

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-48 of 2016
Cr. Appeal No.S- 69 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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Appellant Shoukat Ali Through Muhammad Akhtar Shoro,
Advocate.

Appellant Naseer: Through Zeeshan Ali Burdi, Advocate.

The State Through Mr. Shahid Ahmed Shaikh, A.P.G.

Date of hearing: 19 .05.2017.

Date of decision: 19.05.2017

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J U D G M E N T:-

ABDUL MAALIK GADDI, J- By this common judgment I intend to dispose of above captioned both appeals arising out from the same Crime No.52 of 2015 for offence under Sections 324, 353, 147, 148, 149 PPC of P.S Husri Hyderabad.

2. Through these appeals the appellants have assailed the legality and propriety of the judgment dated 28.03.2016 passed by the learned VIth-Additional Sessions Judge, Hyderabad, in Sessions Case No.707 of 2015 of P.S. Husri Hyderabad, Re: State vs. Naseer & others, whereby the learned trial court convicted and sentenced the appellants

in point No.2 (Para-19) of the impugned judgment which reads as under:-

“16. In view of my findings on point No.1, the accused 1. Naseer s/o Amir Bux Parhiyar, 2. Dil Bahar s/o Samoo Mallah, 3. Shoukat s/o Phull Machi, 4. Hashim Shah s/o Manzoor Shah are hereby convicted U/s 265-H(ii) Cr.P.C and sentenced for an offence punishable u/s 324 PPC to undergo Rigor Imprisonment for Five years (05 years) each and to pay fine of Rs.20,000/-each and they are also sentenced for an offence punishable U/s 353 PPC to undergo R.I for one year (01 year) and to pay fine of Rs.5,000/-each. In case of failure in payment of fine, the accused shall suffer simple imprisonment for three months (03 months). All the sentences shall run concurrently. Accused Dil Bahar and Shoukat are present on bail, their bail bonds stand cancelled and sureties are discharged. They are taken into custody and remanded to custody with directions to serve out sentences awarded to them as above. Accused Naseer and Hashim are produced in custody, they be remanded to custody to serve out the sentences awarded to them as above, they are in jail since their arrest, therefore, they are extended benefit of section 382-B Cr.P.C and their detention period in Jail in this case since from their arrest till today shall be adjusted towards sentences awarded to them as above. The case against proclaimed offenders accused namely Sattar and Lakha Dino be kept on dormant file and shall be reopened as and when they surrender or brought before the Court. As far as the applicability of sections 147, 148, 149 PPC is concerned, the same are not made out, therefore, no conviction can be awarded for said sections. ”

3. Related facts are that on 11.03.2015 complainant ASI Allah Bux Panhwar alongwith his sub-ordinate staff during patrolling received spy information that wanted accused in Crime No.51 of 2015 U/s 392, 34 PPC, namely Naseer Parhyar, Dil Bahar Mallah, Shoukat Machi alongwith their companions Sattar Nizamani, Lakha Dino Sahito and Hashim Shah are coming to Almani

Regulator on motorcycles. After receiving such information, complainant reached at pointed place and started checking of vehicles there, and for the moment two red colour motorcycles emerged there and the same were identified by the complainant party, those on seeing police party tried to run from the spot and made straight firing upon them, as such police also made fires in retaliation. Such encounter consumed three / five minutes, then three persons surrendered themselves, however three persons were succeeded to escape away from the occurrence by taking advantage of devi-bushes. During such encounter one accused Naseer received fire arm injury at his knee and TT pistol alongwith five live bullets were recovered from his possession. Likewise, police also recovered crime weapon viz. TT pistol alongwith live bullets from the possession of apprehended accused Dil Bahar and from accused Shoukat one mobile phone as well as Rs.150 were recovered by the police. Thereafter police party also recovered five empties of TT pistol fired by the accused persons and 10 empties of 12-Bore, 06 empties shell of SMG and 03 empties of G-3 fired by complainant party, which were sealed separately then accused persons were enquired about the names of absconding accused, memo of arrest and recovery was prepared in presence of mashirs HC Wazeer Ali and PC Muhammad Iqbal. The case property and

accused were brought at police station except accused Naseer who was sent to LUH Hyderabad for treatment, hence this FIR.

