

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio*

SPL. CR. A.T. APPEAL NO.205 OF 2019

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| Appellants: | 1) Ahmer son of Ghulam Siddique. 2) Ranjhan son of Raju through Mr. Jan Mohammad Naich, Advocate |
| Respondent: | The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. |

SPL. CR. A.T. APPEAL NO.206 OF 2019

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| Appellant: | Ahmer son of Ghulam Siddique. through Mr. Jan Mohammad Naich, Advocate |
| Respondent: | The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. |

SPL. CR. A.T. APPEAL NO.207 OF 2019

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| Appellant: | Ranjhan son of Raju through Mr. Jan Mohammad Naich, Advocate |
| Respondent: | The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. |

SPL. CR. A.T. APPEAL NO.208 OF 2019

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| Appellants: | 1)Allah Wadhayo son of Dost Muhammad 2)Imran @ Toofan son of Ghulam Ali through Mr. Allah Warayo Khan, Advocate |
| Respondent: | The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. |

SPL. CR. A.T. APPEAL NO.209 OF 2019

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| Appellant: | Allah Wadhayo son of Dost Muhammad through Mr. Allah Warayo Khan, Advocate |
| Respondent: | The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. |

SPL. CR. A.T. APPEAL NO.210 OF 2019

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| Appellant: | Imran @ Toofan son of Ghulam Ali through Mr. Allah Warayo Khan, Advocate |
| Respondent: | The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. |
| Date of Hearing: | 27.01.2022 |
| Date of Announcement | 03.02.2022 |

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellants namely Allah Wadhayo, Ahmer, Imran @ Toofan and Ranjhan have assailed the impugned judgment dated 24.07.2019 passed by the Anti-Terrorism Court No.I, Karachi in Special Case Nos.A-102 of 2013, A-102-A of 2013,

A-102-B of 2013, A-102-C of 2013 and A-102-D of 2013 arising out of Crime No.544, 546 to 549 of 2013 under Section 148/149/302/324/353/109/34 PPC r/w Section 7 of ATA 1997 and under Section 23(1)(a) Sindh Arms Act, 2013 registered at PS Gulistan-e-Jauhar, Karachi whereby accused Allah Wadhayo son of Dost Muhammad, Ahmer son of Ghulam Siddique, Imran @ Toofan son of Ghulam Ali and Ranjhan son of Raju were convicted for offence u/s. 302(b) PPC and sentenced to R.I. for life on each count and to pay compensation of Rs.10,00,000/- (Rupees Ten Lac) each u/s.544-A Cr.PC to the heirs of the deceased and in default thereof they shall suffer S.I. for one year more. They were also convicted and sentenced for the offence punishable u/s.7(a) of ATA 1997 to undergo R.I. for life on each count and to pay fine of Rs.10,00,000/- (Rupees Ten Lac) each and in default thereof they shall suffer S.I. for six months more. They were also convicted and sentenced to undergo R.I. for ten years and with fine of Rs.100,000/- (Rupees One Lac) each for the offence punishable u/s.7(c) of ATA 1997, in case of non-payment of fine they shall suffer S.I. for 06 months more. All accused namely Allah Wadhayo son of Dost Muhammad, Ahmer son of Ghulam Siddique, Imran @ Toofan son of Ghulam Ali and Ranjhan son of Raju for were also convicted and sentenced to undergo R.I. for ten years with fine of Rs.100,000/- (Rupees One Lac) each for the offence punishable u/s.324 PPC and in case of default in payment of fine they shall suffer S.I. for 06 months more. They were also convicted for the offence punishable u/s.7(h) of ATA 1997 and sentenced to R.I. for five years and with fine of Rs.50,000/- (Rupees Fifty Thousand) each in case of non payment of fine they will suffer S.I. for three months more. They were also each convicted for the offence punishable u/s.353 PPC and sentenced to R.I. for two years and with fine of Rs.20,000/- (Rupees Twenty Thousand) in case of nonpayment of fine they will suffer S.I. for two months more. They were also each convicted for the offence punishable u/s.23(1)(a) of Sindh Arms Act, 2013 and sentenced to R.I. for five years and with fine of Rs.50,000/- (Rupees Fifty Thousand) in case of nonpayment of fine they will suffer S.I. for three months more. All sentences shall run concurrently. The benefit of Section 382-B Cr.PC was also extended to them.

