

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Spl. Anti-Terrorism Appeal No.D-199 of 2019
Spl.A.T. Jail Appeal No.D-204 of 2019

PRESENT:

Mr. Justice Muhammad Saleem Jessar
& Mr. Justice Abdul Mobeen Lakho

Appellants in both Appeals : through M/s. Amanullah G. Malik
and Sajjad Ahmed Malik Advocates.

State : through Mr. Aftab Ahmed Shar,
Additional Prosecutor General, Sindh.

Dates of hearing : 18.05.2023

Date of Judgment : 18.05.2023

JUDGMENT

ABDUL MOBEEN LAKHO. J- By this single judgment, we propose to dispose of aforesaid two appeals as both of them arise out of the same judgment passed by the trial Court. By means of Spl. A.T. Appeal No.D-199 of 2019 appellant Abdul Bari S/o Ghulam Rasool has assailed the Judgment dated 18.09.2019 and by means of Spl. A.T. Jail Appeal No.D-204 of 2019 appellant Khalil Ahmed @ Sikandar @ Asghar Ali S/o Ahsanullah Brohi has assailed the same judgment passed by Anti-Terrorism Court-I, Sukkur, Camp at C.P. Sukkur, in Special Case No. 67 of 2016, being outcome of FIR No. 90 of 2010 for offences under Sections 324, 353, 120-B PPC & Section 3/4 Explosive Substance Act & 6/7 ATA, 1997, registered at P.S. Rustam District Shikarpur whereby both the appellants have been convicted under section 265-H(2) Cr.P.C. as under:-

1. For the offence U/s 120-B PPC to undergo R.I. for 14 years and to pay fine of Rs.100,000/- each and in case of default to suffer further RI for one year.

2. For the offence U/s 7 (1) (ff) ATA, 1997 R/W Section 4 of Explosive Substance Act to undergo R.I. for 14 years and to pay fine of Rs.100,000/- each and in case of default to suffer further RI for one year.
3. For the offence U/s 324 PPC to undergo R.I. for 10 years and to pay fine of Rs.5000/- each and in case of default to suffer further SI for one month.
4. For the offence U/s 7 (1) (b) ATA, 1997 to undergo R.I. for 10 years and to pay fine of Rs.5000/- each and in case of default to suffer further SI for one month; and
5. For the offence U/s 353 PPC to undergo R.I. for 02 years and to pay fine of Rs.5000/- each and in case of default to suffer further SI for one year.

However, both the accused were extended benefit under Section 382-B Cr.P.C.

2. Brief facts of the prosecution case are that on 17.12.2010, Complainant. SHO Muhammad Siddique Shar lodged the above said FIR at police Station Rustam, stating therein that he along with his subordinate staff namely, HC Zulfiqar Ali, HC Ghulam Asghar, HC Muhammad Panjal, PC Abdul Raheem, PC Ali Hassan Mahar and Driver PC Altaf Hussain left PS under entry No. 04 at 9:10 am in police mobile for maintaining the law and order situation on the occasion of 10th Muharram-ul-Haram. After leaving the PS, complainant received information from DPO Shikarpur through T.C, Abdul Hakeem Jatoi, Gunman of Provincial Minister Abid Hussain Jatoi, that a suicide attacker having small moustaches aged about 20/22 years wearing black color cloths and jacket, had entered the Imam Baraha Nepairabad where Majlis was going on and Provincial Minister Abid Hussain Jatoi and his family members were targeted. It was further stated that the said suicide attacker was restrained by TC Abdul Hakeem and other police officials who were deployed there by making fires on his legs. DPO Shikarpur directed the complainant and SIP Muhammad Hanif Khoso, SHO of P.S Khanpur to reach at Imam Bargah. The complainant with his staff and SPO Khanpur Inspector Anwar Ali Shaikh along with his staff reached at the pointed place where SHO Khanpur Muhammad Hanif Khoso with his staff was already available there. They went ahead towards the suicide attackers, who was in injured condition and when they reached near to him, he exploded himself with the result SHO Khanpur Muhammad Hanif Khoso, HC Allah

Warayo Khoso, HC Peeran Dino and PC Ghulam Shabbir Malgani received injuries and fell down on the ground the area was filled with smoke the complainant party saw the legs of suicide attacker lying in scattered position. Thereafter, the injured police officials were shifted to RBUT Shikarpur and complainant came at police station and lodged FIR to above effect. However, after completion of investigation the case was disposed of in "A" Class.

