THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No.221 of 2018

Present: ***Mr. Justice Nazar Akbar***
Mr. Justice Zulfiqar Ahmad Khan

Appellant: Siddique Ahmed son of Rasheed Ahmed through Mr. Muhammad Farooq, Advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan, DPG

Date of Hearing: **25.11.2020**

J U D G M E N T

NAZAR AKBAR, J.- Appellant Siddique Ahmed son of Rasheed Ahmed was tried by learned Judge, Anti-Terrorism Court-I, Karachi East, in Special Cases Nos.1489 and 1490 of 2017, arising out of FIRs Nos.328 and 329 of 2017, registered at P.S. Gulistan-e-Jauhar, Karachi, for offences under sections 394, 353, 324, 34, PPC read with section 7 of the Anti-Terrorism Act, 1997 and Section 23(1)(a) of the Sindh Arms Act, 2013. On conclusion of trial, vide judgment dated **09.05.2018**, appellant was convicted and sentenced as under:

1. For offence u/s 394, PPC sentenced to undergo 04 years R.I., with fine of Rs.10,000/-, in default whereof to suffer S.I. for 3 months.
2. For offence u/s 324, PPC sentenced to undergo 5 years R.I., with fine of Rs.10,000/-, in default whereof to suffer S.I. for 3 months.
3. For offence u/s 353 of Sindh Arms Act, 2013 sentenced to undergo 1 years R.I.
4. For offence u/s 7(1)(h) of the Anti-Terrorism Act, 1997, sentenced to undergo 7 years R.I., with fine of Rs.10,000/-, in default whereof to undergo S.I. for 3 months.
5. For offence u/s 23(1)(a) of the Sindh Arms Act, 2013 sentenced to undergo 5 years R.I., with fine of Rs.5,000/-, in default whereof to suffer S.I. for 3 months.

All the sentences were ordered to run concurrently. Benefit of Section 382-B, Cr.PC was extended to appellant. Appellant has challenged the impugned judgment through instant appeal.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 13.07.2017, complainant was present at his house when, at about 05:15 pm, he heard hue and cry and sound of fire shot from the street in front of his house. He immediately came outside from his house and saw that two persons on one motorcycle were running, after firing upon his son Abdul Moiz. Complainant also made hue and cry, in the meantime, mobile van of P.S. Gulistan-e-Jauhar, headed by ASI Hidayatullah along with his staff reached at the place of incident. Complainant disclosed all the facts to the police and also pointed out the accused who were going on motorcycle and disclosed that they have snatched mobile phone from the friend of his son Abdul Moiz and on resistance fired on the leg of his son, who has been shifted to hospital through mohallah people. The police followed the accused along with complainant in the official mobile. After some distance police made lalkara to accused persons but the boy who was sitting on the rear side of motorcycle opened fire upon the police officials with intention to kill. The police also fired in self defence, resultantly the boy sitting on rear side of motorcycle sustained bullet injury on his right leg and fell down from the motorcycle. The police apprehended the injured accused, who disclosed his name as Siddiq Ahmed son of Bashir Ahmed. Police conducted personal search of accused in presence of complainant and has recovered one rubbed number 30 bore pistol along with three live rounds from his right hand. On its body 'made as china' was embossed. From his personal search Q-Mobile phone of black colour was also recovered. The arresting officer sealed the recovered weapon on the spot. Arrested accused disclosed the name of absconding accused as Zubair son of Muhammad Akram. Motorcycle bearing No.KIZ-1076, Superstar was also taken into the police custody. Then complainant returned back to PS where he lodged FIR of main case along with another case under Arms Act against the accused.

After completion of formalities of inquiry challan was submitted against the accused under the above referred sections and accused Zubair son of Muhammad Akram was declared proclaimed offender.

3. Trial Court ordered joint trial in both the cases as provided under Section 21-M of the Anti-Terrorism Act, 1997, vide order dated 24.11.2017, Ex.6, and framed joint charge against the accused at Ex.7. Accused pleaded not guilty and claimed to be tried.

4. In order to substantiate its case prosecution examined 8 witnesses, thereafter, learned DDPP closed the side of prosecution vide statement at Ex.16. Statement of accused was recorded under section 342 Cr.PC at Ex.17, in which he denied the allegations of prosecution, claimed innocence and false implication in these cases. He stated that he was picked up by police from his house and demanded Rs.200,000/- for his release, which he failed to pay and therefore he has been falsely implicated in these cases. He neither examined himself on oath nor led any evidence in his defence.

5. The learned trial court after hearing the learned counsel for the parties and on assessment of entire evidence convicted and sentenced the appellant vide judgment dated 09.05.2018, as stated above.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 09.05.2018 passed by the trial Court therefore the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for appellants, at the very outset argued that the police has falsely implicated the appellants in the instant case for mala fide reasons; while passing the impugned judgment learned trial court did not

consider the actual facts and circumstances of the case; learned trial court did not evaluate the prosecution evidence in its true perspective; the conviction is based on presumption. Lastly, it has been argued that prosecution has failed to prove its case against the appellant beyond any showed of doubt, as such, prayed for acquittal of the appellant.

8. Learned Deputy Prosecutor General Sindh contended that after encounter present appellant was apprehended by the police, who fired at the police official with intention to commit his murder and to deter him from performing his official duties, arms and ammunition have been recovered from his possession, all PWs have fully implicated the appellant in the instant case, therefore, the prosecution has proved its case against the appellant beyond any shadow of doubt. He fully supported the impugned judgment and prayed for dismissal of the instant appeal.

