

GR

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Jail Appeal No. D- 47 of 2016.

Crl. Jail Appeal No. D- 48 of 2016.

Present:

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Fahim Ahmed Siddiqui.

Abdul Hafeez Pirzado.Appellant.

Versus

The State.Respondent.

Messrs Ali Nawaz Ghanghro and Muhammad Hashim Soomro,
Advocates for appellant in both appeals.
Mr. Khadim Hussain Khooharo, Addl. P.G.

Date of Hearing: 16.01.2018.

Date of Judgment: 16.01.2018.

J U D G M E N T

Fahim Ahmed Siddiqui, J: This common judgment would dispose of the above two captioned appeals. Through these appeals, the appellant has questioned the consolidated judgement dated 13.8.2016 passed by the learned Judge, Anti-Terrorism Court, Larkana, whereby the appellant was convicted and sentenced in Special Case No.02/2016, under Sections 324, 353, 148, 149 PPC read with Section 7 (c) of the Anti-Terrorism Act, 1997, so also Special Case No.03/2016, under Section 23 (i) (a) of the Sindh Arms Act, 2013. As per impugned judgement, the appellant was convicted and sentenced for seven different counts for a maximum period of 10 years R. I. He was also directed to pay a sum of Rs.50,000/- as fine for different counts and in default of payment of fine he has to suffer additional sentences summing up for a period of eight months as simple imprisonment. The appellant was also required to pay 'Daman' and 'Arsh' to injured police constables as described within the impugned judgement.

[Signature]
24/1/2018

2. The facts of the case as per FIR No.10/2015 of P.S Fatehpur are that the complainant ASI Abdul Jabbar Mahar received a spy information regarding availability of an absconding accused namely Abdul Hafeez Pirzado with his gang in his village with intention to commit some offence. These said accused was nominated in number of cases; as such the complainant along with police party raided his village to arrest him. When they reached nearby village, base of five persons amongst them one was armed with a pistol while the rest of our armed with Kalashnikovs and they were previously not seen by the raiding police party. The accused persons were informed about the police party and they were directed to surrender but the accused armed with pistol fired upon P.C Manzoor Ali Solangi, who received injury and fell down. The rest of the accused persons also fired upon the police party which was retaliated but due to such firing P.C Saleem Pitafi also received fire shot injury and fell down. Firing remain continued for about five minutes and due to such firing, the accused armed with pistol also received injuries and fell down while the rest of the accused persons succeeded in running away from the scene of offence. In the incident, PC Manzoor received injuries on his chin and left side of shoulder while PC Saleem received injuries on his right-side cheek. The injured accused was arrested, who disclosed his name as Abdul Hafeez Pirzado and such memo of arrest and recovery was prepared on the spot and subsequently FIR was lodged.

3. The learned counsel for the appellant submits that there are lots of contradictions in the deposition of witnesses. After going through the statements of different witnesses, he points out certain contradictions in respect of time and place. According to him, the alleged incident was said to be taken place nearby village but witnesses say that no one was attracted towards the place of incident after hearing the firing. He submits that such a stance taken



by the witnesses creates doubt regarding the happening of the incident as described within the body of FIR. He points out that 'Memo of Arrest and Recovery' (*Exhibit-7/A*) does not bear the signature of person, who prepared the same. According to him, explanation of designation in the 'Memo of Arrest and Recovery' is not proper. He submits that none of the police personnel says that they are also fired upon the accused persons. According to him, the recovered weapon was not sealed on the spot.

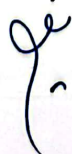
4. On the other hand, the learned Addl P.G. supports the impugned judgement by submitting that there was no enmity of the accused with police party is on the record nor the same is pleaded. He submits that the contradictions and discrepancies are minor in nature as such the recovery is fully established and FSL report is positive.

5. We have heard the arguments advanced and have gone through the available material. In the instant case, the learned counsel for the appellant has pointed out certain contradictions in the deposition, which are sufficient to create doubts regarding the incident. PW Abdul Jabbar in his deposition has stated that the accused was apprehended by ASI Ghulamullah but this fact is contradictory to the 'Memo of Arrest and Recovery'. According to the statement of PC Manzoor Ali, he received firearm injury on his neck but the 'Memo of Arrest and Recovery' indicates that the injury was received by him on his cheek. It is worth mentioning that all the injuries sustained by the injured police constables are declared as 'Shajjah-e-Khafifah' and 'Jurh Ghayr Jaifa Damiyah', meaning thereby that the same are minor in nature. PW Manzoor Ali is a vital prosecution witness but in his deposition, he has stated that he was informed that the injury caused to him was due to a fire made by the appellant. We are of the view that such deposition of this important



prosecution witness amounts to hearsay evidence, as such cannot be relied upon.

6. We have also noticed that there are contradictions between the evidence of the prosecution witnesses and the 'Memo of Arrest and Recovery', which are also fatal for the prosecution case. In the said memo, the injury of injured PC Manzoor Ali sustained on his back side of shoulder is not mentioned and this fact is admitted by the prosecution witness Abdul Jabbar. ASI Abdul Jabbar and other witnesses in their depositions stated that the 'Memo of Arrest and Recovery' was prepared by him but surprisingly the same does not bear the signature of ASI Abdul Jabbar. It is the matter of record that the said 'memo' bears the signature of SHO indicating that he is the author of the same and this fact is also sufficient to create a doubt about the preparation of the said 'memo' on the spot. Furthermore, it has been observed by us that report of Forensic Science Laboratory has not been put to Abdul Hafeez Pirzado (*appellant*) in his statement under Section 342 Cr.P.C. Even the question regarding empties was also not put to the appellant during his statement recorded under Section 342 Cr.P.C. It is settled law that if any piece of evidence is not put to the accused in his statement under Section 342, Cr.P.C. then the same cannot be used against him for his conviction. In this respect, reliance is placed on the case reported as *Muhammad Shah v. The State* (2010 SCMR 1009). Similarly, in the case reported as *Sheral alias Sher Muhammad v. The State* (1999 SCMR 697), it has been observed that any circumstance appearing in the evidence must be put to the accused before it is used against him. As such there are strong and convincing reasons for available in the record for not using the FSL report and recovery of crime weapon against the appellant because the same were not put to him either as a direct question or suggestion to him in his statement under section 342,



77

Cr.P.C. We are therefore of the considered view, that the prosecution remained fail to establish both the cases against the appellant as such the impugned judgment dated 13.08.2016 passed in Special Cases No.02/2016 and 03/2016 were set-aside and the appellant was acquitted from the charge vide our short order dated 16.01.2018 and the above are the reasons for the same.


JUDGE


16-1-2018
JUDGE