IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE NAIMATULLAH PHULPOTO
MR. JUSTICE SHAMSUDDIN ABBASI.

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Special Criminal Anti-Terrorism Appeal No.140 of 2022

Appellants 1. Muhammad Sadiq son of Ikhlas.
2. Toor Jan son of Muhammad.

Respondent The State.

Special Criminal Anti-Terrorism Appeal No.141 of 2022

Appellant Muhammad Sadiq son of Ikhlas.

Respondent The State.

Special Criminal Anti-Terrorism Appeal No.142 of 2022

Appellant Toor Jan son of Muhammad.

Respondent The State.

Special Criminal Anti-Terrorism Appeal No.143 of 2022

Appellants 1. Muhammad Sadiq son of Ikhlas.
2. Toor Jan son of Muhammad.

Respondent The State.

Special Criminal Anti-Terrorism Appeal No.146 of 2022

Appellant Abdullah son of Dost Muhammad.

Respondent The State.

Special Criminal Anti-Terrorism Appeal No.147 of 2022

Appellant Abdullah son of Dost Muhammad.

Respondent The State.

Special Criminal Anti-Terrorism Appeal No.148 of 2022

Appellant Abdullah son of Dost Muhammad.

Respondent The State.

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Appellants Through Mr. Ajab Khan Khattak, Advocate.

Respondent Mr. Muhammad Iqbal Awan, Addl. P.G.

Date of hearing 24.01.2023
Date of recording detailed reasons **20.02.2023**

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JUDGMENT

SHAMSUDDIN ABBASI, J. Through captioned appeals, Muhammad Sadiq, Toor Jan and Abdullah, appellants, have challenged the judgment

dated 25.10.2021, penned down by learned Anti-Terrorism Court No.II, Karachi, in Special Cases Nos.37 of 2021 (FIR No.475 of 2020) registered at Police Station Soldier Bazar for offences under Sections 353, 324 and 34, PPC read with Section 7 of Anti-Terrorism Act, 1997), 37-A of 2021 (FIR No.477 of 2020) registered at Police Station Soldier Bazar for offence under Section 23(1)(a) of Sindh Arms Act, 2013), 37-B of 2021 (FIR No.478 of 2020) registered at Police Station Soldier Bazar for offence under Section 23(1)(a) of Sindh Arms Act, 2013), 37-C of 2021 (FIR No.479 of 2020) registered at Police Station Soldier Bazar for offence punishable under Section 23(1)(a) of Sindh Arms Act, 2013 and 37-D of 2021 (FIR No.480 of 2020) registered at Police Station Soldier Bazar for offences under Sections 395, 458 and 397, PPC read with Section 7 of Anti-Terrorism Act, 1997, through which they were convicted and sentenced as follows:-

> *"1. For offence under section 397 PPC to undergo R.I. for 07 (seven years).*
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> *2. For offence under section 458 PPC to undergo R.I. for 07 (seven years) and fine of Rs.20,000/- (twenty thousand only) in default of payment of fine the accused shall further undergo R.I. for 03 (three) months.*
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> *3. For offence under section 7(h) of ATA Act, R/w section 353 PPC to undergo R.I. for 02 (two) years and fine of Rs.20,000/- (twenty thousand only) in default of payment of fine the accused shall further undergo R.I. for 03 (three) months.*
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> *4. For offence under section 7(1)*b) ATA Act, R/w Section 324 PPC to undergo R.I, for 05 years and fine of Rs.20,000/- in default of payment of fine accused shall further undergo R.I. for 6 (six) months.*
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> *5. For offence under section 23(i) A, Sindh Arms Act to suffer R.I. for 05 years and fine of Rs.20,000/- in default of payment of fine the accused shall suffer further R.I. three months.*
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> *All the above sentences shall run concurrently. The benefit of section 382-B Cr.P.C. is also extended to the accused from the date of their arrest".*

