

IN THE HIGH COURT OF SINDH. CIRCUIT COURT, LARKANA

(1) Cr. Appeal No.S-76 of 2019

Ali Sher Bangulani & another v. The State

And

(2) Cr. Appeal No.S-77 of 2019

Ali Sher Bangulani v. The State

And

(3) Cr. Appeal No.S-78 of 2019

Khathoor Bangulani v. The State

Appellants Ali Sher : Through Mr. Asif Ali Abdul Razak Soomro,
Bangulani & another Advocate.

The State : Through Mr. Ali Anwar Kandhro, Additional
Prosecutor General, Sindh.

Date of hearing : 31.03.2022.

Date of Judgment : 31.03.2022.

J U D G M E N T

MUHAMMAD SALEEM JESSAR, J:- The above three criminal appeals are being disposed of by this common Judgment in view of the fact that all these appeals relate to one and the same incident.

2. Appellants Ali Sher Bangulani and Khathoor Bangulani, have been tried by the trial Court for offences punishable U/Ss 302, 324, 353, 148, 149, PPC arising out of FIR crime No.94/2016, P.S. B-Section Thul, District Jacobabad and convicted them under section 265-H(2), Cr.P.C. and sentenced them under section 302(b), PPC to suffer life imprisonment as Tazir and also to pay fine / compensation of Rs.500,000/- (Rupees Five Lac) each, to be paid to the legal heirs of the

deceased, as required by section 544-A, Cr.P.C. and in case of default of payment of fine / compensation, they shall suffer S.I. for one year more. They were also sentenced under section 324, PPC to suffer R.I. for seven years each and to pay fine of Rs.50,000/- (Rupees Fifty thousand only) each, to be paid to the injured persons and in case of default, they are to suffer S.I. for one year. The appellants were also sentenced under section 353, PPC to suffer R.I. for two years, with fine of Rs.10,000/- (Rupees Ten thousand only) each, and in case of default to suffer S.I. for two months more. It was directed that all the sentences shall run concurrently and benefit of section 382-B, Cr.P.C. was also extended to them.

3. Appellant Ali Sher Bangulani (Cr. Appeal No.77 of 2019) was also convicted under section 265-H(ii), Cr.P.C. for offence punishable under section 23(1)(a) of Sindh Arms Act, 2013 and was sentenced to suffer R.I. for seven years, with fine of Rs.50,000/- and in case of default to suffer further S.I. for six months, while Appellant Khathoor Bangulani (Cr. Appeal No. 78 of 2019) was also convicted and sentenced under same section, as above, but was awarded R.I. for four years and a fine of Rs.30,000/- and in default to suffer further S.I. for two months. Benefit of section 382-B, Cr.P.C. was also extended to the appellants in these cases.

4. Briefly stated, facts of the prosecution case are that on 17.11.2016, complainant SIP Fida Hussain Shaikh, being posted as SHO PS B-Section Thul, lodged FIR, alleging that on the same date he along with his subordinate staff, namely, PC Altaf Hussain, PC Muhammad Yakoob, PC Rafique Ahmed, PC Sher Muhammad, PC Haji Addan, PC Khadim Hussain, PC Zubair Ahmed, PC Manzoor Ahmed and PC Abdul Hadi, in