9. We have carefully heard learned counsel for the parties and examined the prosecution evidence minutely.

10. The prosecution case against the appellant is based on the complaint registered by P.W-1 Abbas Ali father of alleged victim of firearm injury to his son Abdul Moiz said to have been caused by the appellant. The prosecution has also alleged police encounter by alleging that the appellant while sitting on the motorbike and running away from the place of incident with his friend Zubair had made straight fire upon the police while chasing them. However, the record does not establish any fire shot by the appellant at the police at any point of time. In this context the most relevant evidence is the forensic report. P.W-1, ASI Hidayatullah claimed to have recovered one pistol 30 bore from the appellant and alleged that two fires were shot by the appellant and in retaliation two fires of SMG were shot by the police and

therefore along with one pistol of 30 bore two empties marked C-1 and C-2 and two empties of 7.62x39 mm bore weapon marked as C-3 & C-4 were sent by him to the Forensic Laboratory, Sindh. However, the report of forensic division Karachi dated 24.7.2017 (Ex.15/F) shows that only one empty was fired from the alleged 30 bore pistol and the other was not fired from the said pistol. It means there was only one shot, if at all, it was fired by the appellant to deter the police to chase them, then who caused firearm injury to the victim Abdul Moiz since the victim was already injured when police reached at the scene of offence. Therefore, the very claim of the police regarding straight fire upon the police stand disproved. Similarly firing by the police in retaliation was also not proved since the I.O has not sent official SMG for forensic examination to verify that two empties of 7.62 x 39 mm bore were fired from an official weapon issued by the incharge arms and ammunition of the concerned police station. Mere forensic examination of any empty / shell of a bullet without identifying the weapon used to fire shot of the said empty / shell lead us nowhere. Even the injury caused to the appellant as per medical report did not prove to be the injury caused by the bullet of SMG. The medical report of appellant contradicts the prosecution story to the extent that the police said to have used SMG in causing injury to the appellant and the perusal of evidence of medicolegal officer of JPMC shows that the size of the wound is only 0.5 cm whereas size of the empties of fire shot by the police was 7.62 mm. Further, in cross examination Dr. Afzal revealed that the injury was caused by low velocity weapon and of course SMG cannot be treated as low velocity weapon likewise the evidence in support of the prosecution story that the injury to the victim was caused by the appellant is also doubtful. Dr. Muhammad Nadeem, Medicolegal Officer of Abbasi Shaheed Hospital, who provided treatment to victim Abdul Moiz, in his cross examination has informed that he had issued a

letter to the X-Ray department as well as to the injured to get his X-Rays to finalize medicolegal certificate, but the injured did not appear before the Radiologist for his X-Ray. We have already discussed evidence of alleged firing by the appellant, it is even doubtful whether the injury to the victim was caused by the appellant since the single empty recovered from the place of wardat was said to have been a fire shot by the appellant on the police.

11. The evidence of arrest of appellant from the place of incident is also very contradictory, unnatural and unbelievable. P.W-2 Complainant Abbas Ali who claimed that he came out of the house on hearing noise of fire shot found that two persons were fleeing on a motor bike from his street after having caused injury to his son Abdul Moiz and after snatching away a mobile from his friend Umair. He did not call the police and police said to have been reached by chance or after having heard noise of firing. But natural time consumed between the point of coming out of the house by the Complainant and reaching of the police at the scene has been ignored by the story makers when it is claimed by the Complainant that the accused who were coming away on motorcycle were arrested from a distance of 10 to 15 steps away from his house and P.W-1 also stated that the accused were arrested after chasing about 4/5 yards from the house of Complainant. Another witness P.W-8 Inspector Abdul Sattar has stated that the appellant was arrested after a chase by police on their mobile from half kilometer away from place of incident. P.W ASI Hidayatullah stated that the complainant disclosed about the incident and we have made him sit in police mobile in order to chase the accused persons. He further stated that it is correct when Complainant gave information I did not talk with said Abdul Moiz. It is correct I did not talk with the friend of son of Complainant Umair who was also present along with the injured and the distance of

arrest was only 4 to 5 yards. It is unbelievable that the culprits running on the motor bike when chased with the police in their mobile had only covered a distance of only 4/5 yards and in between its chase of 4/5 yards there had been a cross firing from both the sides. The other important piece of evidence that goes against the prosecution is evidence of P.W-3 Umair Ahmed who claimed to be friend of injured Abdul Moiz he was victim of robbery committed by the two persons on motor bike. It is also alleged that the said Umair Ahmed and Mohallah people had taken the injured Abdul Moiz to hospital but police has neither examined anyone from the (Muhallah) nor immediately recorded Statement of the said natural witness under Section 161 Cr.P.C. He conceded in his cross examination that the mobile phone present in court is not owned by my son and his friend. In view of failure of the police to produce the robbed articles in court even a simple case of robbery without use of fire arm could not be established against the appellant.

12. After careful reappraisal of the evidence discussed above, we have no hesitation to hold that there are several circumstances/ infirmities in the prosecution case as highlighted above, which have created reasonable doubt about the guilt of accused. By now it is settled law that for giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In the case of Muhammad Mansha vs. The State (**2018 SCMR 772**), the Hon'ble Supreme Court has observed as follows:-

> "4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many

> circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."

13. For the above reasons, this appeal was allowed by a short order dated **25.11.2020** and the impugned judgment dated 09.05.2018 was set aside and the appellant was acquitted of the charge.

14. Appeal stands disposed of.

JUDGE

JUDGE

Karachi
Dated: 23.01.2021

Ayaz Gul