3. It is further case of the prosecution that accused / appellant Khalil Ahmed was arrested in a case arising out of FIR No.08/2015 registered at PS Lakhi Gate and on 12.03.2015 i.e. after about five years of instant case, during interrogation he disclosed that he with his companion had exploded bomb in the Imam Bargah located in village Napiarabad. On 14.03.2015, SHO PS Rustam, Riaz Hussain Malik, took eye-witnesses of the incident of instant case namely, Asif Ali, Sher Muhammad and Ali Sher to PS New Foujdari, where they identified accused/appellant confined in the lockup stating that he is the same person who on 07.12.2010 along with accused Abdul Bari came at Imam bargah on motorcycle and after explosion ran away on said motorcycle. A Join Investigation Team was formed and on the information of accused Khalil Ahmed his accomplice Abdul Bari confined at Central Prison Sukkur was formally arrested who after his arrest was also arraigned to face trial. Accused Abdul Hafeez @ Ali Sher, Muhammad Ismail and Muhammad Raheem were shown as absconders in the challan.

4. NBWs against the absconding accused were issued but could not be served and ultimately process server returned the same with endorsement that absconding accused are untraceable. Statement of process sever SIP/SHO Syed Imdad Ali Shah was recorded at EX.01 and it was ordered to issue proclamation under sections 87 and 88 Cr.P.C. against absconding accused. Notice of proclamation under section 87 Cr.P.C. was returned by the process sever Ahsan Ali Moryani with endorsement that he had complied the requirement of section 87 Cr.P.C, and his statement was recorded vide Ex.02. Report of Mukhtiarkar Shikarpur was received by ATC Shikarpur to the effect that absconding accused did not have movable or immovable property in the Taluka which was kept on record as Ex.03.

5. The documents were supplied to accused Khalil Ahmed and Abdul Bari under section 265-C Cr.PC. Publications were also made in three newspapers for the absconding accused which were placed on record vide Ex.05 to Ex.08 respectively.

6. Accused Abdul Bari submitted application before trial Court to provide him counsel on State expenses whereupon Mrs. Asia Pathan Advocate was appointed on State expenses to defend him vide order dated 22.09.2015, Ex.09 and later on Mr. Raza Muhammad Soomro advocate was appointed for pauper accused Abdul Bair and absconding accused on State expenses vide order dated 04.02.2017.

7. A formal charge was framed against accused Khalil Ahmed and Abdul Bari to which they pleaded not guilty and claimed to be tried.

8. It is pertinent to mention here that after framing of charge against accused Khalil Ahmed and Abdul Bari, absconding accused Muhammad Ismail was arrested and was sent up for trial. On 26.01.2016, documents under section 265-C Cr.P.C, were supplied to him vide Ex.12 and then amended charge was framed vide Ex.13 to which all the three accused to which they pleaded not guilty and claimed to be tried vide their respective Pleas Ex.13/A to 13/C.

9. In order to prove its case, prosecution examined PW 1 HC Ali Sher at Ex.14, PW 02 HC Zulfiar Ali at Ex.15, PW 03 PC Shabbir Ahmed at Ex.16. PW 04 complainant Muhammad Siddique was examined at Ex.17, who produced FIR No.90/2010 as Ex.18. PW 06 HC Allah Warayo was examined at Ex.19, who produced attested copy of entry No.14 as Ex.19/A. PW 07 Tapedar Zubair Ahmed was examined at Ex.20, who produced sketch as Ex.20/A. PW 08 Dr. Imtiaz Ali was examined at EX.21, who produced letters, Lash Chakas Form, Provisional Medical Certificates as Ex.20/A to 20/I. PW 09 Inspector Ghulam Hussain was examined at Ex.26, who produced mashirnama of place of incident, mashirnama of injuries of injured, Technical report, mashirnama of recovery of explosive material, Danishtnama, report of J.I.T and Chemical examiner's report as Ex.26/A to 26/H. PW 10 Asif Ali was examined at Ex.27, who produced mashirnama of identification of accused as Ex.29/A. PW 11 Ali Sher was examined at Ex.31, whereas PW-12 Inspector Nazar Muhammad was examined