government mobile No.SPG-603 with driver PC Amanullah, and in another police mobile No.SPC-082 HC Ali Gul alongwith PC Munir Ahmed, PC Zubair Ahmed, PC Khadim Hussain, PC Ghulam Yaseen and driver PC Liaqat Ali, duly armed with arms and ammunition, as per entry No.8, at 1230 hours, under the directions of high-ups, left P.S for arresting proclaimed offenders. It is further alleged by the Complainant that during course of such process/patrolling they crossed villages Joungal and Bakhshan Pahore and when, at about 1400 hours, they reached near village Rajab Ali Pahroe, they received spy information that notorious criminal of Sindh-Baluchistan, namely, Soomar @ Kali Bangulani, alongwith his companions, was available at Dera near his house, hence he conveyed such information to his subordinates and then proceeded towards the pointed place. As there was no path of vehicles for going to the pointed place, hence they parked government vehicles at village Ghulam Hussain Jafferi and proceeded by foot towards the pointed place. It is further alleged by the complainant that when at about 1430 hours they arrived at pointed place where HC Ali Gul, PC Haji Addan, PC Sher Muhammad and PC Rafique Ahmed saw and identified the accused Soomar Kali, Mahesar, Hazooro, Ali Sher, armed with Kalashnikovs, Khathoor armed with gun, Washo @ Sooreh, Seth, armed with Kalashnikovs, Neko @ Nek Muhammad, Shahdost, armed with G-3, Abdul Latif and Anwar, armed with Kalashnikovs, all by caste Bangulani, were standing there and on seeing the police uniform all accused took position and fired upon complainant party indiscriminately with intention to commit their murder. In the meantime, accused Soomar @ Kali straightly fired from his Kalashnikov upon PC Yakoob, which hit him, who raised cries and fell down. Thereafter, PC Rafique Ahmed fired from his government SMG upon accused Soomar @ Kali, which hit him, who

raised cries and fell down. Thereafter, accused Ali Sher fired burst from his Kalashnikov upon PC Rafique Ahmed, which hit him, who raising cries fell down. Thereafter, accused Hazooro Bangulani fired upon PC Khadim Hussain, which hit him, who raised cries and fell down. Thereafter, accused Khathoor fired from his gun upon PC Altaf Hussain, which hit him on his right hand. It is further alleged by the Complainant that during encounter after taking shelter of wahi(drain), he called more police force for their help. In the meantime, DSP Arbab Ali Soomro along with his staff and police personnel of PS A-Section and C-Section, Thul also came there. Thereafter, accused Washo @ Sooreh took the Kalashnikov of his companion Soomar @ Kali Bangulani and all accused persons by making firing started running towards northern side, hence the complainant encircled the accused. It is further alleged by the complainant that during chasing process the bullets of Kalashnikov of accused Ali Sher and cartridges of gun of accused Khathoor were consumed, hence they raised their hands up and surrendered before the police, therefore, both accused Ali Sher and Khathoor were arrested with their respective weapons, while other accused fled away. Thereafter, complainant cited HC Ali Gul and PC Ghulam Yaseen as mashirs and unloaded the Kalashnikov No.2535456 of 7.62 bore of accused Ali Sher and found its magazine was empty and smell of ammunition was coming from its barrel and magazine. On enquiry, he disclosed his name as Ali Sher and further disclosed that Kalashnikov is without permit. Thereafter, complainant unloaded the SBBL gun of 12-bore of accused Khathoor and also found it was empty and smell of ammunition was coming from its barrel. The encounter remained continued for about one and half hours. Then, complainant sealed the Kalashnikov and gun recovered from the possession of accused separately at spot and on personal search of

accused nothing was secured from their possession. Thereafter, complainant noticed that PC Muhammad Yakoob has sustained firearm injury below right side of navel(DUN) through and through and blood was oozing from his wound; PC Khadim Hussain Bangulani also sustained firearm injury on backside of his shoulder through and through and blood was oozing from his wound and PC Altaf Hussain sustained firearm injury on his right hand through and through and blood was oozing from his wound, hence with the help of police force referred all the injured to Taluka Hospital, Thul for treatment. Thereafter, complainant party found PC Rafique Ahmed was lying dead having two firearm injuries on his right side abdomen through and through, one fire on back of buttock through and through one fire on right thigh through and through and one fire below the right knee through and through and blood was oozing from his injuries. They also found that accused Soomar @ Kali was lying dead having firearm injury on right side nipple through and through and blood was oozing from his injuries. Thereafter, complainant prepared such memo of arrest of accused, recovery of unlicensed weapons, inspection of injuries of injured persons, inspection of dead bodies of deceased PC Rafique Ahmed and accused Soomar @ Kali at spot in presence of above-said mashirs and referred both dead bodies to Taluka Hospital, Thul for postmortem and then they returned back at P.S., where he lodged the FIR u/s 302, 324, 353,148,149, PPC against accused on behalf of the State and also lodged two separate FIRs u/s 23(1)(a), SAA against accused Ali Sher and Khathoor.

