

# THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No. 171 of 2023

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

Appellants: Abdullah Jaan & Abdul Hameed through  
M/s. Khuda Dino Sangi and Imtiaz  
Hussain Bhutto, advocates

Respondent: The State through Ms. Rahat Ahsan,  
Additional Prosecutor General Sindh

Date of hearing: 02.10.2024

Date of announcement: 02.10.2024

## 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 Hyderi Market Karachi led by HC Imran Khan 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 HC Imran Khan in self-defence; as a result whereof, appellant Abdullah Jaan sustained fire shot injury on his right leg, both the appellants were apprehended at the spot; from each one was secured unlicensed pistols of 30 bore; 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 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 by stating that they were taken from their respective houses and then were involved in this case falsely by the police. They did not examine anyone in their defence or themselves on oath. On completion of the trial, they were convicted for the said offences 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.XII Karachi vide judgment dated 16.09.2023, 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 an improper assessment 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.

4. Heard arguments and perused the record.

5. It was stated by complainant HC Imran Khan that on the date of the incident he and P.W/ Mashir PC Majid were conducting patrol within the jurisdiction of PS Hyderi Market Karachi on their motorcycle. On their way, they were joined by P.W/Mashir HC Nazeer; when reached Kabootar Chowk; there are at about 0450 hours, he found the appellants coming on their motorcycle; they were signaled to stop on which they fired at him and the above named witnesses; they too were fired at by him in self defence as a result whereof both the appellants fell down from motorcycle; appellant Abdullah Jaan was found sustaining fire shot injury on his leg; both were apprehended; from them were secured the unlicensed pistols of 30 bores; a memo of arrest and recovery was prepared by him in presence of above-named Mashirs/witnesses;

the appellant with the recovery so made were taken to PS Hyderi Market Karachi; where they were booked accordingly; appellant Abdullah Jaan was referred to Abbasi Shaheed Hospital for examination and treatment of his injury. Such a fact is confirmed by Dr. Usman Hashmi. P.W /Mashir PC Nazeer Ahmed has attempted to support the complainant in his version, which was natural being subordinate. It was appellant Abdullah Jaan who alone sustained fire shot injury during the alleged armed encounter which as per P.W/Mashir HC Nazeer Ahmed continued for about 15/20 minutes. Sustaining of no fire shot injury by any of the police official in such an encounter is not appealing to logic and put a cloud of doubt upon the alleged encounter. No blood-stained earth was secured from the place of the incident which suggests that the incident has taken place in a manner other than the one as has been alleged by the prosecution. It was stated by I.O Inspector Qadir Bux that on investigation he 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 him that he 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 his part could not be overlooked. None was examined by him from the place of the incident to ascertain the correctness of the incident. Apparently, it was a casual investigation on his part and no causal investigation could be relied upon to maintain the conviction. 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 fire shot injury to one of the appellant 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 as allowed.

**JUDGE**

**JUDGE**