

IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD

Criminal Appeal No.S-242 of 2021
Criminal Appeal No S-245 of 2021
Criminal Appeal No.S-02 of 2022
Criminal Appeal No S-07 of 2022
Criminal Appeal No.S-03 of 2022

Appellants: Hiddoo @ Hidayatullah through Mr. Rahim Gaju, Advocate in Criminal Appeal No.242 of 2021.

Gulzar and Muhammad Ayoub through Mr. Imtiaz Ali Channa, Advocate in Criminal Appeal No.S-245 of 2021.

Ghulam Murtaza @ Ali Gul through Mr. Barkat Ali Charan, Advocate in Criminal Appeals No.02 and 03 of 2022.

Wazeer Lund through Mr. Wajid Ali Khaskheli, Advocate in Criminal Appeal No.S-07 of 2022.

The State: Through Ms. Rameshan Oad A.P.G. Sindh.

Date of hearing: 21.02.2022.

Date of Judgment: 21.02.2022.

JUDGMENT

MUHAMMAD SALEEM JESSAR, J. By this Common judgment I propose to dispose of above-mentioned appeals as common questions of law and facts are involved and the same arise out of same incident vide Crime bearing No.47/2021 under Sections 324, 353, 148, 149 PPC and off-shoot Case bearing Crime No.48/2021 under Section 25, Sindh Arms Act 2013, both registered at P.S. Khudabad, District Dadu.

2. Facts of the case, as narrated in Criminal Appeal No.S-242 of 2021, are that on 04.07.2021, complainant ASI Manzoor Ali Panhwar alongwith his subordinate police staff left Police Station Khudabad vide Roznamcha Entry No.18 at about 1830 hours (6.30 p.m.) for patrolling in the area. After patrolling from different places when they reached at Johi-Bhan road Chak More at about 2100 hours (09.00 p.m.) they saw eight armed persons present there and were identified as Gulzar S/o Anwar Mamani, armed with repeater, Wazeer S/o Allah Dino Mamani Panhwar, armed with pistol, Wazeer S/o Piaro Lund, armed with hatchet, Muhammad Ayob S/o Qadir Bux Panhwar, armed with gun, Ghulam Murtaza @ Ali Gul Lund, armed with pistol, Hidayatullah @ Hiddoo Khaskheli, armed with pistol, while two accused armed with pistol and Danda, were unidentified. The accused, while presuming police vehicle as private one, indicated them to stop. The police party stopped and alighted from the

vehicle and identified themselves and asked the accused to surrender, whereupon the accused started straight firing upon the police party with intention to kill them and to deter them from discharging their lawful duties. The police also retaliated and returned the fire in defence and such encounter continued for two minutes and then the police arrested one accused Ghulam Murtaza @ Ali Gul alongwith one unlicensed 30 bore pistol while other accused persons made their escape good. On checking the pistol recovered from Ghulam Murtaza @ Ali Gul four rounds of live bullets of 30 bore were found in its magazine. The recovered pistol and bullets were sealed in presence of mashirs and such mashirnama of arrest and recovery was prepared at the spot. Thereafter, the arrested accused and the case properties were brought to the Police Station, where FIR of this case was registered and a separate FIR under Arms Act was also registered against the arrested accused and others.

3. After usual investigation, the I.O. submitted challan before the Court of concerned Judicial Magistrate, showing accused Ghulam Murtaza @ Ali Gul in judicial custody while the remaining accused were shown as absconders. The Judicial Magistrate, after completing the legal formalities, declared the absconding accused as proclaimed offenders and sent up the case to the Court of Sessions Judge, Dadu for trial. Thereafter, accused Wazeer Lund and Ayoub were arrested and sent up through supplementary challan. Copies of documents as required under section 265-C, Cr.P.C. were supplied to the accused Ghulam Murtaza @ Ali Gul, Wazeer Lund and Ayoub at Exh.4. Formal charge was framed against the accused at Exh.5 to which they pleaded not guilty and claimed trial vide Exh.6,7 and 8.

4. The absconding Gulzar was also arrested subsequently and sent up through supplementary challan. Case papers were supplied to him under receipt at Exh.9. Charge against accused Ghulam Murtaza @ Ali Gul, Gulzar, Wazeer Lund and Muhammad Ayoub was framed at Exh.10 to which they pleaded not guilty and claimed trial vide their pleas recorded at Exh. 10/A to Exh. 10/D respectively.