5. After completing investigation, the I/O. submitted charge-sheet against present accused, namely, Ali Sher and Khatoor Bangulani before the Court of Judicial Magistrate, Thul, showing them in custody, while remaining accused, namely, Mahesar, Hazooro, Washo @ Sooreh, Seth,

Neko @ Nek Muhammad, Shahdost, Abdul Latif and Anwer, as absconders. Thereafter, the Judicial Magistrate, after completion of codal formalities, declared above-named absconder accused as proclaimed offenders and sent up the case to the Court of Sessions Judge, Jacobabad, where necessary documents/police papers were supplied to present appellants Ali Sher and Khathoor vide receipt at Ex. 4 and a formal charge against them was framed at Ex. 7, to which they pleaded 'not guilty' and claimed for trial vide their pleas recorded at Ex.7-A and 7-B, respectively.

6. The prosecution in order to prove its case examined PW-1 complainant Fida Hussain Shaikh at Ex.8, who produced referral letter of injured persons, inquest report and lash chakas form of deceased PC Rafique Ahmed, inquest report and lash chakas form of deceased accused Soomar @ Kali, memo of arrest of accused, recovery of unlicensed weapons, inspection of injuries of injured persons, inspection of dead bodies of deceased PC Rafique Ahmed and accused Soomar @ Kali, attested copy of roznamcha entries and FIR at Ex.8-A to 8-I; PW-2 PC Ghulam Yaseen at Ex. 9, who produced memo of inspection of wardat and securing last-worn clothes of deceased PC Rafique Ahmed and deceased accused Soomar @ Kali at Ex.9- A and 9-B; PW-3 PC Altaf Hussain at Ex.10; PW-4 PC Khadim Hussain at Ex.11; PW-5 Inspector Amanullah Sadhayo at Ex. 12, who produced receipts of handing over dead bodies, Ballistic Examiner's report at Ex.12-A to Exh. 12-D; PW-6 M.O. Dr. Abdul Karim Ansari at Ex.13, who produced medico-legal certificates and postmortem report of deceased PC Rafique Ahmed at Ex.13-A to 13-D; PW-7 Tapedar Bakhtullah at Ex. 14, who produced sketch of wardat at Ex.14-A; PW-8 M.O. Dr. Liaqat Ali Pathan at Ex.15, who produced postmortem report of deceased accused Soomar @ Kali at Ex.15-A. Thereafter, the DDPP for the State filed statement

thereby giving up the remaining witnesses and closed the side of the prosecution. The DDPP also filed statement thereby producing attested copies of certain FIRs registered against deceased accused Soomar @ Kali and absconding accused Mahesar, Seth, Neko @ Nek Muhammad and Shahdost.

