

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Appeal No.23 of 2022
Special Criminal Anti-Terrorism Appeal No.24 of 2022
Special Criminal Anti-Terrorism Appeal No.25 of 2022
Special Criminal Anti-Terrorism Appeal No.89 of 2022
Special Criminal Anti-Terrorism Appeal No.90 of 2022
Special Criminal Anti-Terrorism Appeal No.91 of 2022

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

Appellant in Appeals No.23, 24 & 25 of 2022	Amir Raheem S/o Muhammad Raheem Boneri Through Mr. Samiullah, Advocate
Appellant in Appeals No.89, 90 & 91 of 2022	Muhammad Bux @ Babu S/o Khadim Hussain Laghari Through Muneer Ahmed Gilal, Advocate
Respondent	The State Through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh
Date of Hearing	29.08.2022
Date of Judgment	05.09.2022.

JUDGMENT

ZULFIQAR ALI SANGI, J:- The appellants named above were tried by Anti-Terrorism Court No.X, Karachi in (1) Special Case No.447/2021 under FIR No.1235/2021 U/s 395/397 PPC R/w Section 7 ATA, 1997, (2) Special Case No.447-A/2021 under FIR No.1236/2021 U/s 353/324/186/34 PPC R/w 7 ATA, 1997 (3) Special Case No.447-B/2021 under FIR No.1237/2021 U/s 23(i)A SAA, 2013 and (4) Special Case No.447-C/2021 under FIR No.1238/2021 U/s 23(i)A SAA, 2013; all FIRs were registered at PS Shah Latif Town, Karachi and vide judgment dated 21.04.2022 the appellants were convicted and sentenced as follows:

1. *The accused persons namely Muhammad Bux @ Babu S/o Khadim Hussain Laghari and Amir Rahim S/o Muhammad Rahim are "Convicted U/s 397 PPC R/w 395 PPC and they*

are sentenced to undergo R.I. for a period of "07" years (each).

2. *The accused persons namely Muhammad Bux @ Babu S/o Khadim Hussain Laghari and Amir Rahim S/o Muhammad Rahim are also "Convicted" U/s 7(1)(h) of ATA, 1997 R/w S.353/186/324 PPC and they are sentenced to undergo R.I. for a period of "07" years (each) with fine of Rs.50,000/- (each) and in default in payment of such fine, they shall undergo further S.I. for a period of "03" months (each).*
3. *The accused Muhammad Bux @ Babu S/o Khadim Hussain Laghari and Amir Rahim S/o Muhammad Rahim are also "Convicted" U/s 25 of Sindh Arms Act, 2013 and they are sentenced to undergo R.I. for a period of "05" years (each) with fine of Rs.10,000/- (each) and in default in payment of such fine, they shall undergo further S.I. for a period of "03" months (each).*

All the sentences were ordered to run concurrently; however, the benefit of Section 382-B was extended to the accused persons.

2. The brief facts of the prosecution case are that on 10.07.2021 Muhammad Ramzan Chandio S/o Ali Muhammad Chandio was driving his motorcycle bearing Registration No.KMQ-9607 in Quaidabad, Karachi and when at about 0340 hours he reached Chowkandi Bus Stop main National Highway Road towards Gulshan-e-Hadeed, Shah Latif Town, Malir Karachi 06 persons on 03 motorcycles came from behind and stopped him by force of weapons and then committed dacoity by looting his purse containing cash of Rs.1000/- and copy of his NIC including mobile phone i.e. Vgotel (Basic) black and blue colour as well as his motorcycle after which they started running away towards Jam Kunda Road. At the relevant time, police patrolling in the mobile of PS Shah Latif Town appeared there which was being headed by ASI Jaffar Ali. Accordingly, the dacoity victim narrated the entire incident to the head of the police mobile to which the police party along with the victim started chasing down the dacoits so as to arrest/apprehend them. During such chase when police reached Jam Kunda road, katchi sarak behind Encroachment Headquarter, the victim saw the 06 dacoits who earlier looted the valuables off him and were escaping away on 04 motorcycles. As such, on right pointation of the victim, the police party made lalkara to the dacoits, to which the said dacoits duly armed opened straight firing upon the police with the intention to kill them. Resultantly, the roof of the police mobile received gunshots/bullets. Keeping in view the situation and the right of self-defence, police officials also