5. In order to prove its case, the prosecution examined PW-1, complainant ASI Manzoor Ali at Exh.11. He produced Roznamcha entry No.18, memo of arrest & recovery, FIR and Roznamcha entry No.20 at Exh. 11/A to Exh. 11/D. PW-2 mashir PC-1723 Ali Nawaz at Exh. 12 who produced memo of scene of occurrence, memo of arrest of accused Wazeer Lund and memo of arrest of accused Gulzar at Exh. 12/A to 12/C. PW-3, Investigation Officer ASI Gul Hassan at Exh.13. He produced Roznamcha entry No.28 and report of forensic Science Laboratory at Exh.13/A and Exh.13/B. Thereafter, the ADPP for the State filed statement at Exh.14 whereby he closed the side of the prosecution.

6. Amended charge against accused Ghulam Murtaza @ Ali Gul, Gulzar, Wazeer Lund, Muhammad Ayoub and Hidoo @ Hidayatullah was framed at Exh.16

to which they pleaded not guilty and claimed trial vide their pleas recorded at Exh.16/A to Exh.16/D respectively. After amendment of the charge the learned ADPP for the State filed statement at Exh.17 whereby he adopted the same examination-in-chief of the witnesses recorded before framing of the amended charge. The learned counsel for the accused also filed such statements at Exh.18 to Exh.21, whereby they adopted the same cross examination of the PWs conducted before framing of the amended charge. Mr. Ali Mustafa Khoso, learned counsel for the newly added accused in the amended charge, namely, Hidoo @ Hidayatullah adopted the cross examination conducted by learned counsel for remaining accused. Thereafter, learned ADPP for the State filed statement at Exh.22, whereby he closed the evidence side of the prosecution.

7. Statements of the accused Ghulam Murtaza @ Ali Gul, Gulzar, Wazeer Lund, Muhammad Ayoub and Hidoo @ Hidayatullah were recorded under section 342, Cr.P.C. at Exh.23 to Exh.27, wherein they denied the allegations of the prosecution and stated that they are innocent while accused Ghulam Murtaza @ Ali Gul in his statement under section 342, Cr.P.C. alleged foisting of recovery upon him. He stated that police demanded illegal gratification from him and on his refusal to meet their demand they booked him in this case. All the accused alleged that the case property is managed one and the PWs are hostile towards them. Lastly, the accused prayed for justice. Neither they examined themselves on oath nor led any evidence in their favour despite extending opportunity to them.

8. After hearing learned counsel for the parties, the trial court convicted and sentenced the appellants as under:

(a) U/s 324, PPC R/w S. 149, PPC

All the appellants were sentenced to suffer R.I. for seven (07) years and to pay fine of Rs.30,000/- each and in default of payment of fine to further suffer S.I. for three (03) months more.

(b) U/s.353, PPC R/W S.149, PPC:

All the appellants were sentenced to suffer R.I. for one (01) year and to pay fine of Rs.5000/- each and in default of payment of fine, to suffer S.I. for one (01) month more.

(c) U/s. 148, PPC R/W S. 149, PPC

All the appellants were sentenced to suffer R.I. for two (02) years and to pay fine of Rs.10,000/- each, and, in case of default in payment of fine to suffer S.I. for two (02) months more.

Apart from above, appellant Ghulam Murtaza @ Ali Gul was also convicted under section 265-H(2), Cr.P.C. and sentenced under section 25 of the Sindh Arms Act, 2013 to suffer R.I. for seven (07) years and to pay fine of Rs.50,000/- and in default of payment of fine, to suffer S.I. for six months more. All the sentences were to run concurrent and benefit of section 382-B, Cr.P.C. was also extended to the appellants.

9. The appellants, feeling aggrieved, have preferred the above appeals No.S-242 of 2021, S-245 of 2021, S-02 of 2022 and S-07 of 2022 while the appellant Ghulam Murtaza @ Ali Gul has also preferred Appeal No.S-03 of 2022, assailing his conviction and sentence under the Sindh Arms Act, 2013.

10. I have heard learned counsel for the appellants and Ms. Rameshan Oad, A.P.G. Sindh for the State and have carefully examined the case record with their assistance.

