

87

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Present:

Mr. Justice Muhammad Saleem Jessar,
Mr. Justice Khadim Hussain Soomro,

Crl. Appeal No.D- 01 of 2023.

Appellant:

Soonharo son of Dost Muhammad Bhangwar, through
Mr. Safdar Ali G. Bhutto, Advocate.

Crl. Appeal No. D- 02 of 2023.

Appellants:

1. Ali Murad.
2. Ghulam Shabir.
3. Soonharo.
through Mr. Safdar Ali G. Bhutto, Advocate.

Crl. Appeal No. D- 03 of 2023.

Appellant:

Ali Murad son of Muhib-u-Din Bhangwar, through
Mr. Safdar Ali G. Bhutto, Advocate.

Crl. Appeal No. D- 04 of 2023.

Appellant:

Ghulam Shabir son of Muhammad Alim Bhangwar,
through Mr. Safdar Ali G. Bhutto, Advocate.

Respondent:

The State, through Mr. Ali Anwar Kandhro,
Additional Prosecutor General.

Dates of hearing:
Date of the judgment:
Date of reasons:

21.11.2023.
21.11.2023.
27.11.2023.

Judgment

Khadim Hussain Soomro, J. These four appeals are interrelated, stemming from the amalgamated judgment dated 11.11.2017 passed by the learned Special Judge of the Anti-Terrorism Court, Kashmore @ Kandhkot; therefore, we intend to dispose of these appeals through this common judgment.

2. Meticulous perusal of the record shows that three appellants named above were booked and challaned in four cases registered at P.S A-Section, Kandhkot i.e.


27/11/2023

Crime No.111 of 2014 for offences punishable under Sections 324, 353, 34 P.P.C read with Sections 6/7 of Anti-Terrorism Act, 1997; whereas, remaining three cases vide Crime Nos.112, 113 and 114 of 2014 are registered under the Sindh Arms Act, 2013 relating to the recovery of crime weapons against all three appellants. It further appears from the record that the learned trial Court vide Order dated 06.12.2016 (Ex.8-A) amalgamated and tried these cases jointly in terms of Section 21-M of the Anti-Terrorism Act, 1997.

3. In the wake of supplying the necessary documents, the charge was framed against the appellants, they did not plead guilty and claimed to be tried.

4. The prosecution in order to establish its case examined the complainant Inspector Baharuddin Keerio, PW-4, PW-1 H.C Abdul Sattar. PW-2 SIO Muhammad Hassan. PW-3 PC Abdul Latif. The learned Prosecutor gave up evidence of two witnesses; namely, H.C Sikander Ali and PC Muhammad Haneef, vide statement Ex. 13. The side of the prosecution was closed by the Special Prosecutor vide statement Ex.15. Thereafter, the statements of the appellants Ali Murad, Ghulam Shabir and Sonharo under Section 342 Cr.P.C were recorded at Ex.16 to 18 respectively. However, none of them examined himself on oath nor led evidence in defence.

5. The record further reflects that in the first round of proceedings, the appellants were convicted and sentenced vide judgment dated 22.4.2017, and against such conviction, they filed appeals No. D- 25, 26, 27 and 28 of 2017 before this Court, which were allowed. Consequently, conviction and sentence awarded to the appellants were set aside, and the case was remanded to the trial Court to recall and re-examine some witnesses and pass judgment afresh, after providing the opportunity of cross-examination to the accused, within two months. Ultimately, in compliance with the directions, the learned trial Court completed the evidence afresh and recorded the statements of the appellants under Section 342 Cr.P.C. When the case was fixed for the announcement of judgment on 09.09.2017, the appellants jumped the bail and remained absent on the date of judgment. Accordingly, the learned trial Court initiated proceedings, which included issuance of non-bailable warrants of arrest, notices to their sureties and issuance of proclamations under Sections 87 & 88 Cr.P.C and ultimately the learned trial Court passed the impugned judgment dated 11.11.2017, thereby convicting and sentencing the appellants in *absentia*. The appellants were convicted and sentenced as under:

