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ORDER-SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Before: ***Mr. Zafar Ahmed Rajput-J &***
Mr. Muhammad Iqbal Kalhoro-J.

Criminal Appeal No.D-65 of 2015

Abid Hussain son of Allah Dino Dahote
(Now confined in Central Prison, Larkana) -------- Appellant.

V/s.

The State ------- Respondent.

Mr. Habibullah G. Ghouri, Advocate for the appellant.
Mr. Khadim Hussain Khooharo, DPG for the State.

Criminal Appeal No.D-66 of 2015

Ahmed Bux son of Nooruddin Dahote,
R/o. Taqi Shah Muhalla Badah Town, taluka Dokir, district Larkana.
------ Appellant.

V/s.

The State ------- Respondent.

Mr. Ahsan Ahmed Quraishi, Advocate for the appellant.
Mr. Khadim Hussain Khooharo, DPG for the State.

J.

Criminal Appeal No.D-67 of 2015

Ali Nawaz son of Fateh Muhammad Khoso,
r/o. Village Mohammad Khan Khoso Talukar Mehar, District Dadu.
------ Appellants.

V/s.

The State ------- Respondent.

Mr. Habibullah G. Ghouri, Advocate for the appellant.
Mr. Khadim Hussain Khooharo, DPG for the State.

Criminal Appeal No.D-70 of 2015

1. Abdul Ghani son of Nasrullah Dahot
2. Rustam son of Shahabuddin Jhatial

Both resident of Badah, taluka Dokri, district larkana ------ Appellants.

V/s.

The State ------- Respondent.

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Criminal Appeal No.D-71 of 2015

1. Dhani Bux @ Allah Wassayo son of Allah Rakhio Khoso
2. Liaquat son of Muhammad Ramzan Khoso,
Both resident of Village Lal Khan Khoso, Taluka Mehar, District Dadu

------ Appellants.

V/s.

The State ------- Respondent.

Mr. Habibullah G. Ghouri, Advocate for the appellant.
Mr. Khadim Hussain Khooharo, DPG for the State.

Date of short Order 27-10-2016.

JUDGMENT.

Muhammad Iqbal Kalhoro-J: By this common Judgment, all the captioned appeals are disposed off in the terms as stated herein below. These appeals have been filed by the appellants against the impugned Judgment passed by learned Anti-Terrorism Court, Larkana in Special Case No.01/2014 (State V/s. Dhani Bux and others) registered against the appellants for the offences under sections 302,324,353,148,149 PPC r/w section 7 (a) and (b) of ATA, 1997 bearing Crime No.20 of 2010 at Police Station Badeh District Larkana, whereby the appellants have been convicted for the offences punishable under section 7 (a) of Anti- Terrorism Act 1997 r/w sections 302, 149 PPC and sentenced to undergo imprisonment for life with fine of Rs.50,000/-, in default of which to suffer simple imprisonment for six months more. The appellants have also been convicted under section 7(b) of the Anti- Terrorism Act, 1997 r/w section 324 PPC to suffer RI for 10 years.

2. The facts of the case show that instant F.I.R was registered on 26.2.2010 at 0730 hours by the SIP/SHO Bashir Ahemd of Police Station Thariri Muhabat, District Dadu on behalf of the State alleging therein that on the directions of high-ups to arrest accused Anwar Khoso who was proclaimed offender carrying head money, he along with police of different Police Stations of district Dadu conducted raid on his house situated in Taqi Shah Muhalla Badeh city within jurisdiction of Police Station Badeh where the appellants duly armed with different weapons alongwith said dacoit Anwar were present and as soon as they saw the Police they started firing upon them. In retaliation, Police also fired. During encounter PC-Abbass Ali was murdered by the appellant Ali Nawaz Khoso and

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meanwhile accused Anwar Khoso escaped from the spot after taking official SMG of the PC-Abbas. After sometime all the appellants surrendered before the Police and were duly arrested. From their possession different weapons were recovered. Such Memo of arrest and recovery was prepared and appellants alongwith recovered weapons were brought at P.S, Badeh where above stated F.I.R was registered against the appellants and additionally the F.I.Rs under 13 (d) Arms Ordinance were also registered against them for possessing unlicensed weapons.

