

# 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. 321 of 2019

[ Muhammad Ramzan v. The State ]

Appellant : Muhammad Ramzan through  
Mr. Muhammad Farooq, Advocate

State : Through Mr. Ali Haider Saleem,  
Deputy Prosecutor General

Date of Hearing : 12.11.2020

Date of Judgment : 12.11.2020

## J U D G M E N T

**Zulfiqar Ahmad Khan, J:-** Through instant appeal, Appellant has assailed his conviction and sentence recorded by learned Anti-Terrorism Court No.-VI, Karachi, by judgment dated 24.09.2019, passed in Special Case Nos.750 and 750-A of 2017, arising out of FIR No.42 of 2017 for offences under sections 353/324/34 PPC read with section 7 ATA, 1997 and FIR No.43 of 2017 under section 23(1)(a) of Sindh Arms Act, 2013; both registered at P.S Mangopir, Karachi. On conclusion of trial, accused was found guilty and consequently convicted and sentenced as under:

- i) For the offence under section 353 PPC, appellant was convicted and sentenced to suffer R.I for two (02) years with fine of Rs.5,000/- (rupees five thousand). In case of failure to pay the fine, he shall further suffer S.I for two months.
- ii) For the offence under section 324 PPC, appellant was convicted and sentenced to suffer R.I for five (05) years.
- iii) For the offence under section 23(1)(a) of Sindh Arms Act, 2013, appellant was convicted and sentenced to suffer R.I for seven (07) years.

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

2. The prosecution story unfolded in the FIR is that on 14.02.2017 complainant ASI Abdul Kareem Qazi was posted at P.S Manghopir Karachi. On the same day, he along with PC Muhammad Urs, PC Farukh, PC Ali Akber and DPC Bashir Ahmed proceeded for patrolling vide entry No.19. During patrolling, a spy informer gave information that at Lal Zada Charas Adda Pakhtoonabad graveyard some persons were selling chars. On that information at about 0005 hours they reached at pointed place and found two persons selling chars. On seeing the police party, they started firing on them and in retaliation thereof, police also fired on them. During such encounter, one accused (present appellant) received bullet injury and fell down. The said accused was holding in his right hand one 30 bore pistol loaded with a magazine of four live bullets without number and in his left hand piece of chars was in plastic bag weighing 1250 grams and so also from his left side pocket cash amount was recovered Rs.1130/-. On enquiry, injured accused disclosed his name to be Muhammad Ramzan, and his absconding accomplice name to be Farman. Complainant ASI Abdul Kareem Qazi called the ambulance and also informed the duty officer who also arrived there. He has further stated that on the same day at about 0700 hours I.O visited the place of incident on his pointation. He has further stated that the I.O collected 04 empties of 30 bore pistol and 08 empties of SMG from the place of incident. Thereafter, SHO of the P.S also arrived and as per his direction, the injured accused was taken to Abbasi Shaheed Hospital and thereafter he came back to police station and registered separate FIRs.

3. After usual investigation, challan was submitted against the accused under the above referred sections. Then, trial court framed charge against the accused at Exh.04 and later on framed amended charge against the accused at Exh.14, to which accused pleaded not guilty and claimed to be tried.

4. At trial, prosecution examined nine (09) witnesses i.e. PW-01 ASI Abdul Karim Kazi son of Abdul Latif (Exh.5), PW-02 DPC Bashir Ahmed (Exh.8), PW-03 PC Muhammad Urs (Exh.18), PW-04 SIP Riaz Ahmed (Exh.19), PW-05 PI Syed Naveed Ahmed Shah (Exh.22), PW-06 SIO/PI Muhammad Yousuf Khan (Exh.23), PW-07 Dr. Muhammad Khalid (Exh.25), PW-08 ASI Muhammad Ashraf (Exh.26) and PW-09 PI Nisar Ahmed (Exh.27), who had produced certain documents during their evidence, thereafter prosecution side was closed. Statement of accused under Section 342 Cr.P.C was recorded at Exh.29, in which he denied all the allegations leveled against him by the prosecution and claimed that he has been falsely implicated in this case by the police. He however did not examine himself on oath.

5. The learned trial Court after hearing learned counsel for the parties and assessment of evidence, by judgment dated 24.09.2019, convicted and sentenced the appellant, as stated above. Hence the present appeal.