at Ex.33. who produced photo copy of mahsirnama of formal arrest of accused Mohammad Ismail as Ex.33/A. PW 13 Riaz Ahmed was examined at Ex.34, who produced memo of formal arrest of accused Khalil Ahmed, attested copy of roznamcha entry, memo of formal arrest of accused Abdul Bari, photo copy of FIR No.14/2015 registered at PS Sultankot and copy of roznamcha entry as Ex.34/A to 34/H. PW 14 PC Muhammad Arbab was examined at Ex.36. Thereafter, learned APG appearing for the State closed side of prosecution.

10. Thereafter, statements of accused persons were recorded U/S 342 wherein they denied the allegations of prosecution leveled against them. They stated that they are innocent and have been falsely involved in the case. They further stated that all the witnesses are police officials, who are hostile to them. However, neither they examine themselves on oath as provided U/S 340 (2) Cr.PC, nor led any evidence in their defence.

11. After formulating the points for determination, recording evidence of the prosecution witnesses and hearing counsel for the parties, trial Court vide impugned judgment convicted and sentenced the appellant, as stated above. Against said judgment the appellant has preferred instant appeal.

12. We have heard the arguments advanced by learned counsel for the appellants as well as learned Additional Prosecutor General appearing for the State and have perused the material available on the record.

13. Learned counsel for the appellants submitted that the incident in the present case allegedly took place on 17.12.2010 and F.I.R. was got registered on the same day by complainant, SHO Mohammad Siddique of P.S. Rustam. However, in the FIR the complainant has not narrated the fact that after the explosion he saw two persons running away on a motorcycle from the scene of offence. They further submitted that present appellants have not been named in the FIR. They further submitted that after conducting investigation the case was disposed of in "A" Class and it was reopened after a long period of five years. According to learned counsel, no incriminating article, offensive weapons and/or explosive material was recovered from or at the pointation of present appellants. They further submitted that the Investigating Officer did not extend the scope of investigation with regard to identity of suicide attacker who exploded himself on

the day of incident i.e. 17.12.2010. They further submitted that there is contradiction in the contents of F.I.R. vis-à-vis the deposition of P.Ws Ali Sher and Asif Ali. They further submitted that although according to the evidence of P.W. Asif Ali, the suicide attacker had thrown a bomb upon them but the same fell into water; however, the I.O. in his deposition has not uttered a single word about securing any bomb from the water, nor the memo of site inspection finds any mention about such fact. Learned counsel further submitted that accused Mohammad Ismail against whom none of prosecution witnesses has deposed, has been acquitted of the charge through the same judgment impugned herein. They further submitted that as names of present appellants were not mentioned in the F.I.R., nor were they previously known to P.Ws Asif Ali and Ali Sher, therefore, their identification parade was necessary but the same was not held, as such serious doubts have been created in the prosecution case. Learned counsel concluded that in view of above defects in the prosecution case, particularly non-holding of identification parade, serious doubts have been created in the prosecution case and in the circumstances the conviction cannot be maintained. In support of their contentions, they placed reliance upon the cases of *State/Government of Sindh through Advocate General Sindh Ka5racdhi Vs. Sobharo*, reported in **1983 SCMR 585**, *Farman Ali vs. State (1997 SCNR 871)* and *Mohammad Asif Vs. The State (2017 SCMR 486)*. They lastly prayed for setting aside impugned judgment of conviction and acquittal of the appellants.

