

Remand : witnesses not recalled after
charge amended

403

ORDER SHEET
IN THE HIGH COURT OF SINDH, AT KARACHI.

Spl. Cr. A.T.A. No.196 of 2021
Spl. Cr. A.T.A. No.200 of 2021

Date _____ Order with signature of Judge _____

Present:
Mr. Justice Mohammad Karim Khan Agha J.
Mr. Justice Zulfiqar Ali Sangi J.

27.10.2022.

Mr. Hashmat Khalid, advocate for the appellants Spl. Cr. ATA No.196 of 2021.
Mr. Muhammad Imran Meo, advocate for the appellants in Spl. ATA No.200 of 2021
Mr. Muhammad Iqbal Awan, Additional Prosecutor General.

Mohammad Karim Khan Agha, J;- Appellants Shafiquddin @ Kala S/o Islamuddin, Usama S/o Shafiquddin, Muhammad Aslam @ Munna Bangali S/o Muhammad Yousuf, Ahsan @ Sunny S/o Naseer Ahmed and Aman Akhtar S/o Jameel Ahmed were proceeded against before the Anti-Terrorism Court No.IV, Karachi Division in **Special Case No.856/2018** in respect of FIR No.53 of 2018, under Section 353/324/302/34-PPC, R/w Section 7 ATA 1997, P.S CTD Sindh Karachi, **Special Case No.857/2018**, in respect of FIR No.54/2018, u/s 23(1)(a) of Sindh Arms Act, 2013, P.S CTD Sindh Karachi, **Special Case No.858/2018**, in respect of FIR No.58/2018, u/s 23(1)(a) of Sindh Arms Act, 2013, P.S CTD Sindh, Karachi and in **Special Case No.99/2018 (856-C/2018)** in respect of FIR No.03/2019, u/s 23(1)(a) of Sindh Arms Act, 2013, P.S CTD Sindh, Karachi, whereby all the above appellants were convicted and sentenced vide impugned Judgment dated 08.12.2021 as under:-

- a) Accused namely (1) Shafiquddin @ Kala s/o Islamuddin, (2) Usama S/o Shafiquddin (3) Muhammad Aslam @ Munna Bangali S/o Muhammad Yousuf, (4) Ahsan @ Sunny S/o Naseer Ahmed and (5) Aman Akhtar S/o Jameel Ahmed, are found guilty for the charged offences u/s 302(b)/34-PPC, award imprisonment for life to each, and to pay sum of Rs.50,000/- (Rupees Fifty Thousand)

each, as compensation u/s 544-A Cr.P.C to the legal heirs of the deceased Muhammad Ilyas, which shall be recovered by way of arrear of land revenue, and in default of payment/recovery, they shall further suffer imprisonment for six months.

- b) Accused namely (1) Shafiquddin @ Kala s/o Islamuddin, (2) Usama S/o Shafiquddin (3) Muhammad Aslam @ Munna Bangali S/o Muhammad Yousuf, (4) Ahsan @ Sunny S/o Naseer Ahmed and (5) Aman Akhtar S/o Jameel Ahmed, found guilty of offence u/s 6(2) (a) of ATA 1997 and convicted u/s 7(1) (a) of AT 1997, for life imprisonment, each, and fine of Rs.50,000/- (Rupees Fifty Thousand) each, in case of default in payment of the fine, they shall further suffer for six month imprisonment, each.
- c) Accused namely (1) Shafiquddin @ Kala s/o Islamuddin, (2) Usama S/o Shafiquddin (3) Muhammad Aslam @ Munna Bangali S/o Muhammad Yousuf, (4) Ahsan @ Sunny S/o Naseer Ahmed and (5) Aman Akhtar S/o Jameel Ahmed, are found guilty of charged offence punishable u/s 324/34 PPC and hereby convicted and sentence to suffer for five year imprisonment, each.
- d) Accused namely (1) Shafiquddin @ Kala s/o Islamuddin, (2) Usama S/o Shafiquddin (3) Muhammad Aslam @ Munna Bangali S/o Muhammad Yousuf, (4) Ahsan @ Sunny S/o Naseer Ahmed and (5) Aman Akhtar S/o Jameel Ahmed, found guilty of offence u/s 6(2)(b) of ATA 1997 and convicted u/s 7(1)(c) of ATA 1997, for 10 year imprisonment, each, and fine of Rs.10,000/- (Rupees Ten Thousand) each, in case of default in payment of the fine, they shall further suffer for six month imprisonment, each.
- e) Accused namely (1) Shafiquddin @ Kala s/o Islamuddin, (2) Usama S/o Shafiquddin (3) Muhammad Aslam @ Munna Bangali S/o Muhammad Yousuf, (4) Ahsan @ Sunny S/o Naseer Ahmed and (5) Aman Akhtar S/o Jameel Ahmed, are found guilty of charged offence punishable u/s 353/34-PPC and hereby convicted and sentence to suffer for two year imprisonment, each.
- f) Accused namely (1) Shafiquddin @ Kala s/o Islamuddin, (2) Usama S/o Shafiquddin (3) Muhammad Aslam @ Munna Bangali S/o Muhammad Yousuf, (4) Ahsan @ Sunny S/o Naseer Ahmed and (5) Aman Akhtar S/o Jameel Ahmed, found guilty of offence u/s 6(2) (n) of ATA 1997 and convicted u/s 7(1)(h) of ATA 1997, for five year imprisonment, each, and fine of Rs.10,000/- (Rupees ten Thousand) each, in case of default in payment of the fine, they shall further suffer for six month imprisonment, each.