27/11/2023

- Page 11
- (i) For offence under Section 324 & 34 P.P.C read with Section 7 (b) of Anti-Terrorism Court to undergo R.I for ten years and to pay fine of Rs.50,000/- each and in case of default of payment to undergo R.I for six months more.
 - (ii) For offence under Section 353 and 34 P.P.C read with Section 7 (h) of Anti-Terrorism Court to undergo R.I for five years and to pay fine of Rs.30,000/- each and in case of default of payment of fine to undergo R.I for three months more.
 - (iii) Besides the above, the appellants were also convicted for the offence under Section 23 (i) (a) of the Sindh Arms Act, 2013, and sentenced to undergo R.I for five years and to pay a fine of Rs.30,000/- each and in case of default to pay fine to suffer R.I for three months more. The appellants were also convicted under Section 21-L of the Anti-Terrorism Act, 1997 and sentenced for five years each with forfeiture of their moveable and immovable properties and perpetual warrants of their arrest were directed to be issued against them.

6. Against their conviction and sentence, the appellants filed present captioned appeals before this Court on 05.01.2023, and vide Order dated 18.01.2023, this Court observed as under:

"The appeals are time barred albeit the appellants have moved applications for condoning the delay under Section 561-A Cr.P.C. Issue notice thereon to the Addl. P.G for 07.2.2023. Appellants present in Court are taken into custody and they are remanded to Central Prison Sukkur."

7. It appears from the record that these appeals were admitted to a regular hearing by this Court passed vide Order on 07.02.2023, by observing as under:

"Learned D.P.G submits that though the State opposes the condonation of delay in filing these appeals, such aspect can be examined at the stage of hearing of main appeals. Therefore, subject to the objection of limitation, all these appeals are admitted to regular hearing. Call R&Ps and prepare paper books at the cost of the appellants. To come up on 29.3.2023. Office to place a copy of this Order in all appeals listed above."

8. It is evident from the records that on 21.11.2023, learned Add. P.G. submitted a copy of letter No. JB/-18828/29, dated 20.11.2023 of Senior Superintendent of Central Prison & Correctional Facility, Sukkur along with a photocopy of the death certificate of appellant Soonharo. These documents show that appellant Soonharo expired on 19.11.2023 at 08:57 p.m. in Medical Unit-I of Ghulam Muhammad Mahar Medical College Teaching Hospital, Sukkur. Consequently, the proceedings against appellant Soonharo stand abated.

27/11/2023

9. Learned counsel for the appellants argued that the judgment of the trial Court is against the law, facts and equity and liable to be set aside; that the trial Court has failed to appreciate the factual as well as legal aspects of the case while convicting the appellants. He next argued that the evidence adduced by the prosecution at the trial was not properly assessed and evaluated by the trial court, and the evidence was insufficient to warrant the conviction of the appellants. He further added that no independent witness was examined, and the witnesses examined at trial were interested in being police officials and colleagues to each other. Moreover, he insisted that the prosecution witnesses contradicted each other on very material points and that the prosecution case was full of material contradictions and discrepancies. Learned counsel further contended that the impugned judgment suffers from misreading and non-reading of evidence. Lastly, he contended that the defence had created so many doubts in the prosecution case, the benefit of which may be extended in favour of the appellants by setting aside the impugned judgment and ordering the acquittal of the appellants.

10. On the other hand, Mr Aitbar Ali Bullo, learned Deputy Prosecutor General, opposed the appeal and contended that the evidence produced at trial was natural and confidence-inspiring, that the F.I.R was promptly lodged, and names of the appellants were mentioned in the F.I.R that the appellants were apprehended by police party on the spot along with crime weapons and F.S.L. report in respect of those weapons came in positive. He further argued that the defence has failed to create dents in the prosecution case. The defence counsel has pointed out no significant material contradictions and discrepancies. He further contended that the prosecution had established its case beyond any shadow of doubt against the appellants and learned that the trial Court had rightly convicted the appellants. Lastly, he prayed for the dismissal of the appeal.

11. Heard the learned counsel for the appellants as well as learned Addl. P.G. appearing for the State.

12. Before giving observations on the merits of the case, we feel it appropriate to decide the question of limitation raised by the office at the time of institution of present appeals as the same was not filed by the appellants within the stipulated time prescribed by the procedural law viz The Code of Criminal Procedure.


