

IN THE HIGH COURT OF SINDH, KARACHI

**Special Criminal Anti-Terrorism Jail Appeal No.176 of
2016**

Special Criminal Anti-Terrorism Appeal No.180 of 2016

Special Criminal Anti-Terrorism Appeal No.181 of 2016

Special Criminal Anti-Terrorism Appeal No.182 of 2016

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi.

Appellants : 1. Junaid-ur-Rehman S/O Anees-ur-Rehman through Mr. Moula Bux Bhutto, Advocate
: 2. Muhammad Rashid S/O Ashiq Ali through Mr. Muhammad Farooq, Advocate

Respondent : The State
Through Mr. Saleem Akhtar Buriro, Additional Prosecutor General, Sindh

Date of Hearing : 31.03.2020
Date of Judgment : 22 .04.2020

J U D G M E N T

ZULFIQAR ALI SANGI, J:- Accused Junaid-ur-Rehman S/O Anees-ur-Rehman and Muhammad Rashid S/O Ashiq Ali were tried by the learned Judge, Anti-Terrorism Court No.X, Karachi in Special Case No.A-34 of 2012 arising out of Crime No.01/2012, U/s. 353/324/302/34 PPC r/w Section 7 of ATA, 1997, registered at P.S. Korangi Karachi, Special Case No.A-35 of 2012 arising out of Crime No.02/2012, U/s. 13(d) Arms Ordinance, registered at P.S. Korangi Karachi, Special Case No.A-36 of 2012 arising out of Crime No.05/2012, U/s. 353/324 PPC r/w Section 7 ATA, 1997, registered at P.S. Korangi Karachi, and Special Case No.A-37 of 2012 arising out of Crime No.06/2012, U/s. 13(d) Arms Ordinance, registered at P.S. Korangi Karachi. After the trial vide judgment dated 30.05.2016 the appellants named above were convicted and sentenced as under:-

1. Convicted accused Junaid-ur-Rehman S/O Anees-ur-Rehman and Muhammad Rashid S/O Muhammad Ashiq for offence U/S 302/34 PPC r/w section 6 (2) (a)/7 (1) (a) of ATA, 1997 and sentenced to undergo R.I. for Life Imprisonment with fine of Rs.50,000/- each. In default in payment of such fine, they will suffer further R.I. for "06" months more.
2. Convicted accused Junaid-ur-Rehman S/O Anees-ur-Rehman and Muhammad Rashid S/O Muhammad Ashiq for offence u/s 324 PPC r/w S. 6 (2) (d)/7 (1) (b) of ATA, 1997 and sentenced to undergo R.I. for "5" years each.
3. Convicted accused Junaid-ur-Rehman S/O Anees-ur-Rehman and Muhammad Rashid S/O Muhammad Ashiq for offence u/s 353 PPC r/w S. 6 (2) (m) and 7 (1) (h) of ATA, 1997 and sentenced to undergo R.I. for "2" years each.
4. Convicted accused Junaid-ur-Rehman s/o Anees-ur-Rehman for offence u/s 13-D Arms Ordinance and sentenced to undergo R.I. for "7" years.
5. Convicted accused Muhammad Rashid S/O Muhammad Ashiq for offence u/s 324 PPC r/w S. 6 (2) (b)/7 (1) (c) of ATA, 1997 and sentenced to undergo R.I. for "10" years.
6. Convicted accused Muhammad Rashid S/O Muhammad Ashiq for offence u/s 353 PPC r/w S. 6 (2) (m) and 7 (1) (h) of ATA, 1997 and sentenced to undergo R.I. for "2" years.
7. Convicted accused Muhammad Rashid S/O Muhammad Ashiq for offence u/s 13-D Arms Ordinance and sentenced to undergo R.I. for "7" years.

All the sentences by way of imprisonment were ordered to be run concurrently. The Benefit of Section 382(b) of Cr.P.C. was also extended to them.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.X, Karachi, the aforesaid appeals have been preferred by the appellants against their conviction.