14. Mr. Aftab Ahmed Shar, Addl. P.G. appearing for the State, while opposing the appeal, submitted that the law referred to by the counsel for the appellants related to ordinary law whereas instant case pertains to special law, as such the ordinary law referred to by the appellants' counsel has no relevancy. He, therefore, prayed for maintaining the impugned judgment and dismissal of the appeals.

15. In instant case FIR was lodged against an unknown suicide attacker, who exploded himself at the Imam Bargah situated at village Napiarabad with the result various police officials were injured. A joint Investigation Team was also constituted; however on completion of investigation the case was disposed of in "A" Class. None except said suicide attacker, who also died at the spot, was named in the F.I.R. It was after about five years that on 14.03.2015 SHO PS Rustam, namely, Riaz Hussain Malik took PWs Asif Ali and Ali Sher to PS New

Foujdari where accused/appellants Kahlil Ahmed was confined in the lock up and as per prosecution case these two witnesses identified him to be the same person who made their escape on a motorcycle after the explosion. Thereafter, on the pointation of accused Khalil Ahmed, appellant/accused Abdul Bari was also formally arrested from Central Prison where he was confined in another case.

16. It is an admitted position that none of the prosecution witnesses except P.Ws. Asif Ali and Ali Sher have involved present appellants. In the circumstances, so far as the present appellants are concerned, only the evidence of said two witnesses is relevant.

17. In nutshell, both these witnesses have deposed that after the suicide attacker exploded himself resulting in injuries to police officials and who were taken to hospital. Meanwhile, when the people, who were present in the Majlis at the time of alleged incident, were running here and there for their lives, these two witnesses saw two persons running away on a motorcycle. This aspect alone not create or creates doubt as whole the Imam Bargah was filled with smoke the people in the Imam Bargah are desperate to get out of Imam Bargah for their lives some on foot and some on motorbikes or any other vehicle, this is it hardly possible for any person to distinctly identify any person in that commotion. Furthermore, it is important to mention here that these two witnesses kept mum for Five years maintaining radio silence and all of sudden discloses the Hulia of the two accomplices which is afterthought. They have further deposed that on 14.3.2015 i.e. after about five years of the disposal of the case in "A" Class, they were taken by S.H.O. P.S. Rustam namely, Riaz Hussain Malik to the Police Station New Fojdari and showed them the accused confined in the lockup. The witnesses identified the appellants to be the same persons who were seen by them after explosion while running away on a motorcycle. It is an admitted position that both the accused / appellants were not previously known to theses witnesses. P.W. Asif Ali during his cross-examination had admitted, ***"It is correct to suggest that accused Abdul Bari was not previously known to me"***. P.W. Ali Sher admitted in his cross examination, ***"It is correct to suggest that accused Khalil was not previously known to me. It is correct to suggest that I had not seen the accused after date of incident till prior to his identification at police station."*** It is a well settled principle of law that when the accused is not

named in the FIR and / or he is not previously known to the alleged eye-witnesses, then holding of identification test is necessary and such test is a check against false implication and is a good piece of evidence against the genuine culprits. In this connection, reference can be made to the case of *Mohammad Asghar Vs. State* reported in **P L D 2008 Supreme Court 513**, wherein a Full Bench of Honourable Supreme Court held as under:

“We feel that in the attending circumstances of the case as the appellant was not known to the witnesses by face and his name was not mentioned in the F.I.R. it was all the more necessary for the prosecution to hold identification parade of the appellant.”

In another case reported as *Farman Alil Vs. State (1997 SCMR 971)*, Honourable Supreme Court held as under:

“7. Holding of identification test becomes necessary in cases, where names of the culprits are not given in the F.I.R. Holding of such test is a check against false implication and it is a good piece of evidence against the genuine culprits. Holding of identification test cannot be dispensed with, simply because the person accused of committing the robbery, has been subsequently found in possession of the robbed goods. It is not necessary that the eye-witnesses of the robbery should have witnessed the recovery of the robbed property. It was not the prosecution case that the recovery of the robbed truck took place in presence of the complainant and his cleaner and hence identification test of the petitioner through the complainant and Qamar Shahz ad was absolutely necessary.”