2. The facts giving rise to these appeals, briefly stated, are that on 22.12.2020 police party of P.S. Soldier Bazar, headed by ASI Nasir Mehmood Jutt, was busy in patrolling of the area in official mobile. It was about 0450 hours the officer heading the party on receipt of information through wireless from 15 (Madadgar) about presence of dacoits in Bungalow No.245, Catholic Colony No.1, United Costal Church, M.A. Jinnah Road, Karachi,

reached there alongwith his party at 0500 hours and saw six persons coming out from the bungalow who on seeing police started straight firing at them and entered adjacent Bungalow No.250. The police chased them and also entered the bungalow. PC Saleemuddin and PC Moeenuddin, members of the police party, retaliated and fired in self defence, resultantly four persons sustained firearm injuries while two made their escape good. Out of four injured, one Asad, who was armed with 30 bore pistol loaded with magazine containing one live bullet and one chamber load, succumbed to his injuries and died at spot, while the other three were apprehended in injured condition, who disclosed their names as Sadiq, armed with 30 bore pistol loaded with magazine containing two live bullets and one chamber load, Abdullah, armed with 30 bore pistol loaded with magazine containing three live bullets and one chamber load and Toor Jan, armed with 30 bore pistol loaded with magazine containing one live bullet and one chamber load. They also disclosed the names of their companions, who decamped from the scene of offence, as Sangeen and Abdul Rehman. They were arrested at spot alongwith unlicensed arms as well as Afghan citizenship cards, recovered from their possession, and referred to hospital alongwith the dead body of deceased accused for further proceedings. The police also secured seven empties of SMG, 13 of 30 bore and two of 9 mm from the scene of offence and then returned back at P.S. Soldier Bazar and registered five cases for offences under Sections 395, 458, 397, PPC read with Section 7 of Anti-Terrorism Act, 1997, Sections 353, 324 and 34, PPC read with Section 7 of Anti-Terrorism Act, 1997 as well as recovery of unlicensed arm under Section 23(1)(a) of Sindh Arms Act, 2013 on behalf of the State.

3. Pursuant to the registration of FIRs, the investigation was followed and in due course challans for each case were submitted before the Court of competent jurisdiction under the above referred Sections, whereby the appellants were sent up to face the trial.

4. Joint trial was ordered in terms of Section 21-M of Anti-Terrorism Act, 1997.

5. A charge in respect of offences under Sections 353, 324, 34 PPC read with Section 7 of Anti-Terrorism Act, 1997 and 395, 458, 397 PPC read with Section 7 of Anti-Terrorism Act, 1997 and 23(1)(a) of Sindh Arms Act, 2013

was framed against appellants. They pleaded not guilty to the charged offences and opted to a trial.

6. At trial, the prosecution has examined as many 11 (eleven) witnesses. The gist of evidence, adduced by the prosecution in support of its case, is as under:-

7. Complainant ASI Nasir Mehmood Butt appeared as witness No.1 Ex.P/1, Bahadur George (Padri) as witness No.2 Ex.P/14, Nelson George as witness N.3 Ex.P/17, PC Muhammad Ramzan as witness No.4 Ex.P/18, Sohail Sardar Masih as witness No.5 Ex.P/19, ASI Muhammad Khan as witness No.6 Ex.P/21, Dr. Ali Raza as witness No.7 Ex.P/22, MLO Sikandar Azam as witness No.8 Ex.P23, Dr. Noor Ahmed as witness No.9 Ex.P/24, SIP Shakeel Khan as witness No.10 Ex.P/25 and Inspector Zulfiqar Ali (investigating officer) as witness No.11 Ex.P/26. All of them were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.46.

8. Appellants Muhammad Sadiq, Toor Jan and Abdullah were examined under Section 342, Cr.P.C. at Ex.47, Ex.48 and Ex.49 respectively. They have denied the allegations imputed upon them by the prosecution, professed their innocence and stated their false implication in the cases. They neither appeared on Oath under Section 340(2), Cr.P.C. nor produce any witness in their defence.

