

# THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No. 203 of 2023  
Special Criminal Anti-Terrorism Appeal No. 204 of 2023  
Special Criminal Anti-Terrorism Appeal No. 205 of 2023

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

Appellants: Nadir Ali & Abdul Rehman through M/s.  
Muhammad Jamil & Asadullah, advocates

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

Date of hearing: 09.10.2024  
Date of announcement: 09.10.2024

## 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 Khawaja Ajmair Nagri led by PC Ali Raza from discharging its lawful duty as a public servant by firing at them intending to commit their murder by resorting to terrorism; they were also fired at by PC Ali Raza in self-defence; as a result of such firing appellant Nadir Ali sustained fire shot injury on his right knee; both of the appellants were apprehended and from them were secured the unlicensed pistols of 9mm and 30 bores with magazines containing live bullets and a motorcycle, for which they were booked and reported upon. All three cases, one relating to the police encounter and the rest of two relating to recovery of unlicensed weapons from the appellants were amalgamated by the learned trial Court in terms of Section 21-M of ATA, 1997. At trial, the appellants denied the charge and the prosecution to prove the same, examined four 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, the appellants were convicted for the said

offence and sentenced to undergo various terms of imprisonment spreading over ten years; all the sentences were directed to run concurrently with the benefit of Section 382(b) Cr.PC by learned Judge, ATC Court No.XIII vide judgment dated 24.10.2024, which they have impugned before this Court by preferring the instant Spl.Crl. AT Appeals.

2. Heard arguments and perused the record.

3. As per complainant Ali Raza and P.W/Mashir PC Ahmed Ali Khan, they with rest of the police personnel were conducting patrol on their respective motorcycles within jurisdiction of PS Khawaja Ajmair Nagri, when reached at Nursery cut, they were intimated about the presence of the appellants at *Jumay Raat Bazar* with intention to commit some offence by a person on a motorcycle; on such information, they proceeded to the pointed place, the appellants were found available there; they with no loss of time fired at them and rest of the police officials; they too were fired at by complainant PC Ali Raza in self defence; as a result of such firing, appellant Nadir Ali sustained fire shot injury on his right knee; both the appellants were apprehended at the spot; ASI Jahangeer Nazir was called at the spot through cell phone; he came and effected the recovery of unlicensed pistols of 9mm and 30 bores with magazines containing live bullets and motorcycle from the appellants under memo prepared at the spot who then referred injured appellant to Abbasi Shaheed Hospital for examination of his injuries and treatment, then they went at PS Khawaja Ajmair Nagri, where the appellants were booked for the said offence. No police official sustained fire shot injury during the alleged armed encounter though it was a direct one which is not appealing to logic and appears to be doubtful. P.W ASI Jahangeer Nazir who has prepared the memo of arrest and recovery has not been examined by the prosecution for the reason that he has been dismissed from the service. By such act, valuable piece of evidence has been

withheld by the prosecution which has prejudiced the appellants in their defence seriously. Even otherwise, in absence of author, no much reliance could legally be placed upon memo of arrest and recovery. The Incharge of *Malkhana* has not been examined by the prosecution. His examination was essential to prove the safe custody of the property allegedly secured from the appellants. The person who intimated the police officials about the presence of the appellants at the place of the incident has not been cited as a witness even; such omission on the part of the prosecution could not be overlooked. The report of the forensic expert is silent concerning the description of the pistols allegedly secured from the appellants which takes mention in the memo of arrest and recovery; such inconsistency could not be overlooked; it suggests manipulation of the pistols allegedly secured from the appellants. One of the motorcycles which the police party was having and allegedly sustained damage during the course of the encounter has never been produced at the trial; its non-production could not be ignored. No independent person was associated by the Investigating Officer Abdul Ghaffar to witness the preparation of the memo of the place of the incident; it was essential to maintain transparency. No blood mark was found at the place of the incident which suggests that the incident has taken place in a manner other than the one as is alleged by the prosecution. In these circumstances, the contention of learned counsel for the appellants that the appellants have been involved in this case falsely by the police by foisting upon them the unlicensed weapons to save them from legal consequences for causing fire shot injury to one of them 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 appellants beyond a shadow of reasonable doubt and they are found entitled to such benefit.

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 Spl. CrI. AT Appeals were allowed.

**JUDGE**

**JUDGE**

*Nadir/PA*