

# THE HIGH COURT OF SINDH AT KARACHI

Spl. CrI. A.T Jail Appeal No.108 of 2023

Spl. CrI. A.T Jail Appeal No.151 of 2023

Spl. CrI. A.T Jail Appeal No.160 of 2023

Present:

Naimatullah Phulpoto, J.

Irshad Ali Shah, J.

Appellants: Abdullah @ Ravi son of Muhammad Sadiq, Muhammad Hammad son of Muhammad Rafiq and Ashfaque Rehman son of Abdul Ghafoor through M/s. Iftikhar Ahmed Shah, Raja Zeeshan, Dr. Shahrukh Shahnawaz, Aijaz Ali Tunio, Ms. Yasmeen Bano and Amjad Ali Shar, advocates

Respondent: The State through Mr. Abrar Ali Khichi, Additional Prosecutor General Sindh

Date of hearing: 26.09.2024

Date of announcement: 26.09.2024

## J U D G M E N T

**IRSHAD ALI SHAH, J-** It is the case of the prosecution that the appellants in furtherance of their common intention deterred the police party of PS Kalakot led by SIP Muhammad Yousuf from discharging its lawful duty as a public servant by firing at them intending to commit their murder, they too were fired at by the said SIP in self-defence; as a result of such firing, they sustained injuries and were arrested and from them were secured three unlicensed pistols of 30 bore, for which they were booked and reported upon. At trial, all the cases were amalgamated in terms of Section 21-M of the Antiterrorism Act, 1997 and proceeded accordingly. The appellants denied the charge and the prosecution to prove the same, examined five witnesses and then closed its side. The appellants in their statements recorded u/s. 342 Cr.PC denied the prosecution's allegation by pleading innocence; they did not examine anyone in their defence or themselves on oath. On completion of the trial, they were convicted for the said offence and sentenced to undergo

various terms of imprisonment spreading over 10 years; all the sentences were directed to run concurrently with the benefit of Section 382(b) Cr.PC by learned Judge, Anti-terrorism Court No.XIII Karachi vide judgment dated 25.05.2023, which they have impugned before this Court by preferring the three separate Appeals.

2. Heard arguments and perused the record.

3. There is no independent witness to the incident. No police official had sustained fire shot injury during the alleged armed encounter, which appears to be surprising. No damage has been caused to the police mobile. The arrest of the appellants after sustaining fire-shot injuries at the hands of the complainant is not appealing to logic. The pistols allegedly secured from the appellants as per the complainant and PW/Mashir PC Muhammad Hussain were found with their numbers rubbed. As per the forensic report, one of the pistols was found description, the other one was found not working. How it happened? It suggests manipulation and/or foistation. No independent person was examined by the Investigating Officer to ascertain the correctness of the incident; such omission on his part could not be lost sight of. No act of terrorism is evident. In these circumstances, the plea of innocence taken by the appellants at trial could not be overlooked.

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 appellants beyond a shadow of reasonable doubt and to such benefit they are 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 appellants by way of impugned judgment are set aside and they are 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 Appeals were allowed.

**JUDGE**

**JUDGE**

Nadir\*