9. Upon completion of the trial, the learned trial Court found the appellants guilty of the offences charged with and, thus, convicted and sentenced them as detailed in para-1 (supra), which necessitated the filing of the listed appeals.

10. It is contented on behalf of the appellants that they are innocent and have been falsely implicated in these cases as otherwise they have nothing to do with the alleged offences and have been made victim of the circumstances. It is next submitted that the prosecution has wrongly applied Sections 397, PPC and 7 of Anti-terrorism Act, 1997 and failed to place on record any evidence to substantiate such offence, hence conviction awarded to appellants under the provisions of Section 397, PPC and 7 of Anti-Terrorism Act, 1997 are illegal and in violation of the

precedents of Hon'ble apex Court. Per learned counsel, insofar as other offences are concerned, the prosecution has failed to discharge its legal obligation of proving the guilt of the appellants as per settled law and the appellants were not liable to prove their innocence. The impugned judgment is bad in law and facts and based on assumptions and presumptions without assigning any valid and cogent reasons. The private witnesses while appearing before the learned trial Court neither supported the case of the prosecution nor identified the appellants, hence in view of this background of the matter the testimony of police officials is unsafe to rely upon. They were inconsistent with each other rather contradicted on crucial points benefit whereof must go to the appellants. The learned trial Court while passing the impugned judgment has deviated from the settled principle of law that a slightest doubt is sufficient to grant acquittal to an accused. The medical evidence is not in line with the ocular account furnished by the prosecution. The investigating officer has conducted dishonest investigation and involved the appellants in a case with which they have no nexus. The learned trial Court also did not appreciate the evidence adduced by the prosecution in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in convicting the appellants merely on assumptions and presumptions. The impugned judgment is devoid of reasoning without specifying the incriminating evidence against each appellant. The learned trial Court totally ignored the pleas taken by the appellants in their Section 342, Cr.P.C. statements and recorded conviction ignoring the neutral appreciation of whole evidence. The material available on record does not justify the conviction and sentences awarded to the appellants and the same are not sustainable in the eyes of the law. The learned counsel while summing up his submissions has emphasized that the impugned judgment is the result of misreading and non-reading of evidence and without application of a judicial mind, hence the same is bad in law and facts and the conviction and sentences awarded to the appellants, based on such findings, are not sustainable in law and liable to be set-aside and the appellants deserve to be acquitted from the charge and prayed accordingly.

11. The learned Additional Prosecutor General while controverting the submissions of learned counsel for the appellants has submitted that appellants have been arrested at spot alongwith unlicensed used by them in

the commission of offence. The witnessed while appearing before the learned trial Court remained consistent on each and every material point. They were subjected to lengthy cross-examination but nothing adverse to the prosecution story has been extracted which can provide any help to the appellants. The circumstantial evidence in this case is in line with the ocular account furnished by the prosecution, duly supported by the medical evidence. The role of the appellants is borne out from the evidence adduced by the prosecution. The prosecution in support of its case produced ocular as well as circumstantial evidence, duly supported by the medical evidence, which was rightly relied upon by learned trial Court. The findings recorded by the learned trial Court in the impugned judgment are based on fair evaluation of evidence and documents brought on record, to which no exception could be taken. The pleas taken by the appellant with regard to their false implication does not carry weight vis-à-vis providing help to the defence. The appellants neither appeared on Oath nor produce any witness to substantiate their innocence. The prosecution has successfully proved its case against the appellants beyond shadow of any reasonable doubt, thus, the appeals filed by the appellants warrant dismissal and their conviction and sentences recorded by the learned trial Court are liable to be maintained.

12. We have heard the learned counsel for the parties, given our anxious consideration to their submissions and also perused the entire record carefully with their able assistance.

13. To substantiate an act of terrorism falling under Section 6 of Anti-Terrorism Act, 1997 (The Act), the object, design or purpose behind the said act (offence) is also to be established so as to justify a conviction under Section 7 of the Act.

