

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Nazar Akbar

Mr. Justice Zulfiqar Ahmad Khan

Special Cr. Anti-Terrorism Jail Appeal No.218 of 2019

[Adil Kazmi v. The State]

Appellant : Adil Kazmi is in jail custody.

State : Through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General, Sindh.

Date of Hearing : 26.11.2020

J U D G M E N T

Zulfiqar Ahmad Khan, J:- Appellant Adil Kazmi son of Hashim Kazmi was tried by learned Judge, Anti-Terrorism Court-VI, Karachi in Special Case No. 796 of 2018 [Crime No.145/2018, under sections 353/324/34 PPC read with Section 7 of ATA 1997 and Special Case No.797 of 2018 [Crime No. 146 of 2018, under section 23(l)(a) of the Sindh Arms Act, 2013], registered at P.S. Pakistan Bazar, Karachi. On conclusion of the trial, vide judgment dated 28.05.2019, the appellant was convicted and sentenced under section 265-H Cr. P.C. as under:-

- a. For the offences under Section 353 PPC read with Section 6(2)(m) punishable under section 7(1)(h) of ATA 1997 and sentenced to undergo R.I. for five years with fine of Rs.20,000/-. In default in payment of such fine, he shall further suffer S.I. for four months.

- b. For the offence under Section 324 PPC read with Section 7(1)(b) of ATA, 1997 and sentenced to undergo for ten years with fine of Rs.20,000/-. In default in payment of such fine, he shall suffer further R.I. for four months more.
- c. For the offence under Section 23(1)(a) of Sindh Arms Act, 2013 and sentenced to undergo R.I. for seven years with fine of Rs.20,000/-. In default in payment of such fine, he shall further suffer R.I. for four months.

All sentences were ordered to run concurrently. Benefit of Section 382-B, Cr. P.C. was also extended to accused.

2. The brief facts of the prosecution case are that on 31.05.2018, at 1015 hours complainant ASI Javaid Iqbal with his subordinate HC Asif Khan PC Ghulam Ahmed, PC Nabeel Jameel, DPC Azad Hussain were on patrol duty in Madadgar 15 van and when they reached Johar Chowk, local people informed them that six bandits on three motorcycles were looting spree near Nana Decoration. On such information the ASI along with his subordinate reached near Nana Decoration main road at about 1015 hours, they spotted the culprits entering into Moula Abu Talib Colony, Sector 11 ½ Orangi Town. The police party pursued them on which they stopped their motorcycles and made fire shots at them. Police party also made fire shots in retaliation. During encounter, one of the accused sustained gunshot wound in his right foot and fell down whereas HC Asif Khan received injury in his left foot. Complainant ASI Javaid Iqbal also sustained a bullet injury in his right hand. While five accused persons fled from the crime scene by resorting to shooting. The injured accused was apprehended by the police party and on inquiry he disclosed himself as Adil Kazmi who was found holding a TT Pistol in his right hand, which was loaded with a bullet in its chamber and 02 in its magazine. He was also found in possession of a black wallet carrying an amount of Rs.3570/-, a colored CNIC copy of one Malik Muhammad Imran s/o Pir Bux, a colored copy of registration paper of motorcycle make

Habib, a VGO Tel mobile phone and 07 live bullets in pocket of his pants. Accused Adil Kazmi identified his fleeing accomplices as Ali and Sagheer whereas names of the other three absconding accused were unknown to him. Police found two motorcycles one make Habib Engine No.110955277, Chassis No.03101322 and the other one Honda Engine No.CO4273, Chassis No.NHO-04271 from the spot. ASI Javaid Iqbal also inquired about the status of motorcycles from ACLC of which one was reported to had been stolen from the jurisdiction of PS Joharabad. ASI Javaid Iqbal collected the empties viz. 5 of 9mm, 6 of 30 bore and 3 of SMG and sealed the same on the spot. The motorcycles were also impounded by the police and the articles were sealed. Complainant ASI Javaid Iqbal called the second police mobile and handed over the motorcycles to them. Thereafter, complainant ASI Javaid Iqbal, HC Asif and the accused were taken to Abbasi Shaheed Hospital in an ambulance and on the same day SIP Ayoob Jamali recorded the statement under section 154 Cr. P.C. of complainant ASI Javaid Iqbal at Abbasi Shaheed Hospital. Hence these FIRs.

