

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Cr. A.T. Jail Appeal No. 186 of 2023

Present:

Justice Zafar Ahmed Rajput

Justice Tasneem Sultana

Appellants : 1. Muhammad Shafi s/o Noor Muhammad,
2. Muhammad Aqib s/o Muhammad Shafi
3. Haroon-ur-Resheed @ Kaloo s/o Alam
All through Ms. Sara Malkani, Advocate.

Respondent : The State, through Mr. Ali Haider Saleem,
Addl. P. G., Sindh.

Date of hearing : 07.03.2025
Date of Judgment : 07.03.2025.

JUDGMENT

TASNEEM SULTANA, J. Through this Appeal, appellants Muhammad Shafi, Muhammad Aqib and Haroon-ur-Resheed have assailed a common judgment, dated 28.09.2023, passed by the Anti-Terrorism Court No. X, Karachi (**Trial Court**) in Special Cases No. 513 and 513-A of 2021, arisen out of F.I.R. Nos. 116 of 2021 and 117 of 2021, registered at P.S Hyderi Market, Karachi under sections 353, 324/34, PPC r/w section 7 of the Anti-Terrorism Act, 1997 (**Act of 1997**) and section 23(1)(a), Sindh Arms Act, 2013 (**Act of 2013**), respectively, whereby they have been convicted and sentenced, as under: -

- (i) *for offence under section 324/34, P.P.C., the appellants shall undergo rigorous imprisonment for seven (7) years each and pay a fine of Rs. 50,000/- each, and in default thereof, they shall undergo R.I. for one (1) year each;*
- (ii) *for offence under section 353/34 PPC, appellants shall undergo rigorous imprisonment for two (02) years each and pay a fine of Rs. 20,000/- each, and in default thereof, they shall to undergo R.I. for six months each;*
- (iii) *for the offence under section 23(1)(a) of the Act of 2013, appellant Muhammad Shafi shall undergo R.I for seven (07) years and pay a fine of Rs.50,000/-, in default thereof, he shall suffer R.I. for one year more.*

All the sentences were ordered to run concurrently and the benefit of section 382-B, Cr. P.C. was extended to appellants.

2. Brief facts of the prosecution case are that, on 08.03.2021, complainant ASI Qazi Muhammad Gohar during patrolling received spy information regarding selling of narcotic drugs in Bengali Para near Nadi corner Kausar Niazi Colony. He called two Muhafiz police parties and reached the pointed place where, on seeing them, four accused started firing upon them with the intention to kill and deter them to perform their official duty. In retaliation, police also made firing, on which one of the accused sustained injuries due to fallen down on the ground. He was apprehended and on enquiry disclosed his name as Muhammad Shafi. From his personal search, police recovered one unlicensed pistol of 30 bore loaded with magazine and three rounds in chamber, charas contained in 39 small plastic shoppers, weighing 300 grams and 19 packets of heroin, weighing 30 grams each. He disclosed the names of his three accomplices as Adil, Aqib and Haroon Rasheed, who escaped away from the crime scene. While PC Muhammad Ibrahim also sustained bullet injury on second digit of his right foot. For that F.I.R. No. **116 of 2021** was recorded under sections 353, 324/34, PPC r/w section 7 of the Act of 1997. Since the appellant Muhammad Shafi failed to produce license of the recovered arms, a separate F.I.R. No. **117 of 2021**, under section 23(1)(a) of the Act of 2013 was registered against him.

3. On 10.03.2021, SIP Malik Muhammad Yousuf arrested absconding accused, Muhammad Aqib and Haroon-ur-Rasheed. After usual investigation, police submitted the charge-sheet against the appellants and absconding accused Adil. The necessary documents in compliance of section 265-C, Cr. P.C. were provided to appellants. An application under section 21-M of the Act of 1997 was moved by the District Public Prosecutor for amalgamation of

both the cases for joint trial, which was allowed by the Trial Court, vide order dated 21.12.2021. The Trial Court framed the formal charge against the appellants, to which they pleaded not guilty and claimed to be tried.

