

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No. 175 of 2023

Present:
Naimatullah Phulpoto, Acting
Chief Justice.
Irshad Ali Shah, J.

Appellants: Muhammad Zubair and Muhammad Shahbaz through M/s. Shamsul Hadi and Abdul Jalil, advocates

Respondent: The State through Mr. Khadim Hussain Khuharo, Additional Prosecutor General Sindh

Date of hearing: 28.08.2024

Date of announcement: 28.08.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged by the prosecution that the appellants in furtherance of their common intention deterred the police party of PS Defence Karachi led by ASI Rana Amjad Ali from discharging its lawful duty as a public servant by firing at them intending to commit their murder by resorting to terrorism; they too were fired at as a result whereof both of the appellants sustained fire shot injuries and were apprehended, for which the present case was registered. The appellants denied the charge and the prosecution to prove the same examined eight witnesses and then closed its side. The appellants in their statements recorded under Section 342 Cr.PC denied the prosecution's allegation by pleading innocence; they did not examine anyone in their defence, however, examined themselves on oath. On completion of the trial, they were convicted under Section 324 PPC r/w Section 7 of ATA Act, 1997,

and sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.20,000/- each and in default in payment whereof to undergo simple imprisonment for six months; they were further convicted under Section 353 PPC and sentenced to undergo rigorous imprisonment for one year; both the sentences were directed to run concurrently with benefit of Section 382(b) Cr.PC by learned Judge, Anti-terrorism Court No.XX Karachi vide judgment dated 18.09.2023, which they have impugned before this Court by preferring the instant Spl.Crl. AT Appeal.

2. Heard arguments and perused the record.

3. Admittedly, no police official has sustained fire shot injury during the alleged armed encounter which appears to be surprising. Indeed, it belies the complainant in his version that the encounter was a direct one. The police mobile allegedly sustained damage with fire shot had never been produced at the trial; its non-production could not be overlooked. The pistols allegedly secured from the appellants as per memo of recovery were bearing the descriptions, those on forensic examination were found with their numbers rubbed which suggests its manipulation and/or foistation. No independent person has been examined by the Investigating Officer to ascertain the correctness of the incident. The fire shot injuries as per the appellants have been caused to them by the police officials only to justify their false involvement in the present case. In these circumstances, it would be safe to conclude 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.

4. 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".

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

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

ACTING CHIEF JUSTICE

JUDGE