3. After usual investigation, challan was submitted against the accused under the above referred sections. Both the cases were amalgamated by the trial court under section 21-M of the Anti-Terrorism Act, 1997, vide order dated 31.07.2018 at Exh.2/A .

4. Trial court framed charge against the accused at Exh.04 in both the cases, to which accused pleaded not guilty and claimed to be tried.

5. At trial, prosecution examined five witnesses. Thereafter, prosecution side was closed.

6. Statement of accused under Section 342 Cr. P.C was recorded at Exh.16, wherein the accused denied all the incriminating pieces of prosecution evidence brought against him on record and claimed false

implication in these cases and raised plea that he was picked up from house and shot him in the police station. In a question what else he has to say, he replied that he is innocent and he was picked from his house by the police who demanded Rs.2,00,000/- bribe and police has implicated him in these cases falsely because of his refusal to pay illegal gratification also produced a certified copy of evidence of PWs in Crime No. 182/2018, registered at P.S. Orangi Town (Exh16/A), police booked him in the aforementioned case fifteen (15) minutes after this case.

7. Trial Court after hearing the learned counsel for the parties and assessment of evidence, by judgment dated 28.05.2019 convicted and sentenced the appellant as stated above. Hence this appeal.

8. The grounds taken in the appeal are that the appellant is quite innocent and has not committed the offence as alleged and he has falsely been implicated in these cases and the learned trial Court has failed to appreciate that no alleged weapon has been recovered the exclusive possession of the appellant and the alleged recovery totally foisted upon him and the impugned judgment is illegal, unlawful, arbitrary and is unwarranted by law and that the learned trial Court did not consider the improvements, discrepancies, and contradictions in the statements of PWs while deciding the case and the FIR of encounter was lodged by the complainant falsely, none from the general public sustained bullet injury and the official weapons of police were not sent for FSL which makes the whole story doubtful and the alleged recovered weapon was sent for FSL with inordinate delay without any explanation and the learned trial Court has erred in holding that the prosecution has proved the case against the appellant while there was contradictory evidence which is not trustworthy due to material contradictions and conviction handed down to the appellant is illegal and the same is result of mis-reading of facts and evidence on record and PWs-03 and 04 have

stated that the street in which the accused persons tried to flee was ten feet wide while I.O. has stated that such street is 20 feet wide and the learned trial Court has miserably failed to appreciate the evidentiary value of evidence and no police mobile was hit by any bullet which sole ground is sufficient to create the doubt in the prosecution story. Lastly, the appellant in his appeal has prayed for acquittal.

9. Learned Additional Prosecutor General has argued that the prosecution has examined four PWs and they have fully implicated the accused in the commission of offence. He further argued that police officials had no enmity to falsely implicate accused in these cases and trial court has rightly convicted the accused. Learned Additional Prosecutor General prayed for dismissal of the present appeal.

10. We have carefully heard the learned Counsel for both the parties and scanned the entire evidence available on record.

11. At the trial, prosecution examined P.W.1/Sub-Inspector Muhammad Ayoob who deposed that on 13.05.2018, he was posted at PS. Pak Bazar as a Duty Officer. SI Jabbar through telephonic call informed him that SI Javaid Iqbal, alongwith other police officials had an encounter and ASI Javaid Iqbal, HC Asif and one accused Adil were injured, on which they reached Abbasi Shaheed Hospital and lodged the two FIRs on the basis of statement u/s 154 Cr. P.C., he had gone to the hospital on his own motorcycle. It took about one hour to reach the hospital. He enquired from the MLO about the injured police personnel and the accused. The injured police personnel had received injuries when they were chasing the accused persons, who were on three motorcycles and one of the four accused persons got injured and fell down, who was arrested while the remaining fled from the scene. One of

the police persons received injury in his hand whereas the other one got inflicted in his foot.

12. PW-02 Dr. Azizullah has deposed that on 31-05-2018, who I examined the injured persons and found following injures.

I examine HC Asif and found injuries, lacerated wound of entry gutter shaped 02 cm x 0.5 cm over dorso medial aspect of left foot. I produce such MLC No. 4029/18 of injured HC Asif as Exb-10/A, it is same, correct and bears my signature.

Exit noon seen.

I examine Accused Adil s/o Hashim and found injuries; lacerated fire arm wound of entry 0.75 x 0.75 cm with inverted margins over medial aspect of right lower thigh. I produce such MLC No. 4030/18 of injured Adil s/o Hashim, as Exb/B, it is same, correct and bears my signature. Thereafter, inspector Irshad Ali Korai moved an application to correct the name of the accused, which I produce as Exb-10-C. it is same and correct. On such application I have correct his name at MLC.

