

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No. 120 of 2023

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

Appellant: Daniyal through Mr. Habib-ur-Rehman Jiskani, advocate
Respondent: The State through Mr. Abrar Ali Khichi, Additional Prosecutor General Sindh
Date of hearing: 22.08.2024
Date of announcement: 22.08.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the police party of PS Bahadurabad led by complainant PC Muhammad Sarwar and PW/PC Moosa Raza when was conducting patrol within the jurisdiction of the above said police station through a private vehicle which was being driven by PW Tariq Aziz was confronted by four unknown culprits who came there on two motorcycles; they deterred the said police party from discharging its lawful duty as a public servant by making fires at them intending to commit their murder; they too were fired at by the said police party as a result of such firing PW/PC Moosa Raza and one of the culprit sustained fire shot injuries, for which the present case was registered. At trial, the appellant did not plead guilty to the charge and the prosecution to prove the same examined ten witnesses and then closed its side. The appellant in his statement recorded u/s 342 Cr.PC denied the prosecution's allegation by

pleading innocence; he did not examine anyone in his defence or himself on oath. On completion of the trial, he was convicted for the said offence and sentenced to undergo various terms of imprisonment spreading over 14 years; all the sentences were directed to run concurrently with the benefit of Section 382(b) Cr.PC by learned Judge, Anti-terrorism Court No.XIII Karachi vide judgment dated 17.06.2023, which is impugned by the appellant before this Court by preferring the instant Spl.Crl. AT Jail Appeal.

2. It is contended by learned counsel for the appellant that the appellant is innocent and has been involved in a blind FIR by the police and has been convicted and sentenced by the learned trial Court based on misappraisal of the evidence, therefore, he is entitled to his acquittal by extending him the benefit of the doubt, which is opposed by learned Addl. PG for the State by contending that the appellant was picked up by the complainant in an identification parade which was conducted by a Magistrate and he is fully implicated in the commission of the incident.

3. Heard arguments and perused the record.

4. Admittedly, the FIR of the incident does not contain name and description of the culprits involve in the incident. There is nothing in the evidence of the complainant and his witnesses which may suggest that as to which of the culprit caused the fire shot injury to PW/PC Moosa Raza. The appellant was apprehended in some other case and during the investigation of that case he

allegedly admitted his guilt concerning the present incident; such admission if believed to be true even then could not be used against him as evidence in terms of Article 39 of Qanun-e-Shahadat Order, 1984. The appellant was subjected to an identification parade on the 12th day of his arrest in the present case that too through the complainant alone. No plausible explanation for such delay is offered by the prosecution. PW/PC Moosa Raza was discharged from Agha Khan Hospital finally on 15.01.2023. In all fairness, he would have been called upon to identify the appellant during the identification parade which was conducted on 24.01.2023. It was not done; therefore, such omission on the part of the police could not be overlooked. No terrorism is evident. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove its case against the appellant beyond a shadow of reasonable doubt and to such benefit he is found entitled.

5. In the case of *Shafqat Mehmood and others vs. The State (2011 SCMR 537)*, it has been held by the Apex Court that;

“Delay of seven days in holding the identification parade after the arrest of accused had made the same doubtful”.

6. 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" .

7. Under the discussed circumstances, the conviction and sentence awarded to the appellant by way of impugned judgment are set aside and he is acquitted of the charged offence and shall be released forthwith, if not required to be detained in any other custody case.

8. Above are the reasons for our short order of even date, whereby the instant Spl. Crl. AT Jail Appeal was allowed.

JUDGE

JUDGE

Nadir/PA