fired back at the armed dacoits. Consequently, during cross-firing, 02 dacoits sustained bullet injuries on their legs and fell on the ground with the motorcycle, whereas 04 remaining dacoits on 03 other motorcycles managed to escape away from the crime scene while getting the benefit of darkness. Accordingly, at about 0345 hours the head of police mobile managed to apprehend both injured dacoits at the spot with the assistance of his team, who on query disclosed their identities as Muhammad Bux @ Babu S/o Khadim Hussain Leghari and Amir Raheem S/o Muhammad Raheem Buner. Then, the head/in charge of police mobile firstly made search of injured dacoit Muhammad Bux @ Babu in the presence of the victim, which led to the recovery of one 30 bore pistol from his right hand along with 02 live rounds in the magazine and 01 round loaded in the chamber. On his further search, the head/in charge of police mobile also secured looted articles belonging to the victim Muhammad Ramzan Chandio viz. purse containing cash of Rs.1000/- and copy of his NIC including mobile phone i.e. Vgotel (Basic) of black and blue colour, which were duly identified by the victim as belonging to him. Apart from the said recovery, another mobile phone of Vgotel (Basic) was also secured from accused Muhammad Bux @ Babu. Then, on the search of another dacoit namely Amir Raheem, ASI Jaffer Ali secured another 30-bore pistol from his right hand along with 02 live rounds in the magazine and 01 round loaded in the chamber. Whereas, on his further search, police also secured one G-Five Mobile Phone (Basic) from his possession. On-demand made by in charge/head of police mobile regarding valid licenses of recovered pistols, both the injured dacoits failed to produce any valid arms license. Following this, the head of the police party sealed the recovered arms and ammunition including other articles described above at the spot as case property (evidence/proof) and also prepared necessary documents at the spot, which were duly signed by the victim and police mashirs. Since both dacoits had sustained gunshot injuries on their right legs they were taken/shifted to JPMC, Karachi in Chippa ambulance for their treatment and other legal formalities. Following this, the victim of dacoity came to PS Shah Latif Town Karachi whereby he got registered FIR No.1235/2021 U/s 395/397 PPC being the complainant against the arrested accused persons and also against their absconding accomplices, whose names were disclosed by the arrested dacoits

as Naimatullah, Qabil, Farhan and Zeeshan, whereby he prayed for legal action against them as per law. Apart from the said FIR, three separate FIRs were also registered against the arrested accused and others by ASI Jaffer Ali being the complainant on behalf of the State.

3. After completing the usual investigation, the charge against the appellants was framed, to which they pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case examined 05 Prosecution Witnesses and exhibited various documents and other items. The statement of the accused persons was recorded under Section 342 Cr. P.C in which they denied all allegations leveled against them. After appreciating the evidence on record, the learned trial court convicted the appellants as mentioned above; hence, the appellants have filed these appeals against their convictions.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 21.04.2022 passed by the learned trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. Learned counsel for the appellants has contended that the appellants are innocent and have falsely been implicated in these cases; that the prosecution has miserably failed to prove the charges against the appellants; that the conviction must be based on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case must be resolved in favor of the accused. They lastly submitted that the impugned judgment may be set aside and the appellants may be acquitted of the charge.

7. On the other hand, learned Addl. P.G. Sindh has fully supported the impugned judgment on the basis of evidence produced by the trial Court.

8. We have heard the arguments of the learned counsel for the appellants, Learned Add. PG for the State and gone through the entire evidence which has been read out by the counsel for the

appellants and the impugned judgment with their able assistance and have considered the relevant law.

9. After our reassessment of the evidence on record we have found that the prosecution has proved its case beyond a reasonable doubt against the appellants by producing reliable, trustworthy, confidence inspiring evidence.

10. Initially the complainant PW-1 had registered the FIR that on 10-07-2021, while he was on the way towards his house and when reached at Jam Kando road at about 0300 hours he was interrupted by six accused person on three motorbikes who robbed him of his valuable articles including mobile phone, motorbike No.KMQ-9607 and cash amount and then went away. Meanwhile, he saw a police mobile coming to whom he stopped and narrated the facts of the robbery whereafter a police party headed by ASI Jaffer Ali along with complainant Muhammad Ramzan chased the accused persons and at some distance on the pointation of complainant the police party attempted to stop accused persons but they started firing upon them and the police party also fired while exercising the right of self-defence. During such an encounter two accused persons (appellants) received firearm injuries and fell down. They were arrested by the police on the spot and on their search police recovered robbed money, mobile phone and the robbed motorbike including other items belonging to the complainant so also recovered crime weapons viz pistols and live bullets. The police party also recovered empties from the place of wardat. The complainant at that time identified the accused persons to be the same who robbed him and the articles including the motorbike. The police party sealed the articles on the spot and mashir put their signatures on the parcels so also the complainant. Mashirnama was prepared and the same was signed by the mashirs and the complainant on the spot. However at the time of recording evidence the complainant narrated the facts about the robbery of his valuables but did not depose against the accused persons and did not identify them in court. Learned APG requested the court to declare the complainant as *hostile* and he was so declared. During cross-examination conducted by the APG, the complainant recognized his signatures on the memo of arrest and recovery to be of his which was prepared on the spot. The complainant also admitted and recognized his signature on both

