

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Criminal Appeal No.D-26 of 2022

Criminal Appeal No.D-28 of 2022

Criminal Appeal No.D-29 of 2022

Criminal Appeal No.D-30 of 2022

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Saleem Jessar

Dates of hearings: 23.11.2022, 30.11.2022 & 07.12.2022.

Date of judgment: 07.12.2022.

Appellants : Salahuddin, Altaf alias Budho, Mashooq alias Major and Hakim Ali alias Hakoo, through Mr. Manzoor Ahmed Panhwar, Advocate.

The State: : Through Mr. Nazar Muhammad Memon, Additional P.G Sindh.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J- Appellants have been found guilty of committing offences under Sections 324, 353, 224, 225, 35 PPC r/w Sections 6/7 of ATA, 1997 and 23-A(i)/25 of Sindh Arms Act, 2013, have been sentenced to suffer, maximum, 10 years rigorous imprisonment and to pay fine of Rs.100,000/- each, in default, to suffer one year simple imprisonment. Besides, appellant Salahuddin has been convicted for offence under Sections 353 & 224 PPC and sentenced to suffer two years rigorous imprisonment with fine of Rs.25,000/-, in default, to suffer six months simple imprisonment, which they have challenged by means of appeals in hand.

2. Brief facts of the case are that on 21.12.2020 complainant /ASI alongwith his team was on patrol duty in the area to nab proclaimed offenders, during which he received information about presence of an absconder namely Salahuddin Jamari near Bulri Shah Minor. He reached the spot and arrested him with the help of his

team, and prepared memo of his arrest. When he started taking the said absconder to police station in vehicle, he raised cries, upon which other proclaimed offenders namely Hakim alias Hakoo, Altaf alias Budho, Mashooq alias Major, Jam alias Porho, Khadim and Karim armed with pistols, guns and other weapons arrived there. In order to create terror they made firing. Police retaliated and in ensuing encounter PC Eido Khan sustained a firearm injury above his left eye, opined by Medico Legal Officer as 337-A(vi) PPC. And, in the chaos created by firing, aforesaid accused succeeded in rescuing arrested accused Salahuddin from the police and decamped. Police brought the injured PC Eido at hospital at Tando Muhammad Khan wherefrom he was referred to LMC Hyderabad for further treatment. As a result of such episode, FIR was registered against all the aforesaid accused.

3. In the investigation, appellant/accused Altaf and Mashooq alongwith accused Jam alias Porho were arrested on 07.01.2021 and from them, subsequently, on 14.01.2021 one double barrel gun and one country made pistol was respectively recovered on their pointation from jungle. Appellant Salahuddin was arrested again on 25.12.2021 and from him a country made pistol was recovered. Appellant Hakim was arrested on 27.01.2021 and from his personal search, a 30-bore pistol was recovered from him. Co-accused Khadim and Karim alias Karam were not arrested by the police as they in the meanwhile had obtained pre-arrest bail. After such developments in investigation, Challan was submitted in the Court against all the accused, as a result of which, a trial against the appellants commenced.

4. Prosecution in order to prove the charge against the appellants examined as many as 06(six) witnesses, who produced all the necessary documents including F.I.R, memos of arrest and recoveries, medical evidence etc. The entire incriminating evidence led by the prosecution in the trial was put up to the appellants in their statement under Section 342 Cr.P.C. They have simply denied it and pleaded their innocence.

5. The trial Court, notwithstanding, vide impugned judgment has convicted the appellants to suffer sentences in the terms as stated above. However, at the same time, has acquitted co-accused Jam alias

Porho, Khadim, and Karim alias Karam, which the appellants have challenged by way of these appeals.

6. Learned Defence Counsel has contended that appellants are innocent and have been falsely implicated in this case; that there are material contradictions in the evidence of witnesses; that the case against the appellants is doubtful; that no such encounter had taken place; that complainant/ASI in his evidence has stated that injured PC Eido was in police uniform but the Medico Legal Officer who had examined him at hospital has revealed in his cross-examination that PC Eido was in civilian clothes; that in FIR only general allegations of firing have been leveled against the appellants but the PWs in their depositions have improved prosecution case by holding appellant Hakim alias Hakoo as responsible for causing injury to PC Eido in their deposition; that the role attributed against acquitted accused named above is identical to the role attributed to the appellants but strangely the trial Court has convicted and sentenced the appellants and acquitted the co-accused on same set of evidence holding it as doubtful against them. In support of his contentions, learned Counsel has relied upon the case of SOAZ ALI and 3 others v. The STATE (2001 YLR 1453).

7. On the other hand, learned Additional P.G Sindh has supported the impugned judgment and submits that the case of the prosecution has been established from the evidence.

8. We have heard the parties and perused material available on record including the case law submitted at bar. The prosecution has examined complainant ASI Muhammad Moosa as PW-1. In his evidence, he has described the entire incident but has not specifically implicated appellant Hakim alias Hakoo for causing injury to PC Eido, nor the same fact is mentioned in the FIR that it was appellant Hakim who had caused injury to PC Eido. PW-4 Wali Muhammad has also not taken name of appellant Hakim and has stated that from firing of the accused, PC Eido had sustained an injury above left eye. It is, therefore, apparent that during the trial, other prosecution witnesses have made improvements in their evidence, in so far as role of appellant Hakim is concerned. More so, it may also be mentioned that it is alleged by the prosecution that appellant Hakim alias Hakoo was

armed with a pistol on the day of incident and from him a 30-bore pistol was recovered, which admittedly discharges the bullet and not the pellets. But, the C.T scan report of the injured available at Page-59 (Ex-18/D-8) indicates as follows, *three metallic density shadows are seen giving streaking aircrafts ...Foreign Bodies*, which ostensibly shows that the victim was not hit by a bullet but by pellets, a sufficient circumstance to doubt the role alleged against appellant Hakim alias Hakoo. Next PW-4 Wali Muhammad in his evidence has further revealed that the arrested accused was handed over to PC Eido, and all the police personnel also made aerial firing. This is not even the prosecution case that absconder accused Salahuddin was handed over to PC Eido after arrest and in the face of direct firing from the accused, the police had resorted to aerial firing. He has also contradicted PW-6 SHO Ghulam Hussain over preparation of memo by stating that it was prepared by said Inspector in his and PC Rehmatullah's presence, whereas SHO has said that it was written by PC Wali Muhammad.