7. In the statements of the appellants recorded under section 342, Cr.P.C. at Ex. 17 and 18, the above-named accused pleaded their innocence. They neither led any evidence in their defence nor examined themselves on oath and further stated that all PWs are interested being police officials and they have deposed against them falsely in order to show their efficiency. They further stated that police of PS B-Section, Thul had involved them in so many cases, in which they were acquitted by the Courts, hence they prayed for Justice. The accused Ali Sher has produced certified true copies of order u/s 249-A Cr.P.C dated 28.3.2018 passed by learned Civil Judge and Judicial Magistrate Thul in CrI. Case No.150/2016 State vs. Nihaluddin and others u/s 401, 353 PPC of PS B-section Thul, Judgment dated.11.5.2017 passed by learned IInd Assistant Sessions Judge Jacobabad in Sessions No.258/2016 State vs. Nihaluddin, u/s 23(1)(A), SAA of P.S B-Section Thul, Judgment dated 11.5.2017 passed by learned IInd Assistant Sessions Judge Jacobabad in Sessions No.275/2016 re-State vs. Ali Sher, u/s 23(1)(A) SAA of P.S B-Section Thul, judgment dated 20.7.2018 passed by learned IInd Assistant Judge Sessions, in case No.510/2017 re-State vs. Ali Hussain and others, u/s 399,353, 337-H(2), PPC and order under section 265-K, Cr.P.C. passed by IInd Assistant Sessions Judge in Sessions Case No.63/2017 re-State vs. Khathoor Bangulani, u/s 324, 353, 380, 511, PPC.

8. The trial Court framed the following points for determination:

“Point No. 1. Whether deceased PC Rafique Ahmed died due to unnatural death?”

Point No.2. Whether on 17.11.2016 at about 1430 hour at the Dero of accused Soomar Kali situated near village Ghulam Hussain Jafferi deh Bakhtiarpuir Taluka Thul District Jacobabad, above accused alongwith absconding accused Mahesar, Hazooro, Washo Seth, Neko @ Nek Muhammad, Shah Dost, Abdul Latif, Anwar and accused Soomar @ Kalli, (who expired in encounter) duly armed with lethal weapons formed an unlawful assembly and in prosecution of their common object fired upon police party headed by SIP Fida Hussain Shaikh of PS B-Section Thul with intention to commit their murder and deterred them from discharging their lawful duty as public servant and fired upon PC Muhammad Yakoob, PC Khadim Hussain, PC Altaf and PC Rafique Ahmed, with intention to cause their murder, out of them PC Rafique Ahmed expired at spot and the fires made by PC Rafique Ahmed hit to accused to Soomar @ Kali who also expired at spot?

Point No.3 What should the Judgment be?

9. The trial Court, after hearing the learned counsel for the opposing parties and going through the evidence brought on record by the prosecution, convicted and sentenced the appellants as above, vide the impugned judgment, which has been challenged by the appellants by filing the present appeals.

10. Learned counsel for the appellants submitted that appellants were arrayed by the police due to enmity and nothing was secured, though alleged; the injured PW as well as deceased are from police and investigation was also conducted by the police themselves, hence bias view cannot be ruled out. He next submitted that in fact the co-accused Soomar *alias* Kali was the person, who made indiscriminate firing upon the police and none of other accused was available and later-on all the accused were arrayed by the police aiming to show their efficiency. He further submitted that allegation against appellant Kathoor is that he allegedly caused gunshot injury to injured PW PC Alataf Hussain which hit on his right hand; however, per medical evidence, the said injured

PW/PC Altaf Hussain has sustained lacerated wound and not firearm injury. Hence, submitted that the prosecution has miserably failed to prove it's charge against the appellant; he, therefore, prays for the acquittal of the appellants.

11. Learned Additional Prosecutor General, appearing on behalf of the State, opposed the appeals, on the grounds that both the appellants are nominated in the FIR with specific role of causing firearm injuries to the deceased as well as injured PWs and no animosity or ill-will has been brought on record to believe that the appellants were arrayed falsely. Learned APG, when confronted with page-217 of the paper book, where provisional medico-legal certificate was issued by the Medico-Legal Officer in favour of injured PW/PC Altaf Hussain which reveals that the injured PW Altaf Hussain had sustained lacerated wound and not firearm injury, could not controvert the same.

12. Learned Additional Prosecutor General very candidly admits that the ocular version to the extent of injured PW/ PC Altaf Hussain was not corroborated by the medical evidence. Such medical certificate is as Ex.13- D, at page-217.

