

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Special Anti-Terrorism Appeal No. D– 66 of 2021
Special Anti-Terrorism Appeal No. D– 67 of 2021
Special Anti-Terrorism Appeal No. D– 68 of 2021

Before;

Mr. Justice Naimatullah Phulpoto
Mr. Justice Irshad Ali Shah

Appellants: 1. Zaheed Ahmed son of Ghulam Nabi.
2. Waqar Hussain @ Waqar Ali son of Mushtaq Ahmed @ Mushtaq.
3. Pervez Ahmed @ Pervez Ali @ Pervez @ Paroo son of Ghulam Nabi.
All bycaste Chanchar (Now confined at Central Prison Sukkur)
Through M/s Rukhsar Ahmed Junejo and Muhammad Junaid Akram Malik, Advocates

Respondent: The State, through Mr. Syed Sardar Ali Shah Rizvi, Additional Prosecutor General

Date of hearing: 28-12-2022.
Date of decision: 28-12-2022.

J U D G M E N T

IRSHAD ALI SHAH, J; The facts in brief necessary for disposal of instant appeals are that appellants with rest of the culprits assembled for committing dacoity and in that way deterred the police party of PS A-Section Ghotki from discharging its lawful duty as public servant by making fires at them with intention to commit their murder by resorting to an act of terrorism and on arrest from appellant Zaheer Ahmed was secured official G-3 rifle robbed from PC Farzan Ali and from appellant Waqar Hussain was secured unlicensed kalashnikov, for that they were

booked in three separate cases. On investigation they were challaned accordingly. At trial, all the three cases were amalgamated u/s 21-M of ATA, 1997 and on conclusion of joint trial, they were convicted and sentenced to various terms of imprisonment by learned Judge, Anti-Terrorism Court Ghotki at Mirpur Mathelo vide judgment dated 06-10-2021, which they have impugned before this Court by preferring three separate appeals, those are being disposed of through single judgment.

2. At the very outset, it is pointed out by learned counsel for the appellants and learned APG for the State that in each and every case, evidence was to have been recorded separately by learned trial court, which has not been done in present case. By such omission, the appellants have been deprived of right of fair trial, which is guaranteed by Article 10 –A of the Constitution of Islamic Republic of Pakistan, 1973. By pointing out so, they suggested for remand of the cases to learned trial Court for its fresh proceeding in accordance with law. In support of their suggestion, they relied upon an order dated 01-12-2022 passed in case of Shahzad @ Kalay Khan in (Cr. Jail Petitions Nos.674 & 675/2019 and in Jail Petitions Nos. 676 & 677/2019) by Hon'ble Supreme Court of Pakistan.

3. Heard arguments, perused the record.

4. The omission pointed out by learned counsel for the parties take support from record, it is not cure-able in terms of Section 537 Cr.P.C as it obviously has occasioned in failure of justice, therefore, while relying upon the case law, referred above, the impugned judgment is set-side with direction to learned trial Court to decide the same afresh after recording evidence in each and every case separately according to dictate of justice.

5. Appellant Pervez Ahmed @ Pervez Ali @ Pervez @ Paroo son of Ghulam Nabi was on bail at trial, he may enjoy same concession subject to his furnishing fresh surety in sum of Rs. 100,000/- (One Lac) and P.R bond in the like amount to the satisfaction of learned trial Court.

6. Instant Appeals are disposed of accordingly.

Judge

Judge