

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.D-137 of 2019  
Criminal Appeal No.D-189 of 2019

Present:-

Mr. Justice Muhammad IqbalKalhoro.  
Mr. Justice Khadim Hussain Soomro.

Date of hearing: 02.05.2023  
Date of decision: 02.05.2023  
Appellant: Deedar son of Wazir,  
Through Mr. Sajjad Ahmed Chandio and Ms.  
FaizaUbedMemon, advocates.  
Appellant: Dildar alias Diloo s/o Imam BuxChandio,  
Through Mr. Imtiaz Ali Channa, advocate.  
The State: Through Mr. ShahzadoSaleemNahiyoon, Addl.  
Prosecutor General, Sindh.

JUDGMENT

MUHAMMAD IQBALKALHORO, J:-ASINasrullahSolangi,posted at PS A-Section,Dadu, was on patrol duty along with his team on 28.10.2014. When they reached SurajabadMohalla, near Misri Shah street, they spotted three persons coming on a Motorcycle who were identified by them as Deedar, armed with a pistol, Dildar armed with a Kalashnikov and Saddam armed with a pistol. The said ASI stopped his vehicle and tried to warn the said accused, upon which they directly fired upon the police party hitting PC ZulfiqarAli on left side of his neck. The police party in order to save itself ducked down on ground but did not retaliate on account of presence of children and other people in the street. Accused/ appellants taking advantage of narrow streets made their escape good, however, only after firing at police party for about five to six minutes.

After the incident, the said ASI referred PC Zulfiqar Ali to hospital for examination and treatment, secured the motorcycle left by accused, prepared necessary documents and returned to PS where he registered FIR on the same date at about 2000 hours. After registration of FIR, he returned to the place of incident at about 2030 hours, secured 11 empties of pistol and 08 empties of Kalashnikov from the place of incident which he sealed and prepared the relevant memo.

During investigation on 31.10.2014 when again he was on patrolling duty, he succeeded arresting accused Saddam along with an unlicensed pistol from a road between Sial Mori to Sial Bund, near Qasim Nagar Colony, Dadu. He brought accused and recovered pistol at PS and registered the case against him. Appellant Deedar was later on arrested from District Jail Dadu on 21.07.2016 where he was confined in some other case. Appellant Dildar Chandio was arrested on 12.02.2019 from District Jail Dadu where he was confined in some other crime.

After usual investigation, police submitted the Challan in the Court leading to framing of Charge against the appellants differently in two separate cases as the appellants were tried separately by the same Court on account of difference in the date of their arrest. They denied prosecution case in charge and claimed trial. In the trials prosecution has examined same witnesses namely ASINasrullah Solangi, who is complainant, PW Gulsher, who is PC and was part of police team on the day of incident, injured PC Zulfiqar, Medico-Legal Officer Dr. Abdullah. These witnesses have produced all the necessary documents including FIR, relevant memos and medical certificates. The relevant medical certificate shows that PC Zulfiqar Ali had sustained two injuries, one on his forehead, opined as Shajjah-e-Khafifa u/s 337-A(i) PPC and the second injury has been opined as Itlaf-e-Salahyat Udw 336 PPC which is punishable for upto 10 years. On culmination of prosecution evidence, statement of appellant Deedar was recorded. He was convicted and sentenced to, among others, life imprisonment, u/s 7(1) (c) of Anti-Terrorism Act, 1997, vide judgment dated 26.11.2016. This Court while hearing Criminal Appeal No.D-129 of 2016 against the said judgment decided to remand the case to the trial Court for recording statement of the accused u/s 342 CrPC afresh confronting him each and every incriminating piece of evidence. In compliance, statement of appellant Deedar was recorded afresh but again he has been convicted and sentenced in the terms as stated below:-

*“i. For offence under section 7(1)(c) of Anti-Terrorism Act, 1997 and sentenced to R.I for life imprisonment and to pay fine of Rs.100,000/- (one lac) in default to suffer S.I for one year more.*

*ii. For offence under section 324 PPC and sentenced to R.I for ten years.*

*iii. For offence under Section 336 PPC and sentenced to R.I for ten years as Ta'zir. Accused is directed to pay Arshamount*

*of Rs.1,923,843/-to victim PC Zulfiqar Ali Solangi as notified for the year 2014-15.*

*iv. For offence under section 337-A(i) PPC and sentenced to R.I for two years as Ta'zir.*

*v. For offence under section 353 PPC and sentenced to R.I for two years.*

*All the sentences awarded to the accused shall run concurrently with benefit of section 382-B CrPC."*

He has challenged the same by means of Criminal Appeal No.D-137/2019 in hand. Whereas, appellant Dildar alias Diloo has been convicted and sentenced vide impugned judgment dated 30.09.2019 by learned Anti-Terrorism Court, Naushehro Feroze, in the terms as stated below:-

*"i. For offence under section 7(1)(b) of Anti-Terrorism Act, 1997, sentenced to R.I. for ten years and to pay fine of Rs.20,000/- (twenty thousand) in default to suffer S.I for one year more.*

*ii. For offence under section 324 PPC sentenced to R.I for five years and to pay fine of Rs.20,000/- (twenty thousand) in default to suffer S.I for one year more.*

*iii. For offence under section 353 PPC sentenced to R.I for two years.*

*All the sentences awarded to the accused shall run concurrently with benefit of section 382-B CrPC."*