13. I have heard learned counsel for the appellant, the learned APG for the State and have gone through the evidence on record with their help and assistance.

14. Before advertng to the points formulated for determination by the trial Court, it would be just and proper if objections raised by the learned counsel for the appellants that the appellants were arrayed in the instant case due to enmity, is taken up. This, to say the least, is a wild and bald allegation and is not supported by any evidence. Even, none of the

appellants, in his statement recorded under section 342, Cr.P.C. took such plea and they only stated that the police arrayed them to show their efficiency. It has come on record that a number of cases were registered against the appellants, but the same could not prove any enmity between police and the appellants and, at the most, it could be said that the prosecution was unable to prove its case beyond reasonable doubt in those cases. There was also no plausible explanation as to why the police would involve innocent persons in place of the real culprits, as death of PC Rafique Ahmed, as discussed below, has been proved to be unnatural.

15. Learned counsel for the appellants also tried to create a dent in the prosecution case by arguing that the injured PWs as well as the deceased were from police and hence biasness on the part of police cannot be ruled out. Suffice to say that, it is not a rule of law that in such cases police cannot be entrusted with the investigation of the case. However, nothing has been shown or brought on record that the appellants ever raised such plea before the concerned court by moving an application for transfer of the investigation to any other agency. On the contrary, the learned counsel by arguing that co-accused Soomar *alias* Kali was the person, who made indiscriminate firing upon police party, clearly admits that there was police encounter involving these persons. In police encounters and, particularly those encounters which take place in such remote areas, there is police personnel against the accused and there is no third party involved. Therefore, naturally the witnesses would be police officials only and if their evidence is not believed, particularly when one of their party members was killed in the encounter and others sustained firearm injuries, then the accused could not be convicted at all for their guilt. Therefore, this plea has no force and is rejected. Even

otherwise, in the case reported as Muhammad Riaz V. The State (2018 P.Cr.L.J. Note 179), also all the witnesses were police officials. A Division Bench of this Court held as under:

11. Adverting to the contention of learned counsel for the appellant/accused that the complainant acted as investigating officer of his own FIR and that there is violation of section 103, Cr.P.C. that no private person was joined in recovery proceedings except officials. There appears no force in his contention as it has already been held by honourable Supreme Court in case of Zafar v. The State (2008 SCMR 1254) as under:

"Police officer was not prohibited under the law to be a complainant if he was witness of an offence. Such officer could also be an investigating officer so long as it did not prejudice accused person" and that the "Police employees are competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are police employees."

16. Now, adverting to the impugned Judgment, the trial Court formulated Point No.1 with regard to the mode of death of PC Rafique Ahmed i.e. whether he died un-natural death. This point was discussed in minute detail by the trial Court.

17. After above discussion, the trial Court held that it is proved that deceased PC Rafique Ahmed died due to un-natural death. There was no rebuttal from the learned counsel for the appellants to the above finding in affirmative on point No.1 by the trial court. I find nothing abnormal in the above discussion calling for interference by this court.

18. While discussing point No.2, the trial Court gave a detailed overview of the evidence of PW-1 / Complainant Fida Hussain Shaikh (Exh.8). The relevant portion of the impugned Judgment reads as under:

"They while patrolling Jungal city, Buxan Pahore reached at village Rajab Pahore at 1400 hours where he received spy information that one notorious criminal namely Soomar @ Kall Bangulani with his other criminal companions was standing near the house of said criminal Soomar @ Kali Bangulani at Dera, who was rewarded for Rs.10,00,000/- from Sindh-Baluchistan governments hence he informed about the information to his subordinates and proceeded towards pointed place. When they reached at village Ghulam Hussain Jafferri where they parked their government mobile due to no any path for vehicles and they

