

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Mr. Justice Salahuddin Panhwar; and

Mr. Justice Yousuf Ali Sayeed.

Spl. CrI. A.T.A. No.121 of 2017

1. Mohammad Fayyaz
son of Jafar Ahmed Bangali.

2. Mohammad Aamir
son of Akhtar Hussain Bangali. Appellants

Versus

The State. Respondent

Spl. CrI. A.T.A. No.122 of 2017

1. Mohammad Fayyaz Appellants

Versus

The State. Respondent

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Appellants Through Mirza Abdul Sattar Mughal,
Advocate

Respondent Through Mr. Abrar Ali Khichi,
Deputy Prosecutor General Sindh

Dates of hearing 23.10.2017

Date of order 23.10.2017.

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JUDGMENT

Learned counsel for the appellants, *at the outset*, has referred paragraph No. 6 of judgment dated 18.05.2017 passed in Spl. Criminal A.T. Appeal Nos. 109 and 110 of 2017, whereby awarded sentence was reduced; having referred the same, he contends that appellants in present appeals were tried in same case by the trial Court and convicted on the charge under Section 324, 353, 427/34 PPC. Learned counsel further contends that since there is no evidence against the appellants in the present case and even recovery was not affected, therefore, aforesaid relief may also be extended in the instant appeal.

2. Learned DPG after examining the earlier judgment as referred above has half-

heartedly opposed the plea of learned counsel for the appellants.

3. It would be conducive to refer paragraph 6 of earlier judgment passed in Spl. Criminal A.T. Appeal Nos. 109 and 110 of 2017, which is that :-

“6. Surprisingly in an encounter only the appellant had sustained the injury on his person, but none from the police party had even sustained any injury or scratch on vehicle; no concrete material has been collected by the police to substantiate their claim to the extent of creation of panic situation and fear amongst the society; neither the news duly flashed on any electronic media or publication in any print media has been adduced in the evidence to cover up the prime ingredients for application of sections of the ATA, 1997; allegedly three accused were apprehended alongwith their alleged weapons, but the appellant only had sustained the injury on his right leg. Since the appellant had sustained fire arm injury on his person on 29.01.2016 at 2300 night) the offence with which, the appellant has already charged, have not been proved in sole spirit yet, the trial Court, without considering the injury on the person of the appellant had awarded conviction. Accordingly, conviction on the charge of encounter and terrorism is hereby set aside. Therefore, we while looking into the peculiar facts and circumstances modify the sentence under Section 23(i)(a) of Sindh Arms Act, 2013 and reduce it to that of already undergone by the appellant. The appellant shall be released forthwith, if he is not required in any other custody case. The appeals with the above modification in sentences are hereby disposed of. “

4. Perusal of above reflects that the *impugned* judgment of conviction to extent of charge of encounter as well terrorism stood set-aside while for recovery of fire-arms the sentence was reduced to one, *already* undergone. The appellants have also been convicted through same *judgment* hence they are also entitled for benefit of said *observations* which *otherwise* is requirement of Safe Criminal Administration of Justice. Needless to mention here that an *observation* on fact and law, if is not limited to a *particular* accused, the benefit whereof would be available for other accused persons even those not before the Court. The *legality* of judgment of this Court is not refutable hence benefit of rule of consistency for present appellants cannot be *legally* with-hold for present appellants who are convicted from same *charge*. Accordingly, *impugned* judgment to the extent of present appellant Muhammad Aamir on account of encounter is hereby set aside. Appellant Muhammad Aamir shall be released forthwith if not required in any other custody case. Whereas, recovery was affected from accused

Muhammad Fayyaz therefore, his sentence is reduced to one, as already undergone. He shall also be released forthwith if not required in any other custody case.

The appeals with the above modification in sentences are hereby disposed of.

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