4. At the trial, prosecution examined seven witnesses; **PW-1** ASI Qazi Muhammad Gohar, complainant, examined at Ex.05, he produced roznamcha entry No. 34, memo of arrest and recovery of appellant Muhammad Shafi, FIRs along with Qami entries and memo of site inspection at Ex.05/A to Ex.05/G, respectively; **PW-2** P.C Usama Muhammad Farooq examined at Ex.06, he produced memo of arrest and recovery of appellants Muhammad Aqib and Haroon-ur-Rasheed at Ex.06/A; **PW-3** P.C Ibrahim (*injured*) examined at Ex.07, he produced roznamcha entry No. 28, police letter and copy of his MLC at Ex.07/A to Ex.07/C respectively; **PW-4** SIP (Rtd.) Malik Muhammad Yousuf was examined at Ex.09, he produced roznamcha entry No. 46 and copy of FIR No. 122 of 2021 at Ex.09/A and Ex.09/B respectively; **PW-5** PC Muhammad Nazeer examined at Ex.10; **PW-6** P.I Jameel Ahmed (*being well conversant of signature/handwriting of deceased I.O. P.I Gulzar Ahmed*) examined at Ex.12, he produced and verified the documents of investigation conducted by deceased I.O. of the cases, viz. letter issued by SP Investigation District West, Karachi regarding nomination of PW-6 P.I Jameel Ahmed, Rapat No.16, roznamcha Entry No.24, copy of duty list of police officials, copy of Kote Register regarding issuance of official arms and ammunitions to police officials, a letter addressed to Incharge FSL Branch, Karachi, FSL Report of arms and ammunitions and crime empties, remand report of appellant and CRO of appellants at Ex.12/A to Ex.12/K respectively; **PW-7** Dr. Ghazanfar Ali Shehryar (*MLO*) examined at Ex. 13. The Trial Court recorded the statements of the appellants under section 342, Cr. P.C, wherein they denied the allegations against them and claimed to be innocent. They, however, neither

examined themselves on oath to disprove prosecution's allegations, nor even led any evidence in their defence. The Trial Court after hearing the learned counsel for the appellants as well as A.P.G convicted the appellants and sentenced them as mentioned above, vide impugned judgment.

5. We have heard the learned counsel for the appellants as well as Addl. P. G and scanned the material available on record with their assistance.

6. The learned counsel for the appellants *inter-alia* has contended that the Trial Court failed to appreciate law and facts involved in this case and the material contradictions in the statements of the prosecution witnesses, which have created serious doubt in the prosecution case; that the evidence of the prosecution witnesses being inconsistent cannot be relied upon; that the prosecution has in fact failed to establish its case against the appellants, therefore, conviction recorded and the sentence awarded by the Trial Court on the basis of such evidence being bad in law does not sustain at all.

7. Conversely, learned Addl. P.G. while supporting the impugned judgment, has maintained that the appellants had acted as hardened criminals and as a result of their firing PC Muhammad Ibrahim sustained injury; that the prosecution has proved its case through ocular, circumstantial and medical evidence; that the impugned judgment is based on correct appreciation of facts and evidence on record; hence, the same is required to be maintained.

8. It is an established principle of criminal jurisprudence that for the conviction of an accused, the prosecution must establish its case beyond a reasonable doubt. The initial burden of proof lies on the prosecution to prove its case; once prosecution succeeds in doing so, the burden shifts on the accused to prove otherwise; however, the accused is not required to provide

evidence to refute the prosecution's case if prosecution fails to discharge its initial burden. The two concepts i.e. *"proof beyond a reasonable doubt"* and *"presumption of innocence"* are so closely linked together, they must be presented as a unit. It is one of the principles, which seeks to ensure that no innocent person is convicted. Thus, it is the primary obligation of the prosecution to substantiate its case against the accused and the burden of proof never shifts, except in cases falling under Article 121 of the Qanun-e-Shahadat Order, 1984.

9. After reassessment of the evidence available on record, we find that the prosecution has failed to prove its case beyond reasonable doubt against the appellants for the reasons that the evidence brought on record is inconsistent, and contradictory, which does not inspire confidence at all.

10. As regard the charge against the appellants under Crime No. 116 of 2021, it appears from the evidence of PW-1 ASI Qazi Muhammad Gohar (Ex. 05) that four assailants seeing police party started firing on them, in retaliation, PC Khadim Hussain and PC Ibrahim fired on accused party, while PW-3 PC Ibrahim (Ex.7) has deposed contradicting PW-1 that during encounter PW-1 made 2-3 fire shots. He has not deposed that he and PC Khadim Hussain also made firing on accused party. PC Khadim Hussain has not been examined by the prosecution, as he was given up. Hence, it is not known who had in fact made fire on accused party in retaliation. It is also a matter of record that none of the accused sustained any firearm injury.