4. At trial, complainant PW-1 ASI Allah Bux Panhwar was examined at Exh.09; he produced memo of arrest and recovery at Exh.9/A, letter for treatment, arrival and departure entries, FIR at Exh.9/B and 9/C respectively, FIRs Nos. 53/2015 U/s 23-A Sindh Arms Act at exh.9/D, another FIR No.54 of 2015 U/S 23-A Sindh Arms Act at Exh.9/E, memo of arrest of accused Hashim at Exh.9/F, letter for FSL at Exh.9/G, FSL report at Exh.9/H, criminal record of accused Hashim Shah, Lakha Dino, Sattar Nizamani and Naseer at Exh.9/I and 9/L respectively. PW-2 ASI Wazeer Ali mashir of the incident, was examined at Exh.10. The appellants have cross examined the prosecution witnesses through their advocates. Thereafter, learned DDPP for State closed his side vide statement at Exh.11 available on record.

5. Statements of appellants/accused were recorded under section 342, Cr.P.C at Ex.12 and Exh.15, wherein they have denied the allegations leveled against them and state that police has falsely implicated them in this false case.

6. After hearing the parties' counsel, learned trial court came to the conclusion that the case has been proved against the

appellants/accused; he convicted and sentenced them as stated above.

7. The main contention of the learned counsel for the appellants is that impugned judgment of conviction and sentence is perfunctory, opposed to law and facts on record; that the case against appellants is false and has been registered due to enmity; that the prosecution witnesses are police official and subordinate to complainant, therefore their evidence is undependable; that allegation against the appellants is that at the time of incident they made allegedly fired at police party, but in fact nobody on complainant's side has sustained a single injury, even no bullet was hit to the police mobile; that the incident has taken place in the populated area but despite of that fact no independent witness has been cited by the complainant however having advance information to the incident. He lastly urged that there are material contradiction in between the prosecution witnesses, but the learned trial court did not consider the same and passed 'botch-up judgment', whereby innocent appellants/accused have been convicted, therefore he prayed for their acquittal.

8. Conversely, learned A.P.G argued that the prosecution evidence is trustworthy and contradictions in the evidence of prosecution witnesses are minor in nature and the accused are

specifically nominated in the commission of heinous offence, who in order to deter the public servant attempted to commit their murder, therefore they are not liable to any grace or relief in it.

9. I have carefully considered the arguments as advanced by the learned counsel for the parties and carefully scanned the material so available before me. Indeed, the appellant Naseer as alleged in the FIR has got received fire arm injury, but in this aspect in order to prove the same, the prosecution has examined only ASI Wazir Ali as PW-2, who is mashir of arrest, recovery and place of incident and is subordinate to complainant ASI Allah Bux Panhwar. It is pertinent to mention here that in this case ASI Allah Bux Panhwar is the complainant and I.O of the case, therefore his evidence under these circumstances cannot be safely relied upon. It is an admitted fact that the complainant has advanced information about the availability of the present appellants, despite of this fact the complainant did not bother to take with him any independent person of the locality to witness the incident. It is also an admitted fact that incident took place in a populated area in the evening time, but no plausible explanation is on record for the services of the private person as witness the event. The whole episode as stated in the FIR has been denied by the appellants, therefore under these circumstances the story as narrated in absence of the private witnesses appears to doubtful.

10. During course of arguments I have specifically asked the question from A.P.G that complainant had advanced information why he did not obtain the services of the private person, no answer available with him. I again asked a question that if the alleged encounter continues for almost three to five minutes, whether any police official received any injury. Again no explanation is available with him. It is also an admitted fact that during encounter no bullet was hit to the police mobile. I have also noticed that all mashirs and eye witnesses in this case are police officials and no private person has been examined in this case from the locality, therefore serious doubt has been created in the case of the prosecution. I have gone through the case of Tarique Pervaiz vs. the State as reported in 1995 SCMR page-1345 wherein it has been held as under:-

(b) Prohibition (Enforcement of Hadd) Order (4 of 1979)---

---Art.4---Benefit of doubt, grant of---For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts---If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.

11. Similar view has also been taken in the case of Muhammad Akram vs. the State reported in 2009 SCMR 230 which reads as under:-

(c) Criminal trial---

---Benefit of doubt---Principles---For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.

12. I have also gone through the evidence adduced by the complainant party and found that the same is also contradictory on material particulars, therefore the same also cannot be safely relied upon for maintaining order of the trial court.

13. For my above stated reasons, I have no hesitation to hold that the prosecution has failed to prove its case against the appellants and the learned trial court did not appreciate the evidence properly. Consequently the impugned orders is set-aside and the appellants are acquitted from the charge. They are present on bail, their bail bonds stand cancelled and surety discharged.

JUDGE.