3. The brief facts of the prosecution case, in a nutshell, are that on 01.01.2012, at about 0300 hours, statement U/S 154 Cr.P.C. of the complainant SIP Piyar Ali Jatoi was incorporated into the FIR book wherein he stated that on 31.12.2011, at about 09:00 p.m. he was on patrol duty along with P.C. Muhammad Shafique and PC Muhammad Soomar in an official Mehran Car bearing registration No.SP-0469. During patrolling, when they reached Nasir Colony Jump, one person signaled their car to stop, they stopped their car and the said person

made pointation towards motorcyclists and informed them that they had snatched his mobile phone. Thereafter, the police followed said motorcyclists and reached S-Area Qasim Hotel Street No.1. The said motorcyclists had alighted-off their motorcycle and started firing upon the police party due to which one bullet hit on the windscreen of the police car bearing registration No.SP-0469 which caused injury to PC Muhammad Shafique on the left side of his head and went through and through from the right side of his head. The police in retaliation also made fire shots upon the culprits. In the meantime, SIP Mumtaz Brohi had reached on the spot along with his subordinates in an official Mobile and with the help of SIP Mumtaz, they had caught hold one of the culprits on the spot whereas the other accused succeeded to make escape his good from the scene. Thereafter, SIP Mumtaz Ali had inquired from the arrested accused regarding his identity who disclosed his name to be Junaid son of Anees-ur-Rehman. He was having a pistol in his right hand which was loaded. The said pistol was taken into custody by the police. The arrested accused Junaid-ur-Rehman while trying to escape from the place of the incident had also received injuries over his right leg, hand, face, and head. The arrested accused also disclosed the name of his accomplice to be Rashid. Later on, SIP Piyar Ali shifted the dead body of the deceased constable to J.P.M.C. where SIP Muhammad Akram had also recorded his statement U/S 154 Cr.P.C. Hence, the FIR bearing Crime No.01 of 2012 U/S 353/324/302/34 PPC r/w Section 7 ATA was registered against the arrested accused Junaid-ur-Rehman as well as against the absconder accused Muhammad Rashid in the light of statement U/S 154 Cr.P.C. of the complainant SIP Piyar Ali Jatoi. Later on, at about 0315 hours, another FIR No.02/2012 U/S 13-D Arms Ordinance was also registered against the arrested accused Junaid-ur-Rehman by SIP Muhammad Ali Brohi at PS Korangi Karachi.

4. On 04.01.2012, at about 0010 hours, SIP/SHO Farooq Satti had lodged FIR bearing Crime No.05/2012 U/S 353/324 PPC r/w section 7 ATA and FIR bearing Crime No.06/2012 U/S 13-D Arms Ordinance at PS Korangi, Karachi stating therein that on 03.01.2012, he was on patrol duty along with PC Amanullah and PC Orangzaib, in the meanwhile, at about 2215 hours he had received a call on his mobile from SDPO Ch. Pervaiz Akhtar who directed him to reach at Saima Medical Centre 33-D Korangi No. 2 ½. Thereafter, he reached the pointed place and found that a police encounter was going on between the police and a culprit. He directed his subordinates to take the position and make some fire shots upon the culprit. During the exchange of firing, he saw Ch. Pervaiz Akhtar in an injured condition and the blood was oozing from his head. Thereafter, he saw that Subordinates of injured Ch. Pervaiz Akhtar had caught hold someone who was holding a pistol in his right hand. Later on, he came to know about the name of the arrested accused to be Rashid Ali S/O Ashiq Ali. Thereafter, the injured DSP Ch. Pervaiz had recovered a pistol from his right hand containing 02 live bullets in the magazine and one bullet loaded in the chamber. Police had also secured 03 empties of 30 bore and 15 empties of SMG from the place of incident. Said DSP Ch. Pervaiz sealed the recovered pistol, bullets and empties on the spot. Thereafter, he prepared the memo of arrest and recovery on the spot and obtained his signature as well as the signature of PC Amanullah on it. Later on, they returned at their Police Station along with case property, relevant documents and custody of the accused. Hence, 02 separate FIRs were registered against the accused Muhammad Rashid. After completion of the investigation, the challan was submitted before the competent court of law.

5. The charge against the accused persons was framed to which they pleaded not guilty and claimed trial of the case.

6. To prove its case the prosecution examined 11 prosecution witnesses and exhibited numerous documents and other items in support of the case of the prosecution and thereafter the side of the prosecution was closed. The statements of the accused were recorded U/S 342 Cr.P.C in which they claimed their innocence, However, they did not examine themselves on oath nor call any witness in support of their defence case.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 30.05.2016 passed by the trial court and, therefore, the same may not be reproduced here to avoid duplication and unnecessary repetition.

