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ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
Criminal Appeal No. D- 53 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection 'A'
2. For orders on M.A No./2015
3. For Hearing of cases

05.09.2017

Mr. Habibullah G. Ghouri, Advocate for the appellant.
Mr. Khadim Hussain Khooharo, Addl. PG for the State.

For reasons to be recorded later on, appeal to the extent of present appellant namely Abherio Sabzoi is allowed by setting aside the judgment dated 5.08.2016 passed by Judge, Anti Terrorism Court, Kashmore at Kandhkot in Special Case No. 31/2016 and he stands acquitted in the case. Appellant be released from custody forthwith if he is not required in any other case.

Abid H. Qazi/**

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

CrI. Appeal No.D-53 of 2016

PRESENT:

Mr. Justice Muhammad Junaid Ghaffar,
Mr. Justice Muhammad Saleem Jessar,

Appellant : Abherio Sabzoi, through Mr. Habibullah G. Ghouri,
Advocate.

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

Date of hearing: 05-09-2017. Date of Judgment/Reasons: 08.09.2017.

J U D G M E N T.

MOHAMMAD SALEEM JESSAR, J.- By means of instant appeal, appellant Abherio Sabzoi has assailed the judgment dated 25.8.2016 delivered by learned Special Judge, Anti-Terrorism Court, Kashmore at Kandhkot in Special Case No.31/2016, re-State v. Abherio Sabzoi & others, arisen out of Crime No.228/2014, registered with Police Station A-Section, Kandhkot for offence under Sections 324, 353, 148, 149, PPC read with Sections 3/4 of Explosive Substances Act, 1908 and Sections 6/7 of the Anti-Terrorism Act, 1997

2. The learned trial Court after full-dressed trial found the appellant guilty of alleged charges and has punished him for offence under Sections 324, 149, PPC r/w Section 7 of Anti-Terrorism Act, 1997, thus has convicted and sentenced him for 10 years with fine of Rs.50,000/- and in case of default to undergo S.I for 06 months more. The appellant was also convicted under Section 353, 149, PPC read with Section 7 of Anti-Terrorism Act and sentenced to R.I. for 03 years with fine of Rs.20,000/- and in case of default shall further undergo S.I for two months more. The trial Court also

o/p

convicted the appellant under Section 148, PPC and sentenced him for one year with fine of Rs.10,000/- and in case of non-payment of fine to undergo S.I for one month more. The benefit of Section 382-B, Cr.P.C has also been extended to him, while the case of absconders was kept on dormant file by issuing perpetual warrants against them.

3. The crux of prosecution case as unfolded in FIR in nut-shell is that on 03.8.2014, at 1230 hours, complainant SHO Gul Mohammad Mahar lodged FIR bearing Crime No.228/2014, u/s 324, 353, 427, 148, 149, PPC, 3/4 Explosive Act and 6/7 Anti-Terrorism Act, 1997, at P.S A-Section Kandhkot stating therein that complainant Shah Dost Mohammadani in crime No.110/2014 u/s 302, 324, 449, 148, 149 PPC had filed a petition S.443/14 in HONourable High Court of Sindh Circuit Court Larkana that police of PS A-section Kandhkot is not arresting the absconding accused and HONourable Court on 09.6.2014 issued order to arrest the absconding accused. On 03.8.2014 SHO Gul Mohammad Mahar received spy information about the absconding accused in above mentioned case Abherio and Gaman are available at otaq of Gaman Sabzoi. On receiving such information, he communicated the information with his high ups who directed him to call other police force of district, conduct raid and arrest absconding accused. Complainant/SHO informed SHO PS Karampur, Ghouspur, B-section, Ghora Ghat, Durani Mahar, Miani, Jamal, Mujahid-1, Mujahid-2 and Jahangeer Escort-2 to reach at Jhooly Lal Petrol Pump. Complainant/SHO along with his staff ASI Gulsher Ahmed Bhatti, HC 297 Mohammad Murad, PC-1028 Mohammad Haneef, PC-2066 Ghulam Murtaza, PC-1224 Abdul Lateef, PC-1207 Eid Mohammad, PC-2180 Rehmat Ali, PC-951 Hussain Bux, PC-2609 Gajan, PC-3038 Akbar Ali, PC-397 Shahnawaz and driver PC Bhagio Nindwani proceeded from PS in Government vehicle SP-3556, vide roznamcha entry No.08 at 0930 hours and went to Jhooly Lal Petrol Pump