3. After usual investigation, Police submitted challan before the Special Court Anti-Terrorism Larkana, where in response to the formal charge the appellants pleaded not guilty, hence prosecution in support of its case examined as many as eight witnesses, who are PC-Wazir Ali at Ex-13, SIP/SHO-Bashir Ahmed, complainant at Ex.14, SIP- Khalid Hussain at Ex.15, Inspector Nazir Ahmed at Ex.17, Inspector Muhammad Ibrahim at Ex.19, Dr. Abdul Ghaffar, Medical Officer at Ex.20, SIP/IO- Ali Muhammad Soomro at Ex.21 and Ali Nawaz, Tapedar at Ex.22. These witnesses have produced all the relevant prosecution documents in their respective evidence which include F.I.Rs, different Memos, sketch of place of incident and Medico legal certificates etc. After the prosecution closed its side, the statements of the appellants under section 342 Cr.PC were recorded in which they have denied the prosecution case. However, they have neither examined themselves on oath nor produced any witness in their defense. At the conclusion of trial the appellants were found guilty and were convicted through the impugned judgment in the terms as stated above. Being aggrieved by the said judgment, the appellants have filed the captioned appeals respectively.

4. Mr. Habibullah G. Ghouri, Advocate for the appellants Dhani Bux @ Allah Wasayo, Liaquat Khoso, Ali Nawaz and Abid Hussain, Mr. Ahsan Ahmed Quraishi, Advocate for appellant Ahmed Bux and Mr. Ali Akbar Dahar Advocate for the appellants Abdul Ghani and Rustam mainly argued that entire prosecution case was full of contradictions and doubts; that prosecution had miserably failed to establish charge against the appellants; that although the raid was conducted by the Police of district Dadu within the jurisdiction of District Lakana but no such entry was kept at the relevant Police Station nor any prior permission in this regard was sought or information was given to police station concerned before conducting the raid on the house of accused Anwar Khoso; that place of incident was thickly populated area but no one was associated by the prosecution to witness arrest of the appellants and recovery of weapons; that there were material

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contradictions in the evidence of the prosecution witnesses making the case highly doubtful; that although it was alleged that encounter took place for sufficient time inside the house of accused Anwar but strangely no one got any scratch or injury except a sole bullet received by the PC-Abbas Ali; that Memo of place of incident showed that no marks of bullets fired from either side were available inside the house of accused Anwar Khoso; that escape of accused Anwar was mysterious as it was unclear as to how he from the 07 feet high wall escaped unscathed in presence of heavy machinery of Police; that neither the empties nor the weapons recovered from the appellants allegedly were sealed at the spot or sent to the Forensic Expert for the opinion; that there was no previous criminal record of the appellants to even prima facie suggest that they were criminals; that in the evidence it had come on record that in the said house ladies and children were also present but strangely in the entire prosecution case their presence was not marked or shown; that the prosecution case suggested that deceased was fired at from the distance of 10/ 13 feet, but the Medico-legal Officer in his cross-examination had stated that the distance from which the deceased was fired at was about more than 100 meters; that PW-4 Nazir Ahmed (Ex.17) in his deposition stated that fire of dacoit Anwar Khoso, who had escaped, had hit PC-Abbas which was contradictory to the claim of other witnesses who stated that appellant Ali Nawaz had fired on deceased Police Constable; that I.O of the case namely SIP-Ali Muhammad Soomro (Ex.21) had admitted in his evidence that there were no marks of bullets on the walls, doors or windows of the house and further he had not recovered any empty fired by the accused; that evidence of I.O indicated that from the place of incident the blood stained earth of deceased PC-Abbas Ali was taken and sealed in the plastic bottle but report of the Chemical Examiner (Ex.-21-A) showed that the blood stained earth was received there in an empty cigarette pocket of Gold Leaf. Learned counsel lastly relied upon the case law reported in **2012 SCMR 428** in support of their contentions and pleaded that as the prosecution case was full of contradictions, appellants be given benefit thereof and be acquitted.

5. Mr. Khadim Hussain Khooharo, DPG for the State could not controvert the above submissions of learned defence counsel and candidly conceded that there were major contradictions in the prosecution case. He in the circumstances did not support the impugned Judgment.

