were picked up by police on 01.01.2019 when they were returning from their places of work, and police demanded bribe from them and on failure to fulfill their demand, police implicated them in these false cases but such plea has been disbelieved by the trial Court without assigning any reason. No doubt, police officials as citizens are as good witnesses in Court proceedings as any other person yet, some amount of care is needed when they are the only eye witnesses in the case. It is not on account of an inherent defect in their testimony, but due to the possibility that an individual police official in mistaken zeal to see that the person he believes to be a culprit is convicted, might blur the line between duty and propriety. It is settled law that in the exercise of appreciation of evidence it is necessary as a prerequisite, to see whether a witness in question is not such an overzealous witness. It is alleged that the appellants were on a motorbike bearing Registration No. KJT-6264, though the claim of the appellants was that they were not on the motorbike, while the police has failed to identify the ownership of the motorbike and has not produced the motorbike before the trial Court either. Such non-production of the vehicle of "terror-spread" puts the last nail in the prosecution's coffin.

20. Hence, we are also unable to rely upon the evidence of the witnesses with regard to the police encounter for the reason that there was cross-firing for about 05 minutes but no injury/scratch was caused to the police party. The distance between police officials and accused was 10 feet at the time of encounter and none from the police party sustained any bullet injury and bullet marks on the police vehicle also. Non-production of the arrival and departure entries of the 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.

21. 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. 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*)**.

22. 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)***.

23. 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 police and later implicated in these bogus cases. Hence, no sobriety can be attached to the prosecution case as well as the deposition of prosecution witnesses.

24. As per FIR No.62/2019, the accused were riding motorcycle having registration No. KJT-6264 and were coming in a *suspicious condition* and started firing while riding the said motorcycle. In retaliation, police made fire which hit one of the riders (appellant Mehtab) whereafter police arrested both the individuals. Later it was found that motorcycle had Engine No.1538768 and Chassis No.DSE-2539893. Motorcycle thus became vital case property as the entire prosecution story revolved around the accused using it in a *suspicious condition*, fired on police party while sitting on the motorcycle, trying to flee on the said vehicle and police fired upon these fleeing individuals and one of the riders was hit which helped police to nab both the riders. Having such a pivotal role in the entire escapade, the said Motorcycle was however not shown in Column 5 of the Charge Form (page 197) as case property where only two 30 bore pistols, live bullets, empties and Rupees 500 have been shown, resultantly the impugned judgment only dealt with the above

mentioned (pistol, bullets and empties) under the heading of "Property Order" (page 195).

25. Paragraph (4) of Police Rule 22-16 titled "Case property" requires that *"Motor vehicles detained or seized by the police in connection with cases or accidents shall be produced before a Magistrate after rapid investigation or by means of in-complete challan. The evidence relating to the identity or condition of the vehicle should be led and disposed of at an early date, and the Magistrate should then be invited to exercise the discretion vested in him by Section 516-A, Code of Criminal Procedure, to order that the vehicle be made over to the owner pending conclusion of the case on security to be produced whenever demanded by the Court"* and with regards safe custody, Paragraph (1) of Rule 27.17 requires that *"Weapons, articles and property sent in connection with cases shall on receipt be entered in Register No.1 and shall (excluding livestock) be properly stored in the store-room of the head of the prosecuting agency, or the police station. When required for production in court such articles shall, at headquarters, be taken out in the presence and under the personal order of an officer of rank not less than prosecuting sub-inspector and an entry made in the register of issue from and return to the prosecuting agency's store-room, which register shall be maintained in Form 27.18(1)."*

26. Entry in the Malkhana register to the effect that who had taken the property to the Court and brought it back, is necessary as per Rule 22.70 of the Police Rules titled "Register No. XIX" which provides that *"This register shall be maintained in Form 22.70. With the exception of articles already included in register No. XVI, every article placed in the store-room shall be entered in this register and the removal of any such article shall be noted in the appropriate column."* The register is to be maintained in Form 22.70. It reads as under:-

FORM No. 22-70	
POLICE STATION _____	_____ DISTRICT
Register No. XIX. Store - Room Register (Part-I)	
Column 1 -- Serial No.	
2 -- No. of first information report (if any), from whom taken (if taken from a person), and from what place.	
3. -- Date of deposit and name of depositor.	
4.-- Description of property.	
5. -- Reference to report asking for order regarding disposal of property.	
6. -- How disposed of and date.	
7.-- Signature of recipient (including person by whom despatched).	
8. -- Remarks.	