14. If one is convicted for certain offences under the provisions of Pakistan Penal Code, Sindh Arms Act and Anti-Terrorism Act, it shall seriously prejudice the guarantee provided by Article 13 of the Constitution, therefore, it would always be obligatory upon the prosecution to first establish "object" thereby bringing an act of terrorism and in absence thereof punishment awarded under Section 7 would not be legally justified particularly when accused is convicted for other offences falling under the provisions of Pakistan Penal Code and Sindh Arms Act. The scope and applicability of

Section 6 of the Act has been dilated upon by the Hon'ble apex Court and the view persistently taken is that all acts mentioned in Sub-section (2) of Section 6 of the Act, if committed with design/motive/intent to intimidate the government, public or a segment of the society, or the evidence collected by the prosecution suggest that such an aim is either achieved or otherwise appears as an off-shoot of such terrorist activities, are to be dealt with by Special Courts established under the Act. To determine whether a particular act is terrorism or not is motivation, object, design or purpose behind the act and not the consequential effect created by such act. In the case in hand, the allegation against the appellants is that they entered into a bungalow with intention to commit dacoity and meanwhile police arrived at the scene and on seeing them the appellants made straight firing at police and in retaliation the police returned fires, resultantly they sustained firearm injuries and their two companions made their escape good while one died at spot due to police firing. The prosecution has claimed that such an act of the appellants created sense of fear, insecurity in the mind of people of the locality. The mode and manner of the occurrence does not suggest any design for creating fear and terror in the public as it was night time and everyone was asleep and the only purpose was to flee from the scene. The Hon'ble Supreme Court has taken a persistent view that mere gravity or brutal nature of an offence would not provide a valid yardstick for bringing the said offence within the definition of terrorism and this view has been reaffirmed by the larger Bench of the august Supreme Court of Pakistan in the case of *Ghulam Hussain and others v The State and others reported* [PLD 2020 SC 61], wherein it has been held has under:-

> *"For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clause (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions*

> *specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta".*

15. Based on the peculiar facts and circumstances of the case and the view taken by the Hon'ble apex Court in the cases (supra), we are of the view that present case does not fall within the meanings of Section 6, punishable under Section 7 of the Act. The conviction and sentences awarded to the appellants under the provisions of Section 7 of the Act, are, thus, not sustainable under the law and liable to be set-aside.

16. Coming to the conviction and sentences awarded to the appellants under Sections 353 & 324, PPC and Section 23(1)(a) of SAA, 2013, suffice to observe that the prosecution has produced ocular evidence in shape of PW.1 ASI Nasir Mehmood Jutt (PW.1 Ex.P/1 and PC Muhammad Ramzan (PW.4 Ex.P/18). Complainant ASI Nasir Mehmood Jutt has deposed that on 22.12.2020 he alongwith PC Ramzan and DPC Muhammad Akram was on patrolling duty in the area in official mobile. It was about 4:50 am he received information from 15 that dacoits have entered Bungalow No.248, Catholic Colony, M.A. Jinnah Road, Karachi. He immediately reached at the pointed place and meanwhile two other police mobiles also arrived and encircled the bungalow. They saw six persons climbing the wall of bungalow and signaled to stop them but the culprits started firing at police and entered into adjacent bungalow and took shelter at the roof of said bungalow. PC Saleemuddin and Moeen went behind the dacoits, who fired at them. They retaliated and fired in self defence, resultantly three dacoits sustained firearm injuries while one fell down from the roof to ground floor owing to firearm injury whereas the remaining two made their escape good climbing the roof of other bungalows. He arrested three dacoits in injured condition while the forth one succumbed to his injuries. The three injured disclosed their names as Sadiq, Abdullah and Toor Jan as well as the name of dacoit died at spot as Asad. He recovered four pistols of 30 bore loaded with magazines and live bullets from each dacoit and also secured seven empties of SMG, two of 9mm and 13 of 13 bore pistol as well as an iron rod, through which the dacoits broken the lock of the bungalow, and sealed the same at spot and also referred three injured and deceased to hospital and then returned back at P.S. alongwith recovered property and registered a case

