

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Special Anti Terrorism Appeal No.D-76 of 2022.

Before:

*Mr. Justice Irshad Ali Shah,
Mr. Justice Zulfiqar Ali Sangi.*

Appellants: Zahoor Ahmed @ Abdul Karim and Siraj Ahmed @ Gajo both by caste Jatoi **through** M/s Alam Sher Bozdar and Rukhsar Ahmed Junejo advocates.

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

Date of hearing: 03-01-2024.

Date of judgment: 03-01-2024

J U D G M E N T

IRSHAD ALI SHAH, J-: It is the case of the prosecution that the appellants with one more culprit allegedly assembled at the place of incident with intention to commit some offence, on being prevented from doing so, they deterred the police party of PS Baberloi led by SIP Muhammad Eidan Bhutto from discharging their lawful duty as public servants by making fires at them with intention to commit their murder, eventually HC Munwar Ali died on receipt of fire shot injuries, for that they were booked and reported upon by the police. On conclusion of trial, they were convicted and sentenced to various terms of imprisonment spreading over life with benefit of section 382 (b) Cr.P.C by learned Special Judge, Anti-Terrorism Court Khairpur vide judgment dated 25-05-2022, which the appellants have impugned before this Court by preferring the instant appeal.

2. It is contended by learned counsels for the appellants that the appellants being innocent and juvenile offenders have been involved in this case falsely by the police on account of filing an

application under section 22 A/B Cr.P.C against certain police officials by one of their relative; the complainant SIP Muhammad Eidan, PW/mashir SIP Hafeezullah, SIP Mukhtiar Ahmed and I.O/SIP Nadeem Ahmed Chahcar have not been examined by the prosecution on account of their death/illness and the evidence of the PWs who have been examined by the prosecution being doubtful in its character has been believed by learned trial Court without assigning cogent reasons, therefore, the appellants are entitled to be acquitted of the charge by extending them benefit of doubt. In support of their contention, they relied upon case of *Zeeshan @ Shani Vs. The State (2012 SCMR 428)*.

3. Learned Additional P.G for the state by supporting the impugned judgment has sought for dismissal of the instant appeal by contending that on arrest from the appellants have been secured the pistols which they allegedly used in commission of the incident and the prosecution has been able to prove its case against them beyond shadow of doubt.

4. Heard arguments and perused the record.

5. Complainant SIP Muhammad Eidan, PW/mashir SIP Hafeezullah and Mukhtiar Ahmed could not be examined by the prosecution on account of their death; the benefit of their non-examination, for any reason obviously is to be resolved in favour of the appellants in case like the present one. It was stated by PW/mashir PC Dhani Bux that on the date of incident he being member of police party led by SIP Muhammad Eidan; on information with regard to the availability of the appellants with one more culprit with intention to commit some offence went at the place of incident there, they were deterred by the appellants and one more culprit from discharging their lawful duty as public servants by making fires at them with intention to commit their

murder; eventually HC Munwar Ali died on receipt of fire shot injuries; the appellants and other then made their escape good from the place of incident by taking advantage of date palm trees. The specific role of causing fire shot injuries to the deceased is attributed by him to absconding accused Muhammad Chhuttal and such fact also takes support from the contents of FIR. PW/PC Wazir Ali has attempted to support PW/PC Dhani Bux in his version to some extent. If for the sake of arguments, it is believed that the above named PWs have actually witnessed the incident; even then active role in commission of incident by causing shot injuries to the deceased is attributed by them to absconding accused Muhammad Chhuttal; therefore, the involvement of the appellants in commission of incident on point of vicarious liability could reasonably be judged with doubt. As per prosecution, on arrest from the appellants were secured unlicensed pistols by late SIP Muhammad Eidan, which they allegedly used in commission of the incident, those as per memo of arrest and recovery were found without number. As per report of ballistic expert, the numbers on those pistols were found rubbed. There is line of demarcation between word *without number and number having been rubbed*. Such inconstancy could not be over looked. The report of ballistic expert even otherwise has not been produced in evidence in accordance with law; its production by way of statement obviously has denied the right of defence/cross examination to the appellants on such valuable document. The I.O/SIP Nadeem Ahmed Chachar too has not been examined by the prosecution being ill. The identity of his signatures on documents prepared during course of investigation of the present case by PC Khadim Hussain hardly satisfies the requirement of law. The appellants during course of their examination u/s 342 Cr.P.C have pleaded innocence by stating

that they have been involved falsely in the case by the police on account of filing an application under section 22 A/B Cr.P.C against certain police officials by one of their relative, such plea of innocence could not be lost sight of in circumstances of the present case.

6. The conclusion which could be drawn of above discussion would be that the prosecution has not been able to prove its case against the appellants beyond shadow of doubt and to such benefit they are found entitled.

7. In case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been held by the Apex court that;

"4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

8. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants under impugned judgment are set aside, they are acquitted of the offence for which they were charged, tried, convicted and sentenced by learned trial Court; they shall be released forthwith, if not required to be detained in any other case.

9. The instant appeal is disposed of accordingly.

JUDGE

JUDGE