18. It seems that the trial Court has also observed in the impugned judgment that P.Ws. Asif Ali and Ali Sher also identified the accused / appellants in the Court room. In this connection, the trial Court while referring to the judgment reported as *Eijaz @ Gagen Vs the State 2008 FSC 835*, has referred to the observation made by Federal Shariat Court in the said case that *The fact that a witness identifies an accused at the trial is sufficient unless it is shown that the witness had no opportunity of having seen the accused before*. From above it is cleared that the Federal Shariat Court has justified the identification of accused before the trial court by a witness however it has been made subject to the condition that such witness had got no opportunity prior to this occasion to have seen the accused, whereas in instant case admittedly PWs Asif Ali and Ali Sher had seen the accused / appellants in the lockup of P.S. Fojdari, as admitted by themselves.

19. Needless to emphasize that Superior Courts have not appreciated identification of the accused before the trial Court and have declared the same to be **unsafe**. In this connection, reference may be made to the case of *The STATE through P.G. Sindhand others Vs. Ahmed Omer Shaikh and others* reported in **2021 SCMR 873**, wherein it was held by a Full Bench of Honourable Supreme Court as under:

“Although one of the prosecution witnesses identified the accused in the Court but identification in the Court had no value because said witness and six other witnesses were examined by the prosecution in court and on each occasion the accused was brought with an open face and the witness had all the opportunity during this time to see the accused in Court. Even prior to that the accused was brought many a times before the Court during physical and judicial remand and there was every opportunity for everyone to see him with an open face. So the identification in the Court, by the witness in question, had no persuasive value.”

In another case reported as *Haider Ali and others Vs. STATE*, (**2016 SCMR 1554**), Honourable Supreme Court held as under:

“Apart from that identification of an accused person before the trial court during the trial has generally been held by this Court to be unsafe and a reference in this respect may be made to the cases of Asghar Ali alias Sabah and others v. The State and others (1992 SCMR 2088), Muhammad Afzal alias Abdullah and another v. State and others (2009 SCMR 436), Nazir Ahmad v. Muhammad Iqbal (2011 SCMR 527), Shafqat Mehmood and others v. The State (2011 SCMR 537) and Ghulam Shabbir Ahmed and another v. The State (2011 SCMR 683).

Yet, in another case decided by a Division Bench of Lahore High Court (Multan Bench) it was held as under:

“11. There is another crucial aspect of the case which cannot be overlooked. First Information Report was registered against the four unknown accused persons without citing their descriptions. No identification parade was held in this case which is a must in such like cases to establish the identity of unknown accused. Identifying the accused standing in the dock is not satisfactory and desirable. Identity of the accused could not be proved and said aspect of the case proved a clincher to demolish the prosecution case. It is a trite law that where the accused are mentioned as unknown in the crime report, their identification parade must be conducted to establish their identity.”

20. Apart from above legal position, even otherwise the identification of the accused / Appellants in the lockup of the police station can also be held to be invalid and absurd for another reason. From the perusal of the evidence of P.W.

Ali Sher it reveals that in his examination-in-chief he had made a categorical admission to the effect, ***“Then on 14.3.2015 at about 6.00 pm time I was available at the bungalow of Dr. Ibrahim jatoi when PW Asif received the call from PS Rustum That they had apprehended the absconding accused and asked us to available there and they will taken us towards police station for apprehended of absconding accused. Then police came and taken us towards to PS new Foujdari where I, Sher Muhammad, Asif Jatoi called for identification of the accused and I identified accused Khalil as same accused who was available at the place of incident who had brought the suicider at the place of incident and then ran away.”*** From above admission, it is crystal clear that even before the identification of the accused/appellants at the lockup, these two witnesses were categorically apprised of the fact that, in fact, the persons who would be identified by them at the police station, were the absconding accused who were involved in the instant case. In this view of the matter, such identification even at the police station which, besides being illegal and unlawful having not been conducted under the supervision of a Magistrate and so also in clear derogation of the rules, regulations and instructions issued from time to time and the guidelines provided by Superior Courts, also seems to be to be totally absurd.