where SHO PS B-section Abdul Fattah Dahani, SHO PS Ghouspur Sikander Ali Jageerani, SHO PS Karampur Ghulam Sarwar Buriro, ASI Nabi Bux Sabzoi of PS Jamal, LPC Gul Meer Incharge Mujahid-1, LPC Tufail Ahmed incharge Mujahid-2, LPC Shahid Hussain incharge Jahangeer Escort-2, SHO PS Ghora Ghat Sahib Khan Jagirani, SHO Durani Mahar Abdul Hameed, SHO PS Miami Niaz Ahmed Khoso along with their staff on Government vehicles also reached there, SHO Gul Mohammad Mahar along with police party HC Mohammad Murad, PC Illahi Bux, PC Abdul Lateef, PC Gujan, PC Rahmat Ali, PC Hussain Bux boarded in APC parked at Jholy Lal police picket driven by DPC Meenhon and police party proceeded towards pointed place and reached at the otaq of Gaman Sabzoi at about 1100 hours, on seeing police party about 25 armed culprits came out from otaq out of them police party identified 19 culprits to be 01. Ubherio, 02. Gaman both s/o Meer Sabzoi, 03. Mohammad Sallah s/o Ubherio, 04. Hamal s/o Mohammad Ramzan, 05. Ali Nawaz, 06. Shahban all s/o Kareem Mor, 07. Jamaluddin s/o Rahzan, 08. Qabil s/o Arbelo, 09. Wasand s/o Lutuf Ali, 10. Lutuf Ali s/o Meer, 11. Ali Gul, 12. Shahmeer both s/o Rahzan, 13. Zain-ul-Din, 14. Munshi both s/o Gabhro, 15. Manzoor s/o Piyaro, 16. Naib s/o Sheesho, 17. Derya Khan s/o Abherio, 18. Bakhat Ali s/o Ali Nawaz, 19. Sher Mohammad s/o Saeedo, all by caste Sabzoi, r/o Taluka Kandhkot and six unidentified persons, accused Ubherio was having Rocket Launcher and all remaining accused were having K.Kovs. All the accused after seeing police party took the shelter of Layoon Jungle and started firing upon police party with intention to kill them, which hit to APC chain and police mobile of PS Jamal, police party also retaliated the firing in their defence. In the meantime, accused Abherio fired Rocket Launcher at APC and encounter continued for about 20 minutes, and then all the accused made their escape good towards southern side while making firing. Police party alighted from APC chain and saw that PC Mohammad

Hanif sustained firearm injury on right leg and PC Ghulam Murtaza sustained firearm injuries on right arm at the hands of accused, wind glass of APC chain and back side glass of police mobile of PS Jamal was also damaged. DSP Ansar Ali Mithiyani SDPO Kandhkot also reached on the receipt of such information along with gunmen. Injured police constables Mohammad Haneef and Ghulam Murtaza were referred to the Taluka Civil Hospital, Kandhkot for treatment. Police party returned at PS A-section Kandhkot and SHO Gul Mohammad Mahar lodged the instant FIR against the accused.

4. After registration of FIR, the same was handed over to Inspector Sanaullah Sarki for investigation, who after completion of legal formalities submitted the challan before the competent Court of law having jurisdiction on 01.09.2014.

5. Learned trial Court after completion of codal formalities framed formal charge against the appellant on 11.6.2016, to which he pleaded 'not guilty' and claimed to be tried.

6. To prove its case, the prosecution examined Medicolegal Officer/Dr. Abdul Subhan Dayo as PW-1 at Ex.7, injured PC Mohammad Haneef as PW-2 at Ex.8, injured PC Ghulam Murtaza as PW-3 at Ex.9, complainant/SHO Gul Mohammad Mahar as PW-4 at Ex.10, IO/Inspector Sanaullah Sarki as PW-5 at Ex.11 and then the side of prosecution was closed vide statement of SPP at Ex.14.

7. After conducting the *ex parte* trial, case was kept on dormant file in terms of Order dated 28.3.2015 vide Ex.15. Learned SPP filed statement at Ex.16 for reopening the side of prosecution, as the appellant was arrested. On 25.5.2016 SHO PS A-Section, Kandhkot submitted supplementary challan of the appellant, therefore, papers were supplied to him at Ex.17.

