

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha J.
Mr. Justice Zulfiqar Ali Sangi J.

Spl. Crl. Anti-Terrorism Jail Appeals No.68 and 69 of 2022

Appellant : Samiullah son of Muhammad Badshah
through Mr. Muhammad Hanif Qureshi,
Advocate.

Respondent : The State through Mr. Muhammad Iqbal
Awan, Addl. P.G, Sindh.

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Spl. Crl. Anti-Terrorism Appeals No. 71 and 72 of 2022

Appellant : Zahoor Ahmed @ Abdullah son of Abdul
Malik, through Mr. Muhammad Hanif
Qureshi, Advocate.

Respondent : The State through Mr. Muhammad Iqbal
Awan, Addl. P.G, Sindh.

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Spl. Crl. Anti-Terrorism Jail Appeals No. 76 and 77 of 2022

Appellant : Dad Shah son of Ahmed Shah,
through Mr. Muhammad Hanif Qureshi,
Advocate.

Respondent : The State through Mr. Muhammad Iqbal
Awan, Addl. P.G, Sindh.

Date of Hearing : 21.09.2022

Date of Judgment : 04.10.2022

J U D G M E N T

ZULFIQAR ALI SANGI-J., By this single judgment, we intend to dispose of six captioned Appeals arising out of the same judgment dated 28.02.2022 passed by learned Anti-Terrorism Court No.X, Karachi in Special Cases No.65 of 2021 and 65-A to 65-C of 2021 bearing Crime No.655 of 2020 U/s 353, 324, 34 PPC r/w section 7, ATA, 1997 and Crime Nos.656 to 658 of 2020 u/s 23(1)(A) Sindh Arms Act, 2013, all Crimes were registered at P.S Aziz Bhatti, Karachi whereby appellants Samiullah, Zahoor Ahmed @ Abdullah and Dad Shah were convicted u/s 7(1)(h) of ATA, 1997 read with Sections 353/324 PPC and sentenced to undergo Rigorous

Imprisonment for a period of five (05) years with fine of Rs.50,000/- each and in default thereof, they were ordered to undergo further Simple Imprisonment for a period of six (06) months each. The appellants were also convicted under section 25 read with section 23(1)(A) of Sindh Arms Act, 2013 and sentenced to undergo Rigorous Imprisonment for five (05) years with fine of Rs.50,000/- each and in default thereof, they were ordered to undergo further Simple Imprisonment for a period of six (06) months each. All the sentences were ordered to run concurrently while granting benefit of Section 382-B Cr.P.C to all the appellants.

2. Brief facts of the prosecution case as per FIR are that on 07.11.2020, police party headed by SIP Sadar Uddin Mirani of PS Aziz Bhatti, Karachi whilst patrolling in the area in police Mobile No.SPG-057, when reached at Main University road opposite Al-Hamd Meerut Kabab at about 1335 hours saw a suspicious white colour Corolla Car bearing No.AJN-080 and was signaled to stop, but the said suspects accelerated the speed in order to flee away from the crime scene, however police officials bashed its mobile into the suspected car in order to stop it. However, the said suspected persons opened fire upon the police officials with intention to commit their murder and to evade their arrest. Police officials also returned fire in their defence. Consequently, one of the fire bullets of the police officials hit the Driver of the said suspicious car, who was identified as Zahoor Ahmed @ Abdullah son of Abdul Malik, due to firing of the culprits one bullet also hit to the hood of the police mobile, whereas suspicious car of the culprits also received bullet holes. Finally, police officials managed to apprehend all three assailants at the spot so also secured unlicensed pistols from their hands. On query, the apprehended culprits disclosed their names as Zahoor Ahmed @ Abdullah son of Abdul Malik, Dad Shah son of Ahmed Shah and Samiullah son of Muhammad Badhshah. Due to non-cooperation of private persons, complainant made search of culprits in presence of police mashirs and recovered one Press Card, one black coloured mobile phone of Samsung (Touch System) including Book of the suspected car along with Cash of Rs.1300/- from accused Zahoor Ahmed @ Abdullah, one black colour Infinix mobile phone (Touch system), one Nokia Mobile phone (105), black coloured having keypad

along with cash of Rs.1200/- from accused Dad Shah and one Vivo Touch Mobile phone, blue colour, Nokia Mobile phone (105) with keypad, original CNIC in his name with cash of Rs.1000/- were also secured from accused Samiullah. From the apprehended/injured accused Zahoor Ahmed @ Abdullah, police had recovered one unlicensed 30 bore pistol having one round loaded in its chamber with three live rounds loaded in the magazine, whereas, another unlicensed 30 bore pistol having one round in its chamber and two live rounds in its magazine was recovered from the accused Dad Shah, while another unlicensed 30 bore pistol with one round loaded in its chamber with 4 rounds loaded in the magazine was secured from the accused Samiullah. Accordingly, the complainant sealed the recovered weapons, live rounds crime empties of 30 bore pistol and 9 MM pistol on the spot separately, whereas the entire personal search articles of the accused persons were also taken into custody by the police. The accused persons were then arrested on the spot under a joint memo of arrest, recovery and seizure. Corolla Car was also taken into custody by the police as case property. The injured accused was shifted to Jinnah Hospital, Karachi for his medical treatment. Later on, police party returned back to PS along with custody of accused persons, case property and police papers. Accordingly, four FIRs were registered against the accused persons on behalf of the State.