21. Besides above there are certain contradictions / lapses in the evidence of these two witnesses. P.W. Asif Ali in his examination in chief deposed, ***“During running the said person thrown a bomb upon us which was fallen in the water.”*** However, P.W. Ali Sher is totally silent about this fact and has not uttered a single word in this regard. Even the Investigating Officer namely, SIP/SIO Ghulam Hussain in his evidence at page 151 of the Paper Book, although has deposed about securing various articles from the spot i.e. steel nickels, two pieces of iron alleged to be of the exploded bomb, two legs of the suicide attacker etc. However, he has not deposed about securing any bomb from the water.

22. Similarly, P.W. Ali Sher in his evidence deposed to the effect, ***“When the SHO near the suicider the suicider received the call through his cell phone and after receiving the call on cell phone, the bomb was exploded and the suicider was died and three/four police personnel received injuries including SHO.”***(sic) On the other hand, P.W. Asif Ali has belied such statement by not

deposing anything about such fact. Even from the perusal of the evidence of other prosecution witnesses, most of them are injured police officials who were standing nearby the suicide attacker at the time of the explosion, have also not deposed about such fact in their respective evidence.

23. There is yet another important aspect of the case. According to prosecution case; after P.Ws Asif Ali and Ali Sher raised cries having suspected that one suicide attacker had entered the premises of Imam bargah, it attracted other participants of the Majlis including one Abdul Hakeem, gunman of Provincial Minister Abid Hussain. Thereafter, the said Abdul Hakeem fired upon the alleged suicide attacker which hit at his leg with the result he got injured and fell down on the ground. On the face of such a situation, the evidence of said Abdul Hakeem was very much essential and necessary. However, despite that he has not been examined by the prosecution before the trial Court. According to P.W. ASI Mohammad Bux, who was examined at *Ex.27* at page 173 of the Paper Book, said Abdul Hakeem has shifted to some unknown place due to lodging of FIR No.21/2017 of Police Station, Khanpur by compliant Mst. Sahib Khatoon. Case Diary dated 01.04. 2017 at page 16 of the Paper Book shows that the trial Court in this regard had simply mentioned the fact to the effect, ***“Process Server submitted report that PW TC/Abdul Hakeem not traceable. Statement of process server recorded vide Exh...27 and he produced copy of process, F.I.R. and the report vide Ex.27-A to 27-C.”***It seems that despite the fact that said Abdul Hakeem was a police official i.e. a government servant, which fact is also mentioned in the evidence of aforesaid process server, the trial Court did not bother to exercise its powers by taking any step to trace out the whereabouts of P.W. Abdul Hakeem from the concerned police authorities, particularly in view of the fact that he was a material witness and his evidence was very much necessary and essential as, it was he who allegedly fired at the suicide attacker and got him injured and that it was due to his efforts that the alleged suicide attacker could be apprehend in injured condition, however it was thereafter that he exploded himself which resulted in his death and sustaining injuries by some police officials. This also puts severe dent in the prosecution case.

24. We have also noted certain contradictions in the evidence of other witnesses who are police officials, so also some lacunas in the investigation, however as the same relate to the earlier part of incident which had ended in the

disposal of the case in “A” Class and do not relate to the present appellants, therefore, the same are not being discussed here.

25. The accumulative effect of above lacunas and defects in the investigation is that prosecution has not succeeded in proving its case against the accused/appellants beyond shadow of reasonable doubt which is the requirement of the law.