27. AS per Police Rules, it is also necessary that as and when case property is taken out from Malkhana, necessary entry is required to be made in the said Malkhana Register and also at the time when case property is re-deposited in the Malkhana. Case property in all cases is required to be kept in safe custody from the date of seizure till its production in the Court. It is also necessary that when case property is taken out from Malkhana, entry is made and also at the time when case property is re-deposited in the Malkhana. This exercise is aimed to alley doubt as to whether it is the same case property which was recovered from the accused and sent to the Court, or it is case property of some other case.

28. Paragraph (2) of Rule 22.18 of Police Rules is also relevant which requires that *“All case property and unclaimed property, other than cattle, of which the police have taken possession shall, if capable of being so treated, be kept in the store-room. Otherwise the officer in charge of the police station shall make other suitable arrangements for its safe custody until such time as it can be dealt with under sub-rule (1) above. Each article shall be entered in the store-room register and labelled. The label shall contain a reference to the entry in the store-room register and a description of the article itself and, in the case of*

articles of case property, a reference to the case number. If several articles are contained in a parcel, a detail of the articles shall be given on the label and in the store-room register. The officer in charge of the police station shall examine Government and other property in the store-room at least twice a month and shall make an entry in the station diary on the Monday following the examination to the effect that he has done so."

29. Rule 27.18 of Police Rules titled "Safe custody of property" requires that "(1) Weapons, articles and property sent in connection with cases shall on receipt be entered in register No. 1 and shall (excluding livestock) be properly stored in the store-room of the head of the prosecuting agency, or the police station. When required for production in court such articles shall, at headquarters, be taken out in the presence and under the personal order of an officer of rank not less than prosecuting sub-inspector and an entry made in the register of issue from and return to the prosecuting agency's store-room, which register shall be maintained in Form 27.18(1). Animals sent in connection with cases shall be kept in the pound attached to the police station at the place to which they have been sent, and the cost of their keep shall be recovered from the District Magistrate in accordance with Rule 25.48. (2) In all cases in which the property consists of bullion, cash, negotiable securities, currency notes or jewellery, exceeding in value Rs. 500 the Superintendent shall obtain the permission of the District Magistrate, Additional District Magistrate or Sub-Divisional Officer to make it over to the Treasury Officer for safe custody in the treasury. (3) All cash, jewellery and other valuable property of small bulk, which is not required under sub-rule (2) above to be sent to the treasury, shall be kept in a locked strong box in the store-room. Each court orderly shall be provided with a strong lock-up box in which he

shall keep all case property while it is in his custody in the court to which he is attached. Case property shall invariably be kept locked-up in such box except when it is actually produced as an exhibit in the course of proceedings. After being so produced it shall be immediately replaced in the lock-up box. Boxes shall be provided from funds at the disposal of the District Magistrate. (4) Property taken out of the main store-room for production in court shall be signed for by the court orderly concerned in register No. 2 and the prosecuting officer authorizing the removal shall initial this entry. Such officer shall similarly, after personal check, initial the entry of return of the property to the main store-room on the closing of the courts. (5) Every day, when the courts close, an officer of the prosecuting branch of rank not less than that of sub-inspector shall personally see that the articles produced in court are returned to the store-room, restored to their proper places in the shelves, cup-boards or strong box and 12 of 42 registered as required by sub-rule (4) above. The opening of the storeroom in the morning and its closing in the evening shall invariably be in the presence of the police officials named in this rule. Animals brought from the pound shall be repounded under the supervision of a head constable."

