

# THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No. 129 of 2023

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

Appellant: Ramzan through Ms. Roop Mala Singh,  
advocate

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

Date of hearing: 30.09.2024

Date of announcement: 30.09.2024

## J U D G M E N T

**IRSHAD ALI SHAH, J-** It is the case of the prosecution that the appellant and absconding accused Shakir @ Chahngli in furtherance of their common intention deterred the police party of PS Azam Town led by ASI Tariq Ali Khan from discharging its lawful duty as a public servant by firing at them intending to commit their murder; they too were fired at in self-defence; the appellant was apprehended at the spot in injured condition; from him was secured an unlicensed pistol of 30 bores with a magazine containing three live bullets of the same bore while the absconding accused made his escape from the place of incident on his motorcycle, for which the present case was registered. At trial, both the cases, one relating to a police encounter and the other for recovery of the unlicensed weapon were amalgamated in terms of Section 21-M of the Anti-Terrorism Act, 1997 and the appellant was charged accordingly, which he denied, the prosecution to prove the same examined six witnesses and then closed its side. The appellant in his statement recorded under Section 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, the appellant was 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 26.07.2023, which is impugned by him before this Court by way of the instant Spl.Crl. AT Jail Appeal.

2. Heard arguments and perused the record.

3. There is no independent witness to the incident. The armed encounter was straight, the same as per the complainant continued for about  $\frac{3}{4}$  minutes, yet none sustained fireshot injury except the appellant on his right leg, which appears to be surprising. As per the complainant, he prepared the memo of arrest and recovery while sitting on the front seat of the police mobile. P.W/Mashir PC Ali Raza came with a different version; as per him, it was prepared by the complainant by using the bonnet of a police mobile. Such inconsistency in between their evidence could not be overlooked. The pistol secured from the appellant as per the memo of arrest and recovery was without a number. On forensic examination, its number was found rubbed. There is a distinction between the pistol without a number and the pistol with its number rubbed. Such inconsistency suggests its 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 overlooked. Apparently, it was a table investigation which could hardly be relied upon. No act of terrorism is evident. In these circumstances, the contention of the learned counsel for the appellant that the appellant has been involved in this case falsely by the police only to save themselves from legal consequences for causing fire shot injury to him could not be lost of sight.

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. Based on the above discussion, 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. Crl. AT Jail Appeal was allowed.

**JUDGE**

**JUDGE**

*Nadir/PA*