3. Charge against appellants was framed, to which they pleaded not guilty and claimed trial. At the trial, prosecution examined 06 witnesses including complainant, mashirs of arrests and recovery and Investigating Officer, who produced certain documents.

4. Statement of appellants u/s 342 Cr.P.C were recorded wherein they denied prosecution allegations and pleaded their innocence. They, however, neither examined themselves on oath nor led any evidence in their defense.

5. On conclusion of the trial, learned trial Court convicted and sentenced the appellants through impugned judgment as stated above.

6. Learned counsel for the appellants mainly contended that the appellants are innocent and have been falsely implicated in these cases; that as per prosecution story when police party chased the accused persons, they opened direct fires upon them but none from the police party received any single fire and only the accused on driving seat received firearm injury on his chest without breaking window screen, which negates factum of encounter between police and the accused persons and apparently fake encounter has been shown; that alleged incident took place on main university road which is busy road besides populated area on both sides but none from public was associated as a witness of the incident; that no independent witness has been joined and all the witnesses are police officials, therefore, their evidence cannot be relied upon; that P.W.1 SIP Sadaruddin Mirani did not identify the accused persons in the court properly. Learned counsel further argued that there are material contradictions between evidence of P.Ws as Complainant SIP Sadaruddin deposed that after sustaining bullet injury, accused on driving seat started running by leaving the car whereas P.W.5 HC Muhammad Iqbal deposed that after encounter when he came there, he saw a person on driving seat having bullet injury was lying there; that as per FIR and memo of arrest and recovery, one bullet was hit to police mobile on its hood whereas complainant deposed that two bullets hit on bonnet of police mobile; that sketch/diagram of alleged recovered pistols was drawn at the back side of memo of recovery without assigning name of accused, however, during cross examination complainant failed to properly match such sketch to the accused persons; that P.W.1 complainant deposed that injured accused was shifted from place of incident to hospital directly whereas P.W.2 PC Muhammad Sarwar admitted that on reaching back to P.S, injured accused was referred to the hospital; that alleged recovered pistols were sent to FSL with delay of two days and car was sent after two months, for which no plausible explanation was given by the prosecution regarding safe custody of the case property during such period, therefore, it cannot be ruled out that alleged recovery was foisted upon the accused; that in view of the aforesaid contradictions the prosecution failed to prove its case against the appellants beyond shadow of doubt but learned trial court convicted

the appellants, which is not sustainable in law and is liable to be set aside. He lastly prayed for acquittal of the appellants.

7. On the other hand, learned Addl. P.G has contended that the prosecution has successfully proved its case by examining the P.Ws, who had no enmity or ill-will with the appellants; that the police party chased the appellants while going in the car and as and when reached near to them, they made firing upon the police party and in retaliation, one accused sustained firearm injury; that appellants were caught red handed on the spot and crime weapons were also recovered from them, therefore, there is no doubt in the prosecution case and the impugned judgment does not suffer from any illegality or irregularity. He lastly prayed for dismissal of the appeals.

8. We have heard learned counsel for the appellant as well as learned Addl. P.G and perused the material available on record.

9. An accused person is presumed to be innocent till the time he is proven guilty beyond reasonable doubt, and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond reasonable doubt on the basis of legally admissible, confidence inspiring, trustworthy and reliable evidence. It is well settled law that the prosecution is bound to prove its case against the accused beyond any shadow of reasonable doubt, but no such duty is cast upon the accused to prove his innocence. It has also been held by the Superior Courts that conviction must be based and founded on unimpeachable evidence and certainty of guilt, and any doubt arising in the prosecution case must be resolved in favour of the accused. The evidence produced by the prosecution in the case in hand is reassessed by us in careful manner.

