

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No.193 of 2023
Special Criminal Anti-Terrorism Jail Appeal No.225 of 2023

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

Appellant: Shahzaib Irfan @ Zebo and Farman @
Toor @ Munna through Mr. Shah Imroz
Khan and Ms. Farah Khan (absent),
advocates

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

Date of hearing: 19.09.2024

Date of announcement: 19.09.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellants were apprehended by the police party of PS Rizvia Colony led by SIP Jaro Khan after an armed encounter, whereby one of the appellant namely Farman @ Toor @ Pathan @ Munna sustained fire shot injury on his right leg; from him was secured an unlicensed pistol of 30 bore with magazine containing four live bullets of same bore besides stolen motorcycle, for which they were booked accordingly; both the cases one relating to police encounter and other to recovery of unlicensed weapon were amalgamated in terms of Section 21-M of AT Act, 1997. The appellant did not plead guilty to the charge and the prosecution to prove the same, examined four witnesses and then closed its side. The appellants in their statements recorded u/s. 342 Cr.PC denied the prosecution's allegation by pleading innocence by stating that they had been involved in this case falsely by the police officials; they examined Muhammad Zeeshan in their defence, however, none of them examined himself on oath to disprove the prosecution's allegation. On completion of the trial, they 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 the benefit of Section 382(b) Cr.PC by learned Judge, ATC Court No.XXIII vide judgment dated 19.10.2023, which the appellants have impugned before this Court by preferring the instant Spl.Crl. AT Appeals.

2. Heard arguments and perused the record.

3. Admittedly, the place of the incident is a busy spot, yet no independent person was associated to witness the arrest of the appellants and recovery of the weapon and motorcycle from them; such omission on the part of the complainant could not be overlooked. As a result of an armed encounter, neither any police official sustained a fire shot injury nor any damage caused to the police mobile. It was appellant Farman @ Toor @ Pathan @ Munna who alone sustained fire shot injury on his right leg, which appears to be surprising, it does not appeal to logic. The pistol allegedly secured from appellant Farman @ Toor @ Pathan @ Munna as per memo of arrest and recovery was bearing description. On Forensic examination, it was found with its number rubbed; such inconsistency suggests its manipulation or foistation upon the appellants. No blood-stained earth was secured from the place of the incident by the Investigating Officer, which suggests that the incident has taken place in a manner other than the one as alleged by the prosecution. No independent person was examined by the Investigating Officer to ascertain the correctness of the incident which suggests that his participation in the investigation of the present case was only to the extent of the table. The table investigation could hardly be relied upon to maintain conviction. The appellants have pleaded innocence and to prove their innocence they have also examined Muhammad Zeeshan in their defence; such a plea on their part could not be overlooked. In the circumstances of the case, the contention of learned counsel for the appellants that they have been involved in this case falsely by the

police officials only to justify the fire shot injury which they have caused to the appellant Farman @ Toor @ Pathan @ Munna could not be lost sight of.

4. 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 a doubt and they are found entitled to such benefit.

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 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.

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

JUDGE

JUDGE