IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

PRESENT:-
Mr. Justice Shamsuddin Abbasi
Mr. Justice Ali Haider 'Ada'.

<><><>

Criminal Jail Appeal No. D-21 of 2024

Appellant	Ali Sabzoi son of Muhammad Hassan @ Gadehi Sabzoi through Mr. Safdar Ali Ghouri, Advocate.
Respondent	The State through Mr. Nazir Ahmed Bhangwar, Deputy Prosecutor General.
Date of hearing	**01.10.2025**
Date of Judgment	**09.10.2025**

<><><><><>

JUDGMENT

Shamsuddin Abbasi, J. Ali Sabzoi son of Muhammad Hassan @ Gadehi Sabzoi, appellant, has challenged the validity of the judgment dated 24.12.2021, penned down by the learned Anti-Terrorism Court No.II, at Central Prison, Sukkur, in Special Case No.03 of 2021 {FIR No.02 of 2017} registered at Police Station Gublo Kacho, for offences under Sections 302, 324, 353, 395, 120-B. 148 and 149, PPC read with Section 7 of Anti-Terrorism Act, 1997, through which he was convicted and sentenced as under:-

> *"To undergo rigorous imprisonment for life and to pay a fine of Rs.500,000/- and to suffer simple imprisonment for a further period of one year in lieu of fine and to further pay a sum of Rs.500,000/- as compensation in terms of Section 544-A, Cr.P.C. payable to the legal heirs of the deceased, which shall be recovered as land revenue and forfeiture of his properties to the Government in terms of Section 7{2} of ATA, 1997 for commissions of offences under Sections 149, PPC read with Section 7{i}{a} ATA, 1997 read with Section 302{b} and 34, PPC.*
>
> *To undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.200,000/- and to suffer simple imprisonment for a further period of one year in lieu of fine for commission of offence under Section 7{1}{c} of ATA, 1997 read with Section 324, PPC.*
>
> *To pay 1/3rd of the Diyat as Arsh for commission of offence under Section 337{d}, PPC and to undergo 10 years' imprisonment as Tazir.*

To undergo rigorous imprisonment for 10 years and to pay a fine of Rs.100,000/- and to suffer simple imprisonment for a further period of one year in lieu of fine for commission of dacoity /snatching of police mobile.

To undergo rigorous imprisonment for a period of 05 years and to pay a fine of Rs.100,000/- and to suffer simple imprisonment for a further period of six months for commission of offence under Section 21-L of Anti-Terrorism Act, 1997.

Benefit of Section 382-B Cr.P.C. is extended to accused and it is ordered that period of his confinement as UTP be deducted from the sentence. However, all the sentences shall run concurrently.

2. Worth to mention here that the learned trial Court while proceeding with the matter jointly acquitted the appellant of the charges in Special Case No.04 of 2021 {FIR No.02 of 2017} registered at Police Station Durani Mahar, District Kashmore @ Kandhkot for offences under Sections 324, 353, 148 and 149, PPC read with Section 7 of ATA, 1997 through common judgment, which is impugned in this appeal.

3. Short but relevant facts of the case are that on 20.01.2017 complainant SIP Aijaz Ahmed Jagirani, SHO of P.S. Gublo Kacho, was present at P.S. when he received information that dacoits Ali and Takkar @ Ali Muhammad alongwith their companions are gathered in village Sakwan Jaffari with intention to commit some offence. On receipt of such information, he alongwith his staff HC Ghulam Rasool, PC Subah Sadiq, PC Zakir Hussain, PC Ali Muhammad, PC Soobal Khan, PC Qudratullah {driver}, PC Bashir Ahmed Mugheri, Incharge Mujahid-I with his staff and PC Ghulamullah {driver} left P.S. under entry No.04 at 9:10 am and on the way to the pointed place SIP Aijaz Ahmed sought help from P.S. Durani Mahar to join them. On reaching the place they saw 24 persons emerging from Lal Forest, out of them 21 were identified as Ali son of Muhammad Hassan @ Gadehi, Takkar @ Ali Muhammad son of Jabal @ Abdul Wahid, Bashir @ DC son of Khairo @ Shahnawaz, Kakar son of Jabal @ Abdul Wahid, Dadoo @ Allah Bux son of Shahnawaz, Yaseen son of Shah Dino, Mir Ahmed son of Mehar, Saboo @ Sabir son of Abdul Khaliq, Mehar son of Moula Bux, Hussain son of Illahi Bux, Nadir son of Yaseen, Suleman son of Wahid Bux, Shaban son of Wahid Bux, Jaggan son of Wahid Bux, Nooruddin son of Wahid Bux, Najoo @ Najamuddin son of Wahid Bux, Meenho son of Muhammad Hassan, Hafeez son of Muhammad Saleh, Ahmdan son of