8. Mr. Moula Bux Bhutto learned counsel for the appellant Junaid-ur-Rehman has contended that appellant is innocent and falsely involved by the police with mala fide intentions; that the prosecution has not proved its case by producing trustworthy and confidence-inspiring evidence; that major contradictions are available in the evidence of prosecution witnesses but the same were not considered by the trial court; that the encounter was a fake encounter and the story was managed by the police officials; that weapon was not recovered from him but the same was foisted upon him; that the appellant has no criminal history; that entire case of the prosecution is doubtful; that the judicial confession of the appellant was not recorded according to law and he retracted the same while recording his statement under section 342 Cr.P.C, and as such for any of the above reasons he should be acquitted by extending to him the benefit of the doubt.

9. Mr. Muhammad Farooq learned counsel for the appellant Muhammad Rashid has contended that the appellant is innocent and was falsely involved by the police with mala fide intentions; that the Identification Parade of the appellant was not conducted according to

law; that appellant was in the custody of police and the witnesses also belong to police department, therefore, they had a good look on appellant at the time of arrest and in such circumstances, the identification parade had lost its legal value; that no proof about injury received by the DSP Pervez Akhtar was produced by the prosecution, therefore, the encounter and arrest of the appellant at the spot is doubtful and as such for any of the above reasons he should be acquitted by extending to him the benefit of the doubt. He has relied upon the cases of **Mehmood Ahmed and 3 others vs. The state and another** (1995 SCMR 127), **State through Advocate-General Sindh Karachi vs. Farman Hussain and others** (PLD 1995 Supreme Court 1), **Ali Muhammad and 2 others vs. The State** (2007 YLR 894), **Abdul Ghaffar vs. The State** (2001 YLR 500), **Ikramullah vs. The State** (2010 P.Cr.R.213), **Muhammad Shafiq, etc. vs. The state** (PLJ 1991 Cr.C. (Lahore)396), **Abdul Sattar & 3 others vs. The State** (SBLR 2015 Sindh 113), **Muhammad Rafiq-ul-Islam vs. The State** (1998 P Cr.L.J 1262), **Ali Dad vs. The State** (2009 MLD 1157 Quetta).

10. On the other hand, Mr. Saleem Akhtar Buriro learned Additional Prosecutor General has fully supported the impugned judgment and contended that the prosecution has proved its case against the appellants beyond a reasonable doubt; that all the prosecution witnesses are on one line with each other on each aspect of the case; that both the appellants were arrested during the encounters and weapons were recovered from their possession; that appellant Junaid-ur-Rehman made confession before the Judicial Magistrate which is voluntary and true and the appellant Muhammad Rashid was rightly picked out during identification parade by the witnesses; that during the first encounter police constable Muhammad Shafique lost his life and in another encounter, DSP Pervez Akhtar received an injury at the hands of accused; that there is no any major contradiction in the

evidence which suggest that case is false; that no enmity or will-will suggested against the police officials during the cross-examination. Lastly, he prayed that the appeals of the appellants may be dismissed. In support of his contentions, he placed reliance on the cases of **Ghazanfar Ali @ Pappu and another vs. The State** (2012 SCMR 215), **Muhammad Amin vs. The State** (PLD 2006 Supreme Court 219), **The State vs. Minhun alias Gul Hassan** (PLD 1964 Supreme Court 813), **Khan Muhammad and others vs. The State** (1999 SCMR 1818), **Joygun Bibi vs. The State** (PLD 1960 Supreme Court (Pak.) 313), **Muhammad Ashfaq Qureshi and others vs. The State** (un-reported judgment in Special CrI. Anti-Terrorism Appeal No.39 to 41 of 2010), **Raz Muhammad vs. The State** (PLD 2002 Supreme Court 56).

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the counsel of the appellants, the impugned judgment with their able assistance and have considered the relevant law cited at the bar.

12. After our reassessment of the evidence, we have found that the prosecution has proved its case against the appellants beyond a reasonable doubt and they were rightly convicted by the trial court after the assessment of the evidence. We found from the evidence that this case is based on two episodes. In one episode the encounter took place between the appellants and the police party in which one P.C Muhammad Shafique has died and appellant Junaid-ur-Rehman was arrested at the spot and pistol was recovered from his possession and appellant Muhammad Rashid made his escaped good while leaving the motorcycle at the spot. In the other episode, an encounter took place between the police party and the accused in which DSP Pervez Akhtar sustained the injury and appellant Muhammad Rashid was arrested at the spot and recovery of the pistol was affected from his possession. The

learned trial court consolidated both the cases and tried the same together.