9. Further, we have read the impugned judgment but have not been able to understand as to why the same evidence qua acquitted accused has not been believed by the trial Court, and has been relied upon against present appellants. Although there is no perceivable difference in the role ascribed to the acquitted accused and the role alleged against the appellants. The only distinction, however, we have seen, is recovery of firearm weapons from the appellants. But, the FSL reports available in paper book from Pages-95 to 99 as Ex-20-I/1 to 20-I/5 show that the weapons recovered from the appellants did not match with the empties recovered from the spot. It may be noted that from the spot four 12-bore crime empties, five 7.62 MM 30-bore crime empties and five 7.63 base MM crime empties were recovered but none of them has been opined to have been fired by the Expert from the weapons recovered from the appellants. So when we keep this fact in mind, it would appear that there is no difference at all between the case of acquitted accused and the case of appellants.

10. It is a settled law that when benefit of doubt is extended to one set of accused with identical role, the same cannot be withheld from other set of accused having been assigned the similar/identical role by the prosecution in the case. In any case, as stated above, the

trial Court has not believed the prosecution story against one set of accused just because from them no recovery of weapon was effected, forgetting however that they were charged for resisting and rescuing the absconder accused from the team of police by making fire upon them, and were not accused of possessing unlicensed weapons. And that the possession of such weapons is an independent offence irrelevant to the case set up by the prosecution. We, therefore, are of the view that appellants are entitled to the same benefit of doubt already extended to the co-accused having been assigned same role, and particularly when their acquittal has not been challenged by the prosecution. Hence, Criminal Appeal No.D-26 of 2022 is hereby allowed and the appellants are acquitted of the charge to the extent of ATC Case No.03 of 2021 emanating from Crime No.61 of 2020 of P.S Abadgar under Sections 324, 353, 224, 225, 35 PPC r/w Section 6/7 ATA, 1997.

11. Notwithstanding, we have seen, evidence of the prosecution witnesses in regard to recovery of unlicensed weapons from appellants Altaf alias Budho, Mashooq alias Major and Hakim Ali alias Hakoo on their pointation is unimpeachable. The witnesses have supported factum of recovery of weapons to have been effected in their presence from the appellants. There is no contradiction to doubt this part of the story. The recovered weapons when sent to the Laboratory have been confirmed to be in working condition. Further, there is apparently no material contradiction to show that the appellants have been falsely implicated in the case of recovery of unlicensed weapons from them. Even learned Defence Counsel, in view of such confidence inspiring evidence led by the prosecution on this point, has not contended appellants' conviction in such cases and has pleaded for reduction of their sentence to the period already undergone by them on the ground, among others, that they are not previous convict. His proposal has not been opposed by learned Additional P.G. Therefore, while dismissing Criminal Appeal Nos.D-28, 29 and 30 of 2022 and maintaining appellants' conviction under Section 23-A(i)/25 of Sindh Arms Act, 2013, we modify their sentence to the period already undergone by them including fine. These are the reasons of our short order dated 07.12.2022 whereby we had disposed of all the appeals in following manner:-

“For reasons to be recorded later, Criminal Appeal No.D-26 of 2022 is hereby allowed and consequently impugned judgment dated 23.02.2022 passed by Anti-Terrorism Court No.1, Hyderabad / trial Court to the extent of ATC Case No.03 of 2021 emanating from Crime No.61 of 2020 P.S Abadgar u/s. 324, 353, 224, 225, 35 PPC r/w Sections 6/7 of ATA, 1997 is hereby set aside. Appellants Salahuddin, Altaf alias Budho, Mashooq alias Major and Hakim Ali alias Hakoo are hereby acquitted of the charges arising out of Crime No.61 of 2020. The appellants shall be released forthwith if they are no more required in any other custody case.

As far as remaining Criminal Appeals Nos.D-28, 29 and 30 of 2022 are concerned, same are hereby dismissed. However, the sentences awarded to appellants Altaf alias Budho, Mashooq alias Major and Hakim Ali alias Hakoo vide impugned judgment dated 23.02.2022 passed by Anti-Terrorism Court No.1, Hyderabad / trial Court to the extent of ATC Case No.08 of 2021 (Re: The State v. Altaf alias Budho) emanating from Crime No.01 of 2021 of P.S Abadgar u/s 23-A(i)/25 of Sindh Arms Act, 2013, ATC Case No.09 of 2021 ((Re: The State v. Mashooq alias Major) emanating from Crime No.02 of 2021 of P.S Abadgar u/s 23-A(i)/25 of Sindh Arms Act, 2013 and ATC Case No.10 of 2021 (Re: The State v. Hakim Ali alias Hakoo) emanating from Crime No.06 of 2021 of P.S Abadgar u/s 23-A(i)/25 of Sindh Arms Act, 2013, are hereby modified to the period already undergone by them. Consequently, appellants Altaf alias Budho, Mashooq alias Major and Hakim Ali alias Hakoo shall be released forthwith if their custody is no more required in any other custody case.

JUDGE

JUDGE

Shahid