27/11/2023

13. We start from the world-famous known maxim "No man shall be condemned unheard", embodies the principle of audi alteram partem, which is interpreted as "hear the other side" in Latin. This fundamental legal principle highlights the significance of giving all parties involved in a legal proceeding a chance to present their side of the case before the pronouncement of a judgment. In legal terms, this maxim reveals the right to a fair hearing and due course of law. It means that no person should be subjected to adverse legal consequences, such as condemnation or punishment, without first being given a rational opportunity to be heard to defend themselves against any allegations or charges brought against them. The right to be heard is a keystone of justice and guarantees that legal proceedings. It is a vital feature of human rights and is cherished in legal systems around the world to safeguard persons from arbitrary or unjust actions. The counsel for the appellants, during the course of arguments, extended an explanation that the appellants were draggers drawn with the Sunderani community and hundreds of people were killed from both sides. The Sunderani tribes made a conspiracy to kill the appellants in the trial court, that why the appellants jumped. However, as soon as they settled the dispute with the enemy tribe, they voluntarily appeared and surrendered before this court, and since then, they have been in custody. In light of the above facts and circumstances of the case, the delay in filing of the appeals are hereby condoned as the delay in filing of these appeals has been reasonably explained by the counsel for appellants. In this regard we have been guided by the case of **NAZAR MUHAMMAD V/S THE STATE, 2011 SCMR 1487**, the relevant portion of the judgment is reproduced as under:-

"Since the judgment was delivered and the appellant was condemned un-heard therefore the said judgment would be coram non judice in the circumstances. However, the delay of 447 days in filing this direct appeal is condoned as the judgment was passed in absentia. Other grounds urged by the learned counsel for the appellant can be advanced in the appellate court regarding the maintainability of acquittal appeal on behalf of time State. The arguments on behalf of the counsel for both the parties on merits and demerits of the case can be advanced by the parties before the appellate court"

14. Now, we are reverting to the merits of the case. The prosecution examined Complainant Inspector Baharuddin Keerio lodged the F.I.R on 27.4.2014 at 1200 hours being Crime No.111 of 2014, on behalf of the State of P.S A-Section, Kandhkot, deposed that on the day of the incident he along with his subordinate staff namely H.C Abdul Sattar, H.C Sikander Ali, P.C Abdul Lateef, P.C

27/11/2023

Page 16

Muhammad Haneef, P.C Saeed Ahmed and driver P.C Riaz Ahmed left police station under roznamcha entry No.12, at 0930 hours for patrolling an official vehicle. It is further stated that patrolling after different places when they reached Saqi Mour, where the Incharge Escort Jahangeer, including staff, reached, during the course of patrolling, they received spy information that some persons of Bhangwar community after the attack upon the car of Sundrani community at Allah Wala Chowk were coming towards Saqi Mour, Anaj Mandi road. The complainant intimated to his staff regarding information and conducted "nakabandi". Meanwhile, at 1050 hours, three accused on a 125-motorcycle came there; two had guns; the police party tried to stop their motorcycles, to which both the accused having guns started firing upon the police party with the intention to commit their murder; the third accused who was driving the motorcycle slowed the motorcycle and took out the pistol and also started firing upon police party. The police party also started firing in their defence, during firing all three accused were apprehended at the spot and on inquiry, they disclosed their names to be Ali Murad from whom one DBBL gun of 12-bore and a bag containing 15 live cartridges and a currency notice of Rs.500/- were secured. The second accused disclosed his name to be Ghulam Shabir, from whom one DBBL gun of 12-bore and bag containing 12 live cartridges and two currency notes of Rs.100/- were secured and the third accused disclosed his name to be Sonharo, from whom one 30-bore pistol and a separate magazine containing 10 live bullets and three currency notes of Rs.100/- were secured. The motorcycle was also seized, and a memo of arrest and recovery was prepared by the complainant at the spot in the presence of Mashirs. The accused and recovered properties were brought to the police station, where the complainant lodged the F.I.R. against the accused of the main case as well as separate F.I.R.s under the Sindh Arms Act 2013.