vide FIR No.475 of 2020 in respect of police encounter case and four other cases vide FIR No.476 of 2020, FIR No.477 of 2020, FIR No.478 of 2020 and FIR No.479 of 2020. On the next day he pointed out the place of incident to investigating officer Inspector Zulfiqar, who conducted site inspection in presence of mashirs PC Ramzan and PC Akram. He also handed over the SMG of PC Saleemuddin and 9 mm pistol of PC Moeen to I.O. He identified three accused as well as case property viz recovered weapons, live bullets, empties, iron rod, I.D. cards, currency notes and looted property viz brown wallet, camera, leather pouch containing sugar testing machine.

17. Complainant ASI Nasir Mehmood Jutt has been supported by PW.4 PC Muhammad Ramzan Ex.P/18. He has deposed in the same line as that of complainant and also testified the encounter taken place between police and six dacoits, out of them four dacoits sustained firearm injuries during exchange of fires and one out of four succumbed to his injuries while two made their escape good. He has also disclosed the names of dacoits with role as well as details of injuries suffered by them and also the recovery affected from the possession of arrested accused and has correctly identified them in Court as well as the case property.

18. A keen look of the testimony of complainant and eye-witness reveals that they have identified the appellants and involved them in the commission of offence with their role. They have also correctly explained the manner as well as mode of taking place of the occurrence. They remained consistent on each and every material point despite having undergone a lengthy cross-examination by the defence. Nothing has been extracted from their mouth during cross-examination. Their evidence has extended adequate confidence to the learned trial Court to be believed upon them and we have also acknowledged the quality of their truthfulness to believe them as dependable witnesses. No doubt they belong to police department, but their testimony cannot be discarded until and unless the defense succeeds in giving dent to their statements and prove their malafide or ill-will intentions against the appellants. It is by now well settled that statements of police officials are as good as the statements of private witnesses, unless through evidence it has been proved that previous grudge had existed in between the parties. The testimony of police officials is entirely independent and truthful, therefore, their testimony without looking for any other corroborative evidence, would alone be sufficient to establish

the charge. There is no bar upon police officials to become witnesses of any crime. They seem to be natural witnesses and have explained their presence properly at the scene of offence at relevant time and no element of doubt is available as to their presence at the place of incident at the relevant time. They have furnished graphic details of the occurrence without being trapped into any serious narrative conflict and deposed same facts in their evidence, which are in line to that of their earlier statements recorded by investigating officer during investigation. Hence, their presence at spot could not be disputed. Reliance in this regard is placed on the case of *Muhammad Mushtaq and another v State* (2008 SCMR 742), whereby the Hon'ble Supreme Court has observed that the police officials are also competent witnesses and their testimony cannot be discarded merely for the reason that they are the employees of police force. Hence, in view of above legal and factual position the contention of the learned defence counsel challenging the conviction without corroboration from independent side is absolutely without any substance.

19. The ocular evidence adduced by the prosecution, referred herein above, has further been corroborated by the medical evidence adduced by PW.7 Dr. Ali Raza (Ex.22), PW.8 Dr. Sikandar Azam (Ex.23) and PW.9 Dr. Noor Ahmed (Ex.24). Dr. Ali Raza has examined injured accused Sadiq at Civil Hospital, Karachi, and testified the injuries as reported in the FIR caused with firearm while Dr. Sikandar Azam examined injured accused Toor Jan Abdullah at JPMC, Karachi, and supported the injuries as mentioned in the FIR caused with gun. Dr. Noor Ahmed has examined deceased accused Asad at Civil Hospital and issued post-mortem report declaring cause of death as cardio respiratory failure and hemorrhage shock resulting from firearm projectile. The ocular account, thus, furnished by the prosecution has further been corroborated by the medical evidence adduced by the Medical Officers. The fact of blood stained qameez of accused Asad (deceased) has also been affirmed by Chemical Report, available at page 181 of the paper book, testifying same to be stained with human blood. The positive report, issued by the office of Sindh Forensic DNA and Serology Laboratory, Karachi, has further strengthened the case of prosecution as a strong circumstantial evidence.

