

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-105 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
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Appellant: Through Syed Shafique Ahmed Shah, Advocate.

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

Date of hearing: 01 .06.2017.

Date of decision: 01.06.2017

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J U D G M E N T :-

ABDUL MAALIK GADDI, J- Through instant appeal, the appellant has challenged the judgment dated 24.06.2015 passed by learned 2nd Additional Sessions Judge, Sanghar, in Sessions Case No.39 of 2015 of P.S. Sinjhor, Re: State vs. Muhammad Khan and another, whereby the learned trial court after full-dressed trial convicted and sentenced the appellant as mentioned in point No.II (Para-27) of the impugned judgment which reads as under:-

“27. For what has been discussed above in point No.1, I am of the view that prosecution has successfully proved its case against accused Muhammad Khan, therefore, I convict him for offences punishable under section 324, 353 PPC, he is sentenced R.I for seven years for offence U/s 324 PPC, and to pay fine of Rs.10,000/-in case of failure, he shall further suffer S.I for six months. He is also sentenced R.I two years for offence U/s 353 PPC and to pay fine of Rs.2000/-in case of failure thereto, he shall suffer S.I for three months more. He is allowed benefit of section 382-B Cr.P.C. The sentences awarded to accused shall run concurrently. He is produced in custody from District Jail, Sanghar. He is ordered to be sent to Central Prison Hyderabad alongwith conviction warrant/slip to serve out the sentences awarded to him in accordance with law.”

2. Related facts are that on 26.11.2014 complainant LNK Ameer Bux, Incharge Check Post King Patti Mori alongwith C-Muhammad Shabbir were present on duty. At 0430 hours, LNK Sardar Ali, Incharge Landhi Mori, informed him through cell phone that on one motorcycle two persons were having two he goats, to whom he and C-Allahdad have tried to stop them on the source of torch light, but they made firing upon them and they were coming at King Patti via Jamrao bridge and he asked for holding Nakabandi, disclosed him that they are chasing them on motorcycle. On such information, complainant and PC Muhammad Shabbir started nakabandi by keeping wooden bamboo, at 0500 hours, they saw one motorcycle and two persons on it having two he goats, who were cautioned to stop, but they started firing upon them with intention to kill them while after breaking wooden bamboo they crossed bridge, police party started firing in defence. One person had received fire arm injury, as such, motorcycle was slipped down. On person decamped while making fire arms shots towards southern side. Meanwhile, LNK Sardar Ali and C-Allahdad reached there, they jointly reached at the place where motorcycle had fallen and saw that person had received firearm injuries on left side on their abdomen. Thereafter, pistol was recovered from injured accused and on enquiry; he disclosed his name as Muhammad Khan. About escapee accused he disclosed that he was Rashid Chandio r/o Taluka Jam Nawaz. The recovered pistol was found without number of 30 bore, it was empty. Both he goats died on account of firearm injuries. On demand of license of pistol and documents of motorcycle, accused disclosed that pistol is without license and he does not possess documents of motorcycle.

The recovered motorcycle was seized under section 550 Cr.P.C. Thereafter, such memo of arrest and recovery was prepared with signatures of C-Muhammad Shabbir and C-Allahdad, arrested accused and recovered property were brought at police station, after getting letter from police station, injured accused was brought at Taluka Hospital Sinjoro, wherefrom he was referred to LUMCH Hyderabad. Leaving accused under treatment, complainant appeared at police station and lodged FIR and case was challaned after completion of investigation.

3. At trial, prosecution examined P.C Ameer Bux at Exh.07; he produced memo of arrest and recovery at Exh.7/A, FIR at Exh.7/B, daily diary entry No.4 at Exh.7/C. PW-2 PC Muhammad Shabbir at Exh.8, he produced memo of injuries, memo of place of wardat at Exh.8/B. PW-3 PC Sardar at Exh.9. PW-4 ASI Mehmood Ahmed at Exh.10, he produced FSL report at Exh.10/A. PW-5 Medical Officer Dhanesh Kumar at Exh.11, who produced police letter at Exh.11/A, copy of referring letter at Exh.11/B, provisional medical certificate at Exh.11/C, final medical certificate at Exh.11/D, X-rays at Exh.11-E to Exh.11-H, letter No.6911, dated 26.12.2014 at Exh.11-I. Thereafter, learned DDPP for State closed his side vide statement at Exh.13.

4. Statement of accused was recorded under section 342, Cr.P.C at Ex.14, wherein he has denied the allegations leveled against him.

5. After hearing the parties' counsel, learned trial court came to the conclusion that the case has been proved against the appellant/accused; he convicted and sentenced him as stated above.

6. The main contention of the learned counsel for the appellant is that impugned judgment of conviction and sentence is perfunctory,

opposed to law and facts on record; that the case against appellant 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 appellant is that at the time of incident he made allegedly fired at police party, but in fact nobody has sustained a single injury, even no bullet was hit to the police and their motorcycle; that the incident has taken place in the populated area but despite of that fact no independent witness has been cited by the complainant though having advance information to the incident. He lastly urged that there are material contradiction in between the prosecution witness, but the learned trial court did not consider the same and passed 'botch-up judgment', whereby innocent appellant/accused is suffering woe in jail, therefore he prayed for their acquittal.

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

8. I have carefully considered the arguments as advanced by the learned counsel for the parties and carefully scanned the material so available before me. Admittedly, there are general allegations of firing against the accused and no specific and overt act has been attributed to the present appellant. Further, it is surprised that an encounter has been taken place between the complainant and accused party for a considerable time, however, the police party

having heavy guns and on both side straight firing were made, but it appears that nobody was sustained a single injury/scratch or the same hit to police or their motorcycles, except appellant and his two he goats, received firearm injuries. Besides, neither recovery of bullets fired by either side from the place of incident were collected by the police nor allegedly recovered pistol from the accused was sealed at wardat. Furthermore, the prosecution has examined complainant PC Ameer Bux, PC Muhammad Shabbir, PC Sardar and ASI Mehmood Ahmed who are the colleagues of complainant, hence malafidness at the part of complainant cannot be ruled out and the same cut at the root of whole episode of prosecution story which also creates highly doubt in it, despite of the fact that complainant had an advanced information regarding the incident, but he has miserably failed to conform the requirements of section 103 Cr.PC. In this case police officials have also not produced any evidence with reference to ammunition which was issued to them and which was accounted for, and on this count also the case of the prosecution is doubtful. Also, in this matter complainant is Investigating Officer of the case, therefore his investigation cannot be safely relied upon. Further, nothing is available on record to show that the present appellant is previously convicted or he is disparate, dangers and hardened criminal. I have also perused the evidence so brought on record and found that the evidence of the prosecution witnesses is contradictory on material particulars.

9. For my above stated reasons, I have no hesitation to hold that the prosecution has failed to prove its case against the appellant and the learned trial court did not appreciate the evidence properly. It is settled position of law that if there is slight apprehension regarding

prosecution case being untrue, its benefit extends to the accused, resultantlly appeal is allowed. The impugned judgment is set-aside and the appellant is acquitted from the charge. He is in jail, he be released forthwith, if not required in any other case.

JUDGE.

Ahmed/Pa