

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti Terrorism Jail Appeal No.06/2014

Appellant : Rao Muhammad Kaleem, through Mr. Muhammad Khan Buriro, Advocate.
Respondent : The State, through Mr. Abdullah Rajput, learned APG.

Special Criminal Anti Terrorism Jail Appeal No.07/2014

Appellant : Rao Muhammad Kaleem, through Mr. Muhammad Khan Buriro, Advocate.
Respondent : The State, through Mr. Abdullah Rajput, learned APG.

Special Criminal Anti Terrorism Jail Appeal No.08/2014

Appellant : Babar Ali, through Mr. Muhammad Khan Buriro, Advocate.
Respondent : The State, through Mr. Abdullah Rajput, learned APG.

Date of hearing 10.05.2017

Date of Judgment

**Present: Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J**

JUDGMENT

YOUSUF ALI SAYEED, J. The captioned Jail Appeals call into question the Judgment dated 28.01.2014 (the “**Impugned Judgment**”) passed by the Anti-Terrorism Court No. 1 at Karachi in Special Case Numbers A-106, A-107 and A-108 of 2012 (the “**Subject Cases**”) whereby convictions were recorded against the Appellants under S. 7 S.7(b) of the Anti-Terrorism Act, 1997 (the “**ATA**”) read with S.324/34 PPC, in respect of which they were each sentenced to imprisonment for 10 years and fine of Rs.30,000/-, and in case of non-payment, to undergo R.I for 6 months more; under S.7(h) of the

ATA read with S.353 PPC, in respect of which they were each sentenced to imprisonment for 05 years and fine of Rs.20,000/-, and in case of non-payment, to undergo R.I for 3 months more; and under S.13(d) of the Pakistan Arms Ordinance 1965, in respect of which they were awarded sentences of imprisonment for 07 years and fine of Rs.10,000/-, and in case of non-payment, to undergo R.I for 6 months more. All the sentences were to run concurrently, and the benefit of S.382-B Cr. P.C. was also extended to them.

2. The case of the Prosecution is that on 29.04.2012 4 personnel of Pakistan Rangers on patrol aboard two motorbikes came across the Appellants at 1917 hours, whilst they were engaged in the act of robbing the occupants of a car and rickshaw at Gulistan-e-Johar, Block-1615, at gunpoint. The Appellants are said to have been seated on a motorbike and to have fired directly at the law enforcement personnel from such position with deadly intent, as a consequence of which a Rangers Sepoy, namely Jawed Iqbal, sustained a gunshot wound on his right thigh. The Appellants were apprehended and an unlicensed 30 bore pistol containing live rounds was said to have been recovered from each of them. FIR Number 236/2012 was registered the same day at PS Gulistan-e-Johar at 2050 hours in relation to the encounter by Sub-Inspector Munirullah of Pakistan Rangers, and FIR Numbers 237/12 and 238/12 were also registered on behalf of the State through PC Muhammad Shahid in relation to the recovery of unlicensed firearms.
3. On 08.10.2012, the Appellants were Charged in relation to the encounter and the recovery of unlicensed firearms, to which they pleaded not guilty. The Subject Cases accordingly proceeded to trial, culminating in the Impugned Judgment.
4. Whilst assailing the Impugned Judgment, learned counsel for the Appellants contended that the encounter was a fabrication, the guns had been foisted on the Appellants, and the case was one of false implication. He pointed out various irregularities in the Prosecution case with reference to the depositions and cross-examinations of the Prosecution witnesses as well as certain discrepancies between the FIRs (Ex. 05/B, Ex. 05/C and Ex. 05/D respectively) as well as the Memo of Arrest and Seizure (Ex. 05/A) on the one hand and the Examination Reports of the allegedly recovered firearms (Ex. 10/B) on the other. He submitted that the Impugned Judgment was the product of a misreading of the evidence due to which the learned trial Court failed to resolve the benefit of doubt in favour of the Appellants, and prayed that the Impugned Judgment be set aside.

5. We have considered the record and the submissions made by learned counsel for the Appellants as well as by the learned APG. During the course of the trial, the Prosecution examined six witnesses, namely (i) ASI Mehmood Afazal (PW-1), who was the duty officer at PS Gulistan-e-Johar and registered the aforementioned FIRs and prepared the Memo of Arrest and Seizure (Ex. 05/A) at the PS; (ii) Javed (PW-2), sepoy of Pakistan Rangers, who is said to have sustained a gunshot wound during the encounter referred to in FIR Number 236/2012, (iii) SI Munirullah (PW-3), the officer of Pakistan Rangers who was a member of the patrolling party and provided the first information underpinning FIR Number 236/2012, and who is also a Mashirs to the Memo Regarding Inspection of Place of Occurrence (Ex. No. 07/a); (iv) PC Muhammad Arif (PW-4), a police constable posted at PS Gulistan-e-Johar, who was a member of the patrolling party and is also one of the Mashirs to the Memo of Arrest and Seizure; (v) SIP Mir Muhammad Lashari (PW-5), the initial investigating officer, who prepared the Memo Regarding Inspection of Place of Occurrence (Ex. No. 07/a); and (vi) Inspector Muhammad Farid-u-Din (PW-6), to whom the investigation was transferred.

