

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**  
**Criminal Special Anti-Terrorism Appeal No.D-38 of 2023**

**Before:**

*Mr. Justice Irshad Ali Shah,*  
*Mr. Justice Zulfiqar Ali Sangi.*

**Appellants:** (1) Muhammad Sadiq, (2) Jam Ladho and (3) Gulab all by caste Dhanudhu through M/s Shabbir Ali Bozdar and Raja Ifitkhar Hussain Ansari, advocates.

**The State:** **Through** Mr. Imran Mobeen Khan, Assistant Prosecutor General.

**Date of hearing** 18-01-2024

**Date of decision** 18-01-2024

**J U D G M E N T**

**IRSHAD ALI SHAH, J.** It is the case of prosecution that the appellants in furtherance of their common intention deterred the police party of PS Reti led by complainant/SIP Ghulam Safdar from discharging its lawful duty as public servants by making fires at them with intention to commit their murder, eventually as a result of such firing, PW/DPC Akbar Ali sustained fire shot injury, for that they were booked and reported upon by the police. On conclusion of trial they were convicted and sentenced to undergo various terms of imprisonment spreading over ten years with benefit of section 382(b) Cr.P.C by learned Judge, Anti-Terrorism Court, Ghotki, vide judgment dt: 21-06-2023, which they have impugned before this Court by preferring the instant Appeal.

2. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the police and have been convicted and sentenced on the basis of improper assessment of evidence, which was doubtful in its nature; therefore, they are entitled to be acquitted of the charge by extending them benefit of doubt, which is opposed by learned

Assistant P.G for the State by contending that the prosecution has been able to prove its case against the appellants beyond shadow of doubt.

3. Heard arguments and perused the record.

4. It was stated by complainant/ SIP Ghulam Safdar and PW/mashir PC Ajab Gul that on the date of incident they with rest of the police officials were conducting patrol within jurisdiction of PS Reti, when reached at the place of incident, there they found coming the appellants on a motorcycle, they were asked to stop, on that they started to make fires at them, they also fired at the appellants in self defence, such firing continued for about 10/15 minutes, during course whereof DPC Akbar Ali sustained fire shot on his right thigh; the appellants were apprehended; from them were secured unlicensed pistols and repeater gun. They with the recovery so made from them, were taken to PS Reti and were booked accordingly. The evidence of the complainant and PW/PC Ajab Gul takes support from evidence of PW/DPC Akbar Ali. However, their evidence is silent as to who actually caused fire shot injury to PW/DPC Akbar Ali; therefore, benefit of such ambiguity is to be resolved in favour of the appellants. On asking it was stated by the complainant that FIR of the incident was written by WPC Ahmed Malik. In same breath, he stated that the memo of arrest and recovery and FIR of the present case are under one and same hand. WPC Ahmed Malik was not a member of police party which undertook the alleged encounter; therefore, the memo of arrest and recovery being under hand of WPC Ahmed Malik prima-facie suggest that it was prepared by him at police station. The motorcycle, which was produced before the Court at trial, as per the complainant was without registration number, without chassis number, without chain with both of its tyres punctured. How a motorcycle, which was having no chain was used by the appellants for traveling purpose at the time of incident? It is mystery. On the next date, appellant Muhammad Sadiq was

referred to Taluka Hospital Ubauro for examination of his injuries, treatment and certificate. He as per medical officer PW Abdul Rehman was found semiconscious and sustaining injuries on his head with hard and blunt substance. Who caused such injury to him? Record is silent. Possibly, he was maltreated at police station after his arrest. As per I.O/SIP Aftab Ahmed Farooqi, the memo of place of incident and recovery of empties was prepared by WPC Mushtaq Ahmed at his dictation. There is nothing in such memo, which may suggests that it was actually prepared by WPC Mushtaque Ahmed. As per report of ballistic expert, the empties and unlicensed pistols and repeater gun were sent to him jointly. Those ought to have been dispatched to him separately to maintain transparency; such omission on part of prosecution could not be over looked. Even otherwise, no question with regard to such recovery has been put to either of the appellant during course of their examination u/s 342 Cr.P.C; therefore, they could hardly be connected with such recovery. The appellants have pleaded their innocence; such plea on their part could not be lost sight off in the circumstances of the case.

5. The above discussion involves a conclusion that the prosecution has not been able to prove its case against the appellants beyond shadow of reasonable doubt and to such benefit, they are found entitled.

6. In case of *Muhammad Javed vs. The State (2016 SCMR 2021)*, it has been held by Apex Court that;

*“...although a report of the Forensic Science Laboratory was received in the positive in respect of matching of the firearm recovered from the appellant's custody with a crime-empty secured from the place of occurrence yet the investigating officer (PW9) had clearly acknowledged before the trial court that the crime-empty had been sent to the Forensic Science Laboratory on the day when a*

*carbine had been recovered from the custody of the appellant."*

7. In case of *Haji Nawaz vs. The State (2020 SCMR 687)*, it has been held by Apex Court that;

*"The law is settled by now that if a piece of evidence or a circumstance is not put to an accused person at the time of recording his statement under section 342 Cr.P.C then the same cannot be considered against him for the purpose of recording his conviction."*

8. In case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been held by the Apex court that;

*"4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many 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".*

9. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants under impugned judgment are set aside, they are acquitted of the offence with which they were charged, tried, convicted and sentenced by learned trial Court; and shall be released forthwith, if not required to be detained in any other custody case.

10. The instant Criminal Special Anti-Terrorism Appeal is disposed of accordingly.

**Judge**

**Judge**

