

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No.S-106 of 2024.

Criminal Appeal No.S-107 of 2024.

Appellant. : Ali Jan and others through Mr. Safdar Ali Bhutto, Advocate.
Respondent : The State through Mr.Nazir Ahmed Bangwar, D.P.G.
Date of hearing : 10.3.2025.
Date of Judgment : 21.3.2025.

J U D G M E N T

KHALID HUSSAIN SHAHANI J.- Appellants Ali Jan s/o Chachar Sabzoi, Shahid Shaikh and Ali Jan s/o Meeral Sabzoi were convicted by the court of learned Sessions Judge, Kashmore @ Kandhkot, in Sessions Case No.441 of 2024 Re(State v. Ali Jan and others) emanating out of Crime No.267 of 2024, P.S A-Section Kandhkot, offence u/s 399, 402, 324, 353 PPC; besides appellant Ali Jan s/o Chachar Sabzoi was convicted in a case bearing crime No.442 of 2024 emanating out of Crime No.268/2024 of P.S A-Section Kandhkot, offence u/s 23(i)(a) Sindh Arms Act, 2013, whereby they have been sentenced as under:-

- For offence u/s 324 PPC to suffer R.I for 07 years and a fine of Rs.30,000/- each, in default to suffer S.I for 06 months more.
- For offence u/s 353 PPC to suffer R.I for 02 years and a fine of Rs. 10,000/- each, in default to suffer S.I for 02 months more.
- For offence u/s 399 PPC to suffer R.I for 04 years and a fine of Rs. 20,000/- each, in default to suffer S.I for 02 months more.
- For offence u/s 402 PPC to suffer R.I for 05 years and a fine of Rs. 30,000/- each, in default to suffer S.I for 03 months more.
- For offence u/s 23(i)(a) of Sindh Arms Act, 2013 to suffer R.I for 07 years and pay fine of Rs.50,000/- and in case of default to suffer S.I for 06 months more.
- The appellants were accorded benefit of section 382-B Cr.P.C

02. The prosecution case, set forth in the FIR is that on 11.09.2024 at about 2130 hours, a police party led by complainant HC Muhammad Haneef, whilst patrol, received spy about availability of ten culprits armed with weapons at link road near PPL Valve, with intention to commit some crime. Upon reaching the pointed place, the police party found the road blocked with stones. Ten culprits were seen stating on road duly armed with weapons out of them eight were identified with their names, parentage and

addresses including present appellants and two unidentified individuals. It is alleged that the culprits on seeing the police, started intense firing upon them. The police party also retaliated firing in defense. The encounter lasted for 05 minutes, after which two accused, later identified as the appellants Ali Jan S/O Chacher and Shahid, were found injured and apprehended. From Ali Jan, a T.T. pistol was recovered, and from Shahid, a Lathi (stick). On inquiry apprehended culprits disclosed that they had sustained injuries at the hands of their accomplices. The injured were referred for medical assistance. Consequent upon cases were registered against the accused.

03. During investigation accused Ali Jan s/o Meeral was arrested. Accordingly, report was submitted against him to face trial.

04. The appellants pleaded not guilty. To substantiate its case prosecution examined HC Muhammad Haneef (complainant), PC Muhammad Tayab (Mashir of arrest and seizure), ASI Kaleemullah (investigating officer), PC Pervez Ahmed (Incharge Malkhana), and PC Niaz Muhammad (carrier). The statements of accused were recorded u/s 342 Cr.P.C, to which they denied the wrong doing and claimed innocence.

05. After hearing both sides, the learned trial court convicted and sentenced the appellants as mentioned above vide its judgments dated 28.11.2024.