20. The another intriguing aspect of the matter is that four unlicensed weapons, recovered from the possession of appellants and deceased

accused (Asad), which are said to be crime weapons, and thirteen crime empties of 30 bore, secured from the place of incident, were sent to the office of Assistant Inspector General of Police, Forensic Division, Sindh, Karachi, and the said office has testified that empties were fired from the pistols recovered from the possession of appellants at the time of their arrest. The said office has further reported that two empties of 9 mm bore and seven of 7.62 x 39 mm bore were fired from 9 mm pistol and 7.62 x 39 bore rifle received by the said office. These reports are available at Ex.P/31 and Ex.P/32 at pages 313 to 317. The appellants did not discredit such reports either at the time of their production or while recording their statements under Section 342, Cr.P.C. and failed to create a doubt as to the genuineness of such reports. We are, thus, of the view that the prosecution has been able to prove the charges for commission of offences under Sections 353 & 324, PPC and recovery of unlicensed arms falling under Section 23(1)(a) of Sindh Arms Act, 2013.

21. As to the conviction and sentence awarded to appellants under Section 397, PPC is concerned, suffice to observe that PW.2 Padri Bahadur George (Ex.P/14), who is complainant of FIR No.480 of 2020, while appearing before the learned trial Court has supported the case of the prosecution with regard to commission of an offence of dacoity in the church by 4/5 persons, who tightened him as well as chowkidar and looted three mobile phones, two SIMs and cash of Rs.5,000/-. He has also supported the case of the prosecution that police informed him about the encounter taken place near Bungalow No.250 and admitted his signature on his statement recorded by police under Section 154, Cr.P.C. but did not identify the accused at trial. He was declared hostile and cross-examined by the learned APG and admitted that he was too much confused and under fear and stress, therefore, could not identify the culprits. PW.3 Nelson George (Ex.P/17) has also supported the case of the prosecution and deposed that on 21.12.2020 he was in his room when heard noise coming from the room of his father. He immediately informed 15 and received a reply that police has arrived at the scene. He went to the room of his father and saw him as well as chowkidar tightened. His father informed him that some persons entered his room and took away his cell phone and cash. On next day police came and informed that they have arrested the dacoits after an encounter. The prosecution has also examined chowkidar Sohail Sardar Masih as PW.5 Ex.P/19. He has fully supported the case of the prosecution and identified the appellants while

recording his statement at trial. Non-identification of appellants in presence of plausible explanation furnished by Padri Bahadur George (complainant) that at the time of incident he was too much tensed and confused, therefore, could not identified the accused, seems to be justified and is not fatal to the prosecution case in presence of a positive report qua the crime weapons, recovered from the possession of appellants, matched with the empties, secured from the place of incident and more so when the ocular account in shape of direct evidence, duly supported by the medical and circumstantial evidence has already been believed as trustworthy and confidence inspiring. A look of the record reveals that Padri Bahadur George (complainant) has not attributed any act of using weapon or causing grievous hurt or attempting to cause death or grievous hurt during commission of offence. In view of this background of the matter, the offence committed by the appellants falls within the ambit of Section 458, PPC and not under Section 397, PPC. Thus, the conviction and sentence awarded to the appellants under Section 397, PPC is unjustified and liable to be converted from Section 397, PPC to 458, PPC, punishment whereof may extend to 14 years.

22. Insofar as the contention of learned counsel regarding minor discrepancies in the evidence of prosecution witnesses is concerned, suffice to observe that minor discrepancies in the evidence generally occur in each and every case, which are to be ignored and only material contradictions are to be taken into consideration as held in the case of *Zakir Khan v The State* (1995 SCMR 1793).