26. It is well settled principle of law that the prosecution is bound under the law to prove its case against the accused beyond any shadow of reasonable doubt. 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. In the instant case prosecution does not seem to have proved the allegations against the accused/appellant by producing unimpeachable evidence, thus doubts have been created in the prosecution version. In the case reported as Wazir Mohammad Vs. The State (1992 SCMR 1134) it was held by Honourable Supreme Court as under:

*“In the criminal trial whereas it is the duty of the prosecution to prove its case against the accused to the hilt, but **no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution.**”*

In another case reported as Shamoan alias Shamma Vs. The State (1995 SCMR 1377) it was held by Honourable Supreme Court as under:

*“The prosecution must prove its case against the accused beyond reasonable doubts **irrespective of any plea raised by the accused in his defence.** Failure of prosecution to prove the case against the accused, entitles the accused to an **acquittal.**”*

27. Needless to emphasize the well settled principle of law that the accused is entitled to be extended benefit of doubt as a matter of right and not as a grace or concession. In the present case, there are various admissions in the evidence of the prosecution witnesses which create doubts and put dents in the prosecution case. Even an accused cannot be deprived of benefit of doubt merely because there is only one circumstance which creates doubt in the prosecution story. In recent case of *Ahmed Ali and another Vs. The State* reported in **2023 SCMR 781**, a Full Bench of Honourable Supreme Court has held as under:

“12. Even otherwise, it is well settled that for the purposes of extending the benefit of doubt to an accused, it is not necessary that there be multiple infirmities in the prosecution case or several circumstances creating doubt. A single or slightest doubt, if found reasonable, in the prosecution case would be sufficient to entitle the accused to its benefit, not as a matter of grace and concession but as a matter of right. Reliance in this regard may be placed on the cases reported as Tajamal Hussain v. The State (2022 SCMR 1567), Sajjad Hussain v. The State (2022 SCMR 1540), Abdul Ghafoor v. The State (2022 SCMR 1527 SC), Kashif Ali v. The State (2022 SCMR 1515), Muhammad Ashraf v. The State (2022 SCMR 1328), Khalid Mehmood v. The State (2022 SCMR 1148), Muhammad Sami Ullah v. The State (2022 SCMR 998), Bashir Muhammad Khan v. The State (2022 SCMR 986), The State v. Ahmed Omer Sheikh (2021 SCMR 873), Najaf Ali Shah v. The State (2021 SCMR 736), Muhammad Imran v. The State (2020 SCMR 857), Abdul Jabbar v. The State (2019 SCMR 129), Mst. Asia Bibi v. The State (PLD 2019 SC 64), Hashim Qasim v. The State (2017 SCMR 986), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Zaman v. The State (2014 SCMR 749 SC), Khalid Mehmood v. The State (2011 SCMR 664), Muhammad Akram v. The State (2009 SCMR 230), Faheem Ahmed Farooqui v. The State (2008 SCMR 1572), Ghulam Qadir v. The State (2008 SCMR 1221) and Tariq Pervaiz v. The State (1995 SCMR 1345).”

28. For the forgoing reasons, by a short order dated 18.05.2023 both these special appeals were allowed, consequently, impugned judgment dated 18.09.2019 penned down by the Anti-Terrorism Court-I Sukkur Camp @ C.P Sukkur in Special Case No.67/2016 Re-The State v. Khalil Ahmed @ Sikandar @ Asghar Ali and others, arising out of Crime No.90/2010 registered at Police Station Rustam, District Shikarpur for the offences punishable under Sections 324, 353, 120-B PPC, 3/4 Explosive Substance Act, 1908 and 6/7 ATA, 1997 was set aside to the extent of appellants Khalil Ahmed @ Sikandar @ Asghar Ali and Abdul Bari. Resultantly, the appellants Abdul Bari Pahore and Khalil Ahmed @ Sikandar @ Asghar Ali Brohi were acquitted of the charges and they were ordered to be release forthwith, if their custody is no longer required by the jail authorities in any other criminal custody case.

29. Let copy of judgment along with R&Ps of Special Case No.67/2016 (re-the State Versus Khalil Ahmed @ Sikandar @ Asghar Ali and others) be sent to trial Court for compliance as well as their record.

Judge

Judge

*Ihsan/**