

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

Criminal Appeal No.D-09 of 2022
Criminal Appeal No.D-10 of 2022

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Amjad Ali Sahito.

Date of hearing & Decision: 21.09.2022

Appellants: Through Mr. Masood Rasool Babar Memon,
advocate.

The State: Through Mr. Muhammad Noonari, DPG.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- One Muhammad Ismail with whom appellants have a dispute over agricultural land appeared at Police Station Taluka Mirpurkhas on 03.02.2021 and reported an incident, reduced as Crime No.14/2021, u/s 324 PPC among others, of alleged assault by the appellants on him and other witnesses. Police party headed by SHO of said Police Station acting on the said report went to place of incident to arrest the appellants where police party found appellants and co-accused, since acquitted vide impugned judgment, duly armed with weapons. No sooner the police called them out for arresting purpose, than they assaulted upon police party. Police also retaliated and after a brief encounter succeeded in arresting appellants Siraj with an unlicensed rifle and 35 live bullets and appellant Talib Hussain with an unlicensed repeater with 25 live cartridges, the other accused however made their escape good. After necessary formalities they were brought at Police Station and were booked in three different FIRs i.e. Crime No.15/2021, u/s 324, 353, 147, 148, 149 PPC and sections 6/7 of Anti-Terrorism Act, 1997, and Crime Nos.16 & 17 of 2021 u/s 23(1)(a) of Sindh Arms Act, 2013.

2. In the trial, prosecution to prove the charge examined 04 witnesses and produced all necessary documents. Appellants in their 342 CrPC statements have denied the allegations against them and

have stated that over a dispute on agricultural land regarding which civil litigation is already pending they have been falsely booked in this case. Trial court after appreciating the evidence and hearing the parties has acquitted the appellants vide impugned judgment in the main case bearing Crime No. 15/2021, however, has convicted appellants u/s 23(1)(a) of Sindh Arms Act, 2013 and sentenced them to suffer RI for 07 years and to pay fine of Rs.50,000/- each, in default, to suffer RI for 6 months more.

3. Learned defense counsel has argued that on same set of evidence appellants have been acquitted in the main case but have been convicted in this case in which they have been implicated on the basis of enmity with the witnesses of this case; against PWs Haq Nawaz and Ismail, the civil suit filed by appellants is already pending in which status quo is operating in favour of the appellants but the SHO just in order to do favour to their opponents has lodged false cases against them.

4. Learned Deputy PG has supported the impugned judgment but has admitted that in the main case the appellants have been acquitted of the charge.

5. We have perused the material available on record and heard both the parties. Although the allegations of encounter were leveled against the appellants but the prosecution miserably failed to prove the same. As far as the factum of encounter, therefore, is concerned, due to insufficient evidence it has not been believed by the court. Recovery of weapons from appellants is only a small part of the encounter, may be an independent offence. But when the main aspect of the incident has become doubtful, its portion would be looked at with extra care and caution. The recovery has been witnessed by persons against whom the appellants have already filed a civil suit which is pending in the relevant civil court and reportedly a status quo order is operating in favour of the appellants. It is strange that although at the place, the houses of other persons were available and so also the other people were present, as admitted in evidence. But, the SHO did not try to call them or make persons available to be witnesses in this case and preferred to make those persons as witnesses who are inimical to the appellants. Their evidence supporting the recovery cannot therefore be believed in toto in absence of independent evidence.

6. Furthermore, there is no record of keeping alleged recovered property in Malkhana. It was recovered on 03.02.2021 and was sent for Lab Report on 10.02.2021 after 07 days regarding which no plausible explanation has been put forward by the prosecution. The record is completely silent as to meanwhile where the property i.e. rifle and repeater were kept during such period. When we look at such aspect of the case and unreliable evidence, we find that prosecution has not been able to prove the case against appellants beyond a reasonable doubt. It is a trite law that when there is a single circumstance creating a reasonable doubt in the prudent mind, the benefit of which would be extended to the accused not as a matter of grace but as a matter of right. In view thereof, the appeals are allowed, and the appellants are acquitted of the charge on benefit of doubt. The convictions and sentences awarded to them vide impugned judgment are set aside.

7. Consequently, these appeals are allowed. The appellants shall be released forthwith if not required in any other custody case. These are the reasons of our short order dated 21.09.2022.

8. The appeals are accordingly disposed of.

JUDGE

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