

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal A.T. Jail Appeal No.233 of 2017

Date	Order with signature of Judge
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For hearing of main case.

Present:

Mr. Justice Nazar Akbar

Mr. Justice Zulfiqar Ahmad Khan

26.10.2020

Ms. Humaira Aftab, Advocate a/w Mr. S.M Shuja Abbas Rizvi
Advocate for the appellant.

Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.

The complainant Muhammad Saleem is present in person.

NAZAR AKBAR, J.- This Special Criminal A.T. Jail Appeal is directed against the judgment dated **27.04.2017** passed by the learned Judge Anti-Terrorism Court No.X, Karachi in Special Case No.696/2016 arising out of FIR No.91/2015 under Section 324, 336-B, 34 PPC r/w Section 7 ATA, 1997, registered at P.S Al-Falah, Karachi, whereby the appellant was convicted and sentenced as under:-

In view of my findings given in point No.1 and the reasons discussed above, I am of the view that he prosecution has proved its charges against the accused Shoaib @ Shebi S/o Ghulam Shabbir, I, therefore, "Convict" him for the offence u/s 324 r/w 336-B PPC made punishable u/s 7(1)(c) of ATA, 1997 and he is sentenced to undergo R.I for "10" years & shall also be liable to pay fine of Rs.50,000/-. In default in payment of such fine, he shall undergo further R.I for "06" months more.

The benefit of Section 382-B Cr.P.C is also extended to him.

2. Today Ms. Humaira Aftab, Advocate has filed statement regarding no objection from the earlier counsel who was superseded by her. She has argued the case and mainly contended that on the same set of evidence learned ATC Court No.XX, Karachi has

acquitted co-accused namely Muhammad Naveed Akhtar @ Kuba by a subsequent judgment dated **20.10.2018** and she has placed on record copy of the said judgment. She has further contended that in several cases, the Hon'ble Supreme Court has held that when the case of accused for acquittal was not distinguished from the case of co-accused on the same set of evidence, the conviction of co-accused on the basis of insufficient evidence cannot be sustained. In the case of Rehmat alias Rehma Masih vs. the State reported in **1995 SCMR 733** the Hon'ble Supreme Court has acquitted the accused in Section 302-B PPC on the same principle relying on the several Supreme Court judgments. She has also relied on the case of Imtiaz @ Taj vs. The State reported in **2018 SCMR 344**. The relevant observations of Hon'ble Supreme Court in the said judgment are reproduced below:-

“3. It is not disputed that four co-accused of the appellant attributed effective firing at and specific injuries to Rustam Ali deceased had been acquitted by the trial court. **The law is settled that if the eye-witnesses have been disbelieved against some accused persons attributed effective roles then the same eye-witnesses cannot be believed against another accused person attributed a similar role unless such eye-witnesses receive independent corroboration qua the other accused person** and a reference in this respect may be made to the cases of Ghulam Sikandar v. Mamaraz Khan (PLD 1985 SC 11), Sarfraz alias Sappi v. The State (2000 SCMR 1758), Iftikhar Hussain and others v. The State (2004 SCMR 1185) and Akhtar Ali v. The State (2008 SCMR 6).”

In another case of Shabbir Ahmed vs. the State reported in **2011 SCMR 1142** the Hon'ble Supreme Court has acquitted the co-accused whose appeal was not even filed before the Hon'ble Supreme Court. The relevant observations of the said judgment are reproduced below:-

“The conviction and sentence of the petitioner is set aside and he is acquitted of the charge and, shall be released forthwith, if not required in any other crime. **As far as role of co-accused Bismillah, who has not filed the petition before this Court, but has challenged his**

conviction and sentence before the Federal Shariat Court is similar to the case of the present petitioner, therefore, benefit of doubt is also given to him. He shall also be released forthwith, if in jail and not required in any other crime.”

3. We have perused the evidence with the help of learned DPG, however, we do not find the prosecution evidence sufficient piece against the present appellant in the circumstances when in fact prosecution which challaned four persons including a lady accused, never arrested her despite the fact that she was shown in the record as wife of the accused Muhammad Naveed Ahmed, who was acquitted by the trial Court. We have also gone through the evidence and found that it was a case of no eye witness and the place of incident has been shown a small room of 10x10 sq. feet with only one door and nobody was in the room at the time of incident. The PWs were not present at the place of incident at the time of alleged incident. The complainant, who claimed to have been sleeping and allegedly suffered Acid attack cannot be believed to have identified four persons in the same room after having received injuries with Acid on his face as stated by him in his examination in chief available at page-67. Relevant part of his examination in chief is reproduced below:-

“At about 02:30 pm, someone had thrown Acid over my body, due to which I got up and found Shoaib Shebi, Naveed Kubba, wife of Naveed namely Zubaida and an unknown person over there. The said persons had also beaten me with the Dandas due to which I got seriously injured.”

The story narrated by the complainant was contradicted by the police surgeon in his evidence since no mark of injury on any part of body was found on the complainant.

4. In the above circumstances and also for the reasons that co-accused, who has been equally implicated by the complainant after

having been acquitted by judgment dated **20.10.2018**, the complainant or the state have not preferred any appeal against the acquittal of co-accused.

5. In view of the above, the instant Special Criminal Anti-Terrorism Jail Appeal is allowed and the impugned judgment is set aside. Consequently, the appellant Muhammad Shoaib @ Shebi is acquitted of the charge. He shall be released forthwith, if he is not required in any other custody case.

JUDGE

JUDGE

Ayaz Gul