the sealed parcels to be of his which too were prepared/sealed on the spot. All the signatures put by the complainant on the documents prepared at the place of arrest and recovery were admitted by him to belong to him. The complainant also stated that at the time of the robbery the accused persons wore muffled faces and he had not identified the accused persons at the time of his evidence. It is observed that each criminal case is to be decided having regard to its own particular facts and circumstances. Test to be essentially applied in one case may absolutely be irrelevant in another, as the crimes are seldom committed in identical situations. In this respect reliance is placed on the cases of ***Khan alias Khani and another v. The State (2006 SCMR 1744)*** and ***Imtiaz Ahmad v. The State (2001 SCMR 1334)***.

11. It is further observed that where the complainant being the eye-witness supported the case in respect of robbery from him, receiving the robbed articles including his motorbike and was declared hostile to the extent of the identity of the accused at trial and of his role but the other eye-witnesses fully supported the case, recovery of robbed articles including the crime weapons from the accused persons have been proved by the prosecution and in such circumstances if his (complainant's) evidence is discarded and other evidence is found reliable, trustworthy and confidence-inspiring even then the conviction can be maintained. The Honourable Supreme Court of Pakistan in the case of ***Abdul Khalique v. The State (2020 SCMR 178)*** has observed as under:-

4. *The ocular account in this case has been furnished by complainant Muhammad Sadiq (PW1), Rasheed Ahmad (PW2) and Abdul Rehman (PW3). All the three eye-witnesses remained consistent on all the material aspects **so far as role of petitioner of causing dagger blows on the person of Khalil Ahmad (deceased) is concerned. Though complainant Muhammad Sadiq (PW1) was declared hostile, but to the extent of petitioner, his testimony endorses the statements of other two eye-witnesses.** The medical evidence adduced by Dr. Nizamuddin (PW6) who medically examined Khalil Ahmad in injured condition and Dr. Salahuddin (PW7) who conducted autopsy on the dead body of Khalil Ahmad supports the ocular account. **During the course of investigation, a dagger was recovered on the pointation of the petitioner, which was blood stained.** So far as contention of learned counsel for the petitioner that the learned appellate court has acquitted co-accused Abdul Ghafoor by disbelieving same set of evidence which has been believed qua petitioner*

is concerned, it has been observed by us that Abdul Ghafoor has been shown to be empty handed and no injury on the person of deceased Khalil Ahmad has been assigned to him except that he caught hold of deceased Khalil Ahmad. **In these circumstances, it has been observed by us that the prosecution has successfully proved its case against the petitioner beyond reasonable doubt.** The learned courts below have already taken a lenient view by not awarding sentence of death to the petitioner, which, in the circumstances of the case is justified.

12. Furthermore, the Honourable Supreme Court of Pakistan in the case of ***Sher Muhammad v. The State (1968 P.Cr.L.J 221)*** has observed as under:-

“It may be mentioned that Sultan Khan (P.W.) had been declared hostile to the prosecution in the trial Court and was cross-examined by the learned Public Prosecutor. It was then established that he had made a statement in the committing Court favouring the prosecution story and his statement made, before that Court was transferred as evidence under section 228 of the Code of Criminal Procedure. His refusal to support the prosecution, therefore, at the trial stage, cannot be pressed into service to belie the prosecution allegation in the circumstances of this case.”

13. In yet another case of ***Muhammad Suleman and 4 others v. The State (PLD 2007 SC 223)*** it was observed by the Honourable Supreme Court that:-

“12. There is no cavil to the proposition that the testimony of a hostile witness or a witness, who was not examined being won over was either produced by the defence or was examined as Court witness, must not be left out of consideration for mere reason that he did not support the prosecution rather the evidence of such a witness must be considered with utmost care and caution. The testimony of a witness who speaks in the different tune at different times is certainly not reliable unless strong confirmatory evidence of independent character is available on record. Similarly, the sole testimony of an interested witness, without independent corroboration may not be confidence inspiring to be relied upon for conviction. The rule of independent corroboration is a rule of abundant caution which is followed in the interest of safe criminal administration of justice and is not a mandatory rule of law to be necessarily applied in each case. In the present case the defence having 'challenged the presence of the eyewitnesses namely Muhammad Aslam and Irfan Aslam at the scene of occurrence has questioned truthfulness of their evidence mainly on the ground that none of them sustained a single injury in the occurrence despite direct and indiscriminate firing made by the accused. The incident took place at the

shelter of the complainant and the presence of the complainant and his son at their shelter was not questionable and their testimony was also not suffering from any inherent defect.”