13. The prosecution examined SIP Piyar Ali as **PW-4** who deposed that he along with P.C Muhammad Shafique and P.C Soomar was on patrolling within the jurisdiction of P.S Korangi in Mobile car No: SP-0469 and during patrolling when they reached Nasir colony Jump where one person signaled them and told them that culprits on the motorcycle have snatched his mobile phone and they are ahead they followed the said motorcycle and when they reached near Qasim Hotel street No.1, the culprits alighted from the motorcycle and started firing upon police party and fire hit to windscreen of the police car and then hit to driver P.C Muhammad Shafique on his left side of the head and exit from the right side who died. In the meanwhile SIP, Mumtaz along with the subordinate staff reached their on police mobile and they caught hold, one culprit, at the spot and the other made his escape good leaving the motorcycle.

14. The version given by the SIP Piyar Ali was supported by the evidence of **PW-06** P.C Muhammad Soomar who was patrolling with the SIP Piyar Ali in the police car and participated in the encounter and in his presence P.C Muhammad Shafique shot and murdered after receiving firearm injury from the hands of the appellants and the appellant Junaid-ur-Rehman was arrested at the spot and pistol was recovered from him. He was cross-examined but we do not find any material contradiction in his evidence. **PW-1** Mumtaz Ali was also examined and deposed that on 31-12-2011 he along with P.C Ammanullah and P.C Nadir Ali were on patrolling duty on police mobile within the jurisdiction of P.S Korangi when they reached near Qasim Hotel Korangi and found the encounter in between accused and the police in which P.C Shafique died who was driving the police car and the car had been hit fire shots. He deposed that SIP Piyar Ali and P.C

Soomar were also in the said car. The accused were on a motorcycle wherefrom they were firing upon the police. He deposed that they also participated in the encounter and arrested one of the accused at the spot and the other escaped after leaving the motorcycle at the place of incident. The pistol was recovered from the arrested accused at the spot and he disclosed his name as Junaid-ur-Rehman and the police also took the motorcycle in possession. He further deposed that police had also recovered five empties of 30 bore and four empties of SMG and one live bullet of 30 bore from the chamber of the pistol. The arrested accused disclosed the escaped accused was named Rashid and mashirnama of arrest and recovery was prepared by them. This PW was cross-examined and during cross-examination, suggestions were made that it was New Years' night and firing was made by the people in celebration and that no encounter took place. We find no merit in this line of cross-examination. **PW-08** HC Ammanullah was examined and he also supported the version given by SIP Mumtaz Ali as he was with SIP Mumtaz Ali and saw the encounter and witness of the arrest and recovery from the accused Junaid-ur-Rehman. He was also cross-examined by the defence counsel but his evidence was not shattered. We have found no major contradiction in the evidence of these witnesses which suggests that the case is false or that the appellants were falsely involved in the instant case.

15. SIP Muhammad Akram was examined as **PW-03** who on information furnished to him by the SIP Mumtaz Ali about the encounter and the death of P.C Muhammad Shafique reached JPMC Hospital and presented the letter to the MLO who inspected the dead body and prepared the inquest report in presence of private mashirs Ghulam Hussain and Asghar Ali. After the postmortem, he received a bundle of clothes of deceased as well as the dead body of the deceased constable and handed over the dead body to the legal heirs of the

deceased under the receipt. He recorded statement under section 154 Cr.P.C of the SIP Piyar Ali, and on that basis registered the FIR No: 01 of 2012 U/S 353,324,302 and 34 PPC r/w S. 7 ATA at PS Korangi. He was cross-examined by the defence counsel but we do not find any material contradictions in his evidence.

16. SDPO Pervez Akhtar was examined as **PW-2** who deposed that on 03-01-2012 he along with his subordinated staff was on patrolling duty within the jurisdiction of PS Korangi and received spy information that accused involved in Cr. No.01/2012 of PS Korangi was available in sector 33-D Saima Maternity Home on such information he proceeded there and reached at 10.50 pm, on pointation they went towards the accused who on seeing the police officials started firing upon them and police also retaliated the firing. He had called the SHO through wireless and SHO Farooq Satti had reached at the place of the incident along with his subordinate staff in a private vehicle. During the encounter one bullet also hit on the right side of the head of SDPO Pervez Akhtar and during the encounter accused was caught hold by the police party at the spot and one 30 bore pistol was recovered and the same was checked and two live bullets were found in the magazine and one was in the chamber. On inquiry accused disclosed his name as Muhammad Rashid and further disclosed the pistol was without a license. He deposed that police also secured three empties of 30 bore pistol and fifteen empties of SMG from the place of incident and were sealed at the spot thereafter prepared the mashirnama of arrest and recovery at the spot. Accused and recovered property was handed over to SIP Muhammad Farooque Satti for FIR and he went towards Hospital for treatment.