11. Learned counsel for appellant Ghulam Murtaza @ Ali Gul has submitted that appellant was arrested by SHO P.S. Khudabad on 30.06.2021, therefore, his father, namely, Mehmud Lund filed Habeas Corpus Application No. 162/2021 before the Court of Sessions who assigned it to 1st Additional Sessions Judge, Dadu which was disposed of on 03.07.2021. He further submitted that after disposal of Habeas Corpus petition on 03.07.2021, Khudabad police had implicated the appellant (alleged detainee) in Crime No.47/2021 under sections 324, 353, 148, 149 PPC registered at P.S. Khudabad on 04.07.2021. He further submitted that at the time of trial specific plea with regard to mala fide on the part of complainant / police was raised, though it was not specifically denied, however, it was replied by complainant ASI Manzoor Ali Panhwar in his cross examination (Ex. No.11, Page 44 of paper-book) which reads as under:

"It is incorrect to suggest that we had taken the accused Ghulam Murtaza @ Ali Gul at midnight on 30.06.2021 from his home. I do not know that the father of accused Ghulam Murtaza filed an application U/s 491 Cr. P.C. before the Court of Honorable Sessions Judge, Dadu on 01.07.2021. I do not know whether order was passed on the application U/S 491 Cr.P.C. by this Court on 03.07.2021 and thereafter on 04.07.2021 we had shown the arrest of accused."

The learned counsel further submitted that in response to question No.2 of his statement under Section 342 Cr.P.C. (Ex.22, Page 77 of paper-book) appellant has also replied in following terms:

"No sir it is false. Nothing was recovered from me. I was arrested by police on 30.6.2021 from my home. After that my father filed application 491 Cr.P.C, then they have shown my arrest."

12. Learned counsel also submitted that entire episode of prosecution case as narrated by the complainant in the FIR is nothing but a bundle of lies and as far as recovery of alleged 30 bore pistol is concerned, the same too was foisted upon the appellant only to strengthen their false case. He further submitted that such malice on the part of prosecution is admitted rather was adduced in shape of documentary evidence as appellant Ghulam Murtaza @ Ali Gul has annexed copy of order dated 03.07.2021 passed by 1st Additional Sessions Judge Dadu in Habeas Corpus petition No.162/2021 (page 35 of the Court file in Cr. Appeal No.S-03/2022). He further stated that it is surprising enough that the Presiding Officer is the author of the impugned judgment as well as the author of the Order dated 03.07.2021 and even then he did not take pain to appreciate the material placed on record. He also pointed out that alleged weapon, shown to be recovered from the appellant on 04.07.2021 and was received by the Laboratory on 13.07.2021 (Exh.13/B at page 63 of paper-book) with delay of about 09 days. The prosecution has given no explanation for keeping the weapon in its custody for about nine days. In support of his arguments, learned counsel for the appellant relied on the case of Muhammad Umar and another v. The State (2017 MLD 1097) and Manzoor Elahi v. The State (2018 YLR Note 190). While closing his arguments, the learned counsel submitted that there was joint memo with regard to the arrest of the appellant Ghulam Murtaza @ Ali Gul and the alleged recovery of a weapon and such practice has been deprecated by the Superior Courts. In this behalf reliance was placed on the case of Rashid Khan v. The State (2019 MLD 675).

13. Mr. Imtiaz Ali Channa, Mr. Muhammad Rahim Gaju and Mr. Wajid Ali Khaskheli, advocates appearing for remaining appellants, have adopted the arguments of learned counsel for Appellant Ghulam Murtaza @ Ali Gul and further submitted that neither any police personnel nor their vehicle was hit by any bullet nor any scratch was made by the appellants. They also submitted that nothing was recovered from the said appellants. It was further argued by them that no role has been assigned to any of the appellants except their alleged presence at the place of occurrence and ineffective firing which has not been corroborated by any

incriminating or tangible evidence. The learned counsel relied on the case of Tariq Pervez v. The State (1995 SCMR 1345) and Shah Faisal v. The State (2021 YLR 244).