EXIT.

Lacerated fire arm wound of exit 01cm x 01 cm with everted margins over lateral aspect of right lower thigh.

I then examine ASI Javed Iqbal s/o Muhammad Hussain and found injuries, lacerated fire arm wound of entry 0.25 x 0.25 cm over medial aspect of right hand with inverted margins. I produce such MLC No. 4031/18 as Exb-10/D, it is same, correct and bears my signature.

EXIT. Not seen.

I also produce supplementary Medico Legal Report dated 26.06.2018 as Exb-10/E to Exb-10/G

During his cross-examination he stated that the bullet that hit the hand of ASI Javed Iqbal got stuck without exiting. Whereas the injury of HC Asif had no exit because it only touched the surface without entering and he did not take out the bullet from the hand of ASI Javed Iqbal as it was the job of casualty officer. He further admitted that all the injured persons had received fire shots from a distance of 10/15 meters.

13. PW-03 PC Nabeel Jameel has deposed that on 31.05.2018 he was posted as PC at PS Pakistan Bazar. During patrolling when they reached

at Johar Chowk some public persons informed the ASI that six bandits on three motorcycles were on looting spree near Nana Decoration. On such information they started chasing the bandits and when they entered into a street so also they followed them where they stopped their motorcycles and started firing upon them. They also returned fire and during such shoot out ASI Javed Iqbal received gunshot wound in his right hand and HC Asif had received bullet wound in his left foot. One of the bandits had also received bullet injury in his right leg. Five of the bandits escaped leaving their injured accomplice and two motorcycles behind. They tactfully overpowered the injured accused and found him holding a 0.30 bore pistol. He was subjected to thorough search and such pistol was found loaded with 1 bullet in the chamber, 2 in its magazine and 7 live rounds were found from his pocket. Other articles recovered were a black wallet carrying Rs.3570/-, colored CNIC copy, a driving license, motorcycle papers and a Vigotel cell phone. The ASI collected empties from the spot and sealed the same. During his cross-examination he stated that it was about 1000 hours when they were informed by the public about the looting spree and they reached the accused persons in five minutes from the time of receiving information. The street, in which the accused persons tried to flee, was 10 feet wide. That street was pretty long. The accused persons shot at them from a distance of about 15/20 feet and they returned fire by getting off the police mobile and the encounter ensued for about 5/10 minutes and the engine and chassis number of the motorcycles were noted by me and PC Ghulam Ahmed and the empties were searched and collected by all of them and three empties of SMG, five empties of 9mm and six empties of 30 bore were collected. He and PC Ghulam Hussain had fired 03/03 rounds of SMG and the ASI had fired 10 shots and HC Asif had made 02 fire shots and admitted that he had not exhibited any entry of reaching P.S. to the place of incident the I.O took him, DPC Azad and PC Ghulam Ahmed. A

number of public persons had also gathered and I.O had asked persons from the public to be mushir but they refused and no private person had been cited as a mushir. He also admitted that he did not mention about the black plastic covering on both sides of the handle of the pistol, in his statement under section 161 Cr. P.C. as well as in his examination-in-chief.

14. PW-04/complainant ASI Javed Iqbal has deposed that on 31-05-21018, he was posted as an ASI/Mobile Officer of 15-Madadgar, P.S. Pakistan Bazar. During patrolling, when they reached at Johar Chowk people informed him that six bandits on three motorcycles were looting spree near Nana Decoration. On such information he reached Nana Decoration main road at 1015 hours and he pursued them on which they stopped their motorcycles and made fire shots at them. In retaliation they also made fire shots, during encounter, one of the accused namely, Adil Kazmi sustained gunshot wound in his right foot and fell down whereas, HC Asif Khan received injury in his left foot and he also sustained bullet injury in his right hand. Five accused persons fled from the crime scene resorting to shooting. The injured accused was apprehended by them and on inquiry, he disclosed himself as Adil Kazmi. He was found holding a TT pistol in his right hand which was found loaded with a bullet in its chamber and 02 in its magazine. He was also found in his possession a black wallet holding with an amount of Rs.3570/- therein and a coloured copy of CNIC of one Malik Muhammad Imran, the fleeing culprits were identified by the apprehended accused as Ali and Sagheer whereas he did not know the names of the other culprits. During his cross-examination he admitted that he did not take any of the public persons who had informed him about the culprits on loot, to identify them on the spot and such street was hardly 10 feet wide and 15 paces long and the police van could not enter into such a narrow street therefore, he alighted from the vehicle and went in

