

# THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeals No. 119 and 123 of 2023

Present:  
Naimatullah Phulpoto, J.  
Irshad Ali Shah, J.

Appellants: Muhammad Rasheed and Shaman  
through Mr. Habib-ur-Rehman Jiskani,  
advocate

Respondent: The State through Mr. Ali Haider Saleem,  
Additional Prosecutor General Sindh

Date of hearing: 06.08.2024

Date of announcement: 06.08.2024

## J U D G M E N T

**IRSHAD ALI SHAH, J-** It is the case of prosecution that the appellants allegedly deterred the police party of PS Taimoria led by HC Muhammad Aslam from discharging its lawful duty as public servant by firing at them intending to commit their murder by resorting to terrorism eventually they were arrested in injured position and from them were secured unlicensed pistols of 9mm and 30 bores with magazine containing live bullets, for which the present case was registered. At trial, both the cases against the appellants were amalgamated in terms of Section 21-M of the Anti-terrorism Act, 1997, and they were charged which they denied and the prosecution to prove its case examined six witnesses and then closed its side. The appellants in their statements recorded u/s 342 Cr.PC denied the prosecution allegation by pleading innocence by stating that they were taken from their respective houses and then were involved in this case by the police on account of their failure to

pay them bribe by causing them fireshot injuries on their right legs. They did not examine anyone in their defence or themselves on oath. On completion of the trial, they were convicted for the said offences and sentenced to undergo various terms of imprisonment spreading over 11 years with fine etc. with the direction that all the sentences to run concurrently with the benefit of Section 382(b) Cr.PC by learned Judge, Anti-terrorism Court No.XX Karachi vide judgment dated 30.05.2023, which they have impugned before this Court by preferring two separate jail appeals.

2. It is contended by learned counsel for the appellants that the appellants are innocent and have been convicted and sentenced by the learned trial Court based on an improper assessment of evidence, therefore, they are entitled to their acquittal by extending them the benefit of the doubt. In support of their contentions, he relied upon the case of *Muhamad Younis alias Bona and another vs. The State* (2022 YLR 924).

3. Learned Addl. P.G for the state by supporting the impugned judgment has sought dismissal of the instant appeals by contending that the prosecution has been able to prove its case against the appellants beyond a shadow of a doubt and from them there is the recovery of unlicensed pistols which were used by them in commission of the incident.

4. Heard arguments and perused the record.

5. It was stated by complainant HC Muhammad Aslam and PW/mashir PC Aijaz that on the date of the incident they with the rest of the police officials were conducting patrol through the police mobile within the jurisdiction of PS Taimoria when reached in street near to Dental College Nazimabad there, they found the appellants going in a suspicious condition on their 125 motorcycle; they were signaled to stop on that they fired at them and other police officials intending to commit their murder; those fires were retaliated eventually both of them after sustaining fire shot injuries on their right legs fell on the ground; they were apprehended, on inquiry they disclosed their names to be Muhammad Rasheed and Shaman; from Abdul Rasheed was secured unlicensed pistol of 30 bores and from Shaman was secured unlicensed pistol of 9mm with magazine containing live bullets; a memo of arrest and recovery was prepared and they were brought at PS Taimoria and were booked accordingly and further investigation of the case was conducted by I.O/Inspector Abdul Ghani. No police official sustained fireshot injury though they allegedly were fired at by the appellants directly which besides appearing to be surprising reflects on the factum of the incident adversely. Evidence of PW/ASI Arab Khan is only to the extent that he referred the appellants to Abbasi Shaheed Hospital for examination of their injuries treatment and certificate; his evidence needs no discussion. The factum of the injuries sustained by the appellants on their right legs takes support from

the evidence of Dr. Ali Ikram. Evidence of PW/HC Ghulam Mustafa is only to the extent that with him were deposited the unlicensed pistols allegedly secured from the appellants by the complainant of the present case which he kept in *Malkhana*. Evidence of PW Muhammad Saeed Ahmed is only to the extent that the motorcycle secured from the appellants was robbed from him. His evidence hardly has a bearing on the facts of the present case. It was stated by I.O/Inspector Abdul Ghani that on investigation he recorded 161 Cr.PC statements of PWs, visited the place of incident and prepared such memo in the presence of the complainant and PW/PC Aijaz. It was to have been prepared in the presence of the independent person to maintain transparency. It was further stated by him that he dispatched the pistols secured from the appellants to the Forensic Expert for its examination; such dispatch was a joint one; those were to have been sent independently to maintain transparency. Such dispatch was made on the 4<sup>th</sup> day of its recovery. No explanation for such delay is offered. Omissions noted above suggest that the investigation was casual. No casual investigation could be relied upon to maintain conviction. The pistols are alleged by the appellants to have been foisted upon them by the police; they have also pleaded innocence by denying the prosecution allegation in their statements recorded under Section 342 Cr.PC; such a plea on their part could not be overlooked in the circumstances of the case.

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

7. In case of *Muhammad Jamil vs. Muhammad Akram and others (2009 SCMR 120)*, it has been held by the Apex Court that;

*“When the direct evidence is disbelieved, then it would not be safe to base conviction on corroborative or confirmatory evidence.”*

8. In the case of *Muhammad Javed vs. The State (2016 SCMR 2021)*, it has been held by the Apex Court that;

*“...although a report of the Forensic Science Laboratory was received in the positive in respect of matching of the firearm recovered from the appellant's custody with a crime-empty secured from the place of occurrence yet the investigating officer (PW9) had clearly acknowledged before the trial court that the crime-empty had been sent to the Forensic Science Laboratory on the day when a carbine had been recovered from the custody of the appellant.”*

9. In the 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".*

10. Under the discussed circumstances, the conviction and sentence awarded to the appellants by way of impugned judgment

are set aside, they are acquitted of the charged offence and shall be released forthwith, if not required to be detained in any other custody case.

11. Above are the reasons for our short order of even date, whereby both the instant jail appeals were allowed.

**JUDGE**

**JUDGE**

*Nadir/PA*