14. On the other hand, learned Assistant Prosecutor General, appearing for the State, opposed the appeals on the ground that all the appellants are nominated in the FIR and per available CRO, they have been shown involved in a number of cases. She, however, could not controvert the fact that father of appellant Ghulam Murtaza @ Ali Gul had filed a Habeas Corpus petition before Sessions Court Dadu on 01.07.2021, which was decided on 03.07.2021; however, after its disposal the police had shown arrest of the appellant Ghulam Murtaza on 04.07.2021 on the allegations that he was arrested on the spot while making assault upon police party. However, she fully supported the impugned Judgments and, thereby, the conviction and sentence of the appellants as mentioned above.

15. The trial Court in the impugned judgment (at page 27 of Cr. Appeal No. 02/2022) had observed, “A comparative perusal of evidence of complainant and eyewitness / mashir shows that they both have deposed on same line and supported each other on all material points of charge viz; date, time and place of incident as well as the manner in which the incident took place.” A mere comparison of the two depositions is not enough to reach a just conclusion. The trial court was required to appreciate the entire evidence as well as the 342 Cr.P.C. statements of the accused in proper perspective. I have examined the impugned Judgment in detail and reached the conclusion that the trial Court has placed unnecessary emphasis on procedure and on dilating upon various provisions of Qanun-e-Shahadat Order, 1984. In the present case there was no dispute as to the procedure adopted by the trial Court or the provisions of law discussed by the trial Court. However, I am surprised to note that the contents of the FIR as well as the evidence on record has not been examined as it should have been examined by a Judicial Officer. The primal duty of a judge is to sift grain from chaff. Statement of a complainant cannot be taken at its face value as it has to be critically examined and scrutinized to see whether it is confidence inspiring

and appears to be true and supported by corroborative evidence. Further, it was the duty of the prosecution to prove the guilt of the accused beyond any reasonable doubt as the prosecution was duty bound to prove its accusation and the prosecution could not benefit from the failure or inability of the defence. Reliance was placed on the case of **Muhammad Umair and another** (supra).

16. It is also to be kept in mind that the superior Court have held time and again that for giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts. If there is one circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to benefit of doubt not as a matter of grace and concession but as a matter of right. Reference can be made in this behalf of the case of **Tariq Pervez** (supra) relied upon by learned counsel for the appellants.

17. In the case of **Muhammad Umair and another** (suprs), it was also held as under:

“It was held by this Court in the case of Ashiq Hussain alias Muhammad Ashraf v. The State PLD 1994 SC 879 that all the factors favouring belief in the accusation must be placed in juxtaposition to the corresponding factors favouring the plea in defence and the total effect should be estimated in relation to the question, viz. is the plea/version raised by the accused satisfactorily established by the evidence and circumstances appearing in the case. If the answer be in affirmative, then the Court must accept the plea of the accused and act accordingly. If the answer to-the question be in the negative, then the Court will not reject the defence plea as being false but will go a step further to find out whether or not there is yet a reasonable possibility of defence plea/version being true. If the Court finds that although the accused has failed to establish his plea/version to the satisfaction of the Court but his plea might reasonably be true, even then the Court must accept his plea and acquit or convict him accordingly.”

18. Now, keeping the above authoritative pronouncement by the Apex Court in mind, I will proceed to examine the prosecution case and to see whether it is free from any doubt and the prosecution has been able to prove its case against the appellants beyond any reasonable doubt or there is any circumstance which creates a dent in the prosecution story.

19. First, I will take up the contents of the FIR. The complainant, ASI Manzoor Ali Panhwar, reported that on 04.07.2021 at about 2100 hours when they reached at

