

# THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No. 15 of 2023

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

Appellant: Shouqeen Ali through Mr. Hashmat  
Khalid, advocate

Respondent: The State through Mr. Abrar Ali Khichi,  
Additional Prosecutor General Sindh

Date of hearing: 29.08.2024

Date of announcement: 29.08.2024

## J U D G M E N T

**IRSHAD ALI SHAH, J-** It is the case of the prosecution that the appellant and co-accused Aziz in furtherance of their common intention deterred the police party of PS Khawaja Ajmer Nagri led by complainant SIP Muhammad Naeem by making fires at them intending to commit their murder by resorting to terrorism; the appellant was apprehended at spot in an injured condition with the unlicensed pistol of 30 bores and the motorcycle, while co-accused Aziz escaped from the place of the incident, for which two separate cases were registered; both the cases were amalgamated in terms of Section 21-M of Anti-terrorism Act, 1997 and then proceeded accordingly. The appellant denied the charge and prosecution to prove the same, examined seven 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 by stating that he was taken from his house at Manghpir by the police officials and

then was involved in this case falsely to justify the fire shot injury which was caused to him; he did not examine anyone in his defence or himself on oath. On completion of the trial, he was convicted u/s 353/324/34 PPC r/w Section 6(ii)(n) punishable under Section 7(1)(h) of the Anti-terrorism Act, 1997 and sentenced to undergo imprisonment for 05 years and in default in payment whereof to undergo imprisonment for three months. It was jumble imprisonment for more than one penal section which could never be approved. The appellant was further convicted under Section 23(i)(a) of the Sindh Arms, 2013 and sentenced to undergo imprisonment for three years and to pay a fine of Rs.5000/- and in default in payment whereof to undergo imprisonment for two months; all the sentences were directed to run concurrently with the benefit of Section 382(b) Cr.PC by learned Judge, Anti-terrorism Court No.IV Karachi vide judgment dated 14.01.2023, which he has impugned before this Court by preferring the instant Spl.Crl. AT Jail Appeal.

2. Heard arguments and perused the record.

3. As per the complainant, it was P.W/PC Muhammad Arshad who fired at the appellant in self defence. P.W/PC Muhammad Sharif came with a different version as per him the complainant himself fired the appellant in self defence. Such inconsistency in between their evidence could not be lost sight of; it has reduced the evidentiary value of their version. No police official sustained fire

shot injury during the alleged armed encounter which continued for about 10 minutes which appears to be surprising. No blood-stained earth was secured from the place of the incident which suggests that the incident has occurred at the place other than the one claimed to be by the police officials. No independent person was associated by the Investigating Officer which suggests that the investigation which allegedly was conducted by him in the present case was only to the extent of table. The table investigation could hardly be relied upon. It is alleged by the appellant that he has been involved in this case falsely by the police official by foisting upon him the unlicensed pistol and motorcycle only to justify the injury which they have caused to him. Such a plea could not be overlooked in the circumstances of the case.

4. The discussion involved a conclusion 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 *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".*

6. 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.

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

**JUDGE**

**ACTING CHIEF JUSTICE**

*Nadir/PA*