11. Although PW-5, PC Ibrahim (Ex.07) has deposed that he sustained firearm injury on second digit of his right foot, but his evidence is not supported with far-reaching medical evidence. In this regard, the evidence of PW-7, MLO Dr. Ghazanfar Ali Shaharyar (Ex.13) reflects that injured PC

Ibrahim was examined him and he issued Provisional MLC, but nature of injury was reserved for want of X-Ray film and report, which were not submitted to him; therefore, he did not issue final MLC. Hence, no reliable evidence is available on record if the said injured sustained a firearm injury.

12. Besides, there appears several infirmities and lacunas in the case of prosecution. Admittedly, Investigating Officer did not secure the shoe of PC Ibrahim, who allegedly received injury on second digit of his right foot. As per prosecution's case appellants Muhammad Aqib and Haroon-ur-Resheed exchanged fires from the roof top of the houses of locality but I.O failed to collect such evidence from the locality. Nothing is on the record regarding ownership of the alleged houses. The I.O. has not recorded the statements of any of the inmates of alleged houses.

13. The base of the prosecution case is the alleged encounter in between police and appellants. The entire prosecution's case revolves around the evidence of police officials. No doubt, evidence of police officials is as good as of other citizen, however, their evidence, must be securitized with a greater degree of circumspection; for the reasons that in a society with the level of moral value that we unfortunately have, a subordinate official is seldom expected to tell the truth in deviation of the express or implied instructions of his superior, therefore, there should be very strict scrutiny of their evidence, and while doing so, if there appears any doubt on the credibility of their evidence, the benefit thereof must be given to accused person.

14. So far, the charge against the appellant Muhammad Shafi under Crime No. 117 of 2021 is concerned, it appears that **PW-6** Inspector Jameel Ahmed (Ex. 12) on account of death of I.O Inspector Gulzar Ahmed, appeared and produced covering letter for FSL (Ex.12-E) and FSL report (Exh.12-G). He

verified the signature and hand writing of said deceased I.O. The covering letter for FSL (Ex.12-E) shows that it was prepared on 09.03.2021 and got received in the office of Forensic Division Sindh (FDS), Karachi on 22.03.2021. Thus, no explanation is available on record as to where and in whose possession the alleged case property i.e. 30 bore pistol was lying during such period. Hence, the safe custody of alleged case property is questionable. Besides, no explanation has been furnished as to why the case property was deposited in the office of FDS with delay of 13 days, which has rendered the FSL report (Exh.12-G) to be legally unacceptable and thus, the same is inconsequential, as the possibility cannot be ruled out of consideration that the same has been managed and maneuvered in order to get favorable report of Ballistic Expert. Reliance in this regard is made on the case of Yaqoob Shah vs. the State (1995 SCMR 1293).

15. On the above yardstick, we have scanned the evidence of prosecution witnesses and found that the same is not confidence inspiring in view of above noted contradictions among the depositions of PWs regarding taking part in so-called encounter by responding through fire shots made by the police party; sustaining of the unsupported firearm injury by the PW-5 and infirmities in investigation, therefore, in the given circumstances, the evidence of PWs cannot be safely relied upon for maintaining the conviction of the appellants. In the case of Maqsood Alam and another v. The State and others (2024 SCMR 156), the Apex Court has observed as under: -

“For the accused to be afforded this right of the benefit of the doubt, it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the accused. Reliance is placed on Mst. Asia Bibi v. The State (PLD 2019 SC 64), Tariq Pervaiz v. The State (1995 SCMR 1345), Ayub Masih v. The State (PLD 2002 SC 1048) and Abdul Jabbar v. State (2019 SCMR 129)”.

16. In view of the above stated facts and discussion, we are of the considered view that in the instant case there is no convincing and trustworthy evidence against the appellants to connect them with the commission of alleged offences and thus, prosecution has miserably failed to prove its case against them beyond reasonable doubt. We, therefore, allow this Appeal, set aside the conviction and sentences of the appellants and acquit them of the charges. They be set at liberty forthwith, if not required to be detained in any other case.

17. These are the reasons of our short order dated 07.03.2025.

J U D G E

J U D G E

Faheem/PA