IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Present:
Mr. Justice Zafar Ahmed Rajput.
Mr. Justice Muhammad Iqbal Mahar.

(1) Crl. Appeal No. D- 75 of 2015.

1. Ghulam Ali @ Mirch Junejo.
2. Gulzar Ali alias Niaz Solangi.
3. Asif Junejo.
4. Murtaza Solangi.
5. Nusrat Junejo.

(2) Crl. Appeal No. D- 72 of 2015.
(Asif Junejo).

(3) Crl. Appeal No. D- 73 of 2015.
(Gulzar Ali Solangi).

(4) Crl. Appeal No. D- 74 of 2015.
(Ghulam Ali alias Mirch).

(5) Crl. Appeal No. D- 76 of 2015.
(Nusrat Junejo)

(6) Crl. Appeal No. D- 77 of 2015.
(Murtaza Solangi).

.....Appellants

Versus

The State. .....Respondent

Mr. Safdar Ali G. Bhutto, Advocate for the appellants.
Mr. Khadim Hussain Khooharo, D.P.G, for the State.

Date of Hearing: 04.10.2016.
Date of Judgment: 23.12.2016.

JUDGMENT

Muhammad Iqbal Mahar, J: By this common judgment we intend to dispose above titled six appeals, as one of them i.e. Crl. Appeal No. D-75/2015 arise [illegible] case registered as Crime No 78/2014 of Police Station Badeh (District Larkana), whereas rest five appeals arise

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out of connected cases registered under Sindh Arms Act, 2013, i.e. Crime No.79, 80, 81, 82 and 83 of 2014, respectively.

These appeals are filed against the judgment dated 05.10.2015 passed by the learned Judge, Anti-Terrorism, Court Larkana, in Special Case Nos.08, 12, 13, 14, 15, and 16 of 2015 respectively, whereby the appellants were convicted under Section 7 (c) of Anti-Terrorism Act, 1997 read with Section 324, 337-F (iii), 149 P.P.C and sentenced to suffer R.I for ten years, they were also ordered to pay fine of Rs.50,000/- each and in case of default of payment of fine they will suffer imprisonment for a period of S.I for six months more. All the appellants were also convicted under Section 7 (h) Anti-Terrorism Act, 1997 read with Section 24 of Sindh Arms Act, 2013 and each of them was sentenced to suffer R.I for five years with fine of Rs.50,000/- and in case of default of payment of fine suffer imprisonment for a period of S.I for six months more. The benefit of Section 382-B Cr.P.C was also extended to them.

The facts relevant to be mentioned here are that on 28.11.2014 complainant DSK Aijaz Ali Jatt, Rangers Wing-31, Larkana, received intelligence information that accused Mumtaz Ali Junejo wanted in Crime No.118/2009, Crime No.26/2014 of P.S Badeh and absconding in Crime No.39/2014 of P.S Bakrani is available in his house along with his companions. On such information DRS Ghulam Rasool alongwith his staff, Inspector Waseem alongwith his staff armed with official weapons proceeded to village Mandhra on six Govt: Vehicles and reached at 0600 hours in the morning; they encircled the pointed place and saw that six persons duly armed with weapons came out. The complainant party disclosed their identity to the accused persons and asked them to surrender. The accused persons on hearing about Rangers took the positions and made straight firing upon the complainant party with intention to commit their murder. The complainant party also took positions and fired upon accused persons in their defense. The encounter continued for two and half hours. Thereafter the firing was stopped from the side of accused persons and the complainant party