06. Learned counsel for the appellants argued that the appellants were implicated falsely; the story set forth in the prosecution case was fabricated; the appellants are victims of the police, apprehended from their houses and appellants Ali Jan and Shahid were caused injuries at their knees after their arrest; the appellants Ali Jan and Shahid sustained firearm injuries during encounter, but neither medical evidence in this respect was produced nor medical officer examined; the weapons are foisted against the appellants to strengthen the case; the incident took place during odd hours of night, hence question of identification during intense firing not arise; learned trial court failed to appreciate the contradictions and flaws in the prosecution's case and convicted the appellants on unbelievable evidence.

07. Conversely, learned Deputy Prosecutor General Sindh supported the impugned judgment on the ground that accused were named in the FIR with specific role, however, reluctantly agreed that no medical evidence was brought on the record though accused Ali Jan and Shahid sustained firearm injuries during encounter.

08. Record reflects that appellants Shahid and Ali Jan s/o Meeral Sabzoi were armed with Lathies and role of firing upon police party is attributed to accused Ali Jan s/o Chachar along with his companions. Though as per prosecution theory, as soon as accused saw the police party, started intense firing upon them; however, none of the police official has sustained even a scratch on his person. Surprisingly, it is asserted by the prosecution witnesses that appellant Ali Jan sustained firearm injury at the hands of his companions. Means thereby, deny the accused sustained injuries during the encounter. As against, the defense plea is that it was a fake encounter and accused Ali Jan was arrested from his house, victimized by the police by causing firearm injury at his knee joint. Admittedly, no medical evidence has been brought on the record by the prosecution during course of trial, therefore, inference can be taken against the prosecution that if such an evidence would had been brought on the record, it would support to the defense theory.

09. It is strange that police party was able to identify 08 of the accused out of 10 with names, parentage and addresses, though as per prosecution theory, as soon as accused saw police party, started intense firing with lethal weapons, which is not possible rather to be believed during odd hours of the night. It is case of the prosecution that accused were making preparation to commit dacoity at the scene of occurrence, but neither any private person has come forward to say anything in this respect, nor prosecution has bring on the record, what were the attaining circumstances to suggest that in fact the accused had gathered at scene of occurrence with intention to commit dacoity.

10. So far recovery of T.T pistol from accused Ali Jan is concerned, no evidence has been brought on the record that any sort of inquiry was made from him regarding valid license of the alleged weapon; such alone fact suggests the ingredients of section 23(1)(a) Sindh Arms Act, 2013 are lacking to record conviction against the accused for such an offence.

11. A careful examination of the prosecution evidence reveals contradictions among the witnesses on several material aspects of the case. The complainant and witnesses gave conflicting versions regarding the encounter and the sequence of events. There is no independent corroboration of the encounter or the recovery of weapon from Ali Jan. Both the mashirs of recovery and arrest are police personnel, who being subordinate to complainant are interested and partisan and their testimony cannot be taken as gospel truth in absence of any other strong corroboration by independent evidence including circumstantial evidence

which is lacking in the case in hand. Perusal of record reveals that not a single effort was made to arrange private person to act as mashir despite police party had prior information, thus there is clear violation of Section 103 Cr.P.C. On these scores the prosecution story suffers from material doubts and it cannot be excluded beyond consideration that it was only a paper work by concocting a false prosecution story and foisting recovery of T.T pistol against Ali Jan son of Chachar by police only to strengthen their lame case against accused/appellants to show their so called performance before high ups. It appears that the prosecution failed to establish the guilt of the appellants beyond shadow of a reasonable doubt. It is a settled principle of criminal law that even if a single doubt arises into the prosecution case, its benefit must go to the accused/appellants in the main case as well as offshoot cases.

12. Learned counsel for the appellants have also pointed out glaring discrepancies and flaw in the evidence of the prosecution witnesses regarding safe custody of the weapons and subsequent transmission to the forensic laboratory.

13. Given the above, prosecution case seems to be full of doubts and infirmities; hence, appellants deserve its benefit. Consequently, these appeals are allowed. The conviction and sentences awarded to the appellants by the learned trial court vide judgments dated 28.11.2024 are set aside. The appellants are acquitted of all charges. They shall be released forthwith unless required in any other case.

JUDGE