6. Learned counsel for the appellant contended that the impugned judgment is illegal, unlawful, arbitrary and is unwarranted by law, so also, bad in law as well as on facts, and is not in consonance with the evidence which was brought on record and is liable to be *set aside*, thus the appellant/accused is entitled for acquittal on the sole ground that no material evidence has been brought on record against the appellant/accused to connect him in the commission of the offence. Learned counsel further contended that the appellant is innocent and he has been falsely implicated in this managed case of encounter, as he was booked by the police by foisting weapon upon him. He next contended that the learned trial Court did not consider the discrepancies and contradictions in the statements of PWs and has overlooked the evidence to convict the appellant in the above case. Learned counsel further contended that 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 it is an alleged case of ineffective firing, but police mobile had not bullet marks. He also contended that the learned trial Court has erred in holding that the prosecution has proved the case against the appellant 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 the result of mis-reading of facts and evidence on record. Learned counsel further contended that no independent witness has been cited by the prosecution in this case. Lastly, learned counsel for the appellant prayed for acquittal of the present appellant.

7. On the other hand, learned DPG has fully supported the impugned judgment and contended that the trial Court has rightly convicted the accused on the basis of evidence brought on record by the prosecution. Lastly, he prayed for dismissal of the present appeal.

8. We have heard learned counsel for both the parties and scanned the entire evidence available on record.

9. Summarized deposition of PW-01 complainant ASI Abdul Karim Kazi is that on 14.02.2017 he left police station alongwith PC Ghulam Akbar, PC Farukh, Driver PC Bashir for patrolling on **Government motorcycle**. During patrolling, they reached at 1150 hours, Pakhtoonabad graveyard, Manghopir, Karachi where they received spy information that some persons were selling charas at Lal Zada Charas Adda, where they reached at about 0005 hours. The accused persons on seeing them started firing upon the police party with intention to kill them. He ordered his subordinates namely PC Akbar and PC Khurram to fire, who fired two/three fires each and during the encounter one accused received bullet injury and fell down. On enquiry, he disclosed his name as Muhammad Ramzan. From his possession one 30 bore pistol without number with 04 live rounds, cash of Rs.1130/- and 1250 grams charas. Case properties

were sealed on the spot separately. He prepared memo of arrest and recovery in presence of PC Bashir and Muhammad Urs. He informed to SHO of P.S., where ASI Muhammad Ashraf and SHO Haji Sanullah came at the spot and **ASI Muhammad Ashraf shifted the accused through Chipa Ambulance to Abbasi Shaheed hospital** for medical treatment. After medical treatment, **ASI returned with the accused and case property at P.S. Manghopir at about 0345 hours.** On the same day at about 0700 hours I.O visited the place of incident on my pointation in presence of PC Muhammad Urs and ASI Riaz prepared memo of place of site inspection. I.O collected 04 empties of 30 bore pistol and 08 empties of SMG from the spot. I.O recorded his statement under section 161 Cr.P.C. His further examination in chief was reserved on the request of accused that his counsel was busy. In his recalled and reaffirmed cross (Exh.5, page 83), he stated as under:-

- *“It is correct to suggest that no person of police side **or accused side** got injured during encounter.*
- *It is correct to suggest that I have not mentioned the colour as well as description of the pistol recovered from the accused.*
- *It is correct to suggest that the number of currency notes as well as their quantity are not mentioned in memo.*
- *It is correct to suggest that no time is mentioned on sealing cloths.”*

**10.** PW-02 DPC Bashir Ahmed had deposed that on 14.02.2017 he left police station alongwith ASI Qazi, PC Ali Akbar, PC Muhammad Urs, PC Nazar Hussain for patrolling duty on **Government motorcycle**. During patrolling they reached at 1150 hours, Pakhtoonabad Graveyard, Manghopir, Karachi, where ASI/Qazi received spy information that some persons were selling charas at Lal Zada Chars Adda, Pakhtoonabad, Manghopir Road, Karachi. They reached there at about 0005 hours, the accused persons on seeing the police mobile started firing upon the police party with intention to kill them, ASI ordered to subordinate staff and during encounter one accused Muhammad Ramzan received bullet injury

and fell down. On enquiry the accused person disclosed his name as Muhammad Ramzan and he also disclosed the name of absconder accused Farman. From possession of arrested accused one 30 bore pistol without number and four live bullets was recovered and on further search cash of Rs.1130/- recovered and chars 1250 grams was also recovered. The accused persons failed to produce the license. Case properties were also sealed on the spot separately. ASI prepared memo of arrest and recovery in his presence and PC Muhammad Urs. Thereafter, ASI Muhammad Ashraf shifted the accused through Chippa Ambulance to Abbasi Shaheed Hospital for medical treatment. Thereafter ASI lodged the FIRs separately against the each accused persons. I.O recorded his statement u/s 161 Cr.P.C. In his cross examination, he stated as under:-