4

405

All the sentences were ordered to run concurrently and appellants were given the benefit of section 382-B Cr.P.C.

2. In a nutshell, facts of the prosecution case are that on 06.06.2018, at about 21:50 hours, complainant DSR Muneer Hussain of Bhattai Rangers 82 Wing, Majeed Colony, Landhi, Karachi, along with his subordinate staff in government mobile and motorcycles, left his wing on the basis of information about the presence of wanted criminals and terrorists namely Aman, Fakhar Alam, Dildar @ Sheeshnag, Naveed @ Master, Aslam @ Munna Bangali, Sunny and Usama, in the house of terrorist of MQM-Haqiqi namely Shafiquddin @ Kala bearing No.B-392, KCD Pre-Primary School, Nizam-e-Mustafa Colony, near Halal Masjid, Sector 51/A, Korangi No.06. The terrorists are planning for committing terrorism. Complainant party reached pointed place, when he along with his subordinate staff was encircling and apprehending the terrorists, all of sudden eight armed terrorists named above including Shafiquddin @ Kala, started indiscriminate firing upon Rangers party, with intent to kill them and deterred them from performing their lawful duties. In result of firing Hawaldar Muhammad Ilyas, Sepoy Ameer Khan and Sepoy Ibrahim Shah sustained bullet injuries. In reprisal, Rangers also started firing, resultantly a terrorist Usama S/o Shafiquddin sustained bullet injury on his leg and all terrorists along with injured Shafiquddin made their escape good from the scene, while making firing. DSR Muneer Hussain of Bhattai Rangers 82 Wing, shifted injured personnel to Social Welfare Hospital, Landhi, where Hawaldar Muhammad Ilyas succumbed to his injuries. However, other two injured personnel were shifted to CMH Malir, for provision of medical treatment, while dead body of Hawaldar Ilyas martyred was shifted to Jinnah Hospital, for legal proceedings. Thereafter complainant lodged this FIR at PS against above named terrorists for taking legal action.

3. After completion of formal investigation, the matter was challaned and the appellants were sent up to face trial.

4. In order to prove its case, the prosecution examined 22 P.Ws and exhibited various items and other documents. All the appellants in their 342 Cr.P.C statements denied prosecution allegations and claimed their innocence. None of the appellants examined themselves on oath, however two DWs were called in support of their defence case.

5. After appreciating evidence on record, the trial court convicted and sentenced the appellants as above, hence, the appellants have filed these appeals against their conviction.

6. Evidence and facts are setup in the impugned judgment as such no need to reproduce herewith in order to avoid unnecessary repetition and duplication.

7. At the very outset, learned counsel for the appellants along with learned Addl. P.G. drew our attention that when the charge was amended on 11.08.2020 none of the PWs whose evidence had already been recorded were once again required to give evidence and face cross-examination from each of the appellants' defence counsel. It is noted that the appellants Defence Counsel signed an application that they consented to the PWs whose evidence has been recorded prior to the amended charge not being re-recorded. However, all the learned counsel submitted that such application has been deprecated by the Hon'ble Supreme Court and even otherwise do not cover at least 2 to 3 other important witnesses whose evidence needed to be recorded and as such they contended that this matter should be remanded back to the concerned trial Court.

8. We find that based on the above contentions made by learned counsel for the appellants and the learned Additional Prosecutor General, this is a case which warrants remand back to the concerned trial court. This is because under section 353 of the Cr.P.C. the evidence of all the witnesses (evidence-in-chief, cross-examination and re-cross-examination) must be recorded in the presence of the accused and his defence counsel especially in a capital case. The idea behind this is that the appellants shall have

fair trial as guaranteed by Article 10-A of the Constitution. For example, if the counsel of the defence had been present when the aforesaid important witnesses were giving evidence in chief, they may have objected certain questions being put and certain documents being exhibited, as such the fact that the appellants defence counsel was not present during this process has caused prejudice to the appellants in their defence case. We note that this Court has already in such like cases for example reported in SBLR 2021 Sindh 112 and 2019 MLD 1713 adopted the following approach of remand. As such we set-aside the impugned judgment and remand the case back to the ATC Court No.IV Karachi for the limited purpose of recalling and re-recording the evidence of PW-1 DSR Munir Hussain, PW-3 Ibrahim Shah, PW-4 Amcer Khan, PW-5 Muhammad Ramzan, PW-6 Shafiullah, PW-8 Muhammad Aslam Mughal, PW-9 ASI Shahbaz Yousif, PW-10 Hatim Khan, , PW-11 Muhammad Aslam whose entire evidence shall be recorded afresh before all learned defence counsel of the appellants and re-record the statement u/s 342 Cr.P.C of the accused and thereafter write a fresh judgment in this case in respect of the offences so charged except in respect of the offence under Sindh Arms Act, 2013.

9. It may be made clear that appellants have been acquitted in respect of the offence u/s 23(1)(a) of Sindh Arms Act, 2013 as such no longer required to be sent for trial in respect of this offence as they have been acquitted in respect of this offence and no appeal against acquittal has been filed in this regard as such their acquittal in respect of the offence u/s. 23(1)(a) Sindh Arms Act, 2013 has become final.

10. The learned ATC Court No.IV is directed to complete the trial within 04 months of the date of this order. Copy of the this order shall be sent to ATC Court No.IV Karachi along with R&PS for compliance.

11. The above appeals stand disposed of in the above terms.