pursuit of the culprits along with HC Asif, PC Nabeel Jameel and PC Ghulam Ahmed. The distance between the culprits and them was about 10/15 paces when the encounter ensued and the encounter and chase of the fleeing culprits took about 3/4 minutes and further admitted that the recovered wallet and the cell phone were not sealed on the spot and he made 10 shots with his 9mm pistol, whereas PC Jameel and PC Ghulam Ahmed made 03 SMG shots each and approximately each of the accused persons made 03 fire shots during the encounter and admitted that he did not prepare sketch of the pistol and he did not get to see ASI Abdul Jabbar who took the motorcycles to the PS and on the day of incident his statement u/s 161 Cr PC was not recorded.

15. PW-05/I.O. Inspector Irshad Ali has deposed that on 31-05-2018 he received the investigation of the FIRs Nos. 145/2018 and 146/2018 and so also he received the relevant case papers and admitted that he had not exhibited anything showing the investigation to have been given to him and it was handed over orally and that on the day of getting the investigation he did not record statements of the injured policemen and further admitted that the street of the place of incident would be above 20 feet wide but he could not tell the length of the street and the wall of a house had bullet marks on it but conceded that neither in the FIRs nor any other document speaks of such bullet marks on any wall and in his presence they searched for empties but none were found and it took half an hour to inspect the place of incident and search for the empties and no crowd or any person came closer till their departure and further admitted that he did not inquire from any private person in the street i.e. place of incident whether any police encounter had taken place and departure entry (Exh.14/A) did not mention the name of PC Mumtaz or license plate number of police mobile and arrival entry (Exh.14/B) did not disclose the names of PC Ghulam Ahmed and PC Nabeel Jameel and Exh.14/E speaks only about one motorcycle which did not mention

engine and chassis number and admitted that he had written letter to ETO for only one motorcycle and accused was not produced before the Magistrate for the purpose of acquiring remand and did not acquire assistance of fingerprints expert for accused person's fingerprints on the weapon, the motorcycle and other case property.

16. Record reflects that Ballistics Expert had received only five 9mm bore crime empties, six 30 bore crime empties and three 7.62x39 bore empties for examination on 01.06.2018 as per Exh.14/D, who furnished his report that the same were examined through Integrated Ballistic Identification System (IBIS) and found that the said crime empties did not match with the available data base. According to memo of arrest and seizure of weapon etc. (Exh11/A) one 30 bore (un-numbered) pistol was recovered from the possession of accused with the description as **CAL-30MA43ER MADE AS CHINA BY NORINCO** and word "M20" was engraved but as per letter sent by the I.O. to Incharge FSL Office, Karachi (Exh. 14/C), only abovementioned empties were sent for examination and crime weapon has not been sent for Ballistics Expert's report, which creates serious doubt in the prosecution case. No evidence of modern devices to that extent has been produced by the prosecution before the trial court.

17. It transpired from the record that PW-03 in his cross-examination he had admitted that street was 10 feet wide, whereas, PW-05/I.O. and that the street was 20 feet wide road, furthermore according to PW-03 empties were secured by all the police officials from the place of incident and PW-05 admitted that empties were not found and he further admitted that investigation was handed over to him orally and there was no written order with regard to the investigation of these FIRs and he did not record statements of any policemen and at the time of inspection I.O. did not inquire from any private person in the street

whether any police encounter had taken place and in his cross-examination further admitted that he had written letter to the ETO for only one motorcycle but according to prosecution story two motorcycles were recovered and he also did not acquire assistance of fingerprints expert for accused person's fingerprints on the weapon, the motorcycle and the other case property, whereas, PW-04 stated that two motorcycles were recovered from the spot and street was hardly ten feet wide, wallet and cell phone were not sealed on the spot and he did not prepare sketch of the pistol and engine and chassis numbers were noted by him and on his dictation were written down by DPC Azad, however, PW-03 admitted that engine and chassis numbers of the motorcycles were noted by him and PC Ghulam Ahmed. Prosecution failed to produce the evidence of Injured HC Asif before the Court.