- *“It is correct to suggest that no person of police side got injured during encounter.*
- *It is correct to suggest that the number of currency notes as well as their quantity are not written in memo.*
- *It is correct to suggest that no time is mentioned on sealing cloths.*

11. PW-3 (who has been wrongly mentioned as PW-02) PC Muhammad Urs deposed that on 14.02.2017 he was posted at P.S. Mangopir as PC. His duty hours were from 08:00 p.m. to 08:00 a.m. **on police mobile No.IV**. He alongwith Qazi Karim, DPC Bashir Ahmed and PC Ali Akbar and PC Farukh Hussain proceeded from P.S at 08:10 p.m. They made patrolling at Mushki Para, Umar Goath and stood at Mangopir Mazar and then they went to Paktoonabad Road and at that place a phone call was received by Qazi Karim and he told us that at Lal Zada Adda the charas was being sold and then they went to that Addaa and reached there at 12:05 a.m. It was Qabrustan in Paktoonabad. They saw two persons were standing who on seeing them started firing and our officer also directed us to make fire, he then made two fires from his SMG and one of them fell down and sustaining injury and the other fled away. ASI Karim then apprehended him he was holding one pistol in his right

hand loaded magazine with 04 round and in his left hand one shopper in which there was chars. Accused disclosed his name Ramzan and name of absconding accused Farman. The weight of chars was 1250 grams and from his pocket Rs.1130/- also recovered and Qazi Karim then made phone call to SHO and duty officer and ambulance and then Qazi Karim prepared mashirnama keeping on bonnet on police mobile and also sealed pistol and chars and obtained his signatures and thereafter SHO came and took the injured to hospital. He then went to P.S and thereafter, injured also came at P.S and he proceeded on patrolling. At 06:00 a.m. a phone call was received by Qazi Karim and then they went to P.S and thereafter SIP Riaz took him and Qazi Karim at place of incident and at about 07:00 a.m. reached at place of incident and 04 empties of pistol and 08 empties of SMG were found there and Riaz collected the same and obtained his signatures on mashirnama and thereafter, they came back at P.S and his signatures were taken on my statement 161 Cr.P.C. In his cross examination, he stated as under:-

- *“At the time of exchange of firing the distance between us and accused was about 50 yards and it continued about 05 minutes.*
- *It is correct to say that in that incident neither any police man has sustained injury nor bullet was hit to the police mobile.*
- *It is correct to say that magazine is separated from its spring. (About 01:00 or 01:15 a.m. I went back to P.S.)*

12. PW-04 SIP Riaz Ahmed had deposed that on 15.02.2017 he was directed by PI Naveed Ali Shah to get investigation of crime No.s42 and 43 of 2017. He had received the FIRs, the ML of accused, sealed case property and the accused in lockup. He then alongwith Naveed Ali Shah and Qazi Karim ASI and police party proceeded for site inspection vide entry at Ex.19/A. On the pointation of ASI Abdul Karim inspected the place of incident and prepared mashirnama and secured 08 empties of SMG and 04 empties of 30 bore pistol. He also prepared Nakshah-e-Nazri of the place and thereafter they came back at P.S and he recorded the

statements of witnesses. He then sent the parcel of weapon and empties to FSL. Since the section 7 ATA was inserted the further investigation was taken up by PI Naveed Ali Shah. In his cross examination he stated as under:-

- *It is correct to say that on Nakshah-e-Nazri the signatures of witnesses were not taken.*
- *It is correct to say that the empties were lying in scattered position.*
- *It is correct to say that the witnesses Abdul Karim and PC Urs in their 161 Cr.P.C statement stated the pistol was without number.*
- *It is correct to say that no blood stained earth was collected from place of incident.*
- *It is correct to say that no private person is witness.*

13. PW-05 PI Syed Naveed Ahmed Shah had deposed that on 18.02.2017 he was posted as SIO at P.S Manghopir Karachi and on the same day, he alongwith SIP Riaz went to the Administrative Judge, Sindh High Court at Karachi for remand of accused Muhammad Ramzan but the accused was remanded to jail custody. On the same day he was handed over with the investigation of the instant cases by SIP Riaz. He perused the police file and submitted the challan after approval from SP Investigation West-I, Karachi, by putting the name of accused Muhammad Ramzan and the name of absconder accused Farman in column number 2 with blue ink till ascertaining his parentage. In his cross examination, he stated as under:-

- *“I did not record statement u/s 161 Cr PC of any PWs. Vol. says, that SIP Riaz had already recorded statements u/s 161 Cr PC of the PWs.*
- *It is correct to suggest that I did not visit/inspect the place of incident. Vo. Says, that SIP Riaz had already done inspection of the place of incident.”*



