

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No. 110 of 2023

Present:
Naimatullah Phulpoto, J.
Irshad Ali Shah, J.

Appellant: Amjad Ali through Mr. Khuda Dino Sangi, advocate
Respondent: The State through Mr. Abrar Ali Khichi, Additional Prosecutor General Sindh
Date of hearing: 13.08.2024
Date of announcement: 13.08.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is the case of the prosecution that the appellant with one more culprit in furtherance of their common intention deterred the police party of PS Taimoria led by complainant HC Muhammad Aslam by making fires at them intending to commit their murder by resorting to terrorism, for which the present case was registered. At trial, both cases one relating to a police encounter and the other relating to the recovery of an unlicensed pistol of 30 bores from the appellant were amalgamated and then proceeded accordingly. The appellant denied the charge and prosecution to prove the same, examined five witnesses and then closed its side. The appellant in his statement recorded u/s 342 Cr.PC denied the prosecution's allegation by pleading innocence; he did not examine anyone in his defence or himself on oath. On completion of the trial, he was convicted for the said offences and sentenced to undergo various

terms of imprisonment spreading over 05 years with fine etc. with the direction that all the sentences awarded to him to run concurrently with the benefit of Section 382(b) Cr.PC by learned Judge, Anti-terrorism Court No.II Karachi vide judgment dated 29.05.2023, which he has impugned before this Court by preferring the instant Spl.Crl. AT Jail Appeal.

2. Heard arguments and perused the record.

3. There is no independent witness to the incident. No police official sustained fire shot injury during the alleged encounter which appears to be surprising. No damage was caused either to the police mobile or to the motorcycle which the appellant allegedly was having at the time of the incident. The appellant has sustained fire shot injury on his right leg which as per him has been caused to him by the police officials without legal justification. There is tempering concerning time in the memo of arrest and recovery with no plausible explanation, as such, the same could not be overlooked. The person who was robbed of his motorcycle allegedly recovered from the appellant has not been examined by the prosecution; his non-examination could not be ignored. Evidence of the Investigating Officer was casual as he too has failed to associate any independent person with him during the investigation. The pistol is alleged by the appellant to have been foisted upon him by the police by arranging the same to justify his injury at the hands of the police officials. No terrorism is evident. In these circumstances,

it would be safe to conclude that the prosecution has not been able to prove its case against the appellant beyond a shadow of reasonable doubt and to such benefit he is found entitled.

4. In the 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".

5. Under the discussed circumstances, the conviction and sentence awarded to the appellant by way of impugned judgment are set aside and he is acquitted of the charged offence and shall be released forthwith, if not required to be detained in any other custody case.

6. Above are the reasons for our short order of even date, whereby the instant Spl. Crl. AT Jail Appeal was allowed.

JUDGE

JUDGE