15. On re-assessment of the evidence, we find that the prosecution has failed to prove the charges against the appellants beyond a reasonable shadow of a doubt, for the reasons that despite the purported encounter, which involved substantial gunfire between the appellants and a police party consisting of seven personnel, including the complainant lasting for a significant duration but, either of the party did not sustain injuries in the alleged police encounter. Furthermore, it was established that the discharged gunfire was ineffectual. However, no reported damage was attributed to any motorcycle or police mobile. Notably, there is no evidence of a single bullet striking any structure during the incident. The alleged incident emerged in the bustling area of Allah Wala Chowk, yet the police ignored

22/11/2022

P R E M I E R

to associate any independent person as a witness to the incident, arrest, and purported recovery.

16. Apart from the aforementioned material and conspicuous contradictions, inconsistencies, and deficiencies within the prosecution's case, instilling a sense of doubt, numerous discrepancies exist while passing the impugned judgment. It is pertinent to note that the learned trial Court, in its adjudication of the impugned judgment, convicting and sentencing the appellants, failed to address the above reasoning, thereby neglecting a comprehensive analysis of the case. This omission is noteworthy given that any benefit of doubt arising from the case of prosecution should be accorded to the accused not merely as an act of grace but as a matter of legal entitlement. Consequently, the impugned judgment is susceptible to being set aside, as the same suffers from misreading and non-reading of the evidence. In support of this proposition, reference is made to the case of *Muhammad Akram v. The State* (2009 SCMR 230), wherein the Honorable Supreme Court of Pakistan observed as under:-

"It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of *Tariq Pervez v. The State* 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right."

17. Thus, the prosecution fell short in adducing sufficient evidence to establish its case beyond a reasonable doubt, thereby failing to meet the requisite standard of proof in the above case.

18. So far as the off-shoot cases under The Sindh Arms Act, 2013 are concerned, it is a matter of record that, as per the prosecution, the appellants had taken part in the main case originated from F.I.R No.111 of 2014 registered for offences punishable under Sections 324, 353, 34 P.P.C read with Sections 6/7 of Anti-Terrorism Act, 1997, wherein appellants allegedly used the same weapons. As observed above, the prosecution failed to establish the charges against the appellants in the main countercase, and they are being acquitted of the charges by this judgment. As such, the recovery of guns shown to be used in the offence above becomes doubtful. In this respect, we would like to refer the dicta laid down

27/11/2023

in the case reported as Fida Hussain v. the State (2012 P.Cr.L.J 226), in which it was held as under:-

"8.....In this context, I noticed that the appellant had been acquitted in Crimes No.1 of 2011 and 2 of 2011 and this is an off-shoot of the above-cited crimes, as such, the appellant is entitled to be acquitted in the instant case, which is an off-shoot of the said cases."

19. We also persuade to refer the case of Muhammad Yasir Chaudhry vs. The State, reported in 2012 MLD 1315, wherein it was held by the Lahore High Court as under:-

"In the case reported as Manjhi v. The State (PLD 1996 Karachi 345), it has been held that when the accused has been acquitted in the main case, he would become entitled to acquittal in a case which is offshoot of the said case. Same is the position here, as the present case is an offshoot of the main murder case, so, respectfully following the dictum laid down in the judgment supra, this petition is allowed and the application of the petitioner under Section 249-A Cr.P.C. is accepted and the petitioner is acquitted from the charge in case F.I.R No.17 of 2003, dated 12.01.2003, registered under Section 7 of the Surrender of Illicit Arms Act No.XXI of 1991 with Police Station Civil Lines, Bahawalpur".

20. Thus, when the prosecution could not establish the companion/ main case, the off-shoot case could not be established, especially when there are pearls of doubt scattered throughout the entire prosecution case.

21. Accordingly, for the reasons elucidated herein, these appeals were allowed. Resultantly, the conviction and sentences awarded to appellants Ali Murad and Ghulam Shabir vide impugned judgment dated 11.11.2017, passed by learned Special Judge, Anti-Terrorism Court Kashmir @ Kandhkot, in Special Case No.36 of 2017, (arisen out of F.I.R No.111/2014 of P.S A-Section Kandhkot), 2. Special Case No.37 of 2017, (arisen out of F.I.R No.112/2014 of P.S A-Section Kandhkot) and 3. Special Case No. 38 of 2017 (arisen out of F.I.R No.113/2014 of P.S A-Section Kandhkot), were set-aside and appellants Ali Murad and Ghulam Shabir were acquitted of the charges and proceedings against appellant Soonharo were abated.

27/11/2023
Judge

Judge