6. We have considered the submissions of the parties and have perused the entire record including the case law. The entire prosecution case is based on the evidence of police officials which appear to be full of

contradictions and discrepancies. The Police of several Police Stations raided the house of Anwar Khoso, the alleged dacoit, inside of which the encounter took place. The appellants and the Police from the distance of hardly 10/20 feet were firing on each other, nonetheless no one received any injury which is simply unbelievable. The prosecution case in respect of death of deceased PC-Abbas Ali is that he was fired at by appellant Ali Nawaz from the distance of about 13 feet. Tapedar (Ex-22), who by refereeing to the sketch plan of place of incident, has also deposed that the deceased was fired at from the distance of 13 feet, but contrary to all that, the evidence of Medico Legal officer at Ex.20 is suggestive of the fact that the deceased was fired at from the distance of about 100 meters. Although the complainant namely SIP/SHO Bashir Ahmed (Ex.14) and PW-Khalid Hussain(Ex.15) in their depositions have alleged that the appellant Ali Nawaz had fired at deceased PC-Abbas Ali as a result of which he had died, but PW-Nazir Ahmed (Ex.17), who is also an eye witness, has stated that PC-Abbas Ali had died due to fire made by accused Anwar Khoso. We have also noted that escape of accused Anwar Khoso for whose arrest the entire operation was planned by Police of District Dadu had escaped in mysterious circumstances. When the encounter started, accused Anwar Khoso was inside the house which was surrounded by the heavy contingent of Police officials but strangely he after taking official rifle of PC-Abbas Ali disappeared very easily without any trace of him. The witnesses have not given any details as to whether he had escaped by scaling over the wall or from the main entrance or through any other mode or manner. His unscathed escape from the spot in presence of heavy machinery of Police creates doubt over the manner the incident is described by the prosecution to have taken place. The sketch prepared by the Tapedar (Ex.22-A) and the evidence of all the prosecution witnesses indicate that accused and Police were very near to each other when alleged encounter started but surprisingly neither of them nor the walls, doors, windows etc. of the house received any bullet marks to even prima facie support the narrative of the encounter.

7. The I.O has stated in his deposition that he had sealed the blood stained earth taken from the spot in a plastic bottle but his assertion has been belied by the very report of the Chemical Examiner which shows that it was received there in a cigarette pocket of Gold Leaf. The I.O has further admitted that he had not secured any empty fired by the accused. The weapons allegedly recovered from the spot were neither sealed nor sent to Ballistic Expert to establish that the same were functioning and used at the time of alleged incident and the bullets secured form the spot were fired from

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them. Prosecution witnesses in their cross-examinations have admitted presence of ladies and children inside the house but in none of the documents prepared by the prosecution their presence is mentioned or marked, the entire prosecution is silent over the fact as to what happened to them after the alleged encounter. It is also admitted position that although the alleged blood-stained earth secured from the spot was sent for chemical examination but no sample of blood of deceased PC-Abbas Ali was secured for matching purpose and in absence of which, the chemical report of blood sample is inconsequential. Although, as per prosecution case, PC-Abbas Ali was murdered in the house of accused Anwar Khoso, but very strangely neither the memo of his dead body nor the inquest report was prepared therein. These two documents are shown to have been prepared in the hospital, which leads to a suspicion over the death of PC-Abbas Ali inside the house. We were also informed in the course of arguments that in cases registered under section 13 (d) Arms Ordinance, the appellants have been acquitted.

8. After considering all the above facts and circumstances, we are of the view that learned DPG has fairly and rightly not supported the impugned Judgment. It is a well settled principle of law that to give a benefit of doubt to an accused the multiple circumstances creating doubt are not necessary, if there is a single circumstance which creates a reasonable doubt in the prudent mind, the benefit whereof has to be extended to the accused not as a matter of grace but as a matter of right. In the case in hand as discussed above the prosecution has failed even to establish happening of alleged encounter at the relevant time inside the house of accused Anwar Khoso. We, therefore, extend benefit of doubt to the appellants and acquit them of the charge they are booked in. Resultantly the impugned Judgment is set-aside and the appeals are allowed.

7. These are the reasons for our short Order dated 27.10.2016 whereby we allowed the appeals and ordered to release all the appellants forthwith if not required in any other custody case.

S Ashfaq P.S.