

Judgment sheet.
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.
Cr. Appeal No.S-242 of 2016.

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing: 08 .05.2017.

Date of decision: 08.05.2017

Appellants: Through Sher Muhammad Laghari,
Advocate.

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

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J U D G M E N T :-

ABDUL MAALIK GADDI, J- Through instant appeal, the appellants have challenged the judgment dated 07.12.2016 passed by learned Vith-Additional Sessions Judge, Hyderabad, in Sessions Case No.970 of 2015 of P.S. Hussainabad, Re: State vs. Muhammad Rehan and another, whereby the learned trial court after full-dressed trial convicted and sentenced the appellants in point No.II (Para-16) of the impugned judgment which reads as under:-

“16. In view of aforementioned evaluation of evidence, I am of the humble view that prosecution has been successful to bring home the charge against the accused beyond any shadow of reasonable doubt, as such, accused Liaquat Ali and Rehan are found guilty, hence are convicted under section 265-H(2) Cr.PC and are sentenced to suffer simple imprisonment for five years under section 324 PPC along with fine of 10,000/ rupees and six months under section 353 PPC. In default in payment of fine the accused shall suffer imprisonment for three months more. The accused are on bail, their bail bonds stand cancelled and surety (s) is / are discharged. The accused are taken in to custody and

sent to Central Jail, Hyderabad with direction the the superintendent to serve out the sentence on the accused.”

2. Related facts are that complainant SIP Ghulam Muhammad Laghari registered the FIR at PS Hussainabad on 17.8.2015 at 2310 hours, stating therein that on same date he alongwith HC Shuban Ali, PC Irfan Ali and PC Hazoor Bux left the PS in Government vehicle bearing registration No.SP-560-A, vide entry No.21 at 2040 hours for patrolling within the remits. After patrolling at different places, the complainant party reached at in front of main gate of Giddu Hospital, they received secret information that two persons, being armed with weapons, were standing on the road, leading from Unit No.3 towards Unit No.4. The complainant party after instructing the staff left for the pointed place viz: hors stable, PS Mountain, and reached there at 2200 hours. The complainant party saw two persons standing behind the wall and seeing the complainant party both the accused tried to slip away. Complainant party warned the accused to raise their hands up, on which both the accused took their pistols aimed at the complainant party and fired straightly with the intention to commit murder. The complainant party took positions and fired in their defence while warning the accused to raise their hands up. The accused cried while saying that they raised their hands up, as such, the complainant party tactfully encompassed and caught the accused. The complainant

party recovered pistols from both the accused. One of the pistol was wrapped with red tape and on the butt of another pistol there were black strips. Both the accused were inquired about their description and the person, from whom a pistol, whereupon a red tape was wrapped, disclosed his name to be Liaquat Ali, his pistol was unloaded, which was containing a bullet in its chamber and a bullet in its magazine, the words "CAL-MADE OR NCO" were written and some rust was present and was without number. From his further search one currency note of one hundred rupees and one currency note of fifty rupees, in total one hundred and fifty rupees were recovered. On inquiry the accused disclosed about the pistol to be unlicensed. The person, from whose possession, a pistol having black strips, was recovered disclosed his name to be Muhammad Rehan. His pistol was checked and two bullets, as one from the chamber and an other from the magazine, were recovered. From his personal search two currency notes of one hundred rupees, in total, rupees two hundred were recovered. The accused on inquiry disclosed about the pistol to be unlicensed. The case property was sealed in separate parcels and such memorandum of arrest and recovery was prepared in presence of HC Shoban Ali and PC Irfan Ali with their respective signatures because of non-availability of private persons. The recovered property and the accused were brought at PS and the case besides cases under

section 23(1)(a), Sindh Arms Act, 2013, were registered against the accused.

3. At trial, complainant SIP Ghulam Muhammad Laghari was examined as Exh.05, he produced memorandum of arrest and recovery at Exh.05/A, FIR at Exh.5/A1, arrival and departure entries at Exh05/B, Photostat copies of FIRs of crime No.114 and 113 at Exh.05/C and 05/D, respectively, letter for FSL and FSL report at Exh.05/E and 05/F, respectively. PW-2 PC Irfan Ali was examined at Exh.06. Thereafter, learned DDPP for State closed his side vide statement at Exh.07.

4. Statement of accused was recorded under section 342, Cr.P.C at Ex.08 and Exh.09, wherein they have denied the allegations leveled against them and state that police has falsely implicated them in this false case.

5. 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.

6. 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 witness is police official and subordinate to complainant, therefore his 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 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 witness, but the learned trial court did not consider the same and passed 'botch-up judgment', whereby innocent appellants/accused are suffering woe in jail, therefore he prayed for their acquittal.

7. Conversely, learned A.P.G argued that the prosecution evidence PC Irfan Ali 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.

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, the prosecution examined only complainant SIP Ghulam Muhammad Laghari and PC Irfan Ali in this case and PC Irfan Ali is subordinate to complainant, hence the same cut at the root of whole episode of prosecution story and 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. Further, it is also astonished to note that an encounter has been taken place between the complainant and accused party however, the police party having SMG / G-3 type guns / machines and on both side many straight fires were made by them, but it appears that nobody was sustained a single injury or scratch or the same hit to police mobile, which also creates doubt to the case of prosecution. Also, in this matter complainant is Investigating Officer of the case, therefore his investigation cannot be safely relied upon. Besides this, I have 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 appellants 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, resultantly appeal is allowed. The impugned order is set-aside and the appellants are acquitted from the charge. They are in jail, they be released forthwith, if not required in any other case.

JUDGE.

Ahmed/Pa