Johi – Bhan broken road Chak More they saw through search light that eight persons armed with deadly weapons were standing. Thereafter, the complainant states that they identified Gulzar S/o Anwar Mamani, Wazeer S/o Allah Dino Mamani Panhwar, Wazeer S/o Piaro Lund, Muhammad Ayoub S/o Qadir Bux Panhwar, Ghulam Murtaza @ Ali Gul Lund, Hidayatullah @ Hidoo Khaskheli. The complainant states that the appellants, presuming the police mobile as a private vehicle indicated the police party to stop. The complainant stated, “**We immediately alighted from vehicle disclosed our identity to the accused and asked them to put their hands up.**” This is clear indication that the police party was very close to the appellants / alleged accused as the complainant identified each one of them with their paternity and also observed that they were armed with deadly weapons, details whereof are also given in the FIR. Although the complainant states that the said persons were armed with deadly weapons but he did not say that, after alighting from the vehicle they took shelter behind the police mobile van. It means that they were standing in front of the appellants unshielded. What follows next is very surprising. The complainant says that the accused on coming to know us as police started **straight firing upon us.** The complainant also states that he made three fires from his SMG. The complainant during his deposition (Exh. 11 at page 42 of paper book) stated, “*It is correct to suggest that none of us and accused got any injury during incident. It is correct to suggest that no fire hit to police vehicle. **My target is very excellent, however, my fire was not hit to any of accused.***” Now, the flimsiness of the prosecution story can be gauged from the fact that two armed parties are standing against each other at a close distance without any shelter. One party fired at the party and nobody is hit or injured and then the other party also fired at the first party and again nobody is hit or injured. It has come in the evidence that the complainant, who claims himself to be excellent shot, has fired three rounds from his SMG at the appellants who were standing in open and not very far away, and he was unable to hit any of his target. Even the accused were unable to hit any target or even the police vehicle. This points to only one conclusion that the incident did not take place as alleged by the prosecution at all. In my opinion, this doubt created in the case of

the prosecution was enough to set aside the impugned judgment. However, there are other aspects of the case as well.

20. In his 342, Cr.P.C. statement, appellant Ghulam Murtaza @ Ali Gul, in answer to Question No.2 (at page 77 of paper book) stated as under:

“No sir it is false. Nothing was recovered from me. I was arrested by police on 30.6.2021 from my home. After that my father filed application 491 Cr.P.C, then they have shown my arrest.”

21. The trial Court in the impugned Judgment has quoted a passage from the case reported as 2008 P.Cr.L.J. 1039, which reads as under:

“Accused taking a special plea in his defence is bound to prove the same by adducing cogent and convincing evidence and it cannot blame the prosecution that it has failed to prove the fact.”

22. The appellant, Ghulam Murtaza @ Ali Gul, took a special plea in his defence that he was picked up by the police from his home on 30.06.2021 and his father filed a habeas corpus petition under section 491, Cr.P.C. before District & Sessions Judge, Dadu who marked the same to 1st Additional Sessions Judge, Dadu (i.e. the author of the impugned Judgment) who disposed of the same on 03.07.2021. Thus, according to the appellant Ghulam Murtaza, he was picked up by the police from his home on 30.06.2021 and was in police custody on 04.07.2021 when he was falsely shown to have been present at the place of occurrence. This special plea of the appellant Ghulam Murtaza was not examined at all by the trial Court.

23. It has also come in the evidence that out of eight accused persons, police was able to apprehend only one person i.e. Ghulam Murtaza @ Ali Gul and recovered a 30 bore pistol from him with four live bullets in it. Why the police party was not able to apprehend any other accused. It was incompetence of the police party or is there any other reason for showing arrest of only one appellant from the place of occurrence. Now, a prudent mind will recall that in his 342, Cr.P.C. statement the appellant Ghulam Murtaza @ Ali Gul has stated that he was picked up from his home and that his such illegal detention was challenged by his father by filing an application under section 491, Cr.P.C. It was submitted that on 03.07.2021, the above application was dismissed and on 04.07.2021 i.e. the very next day, the

appellant was shown to have been arrested from the place of occurrence. In case the version of the appellant is accepted i.e. he was picked up from his home on 30.06.2021, then the entire prosecution case crumbles to the ground. However, for reasons best known to the trial Court, this plea was not discussed in proper manner at all.

24. During the cross examination of the complainant, a suggestion was put to him that the said appellant was apprehended by the police at midnight on 30.06.2021 from his home due to which father of the said appellant filed an application under section 491, Cr.P.C., to which the complainant replied as under:

"It is incorrect to suggest that we had taken the accused Ghulam Murtaza @ Ali Gul at midnight on 30.06.2021 from his home. I do not know that the father of accused Ghulam Murtaza filed an application U/s 491 Cr. P.C. before the Court of Honorable Sessions Judge, Dadu on 01.07.2021. I do not know whether order was passed on the application U/S 491 Cr.P.C. by this Court on 03.07.2021 and thereafter on 04.07.2021 we had shown the arrest of accused."

25. The complainant denied the suggestion about arrest of the said appellant from his home on 30.06.2021 and showed his ignorance about filing of application under section 491, Cr.P.C.; however, the trial Court should have diverted its attention to this important aspect of the case.