10. PW-1 SIP Sadaruddin in his examination-in-chief deposed that during the encounter, two bullets were hit on the bonnet of the police mobile. However, during cross-examination he stated that they received firing of the accused persons from both sides i.e left and right side of their police mobile. Again during cross-examination, he stated that the accused persons were firing upon them from both sides, out of which one of the fired bullets hit on the hood of the police mobile. The PW-2 PC Muhammad Sarwar did not support this

aspect of the story narrated by PW-1 and during examination-in-chief, he deposed that their police mobile received bullet on its body i.e. hood. During cross-examination, he stated that "*No bullet hit on the bonnet of police mobile*". PW-1 during his examination-in-chief deposed that after receiving firearm injury by the driver of corolla car, he by leaving the car started running. PW-2 deposed that after receiving the bullet injury by the driver of corolla, his car was hit to one motorcycle to which the car got stopped and the person sitting inside came out from the said car. He did not utter a single word that the injured accused person was trying to run away. The arrest of the accused persons as narrated by the prosecution is also doubtful as PW-1 during cross-examination stated that firstly, police party apprehended the accused Zahoor Ahmed and then two remaining accused persons surrendered themselves immediately. Again he stated that one accused was arrested from outside the car and two accused persons were arrested inside the car. PW-2 during the cross-examination stated that all three accused persons were apprehended from outside the car. From the above discussed evidence of two important eyewitnesses of the prosecution, arrest of all three accused persons as well as injury received by accused Zahoor has become doubtful.

11. We also surprised to see the evidence of PW-2, who in his examination-in-chief, has deposed that the said corolla car was signaled by their head SIP Sadaruddin to stop for checking purpose, in response to which, the persons sitting in the corolla did not stop and instead thereof, opened firing on the police mobile, which was behind the said corolla car as such encounter took place in between accused and the police and one person from accused side received firearm injury. When we examined the evidence of prosecution witnesses, they all deposed that the accused Zahoor received firearm injury on his chest. At the time of encounter as per evidence of PW-2 the police mobile was behind the corolla car then it is not understandable as to how the accused received firearm injury on his chest. Not only this but it is the case of prosecution that accused received injury while sitting in the car but on inspection of the car no blood was recovered and such fact has also been admitted by PW-1 and PW-2 during their cross-examination which creates serious

doubts about the encounter. The injured was taken to the hospital on the police mobile and the eye-witness also admitted that even from the police mobile blood was not recovered. The PW-1 during cross-examination stated that they chased the accused persons for more than 1000 yards. The accused received injury while sitting in the car but when we carefully examined the Medico legal certificate available at Page-221 of the paper book in respect of the injured accused we found that the blackening and charring is available at injury No.1 which is entry wound which also cut the roots of the prosecution case and supports the defence version that the accused were arrested and no encounter took place however the injury was caused to him at the police station. There are so many other contradictions in the evidence of prosecution witnesses, but we found that the above discussed contradictions are sufficient to discard the evidence of prosecution witnesses and are also sufficient to extend the benefit of doubt to the accused persons.

12. The rule of giving the benefit of doubt to an accused person is essentially a rule of caution and prudence and is deep-rooted in our jurisprudence for the safe administration of criminal justice. In common law, it is based on the maxim, "**It is better that ten guilty persons be acquitted rather than one innocent person be convicted**". While in Islamic criminal law it is based on the high authority of sayings of the Holy Prophet of Islam (peace be upon him): "**Avert punishments (hudood) when there are doubts**" and "**Drive off the ordained crimes from the Muslims as far as you can. If there is any place of refuge for him [accused], let him have his way, because the leader's mistake in pardon is better than his mistake in punishment.**" The Hon'ble Supreme Court has quoted probably the latter part of the last-mentioned saying of the Holy Prophet (peace be upon him) in the case of *Ayub Masih v. State* (PLD 2002 SC 1048) "**Mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent.**"

13. Keeping in view the said golden rule of giving the benefit of doubt to an accused person for safe administration of criminal justice, we find that all the evidence discussed above is completely unreliable and utterly deficient to prove the charge against the

appellants beyond a reasonable doubt. Resultantly, the Appeals No.68, 69, 71, 72, 76 and 77 of 2022 are allowed and the impugned judgment dated 28.02.2022 passed by learned Judge, Anti-Terrorism Court No.X, Karachi in Special Case No.65/2021 arising out of FIR No.655/2020 for the offences punishable U/ss 353/324/34 PPC r/w Section 7 ATA, 1997, Special Case No. 65-A/2021 arising out of FIR No.656/2020 for the offences punishable U/s 23(i)A of Sindh Arms Act, 2013, Special Case No.65-B/2021 arising out of FIR No.657/2020 for the offences punishable U/s 23(i)A of Sindh Arms Act, 2013 and Special Case No.65-C/2021 arising out of FIR No.658/2020 for the offences punishable U/s 23(i)A of Sindh Arms Act, 2013, all FIRs were registered at PS Aziz Bhatti, Karachi is set aside and the appellants Zahoor Ahmed @ Abdullah s/o Abdul Malik, Dad Shah s/o Ahmed Shah and Samiullah s/o Muhammad Badshah are acquitted of the charges. They shall be released forthwith if they are not required to be detained in some other custody case.

14. The above Appeals are disposed of in the above terms.

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