

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No. 26 of 2024

Present:
Naimatullah Phulpoto, Acting
Chief Justice.
Irshad Ali Shah, J.

Appellant: Ali through Mr. Muhammad Yousuf Chohan, advocate

Respondent: The State through Mr. Ali Hyder Saleem, Additional Prosecutor General Sindh

Date of hearing: 27.08.2024

Date of announcement: 27.08.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged by the prosecution that the appellant and co-accused Jasim Ali @ Shahzad deterred the police party of PS Kalari from discharging its lawful duty as a public servant by firing at them intending to commit their murder by resorting to terrorism; they too were fired at as a result whereof co-accused Jasim Ali @ Shahzad died while the appellant was apprehended in an injured condition, for which the present case was registered. At trial, the appellant denied the charge and prosecution to prove the same, examined seven 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 by stating that he and the co-accused after attending work were going back to their house on their motorcycle; it was hit by the police mobile and then they were fired at as a result of such firing co-accused died and he sustained fire shot injuries on his abdomen and

thigh and then was involved in this case falsely by the police. None was examined by the appellant in his defence or himself on oath to disprove the prosecution's allegation. On completion of the trial, he was convicted for the said offence and sentenced to undergo various terms of imprisonment spreading over 05 years; all the sentences awarded to him were directed to run concurrently with the benefit of Section 382(b) Cr.PC by learned Judge, Anti-terrorism Court No.XV Karachi vide judgment dated 22.01.2024, which he has impugned before this Court by preferring the instant Spl.Crl. AT Appeal.

2. Heard arguments and perused the record.

3. As per the complainant, he with his police officials after investigating the case outcome FIR Crime No. 123/2023 of PS Jackson when reached Lyari Nadi they found a male and female with a child raising cries of `dacoit`; he noticed the presence of the appellant and co-accused there on two motorcycles; they with no loss of time fired at him and other police officials intending to commit their murder; they too were fired at as a result of such firing co-accused Jasim Ali @ Shahzad died; a pistol was secured from him which he was having at the time of the incident while the appellant was apprehended in injured condition and from him were secured two mobile phones; he was referred to Hospital and then present case was registered. No police official sustained a fireshot injury during such an encounter which appears to be surprising.

There is no recovery of a crime weapon from the appellant; therefore, his involvement based on the allegation of making fires at a police party intending to commit its murder appears to be doubtful. The police mobile which sustained damage during such an encounter had not been produced at trial; its non-production could not be lost sight of. The male and female person, who raised cries of 'dacoits' at the time of the incident have not been examined by the prosecution; their examination was essential to prove the factum of the incident, therefore, non-examination could not be overlooked. PW Nawabzada has been examined to prove the recovery of his robbed articles from the appellant. The identity of the appellant by him through his photograph and at trial could reasonably be judged with doubt. As per I.O /SIP Meer Muhammad Lashari, there is no criminal record of the appellant. In these circumstances, the contention of learned counsel for the appellant that he has been involved in this case falsely by the police party to save itself from legal consequences for causing him fire shot injuries could not be lost sight of.

4. The conclusion which could be drawn from the above discussion would be 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.

5. 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".

6. 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.

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

ACTING CHIEF JUSTICE

JUDGE

Nadir/PA