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2. The brief facts of the prosecution case are that on 15.08.2013, the complainant Sub-Inspector Noor Mustafa, posted at police station Gulistan-e-Jauhar, Karachi registered above FIRs at police station Gulistan-e-Jauhar, Karachi stating therein that on 15.08.2013 at 0615 hours, he was present at police post Hussain Hazara Village, when he received a phone call from SHO Malik Muhammad Saleem, who informed him that absconding accused of murder case namely Pariyal Shah along with his companions was present at his house. On receiving such information, at 0700 hours, the complainant along with sub-ordinate staff reached near the house of absconding accused Pariyal Shah from the side of Safari Park. The SHO and other police officials along with sub-ordinates had already reached there. In the meantime, from the rooftop of house of accused Pariyal Shah, armed culprits started firing over the police party, the police also fired upon the culprits in their defense. Due to firing of the culprits, ASI Muhammad Aslam, ASI Amanullah and PC Azhar Hussain became injured and were shifted to hospital for treatment. During the course of firing, SHO Gulistan-e-Jauhar narrated the facts to SDPO Gulshan-e-Iqbal Muhammad Qasim Ghor, thereafter, DSP Gulshan-e-Iqbal, SHO Mubina Town, SHO Gulshan-e-Iqbal and SHO Bahadurabad along with sub-ordinates also reached at the spot. The DSP directed the police party to encircle the accused persons for their arrest and stepped forward. In the meantime, due to firing of the accused persons, DSP Gulshan-e-Iqbal and ASI Asif of PS Gulshan-e-Iqbal sustained injuries and fell down. SHO Gulistan-e-Jauhar Malik Muhammad Saleem and SHO Bahadurabad Hyder Zaidi tried to take injured through Baktar Band vehicles (APCs), but accused also fired upon them, who also became seriously injured. The complainant by taking shelter reached near DSP Gulshan-e-Iqbal and ASI Asif and saw that both had died on the spot. The complainant shifted the dead bodies and injured to hospital. Thereafter, during the course of firing, police of different police stations also reached there. The police further encircled the accused, who on seeing police party coming towards them, fled away by jumping over the wall of Safari Park, while making firing. The complainant with the help of police party succeeded in apprehending 9 accused persons, who were armed with weapons. The complainant also saw that three terrorist were also lying dead at the spot. The apprehended

accused disclosed their respective names as 1) Imtiaz son of Imdad Hussain, one repeater 12 bore with four live bullets were recovered from his possession, 2) Allah Wadhayo son of Dost Muhammad, one Mouser of 30 bore with five live bullets were covered from his possession, 3) Ahmer son of Ghulam Siddique, one 30 bore pistol without number loaded magazine with four live bullets were recovered from his possession, 4) Imran son of Ghulam Ali, one 30 bore pistol without number with three live bullets were recovered from his possession, 5) Ranjhan son of Raju, from his possession one 30 bore pistol without any round were recovered, 6) Sameeullah son of Ghulam Hussain, from his possession one 30 bore pistol without number with two live bullets were recovered, 7) Abdul Ghaffar son of Rasool Bux, one 30 bore pistol without number with loaded magazine and one live bullet were recovered from his possession, 8) Mohabat Ali son of Haider Ali, from his possession one 30 bore pistol with three live bullets were recovered and 9) Abdul Malik son of Bhooral Khan, from his possession one pistol of 30 bore without number with one live bullet were recovered. All the recovered weapons were without licenses. The arrested accused disclosed names of dead accused as (1) Zamin Shah son of Bachal Shah, from his hand one single barrel shot gun No.KC-59533 and from flower colored bag lying on his shoulder, further three bullets were also found. The name of second dead accused was disclosed as Umeed Ali @ Sobal, one Kalashnikov like Rifle with three live bullets was lying in his hand. The name of third dead accused was Amir Bux Chachar, one 30 bore pistol No.31011144 with four live bullets was lying in his hand. The arms and ammunition recovered from arrested and dead accused were sealed at the spot under memo. Whereas accused Pariyal Shah along with his 4/5 companions succeeded in escaping from place of incident. The dead accused were shifted to JPMC for proceedings. Hence the above FIRs.

3. NBWs against the absconding accused namely 1) Pariyal Shah son of Bachal Shah, 2) Raja Pathan son of not known and 3) Ghulam Ali Bhangwar son of not known were issued which were returned unexecuted. After recording the statement of I.O. the absconding accused persons were declared as proclaimed offenders.

4. After registration of FIRs, the investigation of all the cases was entrusted to Inspector Muhammad Fareed-u-Din who inspected the place of incident and prepared memo as well as recorded the statements of PWs u/s.161 Cr.PC. Learned ADPP filed statement for amalgamating all the five cases, which was allowed by consent. After completing usual investigation charge was framed against the accused persons to which they pleaded not guilty and claimed trial of their case.