8. We have heard Mr. Habibullah G. Ghouri, learned Counsel for the appellant and Mr. Khadim Hussain Khooharo, learned Additional Prosecutor General for the State.

9. Learned Counsel for the appellant submitted that the impugned judgment is not correct as the trial Court has not appreciated the material contradictions and discrepancies which arose in prosecution's evidence and without appreciating the material made available before it has wrongly convicted the appellant, thereby has caused miscarriage of justice. He submits that there are many contradictions on the point of leaving the police station towards Jhoolay Lal Petrol Pump and then towards the place of occurrence. He next contended that the appellant has not been assigned role of causing firearm injuries to the injured PWs and even the injured PWs, who were examined by the prosecution before the trial Court, have not implicated him with regard to their respective injuries allegedly sustained by them. He contended that the appellant was assigned role of firing the rocket launcher, yet no empty shell of rocket launcher was recovered, nor was confronted with the appellant at the time of his examination under Section 342, Cr.P.C. He next argued that prosecution had claimed that their APC vehicle and mobile of Police Station Jamal sustained damage, but the same were not produced before the trial Court, nor were confronted to the appellant to ascertain that they had sustained losses and damages at the hands of appellant, vis-a-vis in this case. He lastly prayed that in view of such glaring features of the prosecution case, the prosecution had not succeeded to prove its case beyond any reasonable shadow of doubt, therefore, appellant may be acquitted.

10. On the other hand, learned Additional Prosecutor General appearing for the State has supported the impugned judgment and contended that the appellant is nominated in the FIR with specific role of firing

rocket launcher upon the police party, therefore, he has rightly been convicted by the trial Court, rather the trial Court has taken lenient view by awarding lesser punishment to him.

11. We have examined the evidence of PWs and find that role of causing firearm injuries to alleged injured PWs PC Mohammad Haneet and PC Ghulam Murtaza is not assigned to present appellant nor have they specifically implicated him in their evidence that he caused firearm injuries to them. We have also noted that broken pieces of window glasses of APC chain were not collected by the I.O during investigation and, therefore, were not produced in trial. The injured PWs have claimed in their evidence that after sustaining injuries on non-vital parts of their body they became unconscious and had regained their senses after 3-4 hours at hospital; however, their such version has totally been belied by the complainant and the Medicolegal officer. Complainant, who is also SHO of the police station, had categorically stated that the injured PWs had not lost their senses and were in senses when they were shifted to hospital. The Medicolegal officer, who conducted their examination and provided them first aid/medical treatment, had also categorically stated in his statement before the Court that the injured were in senses/ consciousness when they were produced before him. As far as their arrival at the otaq of co-accused Gaman Sabzoi is concerned, all PWs have deposed different versions, one said that they had parked their vehicles at the distance of 20-25 paces, other said 40-50 paces and next said that they had parked their vehicles at the distance of about 200 paces. The investigating officer in his cross-examination admitted that memo of wardat place was handed down by WPC Syed Iqbal Shah on his dictation, but the said WPC was not with him while visiting the place of incident nor was made as witness of the case. Such version proves that he had completed all paper formalities at police station and had never visited the place of occurrence, as alleged by the

prosecution. The complainant SHO Gul Mohammad Mahar deposed in his evidence that injured were directly shifted from place of incident towards hospital and he accompanied with I.O to visit the place of incident when I.O himself had prepared memo of occurrence. Such statement is belied with statement of I.O, who stated that memo of occurrence was written down by WPC Syed Iqbal Shah on his dictation. All above discrepancies show that no offence has been committed in the manner as reported and the prosecution miserably failed to prove its case beyond any reasonable shadow of doubt.

12. It is well-settled principle of law that there is no need to gather many circumstances for extending the benefit of doubt to an accused, but if a slightest doubt is arising out of the prosecution case, that is sufficient to discard the evidence of prosecution. We are fortified with the dictum laid down by the Hon'ble Supreme Court of Pakistan in the case of *Tariq Pervez v. The State* reported as 1995 S C M R 1345 and, therefore, while extending benefit of doubt allow instant appeal by setting aside the impugned judgment dated 25.8.2016 and acquit the appellant from the charges.

13. On 05.9.2017 by means of a short order we had allowed instant appeal, and above are the reasons for the same.

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