23. It is a well settled that onus to prove its case always rests on the shoulder of the prosecution and once the prosecution succeeded in discharging such burden with cogent evidence then the accused become heavily burdened to disprove the allegations levelled against him and prove his innocence through cogent and reliable evidence. The appellants while recording their statements under Section 342, Cr.P.C. have neither discredited the prosecution evidence nor placed on record any convincing evidence to substantiate their plea of false implication. In the circumstances, since no specific plea has been taken by the appellants, the learned trial Court has rightly discarded the same to be of untrustworthy. They have also not appeared on Oath under Section 340(2), Cr.P.C. and failed to place on record any evidence as to their innocence, which may give rise to a

presumption that the plea taken by them for their false implication was not a gospel truth, therefore, they avoided to appear and deposed on Oath under Section 340(2), Cr.P.C. If both the versions, one put forward by the appellants and the other put forward by the prosecution, are considered in a juxtaposition, then the version of the prosecution seems to be more plausible and convincing and near to truth while the version of the appellants seems to be doubtful.

24. In view of the analysis and combined study of the entire evidence by way of reappraisal, with such care and caution, we are of the considered view that the prosecution has been able to prove the offences falling under Sections 458, 353 and 324, PPC and Section 23(1)(a) of Sindh Arms Act, 2013. In view thereof, the appeals insofar it impugn conviction, has no merit. However, keeping in view the peculiar facts and circumstances of the case coupled with the fact that the appellants have already served sentences of two years one month and twenty eight days in prison, as reflected from the jail roll, issued by Senior Superintendent, Central Prison & Correctional Faculty, Karachi, we are of the considered view that it would serve both purposes of deterrence and reformation, if the sentences are reduced. Therefore, in terms of our short order dated 24.01.2023, we had dismissed the appeals but modified the sentences as follows:-

> *"(i) According to prosecution case incident had occurred on 22.12.2020 at 0500 hours, in a bungalow/church, it was night time, everyone was asleep and by the act of the appellants no terror was created, while relying upon the principle laid down by the Honourable Supreme Court in the case of Ghulam Hussain vs. State (PLD 2020 SC 61), we hold that conviction of the appellants under Section 7 of Anti-Terrorism Act, 1997 is not sustainable under the law, hence the same is set-aside.*
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> *(ii) Based on the reappraisal of evidence, conviction recorded by the trial Court under Section 397 PPC is converted to Section 458 PPC and appellants are convicted under Section 458 PPC and sentenced to undergo 3 years and 06 months R.I. each. Fine of Rs.20,000/- each is maintained. However, in case of default in payment of fine, appellants suffer S.I for 03 months, instead of R.I. for 03 months.*
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> *(iii) Conviction and sentence recorded against the appellants under Section 353, PPC for 02 years R.I each and fine of Rs.20,000/- each are maintained.*

However, in case of default in payment of fine, appellants suffer S.I for 03 months, instead of R.I. for 03 months.

(iv) Conviction of the appellants under Section 324 PPC is maintained, however, sentence of 05 years R.I awarded to each of the appellant is reduced to 03 years and 06 months R.I. Fine of Rs.20,000/- each is also maintained. However, in case of default in payment of fine, appellants shall suffer S.I for 06 months, instead of R.I for 06 months.

(v) Conviction under Section 23(1)(a) of Sindh Arms Act, 2013 is maintained, however, sentence of 05 years R.I awarded to each of the appellant is reduced to 03 years and 06 months R.I. Fine of Rs.20,000/- each is also maintained. In case of default in payment of fine, appellants suffer S.I for 03 months, instead of R.I. for 03 months.

All the sentences shall run concurrently. Appellants shall be entitled to the benefit of Section 382(b), Cr.P.C.

25. Foregoing are the reasons for our short order dated 24.01.2023.

JUDGE

JUDGE

NAK/PA