5. The prosecution in order to prove its case examined 17 PWs and exhibited various documents and other items. The statements of accused persons were recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them and claimed false implication at the hands of the police. They did not examine themselves on oath or lead any DW in support of their defence case.

6. After hearing arguments of learned counsel and appreciating the evidence on record the trial court convicted the appellants and sentenced them as set out earlier in this judgment. Hence, the appellants have filed these appeals against their conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 24.07.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsels appearing on behalf of appellants have contended that they are completely innocent of any wrong doing and have been falsely implicated in this case by the police at the behest of the rangers; that none of the appellants have been given the specific role of firing on and causing the death or injury of any police officer; that the memo of arrest and recovery is doubtful as five others who were arrested along with the appellants were let off u/s 169 Cr.PC following a report into the incident prepared by DIG Khawaja Sultan; that the weapons were foisted on them by the police; that there was a delay in sending the recoveries for FSL report; that according to the evidence of the IO all those who fired on the police had been killed in the encounter and thus none of the appellants had any responsibility for the death or injury of any

policemen and thus for any or all of the above reasons the appellants should be acquitted of the charge by being extended the benefit of the doubt. In support of their contentions they placed reliance on the cases of **Qaddan and others V The State** (2017 SCMR 148), **Rajib V The State** (2020 P Cr. L J 1342) and **Afaq Ahmed v The State** (2020 YLR 676).

9. On the other hand learned Addl. Prosecutor General Sindh appearing on behalf of the State has fully supported the impugned judgment. In particular he has contended that the appellants were all arrested on the spot and weapons were recovered from each of them; that the prosecution evidence is reliable, trust worthy and confidence inspiring and can be believed; that the medical evidence supports the prosecution evidence; that the recoveries made at the scene lead to a positive FSL report and as such the prosecution had proved its case beyond a reasonable doubt against all the appellants and there appeals should be dismissed. In support of his contentions he has placed reliance on the cases of **Muhammad Ashraf v The State** (2011 SCMR 1046), **Muhammad Ilyas v The State** (2011 SCMR 460), **Muhammad Arif alis Mama v The State** (PLD 2003 SC 942), **Muhammad Din v The State** (1985 SCMR 1046), **Muhammad Mansha v The State** (2001 SCMR 199), **Asif and Others v The State** (2020 SCMR 610), **Atta-ur-Rehman v The State** (2018 SCMR 372), **Hakim Khan v The State** (2013 SCMR 777) and **Abdul Rashid v Muhammad Naizr** (1970 SCMR 330).

10. We have heard the arguments of the learned counsel for the appellants and learned Addl. Prosecutor General Sindh, gone through the entire evidence which has been read out by the counsel for the appellants, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

11. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellants for which they were convicted for the following reasons;

- (a) The FIR was lodged with promptitude and left no time for the police to cook up a false case against the accused. The accused are all named in the FIR with similar roles of firing on the police with intention to kill them which lead to the death of two police

officers on the spot and injury to three other police officers on the spot and the evidence lead by those PW's including the complainant has not been significantly improved on.

(b) That at least eight police PW's gave evidence that they were present at the time of the encounter between the police and the miscreants whilst others had heard that the incident was a result of an encounter. Three of these police PW's were injured by fire arm at the scene as confirmed by medical evidence and three of the accused were killed by the police at the scene as confirmed by medical evidence. It is well settled by now that the evidence of a police witness is as reliable as any other witness provided that no enmity exists between them and the accused and in this case no enmity has been suggested against any of the police PW's and as such the police had no reason to falsely implicate the appellants in a false case. Thus we believe the police evidence which is corroborative in all material respects. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474). That the encounter according to the prosecution evidence was of a major nature which lasted up to 4 hours, reinforcements were called, 149 empties of varying bore was recovered from the scene along with human blood as proved by a chemical report, two policemen died on the spot, three policemen were injured on the spot and three of the miscreants were killed on the spot which is an admitted position. No defense witness was produced from the locality to give evidence that no encounter took place. In fact from the line of defense taken by the appellants it appears that it is not denied that an encounter took place but that the appellants were not present at the time of the encounter with the police and played no part in it. As such based on the above discussion we find that the encounter as alleged by the police has been proven beyond a reasonable doubt on the time, date and location as alleged in the charge.