18. According to prosecution story, the encounter continued for 05/10 minutes but surprisingly no one from the public sustained any injury nor was the surrounding property damaged during the alleged encounter and no police official vehicle has been damaged though I.O admitted that the wall of a house had bullet marks but neither in FIRs nor any other document speaks about such bullet marks on any wall and he failed to record the statement of the owner of the said house. Prosecution has also failed to show that despite being a well-populated mobile market area when police had sufficient time to associate any other shopkeeper/private *Mushirs*, why such was not done, which cuts the roots of prosecution case. The above prosecution evidence shows glaring contradictions/ambiguity. This fact has totally been ignored by the learned trial Court while passing the impugned judgment.

19. Prosecution failed to prove that appellant assaulted or used criminal force to police officials to deter from discharge of their duty. In our view, appellant had been convicted under section 324, PPC without

any evidence. From the prosecution evidence available on record, offence had no nexus with the object of Anti-Terrorism Act, 1997 as contemplated under sections 6 and 7 of the Anti-Terrorism Act, 1997. Therefore, evidence available on record makes it clear that encounter had not taken place. Above stated circumstances created doubt about the very commencement of the encounter.

20. It appears that the Investigation officer to conduct fair investigation in this case has failed as no independent person of locality was examined in order to ascertain the truth beyond any reasonable doubt. The above stated circumstances in our view created serious doubts about the very occurrence of the encounter. The standard of the proof in such a 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 was a day time incident. It was desirable that it should have been investigated by some other agency. Such dictum has been laid down by the Honourable Supreme Court in the case of *Zeeshan alias Shani versus The State* (2012 SCMR 428). Relevant portion is reproduced as under:-

“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 afterthoughts 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. We, therefore, by extending the benefit of doubt allow this appeal, set aside the conviction and

sentence awarded and acquit the appellant of the charges. He be set free forthwith if not required in any other case.”

21. According to the statement of accused under section 342 Cr. P.C., he was picked up by police from his house and shot him in the police station and police demanded Rs.2,00,000/- from him and on failure to fulfill their demand, implicated him in these false cases and he produced certified copy of evidence of PWs in Crime No.812/2018, registered at P.S. Orangi Town but such plea has been disbelieved by the trial Court without assigning any reason. No doubt, police officials as citizen are as good witnesses in Court proceedings as any other person yet, some amount of care is needed when they are the only eye witnesses in the case. It is not on account of an inherent defect in their testimony, but due to the possibility that an individual police official in mistaken zeal to see that the person he believes to be a culprit is convicted, might blur line between duty and propriety. It is settled law that in the exercise of appreciation of evidence it is necessary as prerequisite, to see whether witness in question is not such an overzealous witness.

22. We are unable to rely upon the evidence of the witnesses with regard to police encounter for the reason that there was cross-firing for about 05/10 minutes but no independent person has been cited as witness despite of the fact that the place of incident was a thickly populated area. Accordingly, the prosecution has failed to bring home guilt to the accused as the evidence furnished at the trial is full of factual, legal defects and is bereft of legal worth/judicial efficacy. Therefore, no reliance can be placed on the same, in all fairness.

23. Admittedly, PW-05 Irshad Ali in his cross-examination has admitted that he had not produced any Raznamcha Entry regarding receiving of case property and investigation was handed over to him

orally and there was no written order. Interestingly, Incharge *Maal-khana* (Head *Mohararr*) on the point of safe custody of weapons, has also not been examined by the prosecution and official weapons, which were used in the alleged encounter, have also not been sent for FSL report. Sending the weapons recovered from the accused to the forensic division with one day's delay, has also not been explained properly, as such no sobriety can be attached to the positive report, with regard to the safe custody of the weapon at police station and its safe transit, the Honorable apex court in the case of *Kamaluddin alias Kamala VIS The State (2018 SCMR 577)* has held as under:

“As regards the alleged recovery of Kalashnikov from the appellant's custody during the investigation and its subsequent matching with some crime-empties secured from the place of occurrence suffice to it to observe that Muhammad Athar Farooq DSP/SDPO (PW18), the investigating officer, had divulged before the trial court that the recoveries relied upon in this case had been affected by Ayub, Inspector in an earlier case and thus, the said recoveries had no relevance to the criminal case in hand. Apart from that safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory had never been proved by the prosecution before the trial court through production of any witness concerned with such custody and transmission”