*proceeded by foot and at about 1430 hours they reached at pointed place where HC Ali Gul, PC Haji Addan, PC Sher Muhammad and PC Rafique Ahmed by identifying the persons disclosed that they are namely accused Soomar @ Kali, Mahesar, Hazooro, Ali Sher, all four armed with K. Ks, Khathoor armed with gun, Washo, Seth with K.Ks. Neko, Shahdost armed with G-3 rifles, Abdul Latif and Anwar armed with K.Ks, all by caste Bangulani who by seeing them in police dresses took shelter had started firing upon them intention to with Meanwhile accused Soomar Kali commt their Inurder. K.K. upon PC Muhammad Yakoob with fired from his his murder, who receiving injuries intention to cause fell down. PC Rafique Ahmed fired from his SMG rifle upon accused Soomar @ Kali which hit him and he fell down. **Accused Ali Sher fired burst of K.K. upon PC Rafique Ahmed which hit him and he tell down by crying.***

19. The above highlighted and underlined portion of the deposition of PW-1 Complainant Fida Hussain clearly establishes that appellant Ali Sher fired a burst of KK upon PC Rafique Ahmed, which hit him and he fell down after sustaining injuries from the KK burst fired by appellant Ali Sher.

20. PW PC Ghulam Yaseen Soomro (Exh.9) also deposed that accused Ali Sher fired a burst of KK on deceased PC Rafique Ahmed, who fell down by crying. Similarly, PC Altaf Hussaina and PC Khadim Hussain also deposed on the same line and thus all the PWs, including the Complainant, who are all eye-witnesses of the incident, are unanimous in their deposition that appellant Ali Sher fired KK burst on deceased PC Rafiq Ahmed, who was hit by the burst and he fell down while crying.

21. A minute scrutiny of the deposition of PW-1 Fida Hussain and its comparison with the FIR lodged by him about the incident show that there is no significant / major contradiction between the two and that his deposition is consistent with the complaint lodged by him about the incident. Nothing could be extracted from him that could be beneficial to the defense during his lengthy cross examination.

22. The evidence of the Medico Legal Officer proves that the injuries sustained by the deceased PC Rafique Ahmed due to the burst of KK by Ali Sher caused his death.

23. A perusal of the Forensic Science Laboratory dated 23.11.2016 reveals that the Laboratory received one 7.62 mm bore (SMG) rifle No.2535456, Bolt No.3545, Spring No.35456, Cover No.35456/78502 with magazine which was recovered from appellant Ali Sher and one 12 bore SBBL Shot Gun (number rubbed) recovered from accused Khathoor with some empties. As per the Laboratory report, six 7.62 mm bore crime empties were fired from the above-mentioned rifle recovered from appellant Sher Ali.

24. A perusal of the above depositions of the eye-witnesses of the encounter clearly shows that there is no material contradiction therein and all these witnesses are consistent and unshaken, although they were subjected to lengthy cross-examination.

25. From the above evidentiary material, when placed in juxtaposition, it becomes crystal clear that Point No.2 was rightly answered by the trial Court in the affirmative, as there is no doubt left that PC Rafique Ahmed was hit by the burst fired by appellant Ali Sher from his KK, which caused his death. Reliance can be placed upon the case of *Muhammad Khan Vs. The State* (2020 YLR Note-70).

26. In the case of *SHAFQAT ALI and others Versus THE STATE* (PLD 2005 Supreme Court 288), the Hon'ble Supreme Court of Pakistan, on the question of ocular account getting corroboration from medical evidence, was pleased to held as under:

“10. It may be noted that ocular account furnished by P.Ws. Tahir Abbas Muhammad Akhtar Zarnan gets corroboration from the medical evidence

produced by P.W. Dr. Hafiz Muhammad Akram Gondal. Learned counsel contended that there is contradiction in the ocular and medical but he could not point out any major contradiction, sufficient to disbelieve the ocular testimony furnished by PWs Tahir Abbas, Muhammad Asif and Muhammad Akhtar Zaman and consequently holding that they were not present at the place of incident. It may be noted that as far as medical evidence or expert's opinion is concerned, it is always treated to be confirmatory in nature and if there is ocular account fully reliable then the minor contradictions in medial and ocular evidence can be outweighed. In this behalf we are fortified with the judgment in the case of Muhammad Hanif v. The State (PLD 1993 SC 895)."