Learned defence counsel have argued at length but have ultimately submitted that this case is not covered by Anti-Terrorism Act, 1997 as defined by Supreme Court in different cases including case of Ghulam Hussain & others versus The State & others (PLD 2020 SC 61) as well as by this Court in the case of Dilshad versus The State through AAG Sukkur (2018 PCrLJ Note 221). Citing such case law in support of the plea, they have drawn attention of the Court towards the fact that none of the police party except PC Zulfiqar received any scratch nor the police mobile was hit by any of bullets allegedly fired by the appellants. The witnesses have confirmed about presence of children and common people in the street at the time of incident but none of them was injured. More so, it is highly improbable for the police to identify a particular accused with the role of hitting a particular member of the party when all three accused are stated to be firing at the police party at the same time from distance of 20-25 paces. None of the accused was arrested from the spot and surprisingly the investigation was not entrusted to any independent police officer for three days till 31.10.2014. When ultimately investigation

was assigned to one police officer, he did nothing except recording statements of witnesses u/s 161 CrPC. He did not visit place of incident; he did not try to arrest any of the remaining accused either; and he did not send the empties and the pistol allegedly recovered from co-accused Saddam to Lab. for FSL report; and he did not try to cross check prosecution story as narrated by the complainant in this case. According to them, it is strange to note that complainant visited the place of incident which is admittedly a thickly populated area after one and half hour and yet he was able to find out empties available at the same spot. They have further drawn attention of the Court towards evidence of injured PC Zulfiqar in which although he has supported the prosecution story but has not been able to identify the accused in the Court. Per, learned counsel, if a holistic view of all these facts and circumstances is taken, it would appear that this is not a case to be tried under provisions of the Anti-Terrorism Act. Learned counsel further submit that appellants are in jail since the date of their arrest, if it is decided that this case does not fall within provision of Anti-Terrorism Act, the conviction and sentence in remaining provisions of PPC would be automatically converted to the period already undergone by them. Insofar as, condition of payment of ArshRs.1,923,843/- by appellant Deedaris concerned, his counsel submits that the appellant may be released on furnishing surety / bail bonds of the same amount with Additional Registrar of this Court with the condition that he will pay the said amount to the injured in easy installments spanning over five years. Learned Addl. PG acknowledging all these defects in the prosecution case has recorded no objection to alteration of the conviction and sentence of the appellants from ATA to be under the provisions of PPC only.

We have considered submissions of the parties and perused material available on record. In the evidence, all the prosecution witnesses have stuck to the story narrated by them insofar as incident of firing and identity of the appellants are concerned. However, there are certain facts and circumstances, as pointed out by learned defence counsel and reproduced above, which have not been properly explained by the prosecution. If we consider them in the context of the story narrated by the prosecution, we would definitely come to a conclusion that in this case provisions of ATA, 1997 are not attracted. No doubt, one of the police official was hit in the encounter, but it has not been explicated as to why no one else including police mobile received any bullet from intensive firing by accused/appellants, and why the police

did not make a single fire in retaliation. The excuse given by the police in this regard that there were present children and common people does not appear to be confidence inspiring. For, in that case from firing of the accused someone in the street at the spot ought to have sustained some injury. Memo of place of incident, which we have read with the assistance of learned defence counsel, also shows that police did not succeed in spotting any bullet mark on the walls of the street or at any other place surrounding the area. Therefore, the very factum of police encounter at the place of incident is not without a shadow. It is not clear that whether PC Zulfiqar was injured in some isolated incident by the accused or in fact some encounter with the accused/ appellants as alleged by the prosecution had taken place. This opacity further gets obscured from the fact that the Investigating Officer in this case has failed to cross check the story, and has simply recorded statements of the witnesses u/s 161 CrPC. He even failed to visit the place of incident and collect firsthand information of the incident from people available there. Non recognition of the appellants by the very injured during his evidence has further blurred prosecution case over the factum of encounter.

Therefore there is no reason, legal or otherwise, to not agree with the request made in defence and agreed by the prosecutor. We in the facts and circumstances set-aside the sentences awarded to the appellant Dildar for offence u/s 7(1)(b) and appellant Deedar u/s 7(1) (c) Anti-Terrorism Act, 1997, but maintain convictions and sentences under remaining sections i.e. 324, 353 PPC to appellant Dildar and u/s 324, 336, 337-A(i), 353 PPC to appellant Deedar. The jail roll received today shows that appellant Deedar has remained in jail for 06 years, 09 months and 14 days and has earned remission of 01 year, 07 months and 15 days. Similarly, appellant Dildar @ Diloo has remained in jail for 04 years, 02 months and 23 days and has earned remission of 01 year, 03 days. However, keeping in view the points reiterated and reproduced above, their sentence is converted to the period already undergone by them. However before release, appellant Deedar s/o Wazeer Chandio shall furnish surety / bail bonds in the sum of Rs.1,923,843/- before Additional Registrar of this Court which he shall pay to the victim PC Zulfiqar Ali Solangi after his release in easy installments in the period spanning over five years. If he fails to pay the same, he shall be taken into custody and remanded to jail till he makes payment thereof. This arrangement is ordered in the light of ratio laid down in the case of Muhammad Tufail versus Sessions Judge Attock and others (PLD 2004

SC 89). The appellant Deedar shall furnish the receipt of payment to injured PC ZulfiqarAli to the Additional Registrar of this Court. After such receipt and affidavit of the injured acknowledging the same are submitted in the Court, the Additional Registrar shall put up this case in chamber for perusal and necessary orders. Appellant Dildar alias Diloo has been saddled with fine of Rs.20,000/- which he shall pay as decided by learned trial Court and in case of failure he shall remain in jail S.I. for six months more.

The appeals stand disposed of in the above terms.

JUDGE

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