

Robbery, ~~the~~ ~~accused~~ ~~was~~ ~~an~~ ~~SAA~~ ~~acquitted~~ ~~as~~
already acquitted by TC of encounter

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IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Arshad Hussain Khan,

Spl. Criminal A.T Jail Appeal No.110 of 2022.

Appellant	Zeeshan S/o. Rehman through Mr. Ajab Khan Khattak, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of hearing	13.12.2022.
Date of Announcement	16.12.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- Appellant Zeeshan s/o. Rehman has preferred this appeal against the judgment dated 30.09.2021 passed by Learned Judge, Anti-Terrorism Court No.IV, Karachi Division in Special Case No.56 of 2018 (1593/2016) arising out of Crime No.38 of 2015 U/s. 392/353/324/34-PPC R/w. section 7 of ATA 1997 and Special Case No.56-A of 2018 (1594/2016) arising out of Crime No.39 of 2015 U/s. 23(1)(a) of Sindh Arms Act registered at P.S. New Town, Karachi whereby the appellant was convicted and sentenced as under:-

- (a) The accused Zeeshan S/o. Rehman was convicted and sentenced for the offence u/s. 392-PPC to suffer R.I. for three years with fine of Rs.10,000/-. In case of failure to pay the fine, he was ordered to suffer SI for two months more.
- (b) The accused Zeeshan S/o. Rehman was convicted and sentenced for the offence u/s. 23(1)(a) to suffer S.I. for three years with fine of Rs.5,000/-. In case of failure to pay the fine, he was ordered to suffer SI for four months.

All the sentences were ordered to run concurrently. Appellant was also extended the benefit Section 382-B Cr.P.C.

2. The facts of the prosecution case are that complainant Nadeem Anwar, owner of shop in the name and style of "Chain Computer" at Bahadurabad, Karachi lodged FIR stating therein that on 24.01.2015, he

along with his employee was present in the shop, two persons boarded on motorcycle, their features were of Pathan, came there and on gunpoint they committed robbery from his shop. When they started their motorcycle in the meanwhile police party reached there, encounter took place between police and robbers. Resultantly, police apprehended them in injured condition, who disclosed their names as Zeeshan and Saifullah. From the possession of Zeeshan one pistol of 30 bore, loaded magazine with two rounds and one in chamber loaded, was recovered. From the possession of Saifullah looted articles were recovered. Police seized motorcycle bearing No.KHI-8198, maker Unique and later on got verified from CPLC, which was found snatched within the jurisdiction of Soldier Bazar Police Station. After completion of formal proceedings FIRs were lodged.

3. After usual investigation the charge was framed against the appellant / accused to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 06 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him. However, neither he gave evidence on oath nor called any DW in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellant as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 21.10 .2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant was innocent and had been falsely implicated by the police in this case in order to show their efficiency; that the incident did not take place as no blood stained earth was recovered from the scene of incident; no empties

were recovered from the scene of incident; the official weapons had not been sent for FSL; that no police officer received any injury and no surrounding shops had received any bullet mark; that the allegedly robbed items were not produced and that the pistol was foisted upon him and as such for all or any of the above reason the appellant should be acquitted from the charge by extending him the benefit of doubt.

8. On the other hand, learned Additional Prosecutor General Sindh fully supported the impugned judgment and contended that the appeal was without merit and should be dismissed.

9. We have heard the parties and considered the evidence on record.

10. We find that the prosecution has NOT proved its case against the appellant beyond a reasonable doubt for the reasons set out below:-

- a) The appellant was charged u/s.392/353/324/34 PPC as well as u/s.23(i)(a) of SAA.
- b) The case of prosecution as per the evidence which was led at trial was essentially that the appellant and his absconding co-accused robbed the shop of the complainant and then when trying to escape was spotted by a police mobile which ordered them to stop when the accused who had come on motorbike did not stop and ran away on foot whilst firing on the police. The police in return fired on the appellant and his absconding co-accused which led to them both being injured by fire arm and being arrested on the spot with unlicensed pistols in their possession.
- c) We note, however, in the impugned judgment, for which the State has not filed any appeal against acquittal, the appellant was acquitted of offences u/s.353/324/34 PPC by way of paragraph No.44 of the impugned judgment, which is reproduced hereunder:-

"As regard the offence u/s.324/353/34-PPC is concerned. Since the empties were not secured from the place of incident, only pistol along with live bullets were sent to FSL for examination. FSL report is silent regarding use of pistol. The empties fired by police officials were also not secured. The official weapon used in encounter not sent to FSL for examination. No mark of bullet found in surrounding walls/shops etc. at the place of incident. No case of encounter is made out as encounter means fight between two parties, but in present case all the PWs deposed that accused persons tried to escape from the scene. After assessment of evidence for the offence u/s.353/324/34-PPC, I find that prosecution has failed to prove its case for these offences beyond

reasonable doubt, as such by extending benefits of doubt, the present accused Zeeshan S/o. Rehman is acquitted in these offence i.e. offence u/s 353/324/34-PPC."

- d) It is clear that the learned trial Court has disbelieved the prosecution case that any encounter took place between the appellant and the police and as such no firing was made by either party. This being the case we do not find that it appeals to logic, reason or common sense that the appellant and his absconding co-accused received a fire arm injury on the spot during the encounter with the police especially if already the trial court has made a finding that no firing took place then we find it was not possible for the appellant to have received a fire arm injury when he was arrested on the spot pursuant to an encounter with the police which as per learned trial court never took place.
- e) The findings of the learned trial court as mentioned above which the State did not file any appeal against acquittal againⁿ also makes it clear that the trial court in fact in reaching its findings as set-out above disbelieved the prosecution witnesses who all gave evidence concerning an encounter between the appellant and the police. As such if the witnesses were disbelieved in respect of the encounter we find it difficult to place reliance on the prosecution witnesses in respect of the alleged robbery and the recovery of the unlicensed pistol keeping in view the fact that the complainant did not identify any of his robbed items at the time of the arrest of the appellants absconding co-accused and that the pistol which was allegedly recovered from the scene of incident could not be proven as being fired as no empties were recovered from the crime scene and thus might have been foisted.

11. It is a cardinal principle of criminal law that the accused is entitled to the benefit of doubt as a matter of right as opposed to concession and as such based on the above discussion we find doubts in the prosecution case and by extending the benefit of doubt to the appellant hereby acquit the appellant from the charge, set-aside the impugned judgment and allow the appeal. The appellant shall be released unless he is wanted in any other custody case.

12. The appeal stands disposed of in the above terms.