Ali Akbar, Shahnawaz son of Illahi Bux and Saboo son of Sain Bux, all by caste Sabzoi, armed with deadly weapons. The police party ordered them to drop their weapons and surrender before police. Instead of obeying the orders of police, Takkar @ Ali Muhammad fired from his G-3 rifle, which hit to PC Subah Sadiq, who fell down, whereas the fire shot by Ali from his Kalashnikov hit to PC Bashir Ahmed Mugheri, who became seriously injured. On seeing the situation, the police took position and returned fires in self defence. Meanwhile, a police party of P.S. Durani Mahar, headed by HC Allah Jurio, joined the police party of P.S. Gublo Kacho and made fires in self defence, however, the accused party overpowered some police personnel, snatched their official weapons and made their escape good alongwith police mobile. The complainant noticed PC Subah Sadiq dead having injury on his chest while PC Bashir Ahmed Mugheri was alive having injury on his abdomen through and through. At spot HC Sahib Khan of P.S. Gublo Kacho, HC Allah Dino, PC Mehboob Ali of P.S. Durani Mahar and PC Ahmed Ali disclosed that accused party while decamping snatched their officials weapons viz repeater, SMGs and G-3 rifle and took away the same alongwith them. The complainant after completing relevant proceedings at spot referred the injured PC Bashir Ahmed and dead body of PC Subah Sadiq to hospital and thereafter registered a case vide FIR No.02 of 2017 at P.S. Gublo Kacho on 21.01.2017.

4. The another FIR No.02 of 2017, lodged by SIP Rafique Ahmed at P.S. Durani Mahar, relates to police encounter allegedly taken place on 23.01.2017 wherein one of the accused namely, Ahmdan was arrested in injured condition from whom official Kalashnikov, snatched by the accused party during commission of offence relating to FIR lodged at P.S. Gublo Kacho, was recovered while rests made their escape good whereas the robbed police mobile was also recovered from the scene of offence.

5. Pursuant to the registration of FIRs, the investigation was followed and in due course the separate challan in each case was before the Court of competent jurisdiction, whereby the appellant was sent up to face the trial.

6. Worth to mention here that in the earlier round of litigations, accused Ahmdan, Shahnawaz, Nazakat and Abdul Hafeez were acquitted of the charges and the appeals preferred against their acquittal were dismissed by this Court.

7. Joint trial was ordered in terms of Section 21-M of Anti-Terrorism Act, 1997 and a joint charge in respect of offences for police encounter, commission of murder of PC Subah Sadiq, causing fire-arm injuries to PC Bashir Ahmed, snatching of official weapons and police mobile and creating terror, panic and sense of insecurity amongst the members of the police party as well as public falling under Sections 302, 324, 353 read with Section 149, PPC, 395, 427, 102-B, PPC and 6/7 of Anti-Terrorism Act, 1997 was framed against appellant. He pleaded not guilty to the charged offences and claimed a trial.