found that one Ranger's personnel LNC Muhammad Shafique Jattt sustaining firearm injury, who was sent to Civil Hospital, Larkana, for immediate treatment. Then complainant party proceeded towards accused persons, where they saw that six accused persons standing there while raising their hands up and their weapons lying down on ground and they surrendered themselves before the complainant party. Thereafter, the complainant party arrested all the six accused persons and found three of them in injured condition. The complainant party affected the recovery of weapons. On inquiry, the accused persons disclosed their names to be Mumtaz Ali, sustaining firearm injury, having Kalashnikov; other accused disclosed himself to be Ghulam Ali alias Mirch, sustaining firearm injury, having Kalashnikov, third accused disclosed his name as Gulzar Ali alias Niaz, sustaining firearm injury, having Kalashnikov, fourth accused disclosed himself to be Asif Junejo, one Rifle of 8 m.m. was recovered from him, fifth person disclosed his identity to be Murtaza having SBBL gun of 12-bore and the sixth person disclosed his name as Nusrat Junejo having repeater gun of 12-bore. One rifle of 7 m.m. was also recovered from house of accused Mumtaz. The accused persons did not produce any permit/license, which were taken into custody. The injured accused were taken to hospital; where one of them namely Mumtaz Ali Junejo succumbed to the injuries. Thereafter the complainant conveyed the information to police and then went to his Headquarter and disclosed the incident to his high ups and ultimately he went to police station and lodged report to the above effect, the SHO also registered separate FIRs against the appellants u/s 24 of Sindh Arms Act 2013.

The Police after completing investigation submitted charge sheet before the Court of learned Special Judge, Anti Terrorism, Larkana. The learned trial Court after completing legal formalities framed the charge against the appellants, which they did not plead their guilt and claimed their trial.

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The prosecution in order to establish its case examined the following witnesses:

PW-1 DSR Aijaz Ali Jatt at Ex.6, who produced FIR at Ex.6-A.
PW-2 DSR Ghulam Rasool at Ex.7.
PW-3 Muhammad Shafique at Exd.8.

PW-4 Dr. Sikander Ali Kolachi at Ex.10; he produced Police Letter at Ex.10-A, postmortem report of deceased Mumtaz Ali Junejo at Ex.10-B.

PW-5 Dr. Muneer Ahmed Shaikh, at Ex.11; he produced police letter at Ex.11-A, medical certificate of injured Shafique Ahmed at Ex.11-B.

PW-6 PC Muneer Ahmed/Mashir at Ex.12, who produced mashirnama of inspection of dead body of deceased Mumtaz Ali at Ex.12-A, mashirnama of arrest and recoveries of weapons from them at Ex.12-B, mashirnama of place of vardat at Ex.12-C, mashirnama of inspection of injuries of injured Muhammad Shafique at Ex.12-D.

PW-7 ASI Ghulam Qadir Masan Member of Joint Invetigation Team at Ex.14, he produced letter No.309-12 dated 23.1.2015 issued by SSP Larkana bout constitution of JIT at Ex.14-A.

PW-8 Inspector Karam Ali Zardari at Ex.15; he produced attested photocopy of roznamcha entry No.30 at Ex.15-A, FIR Nos.79, 80, 81, 82 and 83 of 2014 at Ex.15-B to 15-F.

PW-9 SIP Syed Abdul Hakeem Shah, I.O of the case at Ex.16, he produced Danishnama of deceased Mumtaz Ali at Ex.16-A and carbon copy of Lash Chakas Form at Ex.16-B.

Thereafter, the learned DDPP for the State closed the side of prosecution vide his statement at Ex.17.

The statements of appellants were recorded under Section 342 Cr.P.C at Ex.18 to 22 respectively, whereby they denied the allegations of the prosecution and claimed their innocence. However, they did not examine themselves on oath under Section 340 (2) Cr.P.C, nor led any evidence in their defence.

The learned trial Judge on evaluating the evidence brought on record and considering the arguments addressed at the bar by the learned counsel for the parties came to the conclusion that the

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prosecution has proved its case against the appellant and absconding accused therefore awarded sentence as mentioned above.

Learned counsel for the appellants contended that the impugned judgment passed by the learned trial Judge is contrary to law; that there is unexplained delay of 34 hours in lodging the FIR; that the ocular testimony is not worthy of reliance and it could not form the basis of conviction; that no independent evidence was led by the prosecution, though the encounter is shown to have occurred in the mid of village; that the evidence of complainant and other prosecution witnesses is full of contradictions; that the weapons have been foisted upon the appellants; that no independent witness was examined by prosecution to prove recovery from the appellants; that the medical evidence is inconsistent with the ocular evidence. He further submitted that the prosecution has failed to prove its case against the appellants beyond shadow of doubt, therefore, appellants are entitled to acquittal. In support of his arguments learned counsel for the appellants relied upon case Zeeshan alias Shani V. The State (2012 SCMR 428) and Tariq Parvez V. The State (1995 SCMR 1345).