14. PW-08 ASI Muhammad Ashraf had deposed that on 15.02.2017 he was posted at P.S Manghopir as duty officer and on the same day he received information via phone that in an encounter, one accused namely Muhammad Ramzan got injured **and reach Abbasi Shaheed Hospital** with medical letter. He mentioned such fact in station diary alongwith his departure vide entry No.21 (Ex.26/A). **When he reached the hospital, ASI Qazi Abdul Karim was already there alongwith injured accused.** He gave the medical letter to the MLO. Thereafter, he returned to the PS and mentioned his arrival in the station diary at 03:00 hours vide entry No.25 (Ex.26/B). On the same day, SIP Riaz Ahmed recorded his statement u/s 161 Cr.P.C.

15. From perusal of above evidence, we have noted material contradictions in the evidence of prosecution witnesses that is to say PW-1 complainant ASI Abdul Karim and PW-2 Bashir Ahmed in their examination in chief deposed that they left Police station for patrolling on **Government motorcycle**. While FIR, memo of arrest and seizure of accused, daily diary report No.26 of P.S Manghopir (Ex.5/C) and deposition of PW-3 Muhammad, Urs, stipulate that police party was on patrolling **in police mobile No.IV**. In deposition of PW-1 he has stated that **ASI Muhammad Ashraf shifted the accused through Chipa Ambulance to Abbasi Shaheed Hospital for medical treatment** and after medical treatment, **ASI returned with the accused and case property** at P.S Manghopir at about 03:45 hours, whereas, said ASI Muhammad Ashraf (PW-08) deposed that he received information via phone that in an encounter one accused namely Muhammad Ramzan got injured and reach Abbasi Shaheed Hospital with medical letter and he mentioned such fact in station diary alongwith his departure vide entry No.21 (Ex.26/A), **when he reached the hospital, ASI Qazi Abdul Karim was already there alongwith injured accused.**

16. We have also noted that both PW-02 and PW-03 in their cross examinations admitted that neither police party, nor police mobile sustained any bullet injury during exchange of firing, which as per cross of PW-01 (Exh.17, page 113) continued for 05 minutes; that PW-01 in his cross examination available at page 83, exh.5 stated that *“no person of police side or accused side got injured”*; and that the police did not associate any private person as mashir. Admittedly, there is no description of currency in the FIR, memo of arrest, recovery and seizure.

17. It has come on record that the case property was sent to FSL for examination on 18.02.2017 with 3 days' delay without any explanation. Such delay creates serious doubts in the prosecution's version and so also on the safe custody of the case property. With regard to the safe custody of the weapon at police station and its safe transit, the Honorable Supreme Court in the case of Kamaluddin alias Kamala V/S The State (2018 SCMR 577) has held as under:

**“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”**

18. From the above discussion, it is evident that the prosecution has failed to establish safe custody of weapon at Police Station and safe transit to the chemical examiner. Prosecution also failed to prove that appellant assaulted or used criminal force to police officials to deter from discharge of their duty. From the prosecution's evidence available on record, we do not see any nexus of the crime with the object of Anti-Terrorism Act, 1997 as contemplated under sections 6 and 7 of the Anti-Terrorism Act, 1997. Also evidence available on record makes it clear that encounter had not taken place. It is also evident that the investigation and inquiry carried out is neither satisfactory nor free from *malice* and the accused's implication in the instant case is not free from doubts. He thus could not be left at the mercy of the 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. It is settled law that for creating doubt, many circumstances are not required and if a single circumstance creates a reasonable doubt in a prudent mind, then its benefit be given to the accused not as matter of grace or concession but as a matter of right. In the case of **Muhammad Mansha vs. The State** (2018 SCMR 772), the Hon'ble Supreme Court has observed as follows:-

**“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many 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 then 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).”**

19. In view of the above stated reasons, we have no hesitation to hold that there are several infirmities in the prosecution case, as highlighted/discussed above, which have created doubt, therefore, we reached to an irresistible conclusion that the prosecution has utterly failed to prove its case against the appellant and the trial Court failed to appreciate the evidence according to the settled principles of law. False implication of the appellant could not be ruled out. Resultantly, this appeal was allowed by our short order dated 12.11.2020, whereby conviction and sentences recorded by the learned trial Court were set aside and appellant was acquitted of the charges.

20. These are the reasons of our short order dated 12.11.2020.

JUDGE

JUDGE

Dated: .06.2021  
Barkat Ali, PA