

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No. 30 of 2024
Special Criminal Anti-Terrorism Appeal No. 32 of 2024
Special Criminal Anti-Terrorism Appeal No. 33 of 2024

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

Appellants: Muhammad Aslam, Ahsan Raza, Anwar Ali, Zubair and Abid through M/s. Jamil Ahmed Virik and Khalid Hussain, advocates

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

Date of hearing: 10.09.2024

Date of announcement: 10.09.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellants with the acquitted accused while riding on three motorcycles deterred the police party of PS Aziz Bhatti led by SIP Sadardin by firing at them intending to commit their murder by resorting to terrorism; they were also fired at by the said police party in self-defence as a result of such firing the appellants were apprehended in injured condition, from them were secured the unlicensed pistols used by them in the commission of the incident, motorcycles and cell phones allegedly robbed by them from private individuals, while one of the culprit named Adeel made his escape from the place of the incident, for which the appellants were booked and reported upon accordingly. Both the cases one relating to the police encounter and other recovery of unlicensed arms from the appellants were amalgamated by the learned trial Court in terms of

Section 21-M of ATA, 1997. At trial, the appellants and the acquitted accused denied the charge and the prosecution to prove the same, examined fourteen witnesses and then closed its side. The appellants and acquitted accused in their statements recorded u/s 342 Cr.PC denied the prosecution's allegation by pleading their innocence by stating that they had been involved in this case falsely by the police; they did not examine anyone in their defence or themselves on oath. After the trial, accused Adeel, Samiullah, Ismail and Ishaque who were joined in investigation were acquitted while the appellants were convicted for the said offence and sentenced to various terms of imprisonment spreading over ten years; all the sentences were directed to run concurrently with benefit of Section 382(b) Cr.PC by learned Judge, ATC Court No.XVIII vide judgment dated 30.01.2024, which the appellants have impugned before this Court by preferring the instant Spl.Crl. AT Appeals.

2. Heard arguments and perused the record.
3. As per the complainant and P.W Mashir PC Sahib Khan, the appellants were apprehended after an armed encounter whereby they sustained fireshot injuries on their person. No police official sustained any fireshot injury during such an encounter which appears to be surprising, indeed it belies the allegation of armed encounter. No motorcycle sustained any damage; it too appears to be surprising. PWs Muhammad Hassan, Muhammad Sohail, Sohail Asghar, who allegedly were robbed of their motorcycles and cell

phones were not able to identify the appellants or the acquitted accused at the trial. The identity of the appellants Abid and Zubair by P.W Hamza Khan at Police Station Aziz Bhatti through photographs or subsequent at trial could hardly be believed in absence of an identification parade. No blood-stained earth was secured from the place of the incident by the complainant, which suggests that the incident has taken place in a manner other than the one as alleged by the prosecution. At least four of the pistols allegedly secured from the appellants on forensic examination were found with rubbed numbers. As per the memo of arrest and recovery, many of the pistols secured from the appellants allegedly used by them in the commission of the incident were found with descriptions. Such inconsistency cannot be overlooked; it suggests manipulation. Evidence of P.W Wasim Abbas is only to the extent that he kept the property in *Malkhana*; his evidence hardly needs any discussion. Dr. Muhammad Areeb has confirmed the fireshot injuries on the person of the appellants. No independent person was associated by I.O /SIP Sadardin during the investigation; it was necessary to maintain transparency. The pistols are alleged by the appellants to have been foisted upon them by the police only to justify their involvement in the present case and to save themselves from legal consequences for causing them fire-shot injuries. The dispatch of the pistols and empties to the forensic expert was a joint one; those ought to have been separate to maintain transparency;

such omission on the part of the Investigating Officer could not be overlooked. Investigation of the present case on the part of Investigating Officer appears to be casual. The casual investigation could hardly be relied upon to maintain conviction. On the basis of the same set of evidence, at least accused Adeel who allegedly made his escape from the place of incident with a similar role has already been acquitted by the learned trial Court by extending him the benefit of the doubt. In these premises, it would be safe to conclude that the prosecution has not been able to prove its case against the appellants beyond a shadow of a doubt and they too are found entitled to such benefit.

4. In the case of *Sardar Bibi and others vs. Munir Ahmed and others (2017 SCMR 344)*, it has been held by the Apex Court that;

“When the eye-witnesses produced by the prosecution were disbelieved to the extent of one accused person attributed effective role, then the said eye-witnesses could not be relied upon for the purpose of convicting another accused person attributed a similar role without availability of independent corroboration to the extent of such other accused”.

5. 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.”

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 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.

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

JUDGE

JUDGE

Nadir/PA