As against above, learned DPG while refuting the contentions of learned counsel for appellants submitted that delay in FIR is explained by the complainant. The appellants were arrested at spot alongwith weapons, which they used in commission of offence. He further submitted that all prosecution witnesses including injured have fully supported the case of prosecution. Furthermore, the prosecution version is corroborated by recovery of weapons from the appellants and medical evidence. He admitted that some minor contradictions have come on record but same can be ignored as the prosecution witnesses were examined after some time of the incident. He lastly submitted that the impugned judgment does not suffer from any infirmity; therefore, instant appeal is liable to be dismissed.

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We have heard the learned counsel for the appellants, learned D.P.G. and have meticulously examined the entire evidence.

Perusal of record reflects that prosecution case mainly hinges upon the ocular evidence of complainant DSR, Aijaz Ali, DSR Ghulam Rasool, injured LNC, Muhammad Shafiq as they along with other staff, on intelligence report proceeded to village Mandhra encircled the pointed place and saw appellants and Mumtaz who deterred the Rangers from discharging their duties and started firing upon them with intention to kill. The Rangers also took position and retaliated the firing . During firing PW, LNC Muhammad Shafiq sustained fire arm injury and he was removed to Larkana Hospital. After encounter of two and half hours the appellants and Mumtaz threw their weapons and raised their hands up. The complainant party arrested them and secured unlicensed weapons. Out of them three accused, namely, Mumtaz, Ghulam Ali and Gulzar were injured, they were also removed to Hospital but Mumtaz succumbed to the injures in Hospital. The Rangers had no previous animosity with the appellants and all the three eye witnesses narrated the events in natural manner and corroborated each other that the appellants and Mumtaz were apprehended at the spot and weapons were secured for which they could not produce any valid license. The ocular evidence is corroborated by the evidence of medical officers who have fully supported the version of eye witnesses. The Investigating Officer and mashir of recovery have also fully supported the prosecution case. The weapons, i.e, three Kalashnikivs, one 8 mm rifle, one 7 mm rifle, one gun and one repeater, recovered from the appellants are costly hence the same can not be foisted without strong ulterior motives which the appellants have failed to prove in this case. No doubt some minor contradictions have come on record which may be the result of passage of time or lengthy cross examination but there is no material contradiction in the their evidence. It is the basic principle of administration of justice in the criminal case that the conviction should be recorded and sentence awarded to the accused against whom the case is proved beyond any reasonable doubt. The evidence available on

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record proves the guilt of the appellant. They have stated that 3 Kalashnikov, one rifle of 8 mm, and one repeater of 12 bore and one 7 mm rifle recovered from the appellants were produced at P.S The SHO, PS Badeh has produced roznamcha entry as Ex: 15-A.

So far the contention of learned counsel for the appellants that there is unexplained delay in FIR is concerned the same has been explained by the complainant in his FIR and in his evidence before learned trial Court that after the incident and first aid to the injured all the appellants were taken to Rangers Head Quarter where their investigation team interrogated the appellants and there after the complainant went at PS where he lodged the FIR.

The next contention of learned counsel for the appellants was that no criminal history of appellants has been produced in evidence by the PWs. In this regard it is stated that the Rangers had gone to arrest accused Mumtaz who was available in his house along with his companions and the criminal history of Mumtaz has been given in FIR that accused Mumtaz was wanted in crime No: 118/2009, U/S 324,114,504,337-H2,147,148,149 PPC, Crime No: 26/2014, U/S 324,114,540,148,149 PPC of PS Badeh and Crime No: 35/2014, U/S 302 PPC of PS Bakrani.

The facts of case law relied upon by learned counsel for the appellants are totally different. In case of Zeeshan alias Shani the incident had taken place at night time and the accused had fled away from the place of incident whereas in the case in hand the incident occurred at day time and appellants were apprehended at spot along with weapons. So for the case of is concerned in aforesaid case the accused arrested, Heroin was recovered and Heroin was separated in two samples but only one sample was sent to Chemical Examiner, furthermore the accused was acquitted from the charge of selling Heroin.

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For what has been discussed above we are of the opinion that the impugned judgment passed by learned Special Judge, Anti Terrorism Court, Larkana does not suffer from any infirmity, therefore the instant appeal being devoid of merits is here by dismissed.

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