(c) That the police witnesses whose evidence we have already believed along with the medical evidence and post mortem reports, death certificates and MLC's which all corroborate the oral evidence of the police witnesses all prove that two named policemen died on the spot during the encounter on account of the firearm injuries which they received and that three other named police officers received firearm injuries during the encounter and gave evidence to that effect and thus we find that the prosecution has proved beyond a reasonable doubt that during an encounter at the time, date and place alleged in the charge between the police and miscreants two police officers were murdered and three police officers were injured by the miscreants by firearm whilst the miscreants attempted to kill them whilst carrying out their official duties.

(d) The only question which remains therefore is whether the appellants were involved in the encounter which lead to two policemen being murdered by firearm and three other

policemen being wounded by fire arm. We find that the prosecution has proved beyond a reasonable doubt that the appellants were all present and took part in the encounter with the police and that they all had the intention to kill the police along with the absconding accused and were guilty of murdering two policemen and injuring three police men with intention to kill them in order to prevent them from carrying out their lawful duties and were also caught in possession with unlicensed firearms for the following reasons;

(i) That PW 1 Noor Mustafa who was the complainant in the case and was present as an eye witness throughout the incident at the scene arrested all the appellants on the spot and recovered fire arms from them. His evidence accords with the FIR which was lodged with promptitude and was not significantly improved on. He had no ill will or enmity with any of the appellants and had no reason to implicate them in a false case. His evidence was not dented during a lengthy cross examination and he gave his evidence in a straight forward manner which we find to be reliable, trust worthy and confidence inspiring and we believe the same. He recognized all the accused as those who he arrested after the encounter in court.

(ii) That the complainant's evidence is corroborated in all material respects by PW 2 Muhammed Abbas who was another police officer who was present as an eye witness throughout the incident at the scene and was mashir of the arrest and recovery made from the appellants. He recognized all the accused in court as being arrested after the encounter although he mixed up the identification of appellants Ahmer and Ranjha although importantly he identified them all as taking part in the encounter.

(iii) That SHO PW 9 Malik Muhammed Saleem was injured by firearm at the scene and his evidence fully corroborates the prosecution case. He recognized all the appellants in court as having taken part in the encounter.

(iv) That specific weapons were recovered from each of the appellants at the time of their arrest on the spot.

(v) That these weapons of each of the accused produced a positive FSL report when matched with the empties recovered at the scene. The 10 day delay in sending the empties and weapons for FSL report we find to be inconsequential and in this respect reliance is placed on the case of **Muhammed Ashraf** (Supra)

(vi) That there are no major contradictions in the evidence of the PW's and it is well settled by now that minor contradictions which do not effect the materiality of the evidence can be ignored. In this respect reliance is placed on

Zakir Khan V State (1995 SCMR 1793).

(vii) That all appellants fired upon the police party with intention to kill them and whether or not it was one of their bullets which caused the fatal wound to any police officer this is a classic case of murder with common intent falling within the purview of S.302 (b)/34 PPC which based on the evidence the accused were guilty of.

In this regard we are fortified by the findings in the case of **Attur-Rehman** (Supra) where the Supreme Court reduced the death sentence to one of life imprisonment for murder as it was a case of common intent at P.375 as set out below;

"Apart from that the allegations leveled against the appellants and their co-accused were joint and common and no specific injury had been attributed to any particular accused person. It is, thus, not clear as to which one of the accused persons, including the present appellants, was actually responsible for causing the fatal injuries to the deceased. In such circumstances generally a sentence of death is withheld when it is not clear as to whether a particular culprit was actually responsible for causing a death or not. For all these reasons we have decided to exercise caution and to err, if at all, on the side of precaution."(bold added)

(viii) Although it is for the prosecution to prove its case beyond a reasonable doubt we have also examined the defence case which is essentially one of false implication because the appellants were not present at the time of the encounter as they had earlier been picked up by the rangers from their homes. None of the appellants gave evidence on oath to disprove the prosecution case and no DW was called to prove that any of the appellants were arrested from home by the rangers and no family member or neighbor made any complainant against the rangers abducting any of the appellants from their homes. In the face of reliable trust worthy prosecution evidence we disbelieve the defence case as an after thought. The fact that five of the other arrested accused on the spot were released u/s 169 based upon a report by the then DIG does not weaken the prosecution case. This report was not exhibited at trial and is not binding on the trial court.

12. Thus, for the reasons discussed above we find that the prosecution has proved its case beyond a reasonable doubt in respect of all the offences for which each of the appellants were convicted in the impugned judgment and the appeals are dismissed.