

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No. 80 of 2024
Special Criminal Anti-Terrorism Appeal No. 84 of 2024
Special Criminal Anti-Terrorism Appeal No. 85 of 2024

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

Appellants: Haris Shah & Zia-ul-Haq through M/s. Jamroz Khan Afridi and Muhammad Riaz, advocates

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

Date of hearing: 25.09.2024

Date of announcement: 25.09.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellants and absconding accused Muhammad Ilyas in furtherance of their common intention deterred the police party of PS Napier Karachi led by ASI Safdar Mehmood from discharging its lawful duty as a public servant by firing at them intending to commit their murder, they too were fired at in self defence, eventually they were arrested and from them were secured unlicensed pistols of 30 bore, for which they were booked and reported upon. At trial, all the cases were amalgamated in terms of Section 21-M of the Antiterrorism Act, 1997 and proceeded accordingly. The appellants and absconding accused denied 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 were taken by from their houses and were involved in this case falsely by the police on the filing of the applications under Section 491 Cr.PC; photocopies whereof they have produced; they did not examine

anyone in their defence or themselves on oath. On completion of the trial, they were convicted for the said offence and sentenced to undergo various terms of imprisonment spreading over 05 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.II Karachi vide judgment dated 30.05.2024, which they have impugned before this Court by preferring the three separate Appeals.

2. Heard arguments and perused the record.

3. Admittedly, the complainant had advanced information, yet no independent person was associated by him to witness the incident; such omission on his part could not be overlooked. None sustained fire shot injury during course of encounter, which appears to be surprising. One of the bullet allegedly hit to police mobile; it has not been produced at trial; its non-production could not be overlooked. The pistols allegedly secured from the appellants as per the memo were bearing the mark of *Star*. On forensic examination, no *star* mark was found on either of them, which suggests its manipulation and/or foistation. No independent person was examined by the Investigating Officer to ascertain the correctness of the incident; such omission on his part could not be lost sight of. No act of terrorism is evident. In these circumstances, the plea of innocence taken by the appellants, if examined in juxtaposition with the evidence of PWs appears to be strong and trustworthy.

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 reasonable doubt and to such benefit they are 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 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 Appeals were allowed.

JUDGE

JUDGE

Nadir/PA