

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Irshad Ali Shah

SPL. CRIMINAL A.T. JAIL APPEAL NO.192 OF 2019

Appellant Salman son of Bando Khan through
Mr. Iftikhar Ahmed Shah, Advocate.

For State: Mr. Muhammad Iqbal Awan, Additional
Prosecutor General.

SPL. CRIMINAL A.T. JAIL APPEAL NO.316 OF 2019

Appellant Muhammad Shahbaz son of Muhammad Miraj
through Mr. Iftikhar Ahmed Shah, Advocate.

For State: Mr. Muhammad Iqbal Awan, Additional
Prosecutor General.

Date of hearing: 09.08.2021

Date of announcement: 12.08.2021

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellants Salman son of Bando Khan and Mohammad Shahbaz son of Mohammad Miraj have preferred these Criminal Anti-Terrorism Jail Appeals against the impugned judgment dated 30.05.2019 passed by the learned Anti-Terrorism Court No.X, Karachi in Special Case 106 of 2019, F.I.R. No.475 of 2018 u/s. 353/342/34 PPC read with section 7 of ATA 1997 registered at P.S. Quaidabad, Karachi, Special Case 106-A of 2019, F.I.R. No.476 of 2018 u/s. 23(i) A Sindh Arms Act, 2013 registered at P.S. Quaidabad, Karachi, Special Case 106-B of 2019, F.I.R. No.477 of 2018 and u/s.23(i) A Sindh Arms Act, 2013 registered at P.S. Quaidabad, Karachi whereby the appellants have been convicted and sentenced as under:-

1. The accused Salman s/o Bando Khan is hereby, convicted for the offence u/s.7 (h) of ATA, 1997 r/w S.353/324 PPC and sentenced to undergo R.I. for "10" years with fine of Rs.100,000/-. In default in payment of such fine, he shall suffer further R.I. for "01" year.

2. Accused Salman s/o. Bando Khan for the offence u/s.25 of Sindh Arms Act, 2013 and sentence him to undergo R.I. for "07" years with fine of Rs.50,000/-. IN default in payment of such fine, he shall suffer further R.I for "06" months more.
3. The accused Muhammad Shahbaz s/o. Muhammad Meiraj is hereby convicted for the offence u/s.7 (h) of ATA, 1997 r/w. S.353/324 PPC and sentenced to undergo R.I. for "10" years with fine of Rs.100,000/-. In default in payment of such fine, he shall suffer further R.I for "01" year more.
4. Accused Muhammad Shahbaz s/o. Muhammad Meiraj for the offence u/s.25 of Sindh Arms Act, 2013 and sentence him to undergo R.I. for "07" years with fine of Rs.50,000/-. In default in payment of such fine, he shall suffer further R.I for "06" months more.

All the above sentences shall run concurrently. The benefit of Section 382-B Cr.P.C is also extended to the accused persons from the date of their arrest.

2. The brief facts of the prosecution case are that on 22.12.2018 in between 1740 to 1805 hours complainant ASI Naik Zada registered F.I.R. No.475 of 2018 u/s. 353/342/34 PPC read with section 7 ATA 1997 and FIRs No.476 & 477 of 2018 u/s. 23(i) A Sindh Arms Act, 2013 at P.S. Quaidabad, Karachi stating therein that on that day he was on patrolling duty along with his subordinate staff in Police Mobile-I bearing registration No.SPC-459. During patrolling duty spy/informant informed to the complainant that 02 suspicious persons duly armed were standing at Lala Abad Road, near Mola Madad Graveyard, Sher Pao Colony, Landhi, Quaidabad, Karachi. On such information, police party immediately rushed to the pointed place. After reaching there at about 1635 hours they saw 02 motorcyclists on one motorcycle who on seeing the police party started direct firing upon them, with intent to commit kill them and prevent them for performing their lawful duties and official functions. Resultantly, Police Mobile- Ist bearing No.SPC-459 received 02 bullet holes on its body. In retaliation, the police party also made fire shots upon the assailants, in their self defence. Resultantly, both culprits sustained bullet injuries on their left legs and fell on the ground. Thereafter, police officials encircled them and apprehended them on the spot. The Complainant inquired the names of injured/apprehended accused persons, who disclosed their names as Salman s/o Bando Khan and Muhammad Shahbaz s/o Muhammad Meiraj. The complainant then conducted personal search of injured accused Salman and recovered one