26. It is very disheartening to note that the entire impugned judgment is silent on this issue. The trial Court (at page 33 of Court file of Cr. Appeal No.S-242 of 2021) has discussed the 342, Cr.P.C. statements of the accused and has referred to the plea of the appellants with regard to illegal gratification demanded by police and has held that their plea with[out] proof would have no value in the eyes of law. However, the plea taken by the appellant Ghulam Murtaza @ Ali Gul with regard to his illegal arrest from his home on 30.06.2021, which was duly supported by the Order dated 03.07.2021 passed the same Presiding Officer in Habeas Corpus Petition No.162 of 2021 filed by his father, was completely ignored. This is unbecoming of a judicial officer holding such a high post in the District Judiciary.

27. The trial Court, at page 29 of Cr. A. No.242/2021, has noted that the prosecution has also examined the Investigation Officer of this case who has given

minute detail of investigation carried out by him. In the FIR it is stated that the appellants were armed with deadly weapon. Out of the eight accused person only appellant Ghulam Murtaza @ Ali Gul was shown to have been arrested on the spot and a pistol was recovered from his possession. This arrest, due to the discussion made above, is doubtful. The Investigation Officer was unable to recover a single weapon from the other accused even he was unable to recover the hatchet from appellant Wazeer. The main duty of the I.O. is to connect the accused with the commission of the offence alleged against them in such a way that there is no doubt about the involvement of the accused in the offence alleged. In the absence of recovery of weapons from any of the other appellants, how they can be connected with the offence alleged against them. Although, the police have alleged an encounter with the appellants and two unknown person; however, complainant ASI Manzoor Ali Panhwar, has stated in his deposition that he had fired three shots from his SMG. The encounter was stated to have lasted for about two minutes in which only three shots have been fired by the police. It has not been brought on record as to how many rounds were fired by other members of the police party as well as by the appellants on the police party.

28. In the impugned Judgment, much emphasis has been laid on the report of the ballistic expert and it has been stated that it corroborates the ocular evidence. However, in what manner it corroborates the ocular evidence has not been mentioned as no member of the police party was injured. In case of injury, the report of ballistic expert becomes crucial as it can connect the accused from whom a weapon has been recovered to show that the bullet causing injury was fired from the weapon of such accused.

29. A perusal of the Examination Report of the forensic expert (page 63 of the paper book) reveals that the alleged weapon was received by the Forensic Science Laboratory on 13.07.2021. The weapon was allegedly recovered from appellant Ghulam Murtaza @ Ali Gul on 04.07.2021 and it was sent to the Laboratory on 13.07.2021. There is no explanation for the delay of nine days in dispatching the

weapon to the Laboratory. The Examination Report of the ballistic expert does not connect the appellant with the alleged encounter in any manner in view of the doubt surrounding the arrest of the appellant Ghulam Murtaza @ Ali Gul from the spot. Therefore, the same is of no help to the prosecution.

30. The complainant has also admitted in his cross examination that he has not mentioned the number of the pistol as in the Challan the number of the pistol was mentioned as NIL. However, the ballistic expert has mentioned the number of the pistol.

31. This was an alleged case of police encounter, in which not a single person was injured. The apex Court, in the case of Zeeshan Shani v. The State (2012 SCMR 428) has held that in such cases the standard of proof should be far higher as compared to any other criminal case. It was also held that in such cases police cannot be made investigator. The Relevant observation is quoted below:

“11. The standard of proof in this case should have been far higher as compared to any other criminal case when according to the prosecution it was a case of police encounter. It was, thus, desirable and even imperative that it should have been investigated by some other agency. Police, in this case, could not have been investigators of their own cause. Such investigation which is woefully lacking independent character cannot be made basis for conviction in a charge involving capital sentence, that too when it is riddled with many lacunas and loopholes listed above, quite apart from the after thoughts and improvements. It would not be in accord of safe administration of justice to maintain the conviction and sentence of the appellant in the circumstances of the case.”

32. In view of the above discussion, I am of the considered view that this is a case where a lot of doubts have been created which go in favour of the appellants. Accordingly, all the above appeals are allowed vide short order dated 21.02.2022, the impugned judgment dated 20.12.2021 was set aside and the appellants were acquitted of the charges. Appellants were in custody, therefore, they were ordered to be released forthwith if their custody was not required in any other case by the jail authorities. These are the reasons for the short order dated 21.02.2022.