27. In the case of DADULLAH and another versus The State (2015 SCMR 856), the Hon'ble Supreme Court held as under:

"The statements of all the above said witnesses fully connect the appellants with the commission of crime. They have narrated the story in a natural manner. All the witnesses remained consistent and corroborated each other. No mala fide could be attributed by the learned counsel for the appellants towards the witnesses as to why the appellants have been falsely involved in the present case and the actual culprits have been let off. So far as the point raised by learned counsel for the appellants that the FIR was recorded after a delay in which the appellants were not named is concerned, admittedly FIR was got recorded after a delay of only one hour but the same in the facts and circumstances of this case is justified, as immediately after the occurrence, written application for registration of FIR was sent to Levies and at that time the appellants were not identified. Appellant Faizullah was also arrested on the same day."

28. In the present appeals, the facts are almost identical to the facts of the cited Judgment in the Muhammad Khan's case (supra) that the contents of the deposition of the eye-witnesses and the contents of the FIR as well as the report of ballistic expert and that of Medico-Legal Officer fully support the prosecution case in all aspects and no contradiction has been pointed out by the learned counsel for the appellants in the evidence produced by the prosecution.

29. However, in view of the submission of the learned counsel for the appellants that PC Altaf Hussain is alleged to have received firearm injury at the hands of appellant Khathoor, while the medical report states that he did not suffer any firearm injury, therefore, the case of appellant

Khathoor requires deeper appreciation of the evidence on record. When the learned APG was confronted with such position, he was unable to controvert the factual position that from the provisional medico-legal certificate issued by the Medico-Legal Officer (available at page-217 of the paper book), in respect of injured PW/PC Altaf Hussain it reveals that the injured PW PC Altaf Hussain had sustained lacerated wound and not firearm injury. The evidence of medico-legal officer Dr. Abdul Karim Ex. No.13, page-203 of the paper book and at relevant page No.205, has deposed as under:

"A incised wound size 2 x 1/2 cm x skin deep on right side of hand between the thumb and index finger."

30. About the above wound it has not been stated that the same was caused by firearm or that it was through and through like the injuries sustained by deceased PC Rafique Ahmed. Therefore, there is no evidence to prove that injured PW PC Altaf Hussain sustained firearm injury caused by appellant Khathoor.

31. Since appellant Khathoor had caused no injury to deceased Rafique Ahmed or to any other person of the police party; however, he was captured by the police on spot along with offensive weapon, therefore, appellant Khathoor is hereby acquitted of the charge of Section 302, PPC and his sentence under this section is set aside. Per prosecution case, appellant Khathoor had allegedly caused gunshot injuries to injured PW PC Altaf Hussain, but the medical evidence as available on record did not support the case of prosecution, therefore, charge to the extent of section 324, PPC against appellant Khathoor has also not been established. Consequently, the sentence awarded to appellant Khathoor in terms of Section 324, PPC is also hereby set aside.

32. As far as sentence awarded to appellant Khathoor in terms of Section 353, PPC is concerned, he was apprehended by the police on the spot along with offensive weapon, hence prosecution has established it's charge against appellant Khathoor to the extent of Section 353, PPC. Thus, his conviction and sentence under section 353, PPC is maintained.