17. The important witness of the prosecution SIP Muhammad Farooque Satti was examined as **PW-09** and deposed that on 01-01-2012 he was posted at PS Korangi, on the same day he received two

FIR's bearing No.1/2012 U/S 302, 324, 353, 34 PPC r/w S. 7 ATA, 1997 and No. 2/2012 U/S 13 DAO registered at PS Korangi. On the same day at about 4.00 pm he inspected the place of wardat on the pointation of SIP Piyar Ali, PC Soomar and PC Amanullah and prepared the mashirnama and the sketch. He recorded the statements of the witnesses U/S 161 Cr.P.C and wrote letter to SDPO Korangi for sending the clothes of the deceased for chemical examination. He deposed that on the same day he also wrote the letter to FSL for the examination of one pistol along with five empties of 30 bore pistol and 04 empties of SMG and Mehran Suzuki Car SP-0469. He further deposed that on 03-01-2012 he was on patrolling duty along with PC Ammanullah and PC Orangzaib when at about 2215 he received the call of SDPO Pervez Akhtar who directed him to reach Saima Medical Center 33-D Korangi and when he reached he found encounter was going on between police and the culprits. He also participated in the encounter and during the encounter he saw DSP Ch. Pervez Akhtar in injured condition and blood was oozing from his head. He further deposed that during encounter one person was arrested at the spot and pistol was recovered from his possession which contains two live bullets in the magazine and one in the chamber. The police also secured 03 empties of 30 bore pistol and 15 empties of the SMG and the same were sealed at the spot. Memo of arrest and recovery was prepared at spot. He then returned to the police station along with arrested accused and the recovered property where he lodged FIR crime No.5/2012 U/S 353,324 and 34 PPC and FIR crime No. 6/2012 U/S 13 DAO. He rearrested the accused Muhammad Rashid in the FIR NO. 01/2012 and on 04-01-2012 he inspected the place of incident and prepared mashirnama and sketch. He deposed that on 09-01-2012 he wrote the letter to Judicial Magistrate for identification of accused Rashid and on 10-01-2012 wrote letter for CRO of both the accused. He issued notice to the accused Rashid for

his identification parade before Magistrate and notice issued to the PW's for identification parade and on 21-01-2012 identification parade was held wherein the witnesses correctly identified the accused Rashid. He deposed that on 21-01-2012 he wrote a letter to the Magistrate for recording confessional statement of accused Junaid-ur-Rehman and the same was recorded on 23-01-2012. He further deposed that on 26-01-2012 he collected the chemical examination report of Parchajat of deceased Shafique and on 01-02-2012 he received the FSL report of 30 bore pistol, empties of SMG, as well as 30 bore pistol and thereafter the investigation, was entrusted to PI Malik Saleem for further investigation. This witness was cross-examined by the defence counsel but we do not find any suggestion from defence about the identification parade and the confessional statement so also the recovery was not challenged during his cross-examination.

18. The investigation officer of FIR' No. 05/2012 and 06/2012 Eric Jameel was examined as **PW-10**, he deposed that on 09-01-2012 he received both the FIR's for the investigation. He recorded the statements under section 161 Cr.P.C of the witnesses and took out the accused for interrogation, he verified the investigation conducted by the earlier investigation officer Muhammad Farooque Satti. He deposed that he sent pistol recovered from the accused Rashid to FSL. He received FSL reports relating to FIR No. 05 and 06 of 2012 and after completing the investigation he submitted the final challan before the court. He was cross-examined by the defence counsel but we do not find any major contradictions in his evidence. The last investigation officer of FIRs No. 01 and 02 of 2012 was examined as **PW-11**, Malik Muhammad Saleem who deposed that he received the said FIRs from the earlier investigation officer Muhammad Farooque Satti and that the entire investigation was already completed therefore after obtaining the permission from higher officers he submitted the final challan before

the court. He was formally cross-examined by the defence counsel and nothing fatal to prosecution was brought on record by the defence counsel.

19. Dr. Nasreen Qamar was examined as **PW-07** she deposed that the deceased Doctor Manzoor A. Memon was her colleague and she is well conversant with his handwriting and signature. She has seen the Medico-Legal Certificate, postmortem report, and death certificate of the deceased PC Muhammad Shafique and stated that the handwriting and signatures on it are of the deceased doctor Manzoor A. Memon.