Cr. Appeal No. S-03 of 2022

Ghulam Murtaza @ Ali Gul V. The State

The above appeal is directed against the judgment dated 20.12.2021 passed by 1st Additional Sessions Judge-I/MCTC, Dadu in Sessions Case No.262 of 2021 arising out of Crime No.48/2021 of PS Khudabad, registered under section 25 of the Sindh Arms Act, 2013, whereby the appellant was convicted under section 265-H(2), Cr.P.C., and convicted him under section 25 of the Sindh Arms Act, 2013 to suffer R.I. for seven (07) years and to pay fine of Rs.50,000/- and in default of payment of fine, to suffer S.I. for six months more. All the sentences were to run concurrent and benefit of section 382-B, Cr.P.C. was also extended to the appellant.

2. This case is an offshoot of Crime No.47 of 2021, registered under sections 324, 353, 148 and 149, PPC at PS Khudabad in which appellant was alleged to have been arrested on the spot as a result of an encounter with police and an unlicensed pistol was alleged to have been recovered from his possession for which a separate FIR, as above, was registered against him.

3. In the main case i.e. FIR No. 47 of 2021 of PS Khudabad, the evidence produced by the prosecution has not been believed and benefit of doubt has been extended to the appellants, including the present appellant, and they have been acquitted of the charge in the main case, therefore, the appellant is also entitled to benefit of doubt in the instant.

4. Apart from what has been discussed above, it was also argued by leaned counsel for the appellant Ghulam Murtaza that there was joint memo with regard to the arrest of the appellant and alleged recovery of a weapon, which practice has been deprecated by the superior Courts. Reliance was place on the case of Rashid Khan (supra) in which the following observation was made:

“11. Prosecution, in order to prove its case against the appellant, has also relied upon the crime empties recovered from the spot and the two pistols taken into possession on pointation of the appellants and the report of FSL, according to which the crime empties recovered from the spot did match with the pistol recovered on the pointation of appellant Rashid Khan but ibid recoveries are of no help to the prosecution as both the pistols were recovered from an open place which was accessible to all and sundry. Besides, both the pistols were recovered through a joint recovery memo (Ex.PW-10/1) which fact has eclipsed evidentiary worth of the recoveries.”

5. Since it is offshoot case of main crime in which the evidence adduced by the prosecution has not been believed and whist extending benefit of doubt to appellant

Ghulam Murtaza @ Ali Gul, he has been acquitted from the charge of said main case, therefore, propriety of law demands that said appellant may also be acquitted from the charge of instant case. In case of Yasir Chaudhry v. The State and another (2012 MLD1315), the learned bench of Lahore High Court has held as under:

“5. In the case reported as Manjhi v. The State (PLD 1996 Kar. 345), it has been held that when the accused has been acquitted in the main case, he would become entitled to acquittal in a case which is offshoot of the said case. Same is the position here, as the present lis is an offshoot of the main murder case. So, respectfully following the dictum laid down in the judgment supra, this petition is allowed and the application of the petitioner under section 249-A, Cr.P.C. is accepted and the petitioner is acquitted of the charge in case F.I.R. No.17 of 2003 dated 12-1- 2003 registered under section 7 of the Surrender of Illicit Arms Act No.XXI of 1991 with Police Station Civil Lines, Bahawalpur. Resultantly, the proceedings before the learned trial Court are quashed.”

6. Accordingly, the impugned Judgment dated 20.12.2021, passed in Sessions Case No. 262/2021 (Crime No.48 of 2021 of PS Khudabad under section 25 of the Sindh Arms Act, 2013 - State v. Ghulam Murtaza @ Ali Gul S/o Mehmud Lund) was set aside and the appellant was acquitted of the charge. Appellant Ghulam Murtaza @ Ali Gul was in custody, therefore, he was ordered to be released forthwith if his custody was not required in any other case by the jail authorities.

7. Before parting with the judgment, I would like to mention that the impugned judgment is also not in proper form as neither pages are numbered nor paragraphs are numbered.

8. These are the reasons of my short order dated 21.02.2022 whereby the appeals were allowed.

9. Office to place copy of judgment in each file.

Hyderabad, the 21st February 2022.

JUDGE