30. Thus, it is evident from Rule 22.18 that the case property is required to be kept in store room and each article is to be entered in store room, registered and labelled and label shall contain a reference to the entry in the store-room register and a description of the article itself and, in the case of articles of case property, a reference to the case number. Similarly, it is prescribed in Rule 27.18 that weapons, articles and property sent in connection with cases shall on receipt be entered in register No. 1 and shall (excluding livestock) be properly stored in the store-room of the head of the prosecuting agency, or the

police station. The case property when required for production in court such articles shall, be taken out in the presence and under the personal order of an officer of rank not less than prosecuting sub-inspector and an entry made in the register of issue from and return to the prosecuting agency's store-room, which register shall be maintained in Form 27.18(1). Property taken out of the main store-room for production in court is required to be signed by the court orderly concerned in register No. 2 and the prosecuting officer authorizing the removal shall initial this entry. Such officer similarly, after personal check, is required to initial the entry of return of the property to the main store-room on the closing of the courts. It is further provided in the said Rule that every day, when the courts close, an officer of the prosecuting branch of rank not less than that of sub-inspector shall personally see that the articles produced in court are returned to the store-room, restored to their proper places in the shelves, cup-boards or strong box and registered as required by sub-rule (4) above. The opening of the storeroom in the morning and its closing in the evening shall invariably be in the presence of the police officials named in this rule. In case property is required to be committed to the higher Court, then under Rule 27.19, the parcel shall be sealed with the seal of the court and made over to the head of the police prosecuting agency, who shall produce it with unbroken seals before the superior court, or, if so ordered by competent authority, shall make it over to some other officer authorized so to produce it.

31. In the instant case, there is nothing on record to suggest that these Rules were followed with regards any case property generally and for the motorcycle particularly. These stringent Rules have been framed to ensure that case property from its initial stage of seizure till production in the Court remains safe/intact and is restored to store room (or Malkhana) in the presence of senior police officer. Property

taken out of the main store-room for production in court is required to be signed by the court orderly concerned in Register No. 2 and the prosecuting officer authorizing the removal is required to initial this entry. Such officer is to similarly, after personal check, initial the entry of return of the property to the main store-room on the closing of the courts. This legal framework appears to be a fairytale in the present case.

32. It is evident from the perusal of the facts of the case, that no investigation was made as to the ownership of the motorcycle (notwithstanding it had a registration number) and evidently once its rightful owner was not investigated, Court's powers under Section 516-A of CrPC were also not invoked, this vital piece of case property seemingly was usurped in utter defiance of the prescribed procedure.

33. Now coming to the issue of not sending official weapons for forensics alongwith the empties, reference is made to Rule 6.8 of Police Rules titled "Register of distribution of arms" which permits issuance of police weapons. It provides that *"(1) The distribution and movement of individual arms on charge, shall be recorded in Part I of the Arms distribution Register (Form 6-8), to be kept by the kot head constable under the supervision of the line officer. In this register shall be shown only actual arms and those accessories which are issued with them, and the register shall be divided so that a record of each item may be kept separately vide instructions in the form. Columns 3 and 4 of the form shall be balanced daily, the balance being shown in red ink, provided that no balance need be struck on any day when no transaction has taken place. The normal transaction is an issue from one sub-column of column 3 balanced by a receipt in another, the district total being unaffected; whenever an entry affecting the latter is made, e. g., the return of a musket to the arsenal or the transfer of a bayonet scabbard*

to condemned stock-an explanatory entry shall be made a column 5. Care must be taken that when a weapon is moved, the necessary entries are made respecting any accessory moved with it. The Lines Officer shall check this register at frequent intervals. (2) In Part II of the register shall be maintained a nominal roll of the distribution of revolvers on charge in the district. (3) A separate register in form 6-8(3) shall be maintained by the Kot Head Constable under the supervision of the Lines Officer, in which a history sheet of each weapon on charge in the district be entered.