24. Omissions are always fatal to the case of the prosecution and tempering with case property could not be ruled out where the same was not sealed or the same were sent for chemical examination with a delay. Lapse on the part of the police is clear and admitted. Wisdom behind sealing the weapons at the place of incident is to eliminate the possibility of manipulation of evidence after the recovery of the crime weapons. Sealing of weapons is essential, particularly in cases when it is alleged that weapon was used in the commission of crime and empties were secured from the *vardat* but here PW-03 stated that empties were secured by all the police officials but I.O. had not found any empties from the place of incident. In the circumstances at hand evidence of police officials does not appear to be trustworthy thus required

independent corroboration, which is lacking in this case. Reliance is placed on the case reported as **PLD 2004 Supreme Court 39** (*The State vs. Muhammad Shafique alias Pappo*), in which the Honourable Supreme Court has observed as under:-

“13. It has been established by the evidence of Muhammad Saeed Abid C.W. that the respondents were neither the owners of said house nor tenants. It being so, it is very hard to believe that they were occupying it B and were living therein. Learned High Court specifically noted that despite the fact that it was known to the prosecution that the house belonged to aforesaid witness, yet, no evidence was collected to show that the respondents were in its possession. Neither Chowkidar nor labourers nor neighbours were joined by the investigating agency to demonstrate that ever any of them was seen entering or coming out from it. The alleged recoveries of explosive substances, weighing about 30 k.gs. a kalashnikov with 25 live rounds loaded in the magazine from under the mattress of respondent Abdul Jabbar and a wooden box from under said bed of respondent Muhammad Shafique, containing 10 detonators 10 igniters, a T.T pistol loaded with six live rounds, do not inspire confidence, as so C much could not be concealed under said mattresses. Besides, Mashir of recovery namely, Muhammad Usman, as rightly held by High Court, was stock witness of the prosecution, as in the cases related to F.I.Rs. Nos. 58, 59, 61, 62, 68 of 1998 and 16 of 1999 he was cited as prosecution witness of recovery. It is a strong circumstance, which creates doubt about credibility of this witness, particularly when other witness Mushir Abdur Rehman was not examined.”

25. Needless to mention that while giving the benefit of doubt to an accused, it is not necessary that there should be countless 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).

26. No doubt, the Sindh Arms Act, 2013 is enacted to curb the proliferation of arms and ammunitions and punishment for possession of any fire arm is extended to 14 years and with fine and rule for safe administration of criminal justice is “the harsher the sentence the stricter the standard of proof”, therefore, for the purposes of safe administration of criminal justice, some minimum standards of safety are to be available so as to strike a balance between the prosecution and the defence and to obviate chances of miscarriage of justice on account of exaggeration by the investigating agency. Such minimum standards of safety are even otherwise necessary for safeguarding the fundamental rights of the citizens regarding life and liberty, which cannot be left at the mercy of police officers without production of independent evidence. It is therefore held that it would be unsafe to rely upon the evidence of police officials without independent corroboration which is lacking in this case. Consequently, in view of our above discussion, we form a view that appellant was picked up earlier by the police and later implicated in these bogus cases. Hence, no sobriety can be attached to the prosecution case as well as the deposition of prosecution witnesses.

27. In presence of such lacunas in the prosecution case we are of the considered view that the conclusion drawn and reasons advanced by learned trial Court do not show fair evaluation of evidence, which is not in accordance with the settled principles in criminal cases, therefore, impugned judgment is a result of erroneous and unreasonable lines of reasoning and merits interference by this Court to erase the effect of miscarriage of justice.

28. From the above discussion, it is evident that the investigation and inquiry carried out is neither satisfactory nor free from *malice* and the appellant’s implication in these cases is not free from doubts. He thus

could not be left at the mercy of Police. The review of the impugned judgment shows that essential aspects of the case have slipped from the sight of the learned trial Court which are sufficient to create shadow of doubt in the prosecution story.

29. For the above stated reasons, we reached to an irresistible conclusion that prosecution has utterly failed to prove its case against the appellant and trial court failed to appreciate the evidence according to settled principles of law. False implication of the appellant could not be ruled out. Resultantly, instant appeal was allowed. Conviction and sentence recorded by the trial Court vide judgment dated 28.05.2019 were set aside and appellant was acquitted of the charges. Appellant was ordered to be released forthwith if not required in any other custody case.

30. These are the reasons for our short order dated 26.11.2020.

JUDGE

JUDGE

Dated: .06.2021

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