6. It is noteworthy that the prosecution witnesses all stated that the accused persons fired directly upon them, but this could not have been possible as the unnumbered 30 bore pistol said to have been recovered from Babar Ali was not in working condition as per the Examination Report dated 17.05.2012 (Ex. No. 10/B). Sepoy Javed, who sustained the gunshot wound also did not specify which of the Appellants had fired upon him and merely referred to them collectively.

7. Furthermore, it merits consideration that the Appellants were seated on a motorbike whilst in the process of robbing a rickshaw and car, and are said to have fired directly at the approaching police personnel from a distance of 15 to 20 feet. Since, Sepoy Javed was said to be at the helm of one of the patrolling motorcycles, with Sub-Inspector Munirullah seated behind him as his passenger, it is difficult to reconcile the narration of events with the seat of injury, as the trajectory of a bullet under such circumstances is unlikely to result in the rider of the approaching motorbike being struck in the thigh, which would be angled so as to be more or less parallel to the ground whilst the bike was in motion and thus unlikely to be struck by a projectile fired from directly ahead by an assailant at roughly the same elevation.

8. We have also noted that there is no mention of the law enforcement personnel having returned fire, and, instead, SI Munirullah stated in his deposition (Ex. No. 07) that upon Sepoy Javed being shot, the two of them fell from their bike and it was the other Rangers personnel, namely Sepoy Tariq Ameem and Sepoy Shezadullah, who dashed their motorbike into the one being ridden by the Appellants, toppling them as a consequence. However, under cross-examination he admitted that he had not mentioned this dashing of motorcycles in his statement under S.161 Cr. P.C. SI Munirullah went on to state that he shifted Sepoy Javed to Darul Sehat Hospital and directed the other Rangers personnel to chase the assailants. Furthermore, as per the deposition of PC Muhammad Arif (Ex. No. 08) it is apparently these Rangers personnel who apprehended the assailants along with members of the public. Nonetheless, neither of these law enforcement personnel were examined as witnesses, nor is there any mention of any examination of the clashing motorbikes having been conducted to evince and corroborate this version of events. Moreover, whilst SI Munirullah states that after leaving Sepoy Javed at the hospital he came back to the place of incident, and his deposition suggests that he was there at the time of the Appellant's being searched, the deposition of PC Muhammad Arif (Ex. No. 08) contains no mention of his return at the scene, and in our view, as per the timeframe of events that may be distilled from the depositions of various prosecution witnesses, it appears implausible that SI Munirullah was at the scene at the time of arrest. As such, none of the witnesses for the prosecution appear to have been privy to both the encounter and the arrest.
9. Furthermore, the Memo of Arrest and Seizure (Ex.No. 05/A), which was apparently not prepared at the scene, but was evidently prepared at PS Gulistan-e-Jouhar at 2050 hours, disparately narrates that SI Munirullah followed and captured the accused persons, when this is contrary to his own deposition during the course of evidence at trial, as well as opposed to the deposition of PC Muhammad Arif. Additionally, it is evident from the face of the Memo of Arrest and Seizure that PC Muhammad Shahid is the one who is said to have carried out the search of the Appellants and recovered the unlicensed firearms from their possession. Yet, he too was never examined as a witness.
10. Strangely, none of the prosecution witnesses could even make any statement as to the names or even the number of persons said to have been in the car or rickshaw, whom the Appellants were said to be robbing, nor could provide the registration number of these vehicles. This is even though Sepoy Javed, as per his deposition (Ex. No. 06), was apparently shifted to the hospital in the very car said to have been stopped by the

Appellants. Be that as it may, neither the occupants of the car or the rickshaw nor any other members of the public were produced as witnesses, notwithstanding that members of the public are said to have assisted in the arrest of the Appellants and to have beaten them. In fact, SIP Mir Muhammad admitted under cross-examination that he had not even recorded the statement of the occupants of the car or rickshaw and that he had not called any private person as a witness.

11. To our minds, these lapses, contradictions and inconsistencies are not readily reconcilable, and when confronted with these issues and irregularities the learned APG was unable to explain or otherwise point out any material that would serve to controvert the same. Accordingly, we are of the view that the aforementioned factors serve to create reasonable doubt as to the veracity of the prosecution's case, and hence the Impugned Judgment cannot be sustained.

12. These are the reasons for the short Order dictated in these Appeals in open Court on 10.05.2017 whereby the captioned Appeals were allowed and the Appellants were acquitted of the charges.

JUDGE

CHIEF JUSTICE

Karachi
Dated _____