30 bore Pistol from his right hand along with loaded Magazine having 01 round, whereas 01 round loaded in the chamber. Thereafter, complainant conducted personal search of injured accused Muhammad Shahbaz and recovered one 30 bore pistol from his right hand along with loaded magazine having 02 rounds, whereas 01 round loaded in the chamber. The complainant also inquired regarding license of the recovered pistols from the accused persons, but they could not produce the same. The complainant also inquired from the injured accused persons, regarding registration papers of the motorbike but they also failed to produce the same, therefore, the complainant seized the same on the spot. The complainant also sealed the recovered pistols, bullets and magazines, separately in cloth parcels. Thereafter he prepared joint memo of arrest, recovery and seizure on the spot. The police party then returned to PS along with custody of injured accused persons, sealed case property and relevant papers, including motorbike of the culprits.

3. After usual investigations charge was read over to the accused persons by the learned Judge Anti-Terrorism Court No.X, Karachi to which accused persons denied all the allegations leveled against them and further stated that they were falsely implicated in this case. They claimed to be innocent and prayed for trial.

4. The prosecution to prove its case examined 04 PWs who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellants/accused persons recorded their statements under section 342 Cr.PC but did not give evidence under oath or call any DW in support of their defence case.

5. Learned Judge Anti-Terrorism Court No.X, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 30.05.2019, convicted and sentenced the appellants as stated above, hence these appeals have been filed against conviction.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. learned counsel for the appellants has contended that it was a completely false case against the appellants which had been made up by the police to prove their efficiency to their higher ups; that no such encounter took place; that the pistols were foisted upon the appellants and the prosecution evidence was not supported by the medical evidence and did not appeal to reason, logic or commonsense and as such for any of the above reasons the appellants should be acquitted by extending them the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Muhammad Ayoub v. The State** (2020 YLR 2367), **Zeeshan @ Shani v. The State** (2012 SCMR 428), **Jahaz Khan and another v. The State** (1987 SCMR 351), **Makhdoom Hussain and 3 others v. The State** (1989 SCMR 778) and **Barkat Ali v. Muhammad Asif and others** (2007 SCMR 1812).

8. On the other hand Additional Prosecutor General for the State has fully supported the impugned judgment. In particular he has contended that the prosecution eye witnesses are reliable, trust worthy and confidence inspiring whose evidence can be safely relied upon; that the FIR was lodged with promptitude and the S.161 Cr.PC eye witness statements were also recorded on the day of the incident and as such there was no time to cook up a false case against the appellants; that the appellants were arrested on the spot in broad day light in injured condition having gunshot wounds following the encounter with the police; that the pistols were recovered from the appellants on the spot; that the empties recovered at the spot lead to a positive FSL report when matched with the recovered pistols and that for all the above reasons the prosecution had proved its case beyond a reasonable doubt and that the appeals should be dismissed. In support of his contentions he has placed reliance on the case of **Hakim Khan V The State** (2013 SCMR 777).

9. We have heard the arguments of learned counsel for the parties and scanned the entire evidence, minutely and have found that the prosecution has not proved its case against the appellants beyond a reasonable doubt for the following reasons when read together;

(a) that according to the evidence of the police eye witnesses the appellants fired first at them. However it does not appeal to reason that the appellants fire shots missed the police from such close range and only hit the police mobile.

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(b) that both the appellants were shot on the legs which indicates that the police were crack shots and is a common phenomena of "police encounters" in Karachi.

(c) that most importantly when the appellants were medically examined both of the appellants had blackening around their firearm wounds which indicates that they were shot from within 3 to 4 feet at the most however one police witness states in his evidence that the fire shots was from 10 to 15 paces whilst another states that the shots were from one and a half meters which if believed indicates that their should have been no blackening around the wounds which castes severe doubts on their evidence.

(d) that no blood was recovered from the place of the incident.

(e) that when produced at trial the recovered motor bike which the accused were allegedly riding at the time of he incident was not in working condition and was not in either of their names and the owner could not be traced out.

(f) that despite this being a day time incident in a busy area no independent witness or mashir was called to give independent evidence in violation of Section 103 Cr.PC.

10. Thus the impugned judgment is set aside, the appeal is allowed by extending the benefit of the doubt to the appellants who shall be released unless wanted in any other custody case.

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