14. After the evidence of PW-1 who, as discussed above, was declared hostile, we look at his evidence in juxtaposition with other evidence produced by the prosecution. PW-2 ASI Jaffer Ali is also an eye witness of the incident of encounter who led a police party and was on patrol to whom PW-1 had given information in respect of robbery conducted by the accused persons. On such information, he chased the accused persons and gave the signal to stop, the accused persons fired upon the police party, while the police party also by exercising their right of self-defence fired upon them to which two accused persons received firearms injuries and fell. As per his evidence, both the accused persons were arrested, who on inquiry disclosed their names as to be Muhammad Bux @ Babu and Amir Raheem ASI recovered robbed articles including cash amount, mobile phone and the motorbike **belonging to the complainant (PW-1) from them** so also recovered pistols with live bullets. As per his evidence, he prepared such mashirnama on spot and sealed the weapons and other articles separately in two parcels. He then sent both the injured persons through SIP Javed Hussain, who reached subsequently at the spot; Thereafter, PW-2 Jaffer Ali on reaching the police station lodged separate FIRs on behalf of the State. As per his evidence, he collected 05 empties of SMG and 08 empties of 30 bore pistol from the crime scene where the police encounter took place and also sealed the same. As per his evidence, bullets also hit the police mobile. His evidence was further corroborated by PW-4 SIP Javed Hussain Abro, who stated that on the day of the incident, he was on patrol when he was informed by 15 that some encounter took place at Jam Kunda road near Anti Encroachment Headquarters and was directed to reach there. On reaching the place of the incident, he saw an ambulance was already available wherein two injured accused persons were present inside it and SIP Jaffer Ali prepared police letters which were handed over to him for the medical examination and treatment of the accused persons. He has also exhibited medico-legal certificates of both the injured persons. The prosecution also examined PW-5 SIP Abdul Rasheed, being well-conversant with the handwriting and signatures of the then investigating Officer

Dilawar Khatak, who exhibited numerous documents which were collected/prepared by I.O. Dilawar Khatak and recognized the signatures on them to be of I.O. Dilawar Khattak. He also exhibited the CRO reports of the appellants which were collected by the I.O. and also exhibited positive FSL report matching the empties with the pistols recovered from the accused. These witnesses were cross-examined at some length; however, we could not find any material contradiction to discard their testimony. During cross-examination, no enmity or ill-will has been suggested against them and even the accused have not denied receiving injuries on their person. After perusal of the evidence, we find that there is a direct testimony of these witnesses who remained associated during the entire course of events and also are witnesses to the recoveries made from the spot or from the very person of the appellants who were arrested while in injured condition **which memo's were signed on the spot by the complainant**. The arrest in the manner as given by the prosecution is supported by the fact that at the time of the arrest appellants were found injured. They could not explain how they have sustained firearm injuries which are corroborated by medical evidence with regard to the probable time of receiving injuries and the time of occurrence as given by the police who are in this case themselves witnesses.

15. In the present case responsible police officials have supported the case being eyewitnesses of the incident as discussed above and the Police officials are as good as private witnesses and their testimony could not be discarded merely for the reason that they were police officials unless the defence would succeed in giving dent to the statements of prosecution witnesses and prove their mala fide or ill-will against accused which the defence counsel have neither been able to do or show during cross-examination. In this respect reliance can be placed on the case of **Zafar v. The State (2008 SCMR 125)**. We have also noticed some minor contradictions in the evidence but no major contradiction has been pointed out by the defence counsel in the evidence of prosecution witnesses. Even in the cases where some minor contradictions may be available that are not sufficient to create any serious doubt the same can be ignored which always are available in each and every case, as has been held by the Honourable Supreme Court in the case of **Zakir Khan v. The**

State (1995 SCMR 1793), relevant paragraph is reproduced as under:-

“13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motiani upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused.”

16. Thus based on the discussion made hereinabove and on our reassessment of the entire evidence produced by the prosecution, we find that the prosecution has proved the charge beyond a reasonable doubt against the appellants by producing reliable, trustworthy, and confidence-inspiring oral evidence as well as recovery of robbed articles and other material belonging to the complainant party, recovery of the crime weapons, receiving firearm injuries during the encounter so also the documentary evidence in support of the same. We, therefore, uphold all the sentences, fines, and penalties for each offence in the impugned judgment whilst dismissing the appeals of the appellants.

17. The appeals stand disposed of in the above terms.

JUDGE

JUDGE