33. In the case of *DADULLAH AND ANOTHER* (Supra), the concept of punishment has been discussed in detail and it would be expedient to quote the relevant portion of the cited judgment, which reads as under:

“9. Conceptually punishment to an accused is awarded on the concept of retribution, deterrence or reformation. The purpose behind infliction of sentence is twofold. Firstly, it would create such atmosphere, which could become a deterrence for the people who have inclination towards crime and; secondly, to work as a medium in reforming the offence. Deterrent punishment is not only to maintain balance with gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society. Concept of minor punishment in law is to make an attempt to reform an individual wrongdoer. However, in such like cases, where the appellants have committed a pre-planned dacoity and killed two persons, no leniency should be shown to the culprits. Sentence of death would create a deterrence in the society due to which no other person would dare to commit the offence of murder. If in any proved case lenient view is taken, then peace, tranquility and harmony of society would be jeopardized and vandalism would prevail in the society. The Courts should not hesitate in awarding the maximum punishment in such like cases where it has been proved beyond any shadow of doubt that the accused was involved in the offence. Deterrence is a factor to be taken into consideration while awarding sentence, specially the sentence of death. Very wide discretion in the matter of sentence has been given to the courts, which must be exercised judiciously.”

34. Keeping in view the above authoritative pronouncement by the Hon'ble Supreme Court, the sentence of appellant Khathoor has been modified in view of the fact that the firearm injury allegedly caused by him to PW PC Altaf Hussain has not been proved by cogent and confidence-inspiring evidence, while the sentence awarded to appellant Ali Sher has been maintained.

35. As a result of above, the appeal in respect of appellant Khathoor is partly allowed to the extent of his conviction awarded under Sections 302,

324, PPC and the sentences awarded to him for the said offences are hereby set aside, whereas the conviction and the sentence awarded to the appellant Kathoor Bangulani for the offence under Section 353, PPC is maintained.

36. Since it has been proved beyond any reasonable doubt that appellant Ali Sher caused the death of deceased PC Rafique Ahmed, and he was unable to provide any license / permit for the weapon he used in commission of the above offence, therefore, Cr. Appeal No.S-77/2019, filed by the appellant Ali Sher Bangulani, arising out of Crime No.95/2016, registered at Police Station B-Section Thull, for an offence under sections 23-1(A) of Sindh Arms Act, 2013 is hereby dismissed and his conviction and sentence in the above case is hereby maintained.

37. Criminal Appeal No.S-78/2019 filed by the appellant Khathoor Bangulani, arising out of Crime No.96/2016. registered at Police Station B- Section Thull, for an offence under sections 23(1)(a) of Sindh Arms Act, 2013, being offshoot of the main case, is also hereby dismissed for the reason stated above. However, his sentence is modified.

38. Record shows that appellant Khatoohr Bangulani is a young man, having no previous criminal record/history. Per learned Counsel, after his arrest in these cases he has continuously remained in custody and there being no earning male member, his family has suffered a lot. Therefore, by taking lenient view, the conviction and sentences awarded to him by the learned trial Court and maintained by this Court in the main case u/s 353, PPC as well as in the offshoot case are hereby altered and converted into already undergone. He is in custody; therefore, he shall be released forthwith, if, his custody is not required by the jail authority in any other custody case.

39. Criminal Appeal No.S-76 of 2019 was dismissed by a short order dated 31.03.2022 in the following terms:

“For the reasons to be recorded later on, the Cr. Appeal No.S-76 of 2019 filed by the appellants Ali Sher and Khathoor, arising out of Crime No.94/2016, registered at Police Station B-Section Thull, for an offence under sections 302, 324, 353, 148, 149 PPC, is hereby dismissed to the extent of Appellant Ali Sher and the impugned Judgment dated 24.09.2019 is hereby maintained in regard to the conviction and the sentences of the appellant All Sher.

So far appellant Ali Sher is concerned, he is also in custody and shall remain in Jail to serve out his remaining sentence.

Let a copy of this Order be sent to the Superintendent, Central Prison, Larkana for compliance. A copy of this Order also be provided to the appellant Ali Sher.”

40. Above are the reasons for the Short Order dated 31.03.2022.

Larkana, 13th April, 2022.

Judge