

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No. 180 of 2023

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

Appellants: Jaleel Ahmed and Usman through M/s. Samiullah Soomro and Tariq Mehmood, advocates

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

Date of hearing: 03.10.2024

Date of announcement: 03.10.2024

J U D G M E N T

IRSHAD ALI SHAH, J- It is alleged that the appellants in furtherance of their common intention deterred the police party of PS Nabi Bux Karachi led by ASI Rasheedullah 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 by complainant ASI Rasheedullah and P.W/Mashir PC Hasnain Shah in self-defence; as a result whereof, the appellants sustained fire shot injuries on their right legs, both were apprehended at the spot; from each one was secured unlicensed pistol of 30 bore and 9 mm bore with magazines containing live bullets; they were booked accordingly. At trial, cases relating to the police encounter and recovery of unlicensed weapons were amalgamated in terms of Section 21-M of the Anti-terrorism Act, 1997, and the appellants were charged accordingly, which they denied and the prosecution to prove the same, examined eight 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 by stating that they had been involved in these cases by the police officials falsely on account of their failure to pay them a bribe. 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 05 years with the direction that all the sentences to run concurrently with the benefit of Section 382(b) Cr.PC by learned Judge, Anti-terrorism Court No.XI Karachi vide judgment dated 05.10.2023, which they have impugned before this Court by preferring the instant appeal.

2. It is contended by learned counsel for the appellants that the appellants are innocent and have been involved in this case falsely by the police by foisting weapons upon them and they have been convicted and sentenced by the learned trial Court based on misappraisal of evidence, therefore, they are entitled to their acquittal by extending them the benefit of the doubt. In support of their contentions, they relied upon the case of *Muhamad Younis alias Bona and another vs. The State (2022 YLR 924)*.

3. Learned Addl. P.G for the state by supporting the impugned judgment has sought dismissal of the instant appeal by contending that the prosecution has been able to prove its case against the appellants beyond a shadow of a doubt by leading cogent evidence and on arrest from them had been secured the crime weapons.

4. Heard arguments and perused the record.

5. It was stated by complainant ASI Rasheedullah and P.W/Mashir PC Hasnain Shah that on the date of the incident they with HC Tasawar Hussain were conducting patrol within the jurisdiction of PS Nabi Bux Karachi on police mobile when reached Ramswami; they found the appellants standing on their motorcycle in suspicious condition; they with no loss of time fired at them intending to commit their murder; they too were fired at by them in self-defence as a result whereof both the appellants sustained fire shot injuries on their right legs, both were apprehended; from them were secured the unlicensed pistols of 30 bores and 9mm bore with

magazines containing live bullets; a memo of arrest and recovery was prepared at the spot; the appellants were referred to Hospital through P.W HC Farhan Khan by arranging the Chipa Ambulance who was called at the spot through cell phone. Evidence of P.W HC Farhan Khan is to such an extent. P.Ws Irfan and Muhammad Akram have confirmed the fact that they being drivers of Chipa Ambulance shifted the appellants to the Hospital for examination of their injuries and treatment. Dr. Rajesh Kumar has confirmed the sustaining fire shot injuries by the appellants. As per the complainant, the 30-bore pistol secured from appellant Jaleel was bearing description. P.W/Mashir Hasnain Shah has come with a different version; as per him, such a pistol was without a number. Such inconsistency in their evidence suggests its manipulation. No police official has sustained fire shot injury during such an encounter which is not appealing to logic and has put a cloud of doubt upon the alleged encounter. Evidence of P.W/ASI Muhammad Ishaque is only to the extent that he kept the property in *Malkhana*. His evidence hardly needs any discussion. It was stated by I.O Inspector Syeda Ghazala that on investigation she recorded 161 Cr.PC statements of the P.Ws; visited the place of the incident; prepared such memo. It was prepared without associating an independent person, which too appears to be surprising. It was further stated by her that she then dispatched the pistols and empties to the forensic expert for examination. It was a joint dispatch; the same ought to have been independent to maintain transparency; such omission on her part could not be overlooked. None was examined by her from the place of the incident to ascertain the correctness of the incident. Apparently, it was a casual investigation on her part and no causal investigation could be relied upon to maintain the conviction. It was a night-time incident, therefore, the act of terrorism is hardly evident. In these circumstances, the contention of the learned counsel for the

appellants that they have been involved in this case falsely by the police officials by foisting upon the unlicensed pistols only to save their skin from legal consequences for causing fireshot injuries to the appellants on their legs could not be lost of sight.

6. 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.

7. In the case of *Muhammad Javed vs. The State (2016 SCMR 2021)*, it has been held by the Apex Court that;

"...although a report of the Forensic Science Laboratory was received in the positive in respect of matching of the firearm recovered from the appellant's custody with a crime-empty secured from the place of occurrence yet the investigating officer (PW9) had clearly acknowledged before the trial court that the crime-empty had been sent to the Forensic Science Laboratory on the day when a carbine had been recovered from the custody of the appellant."

8. 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".

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

10. Above are the reasons for our short order of even date, whereby the instant jail appeal was allowed.

JUDGE

JUDGE