34. Paragraph (3) of Rule 6.10 states that “*Every police officer is personally responsible for the safe custody and care of every weapons, or accessory thereto, issued to him, until it is returned to the custody of the officers responsible for issuing it, as prescribed in sub-rule (1) above.*” Rule 25.17 (Supra) includes weapons as part of the case property which ought to be sealed and dealt with as per the foregoing discussion. With regards empties paragraph (4) of Rule 6.14 provides that “*The kot head constable shall personally make all and receipts and keep the account of this stock in Form 6-14(4). He shall replenish the stock as required from the magazine in exchange for a corresponding number of empty cases, damaged or lost rounds.*” In the case at hand whilst admittedly official weapon was used and such empties were also collected from the place of incident, however, official weapons were not sent for forensic examination to ascertain that in fact official weapons and bullets allocated to the police officials were those used at the crime scene, and as well as empties and weapons allegedly recovered from the accused persons were sent on 02.01.2019 for forensic examination after the arrest of the accused persons on 01.01.2019, an in such circumstances, the Hon’be Supreme court in the case of Muhammad Amin v/s State reported as 2019 SCMR 2057 has held

that “*Crime empties secured from the place of occurrence sent to the office of forensic Science Agency after arrest of the accused---In such circumstances, the positive report of the Agency was of no avail to the prosecution and was inconsequential*”. Similar findings were also given by the apex court in the case of Muhammad Ashraf alias ACCHU v/s State (2019 SCMR 652), Haleem v/s State (2017 SCMR 709), Khuda-e-Dad alias PEHLWAN v/s State (2017 SCMR 701) and Muhammad Irshad v/s Allah Ditta (2017 SCMR 142).

35. It was for these reasons that while passing our short order dated 01.12.2020, we not only acquitted the accused, but also we were constrained to give directions against the I.O. (PW-07) as per the following:-

“Amongst other reasons to be mentioned in the detailed judgment, we have noted the following points which show that the case of prosecution is not trustworthy and there are several dents in the prosecution story:

- i. There is no explanation of not sending the official SMG for forensic examination to identify whether the bullet hit the injured accused was fired from the official weapon or not.
- ii. It is alleged that the appellant was on motorbike bearing registration No.KJT-6264, though the claim of the appellant was that he was not on the motorbike, be that as it may, the police has failed to identify the ownership of the motorbike and has not produced the motorbike before the trial Court.
- iii. As stated by learned counsel, the alleged incident has taken place at the time of snap checking by the police, which means there have been some other vehicles also around at the time of incident but no private person was associated as witness in the offence of police encounter.
- iv. Blood stained earth was not collected from the spot to prove that the incident took place at the pointed location.
- v. There are repeated directions by this Court that if the CROs placed on record by the prosecution are incomplete, it will be presumed that the said CROs are produced by the prosecution only to misguide the Court.

In view of the above, for the reasons to be recorded later on, the instant Spl. Crl. A.T.J. Appeal is allowed and

the impugned judgment of conviction and sentence awarded to appellant (1) Mehtab son of Ali Muhammad Qureshi and (2) Naveed son of Gulzar in Special Case Nos.62/2019, 62-A/2019 and 62-B/2019, arising out of FIRs Nos.01/2019, 02/2019 and 03/2019 under Sections 353/324/34 PPC r/w section 7 ATA, 1997 and 23(1)(a) of Sindh Arms Act, 2013, registered at P.S Steel Town, Karachi is set aside. In result thereof, the appellants (1) Mehtab son of Ali Muhammad Qureshi and (2) Naveed son of Gulzar are acquitted of the charge. They may be released forthwith if they are not required by any other Court in any other crime/offence.

Pending the detailed reasons in the instant appeal, it is specifically ordered that the I.O of this case must be present in Court tomorrow i.e **02.12.2020** at **11:00 am** alongwith motorbike bearing registration No.KJT-6264 to hand over the same to the Nazir of this Court. If he fails to produce the said motorbike by tomorrow 11:00 am, he shall be suspended by the concerned SSP pending enquiry against him for his failure to produce the motorbike before the trial Court. A disciplinary action should be taken against him and progress be reported to this Court after 15 days by the SSP concerned for perusal in Chamber.

Copy of this order be faxed to SSP concerned forthwith.”

JUDGE

JUDGE