20. Judicial Magistrate was examined as **PW-05**, he deposed that on 21-01-2012 SIP Farooq Satti of PS Korangi brought an application for recording confessional statement of accused Junaid-ur-Rehman in Cr. No. 01/2012 U/S 353,324,302 and 34 PPC r/w S. 7 ATA, 1997 which was allowed and he was directed to produce the accused on 23-01-2012 who was produced at 1100 hours and the confessional statement of Junaid-ur-Rehman was recorded after completing all the legal formalities and after the recording the confessional statement of accused he was remanded to judicial custody. He further deposed that on 21-01-2012 the investigation Officer also moved the application for the identification parade of accused Muhammad Rashid and the same was conducted in accordance with the law and during identification accused was correctly identified by the witnesses namely Muhammad Soomar and SIP Piyar Ali. He was cross-examined at length but his evidence was not shattered by the defence counsel.

21. The entire evidence as has been discussed above and on the reappraisal of the same it establishes that the prosecution has proved the case against both the appellants beyond a reasonable doubt by producing trustworthy, reliable and confidence-inspiring evidence corroborated by medical evidence so also recovery of the weapons used by the appellants at the time of the commission of the offence and both

the appellants were arrested at the spot on the respective dates of the incidents during separate encounters. The empties recovered from the place of incident and the recovered weapons were sent for FSL and the report is positive.

22. The identification parade of the appellant Muhammad Rashid was conducted before the Judicial Magistrate in which he was correctly identified by both the eyewitnesses namely SIP Piyar Ali and PC Soomar who were the eyewitnesses to the murder of PC Muhammad Shafique and were available in the car driven by the deceased at the time of encounter having no ill-will against the appellant or any reason to falsely implicate him in this case. Furthermore, we find no major faults in the conduct of the identification parade which would lead us to the conclusion that it cannot be safely relied upon.

23. We have found that the confessional statement of the appellant Junaid-ur-Rehman recorded by the Judicial Magistrate has been made voluntarily and true which was not retracted and the same was admitted by the appellant in his statement under section 342 Cr.P.C but the only defence was taken in the said statement was that the same was recorded by him due to the pressure of the investigation officer. We have verified the deposition of the investigation officer in this respect but could not find any suggestion of the defence that it was recorded under the pressure of the investigation officer and thus in the absence of any suggestion in this respect there is no option except to believe the same as true and voluntary and as such his statement in his S.342 Cr.P.C statement that the confession was made under pressure is an afterthought. It is by now well settled that even a retracted judicial confession can be legally admissible and used against its maker in certain circumstances and conviction can be awarded on the basis of retracted judicial confession as has been held by Honourable Supreme Court in cases of **Muhammad Amin V. The State (PLD**

2006 S.C 219) and **Mst. Joygum Bibi V. The State (PLD 1960 S.C(Pak) 313)**. We have also found that there were no such irregularities in the recording of the confession which could lead us to believe that the relevant safeguards were not complied with.

24. Positive FSL reports in respect of the empties of 30 bore pistols recovered from the wardats and the recovered pistols used by the appellants at the time of encounter so also positive FSL of the car which established that the hole was caused due to the passage of fired projectile of firearm supported by the other circumstantial evidence including the arrest of the appellant at the spot during the encounter further establishes the case against the appellants.

25. The contentions of the defence counsel that all the witnesses are police officials and their evidence cannot be relied upon has no force as the Police officials are as good as private witnesses and their testimony could not be discarded merely for the reason that they were police officials unless the defense would succeed in giving dent to the statements of prosecution witnesses and prove their mala fide or ill-will against the accused. All the witnesses furnish ocular evidence and supported the case of the prosecution, no enmity was suggested against the prosecution police witnesses and they were cross-examined at length but we do not find any major contradiction in their evidence which leads us to believe that their evidence is reliable and trustworthy and such we believe the same.

26. Thus, based on the particulars facts and circumstances of this case where the trial court has already shown leniency in not awarding the death penalty keeping in view the brutality of the crime where one innocent police constable was murdered during the encounter with the accused while performing his duty, the complete lack of mitigating circumstances and in fact the presence of aggravating circumstances as mentioned above whereby the deceased received firearm injury on his

head and the need to discourage such kind of offences against the police which regrettably are most common now a days so we are of the view that the sentences handed down by the trial court do not justify any interference on our part. We, therefore, uphold all the sentences for each offence in the impugned judgment whilst dismissing the appeals filed by the appellants.

27. The appeals stand disposed of in the above terms.

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