8. At trial, the prosecution has examined as many as 15 witnesses. The gist of the evidence, adduced by the prosecution in support of its case, is as under:-

9. Inspector Rafique Ahmed appeared as witness No.1 Ex.5, PC Shaukat Ali as witness No.2 Ex.6, PC Muhammad Khan as witness No.3 Ex.7, HC Sahab Khan as witness No.4 Ex.8, PC Mehboob Ali as witness No.5 Ex.9, Qadeer Ahmed {Tapedar} as witness No.6 Ex.10, ASI Sher Dil as witness No.7 Ex,11, PC Jamaldin as witness No.8 Ex.12, Dr. Abdul Subhan as witness No.9 Ex.13, ASI Allah Jurio as witness No.10 Ex.14, ASI Gulzar Ahmed as witness No.11 Ex.15, ASI Ghulam Rasool as witness No.12 Ex.17, Inspector Abdul Ghaffar as witness No.13 Ex.19, PC Bashir Ahmed {injured} as witness No.14 Ex.20 and complainant SIP Aijaz Ahmed as witness No.15 Ex.21. All of them have exhibited certain documents in their evidence and were subjected to cross-examination by the defence. The prosecution closed its side of evidence vide statement Ex.22.

10. Statement of appellant under Section 342, Cr.P.C. was recorded at Ex.23. He has denied commission of offences, professed his innocence and stated his false implication with malafide intention. He opted not to make a statement on Oath under Section 340(2), Cr.P.C. nor produce any witness in his defence.

11. Upon culmination of the trial, the learned trial Court found the appellant guilty of the offences charged in FIR lodged at P.S. Gublo Kacho and, thus, convicted and sentenced him of the charges leveled in FIR registered at P.S. Durani Mahar as detailed in para-1 (supra) and aggrieved of the convictions and sentences, the appellant has preferred the instant appeal whereas the acquittal appeals filed by the State were dismissed by this Court.

12. It is contented on behalf of the appellant that he is innocent and has falsely been implicated in this case by the witnesses who being police officials are inimical to the appellant, hence they have falsely deposed against him. Next contends that the FIR has been lodged after one day of the incident and that too without furnishing any plausible explanation. Also contends that the ocular account has been furnished by police officials without support of independent corroboration, which too is not in line with the medical evidence, hence the same has been wrongly relied upon. They were inconsistent with each other rather contradicted on crucial points benefit whereof must go to the appellant. Per him the learned trial Court on one hand acquitted most of the co-accused in the earlier rounds of litigation and on the same set of evidence convicted the appellant, which is inadmissible. He also emphasized that the learned trial Court while passing the impugned judgment has deviated from the settled principle of law that a slightest doubt is sufficient to grant acquittal to an accused. The learned trial Court also did not appreciate the evidence in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in convicting the appellant merely on assumptions and presumptions. Neither any weapon has been recovered nor any other incriminating evidence has been brought on record to substantiate the involvement of the appellant in the commission of crime. He further argued that the impugned judgment is devoid of reasoning without specifying the incriminating evidence against appellant. Per learned counsel, the appellant has not done any offence and in his Section 342, Cr.P.C. statement too he has denied the whole allegations leveled against him by the prosecution. The learned trial Court did not consider the plea taken by the appellant and recorded conviction ignoring the neutral appreciation of whole evidence.

Lastly submits that the impugned judgment is the result of misreading and non-reading of evidence, without application of a conscious judicial mind and against the principle of natural justice, hence the same is bad in law and facts and the convictions and sentences awarded to the appellant through the said judgment merit reversal.

13. The learned DPG while controverting the submissions of learned counsel for the appellant has submitted that the offence is heinous one wherein the accused party being members of an unlawful assembly resisting the police party from making their arrest by way of indiscriminating firing, committed murder one of the members of police party and caused injuries to another one, overpowered some of the police officials, snatched their officials weapons and also took away the police mobile with them, therefore, keeping in view the gravity of offence, the delay of one day in lodgment of FIR is not fatal to the prosecution case more particularly when the complainant was busy in completing the relevant proceedings and removing the dead body as well as injured to hospital. Next contends that the appellant alongwith his companions being a member of unlawful assembly attacked at police party and made indiscriminating firing, created sense of fear amongst the members of the police party as well as general public. Also contends that the ocular account furnished by complainant and eye-witnesses in shape of direct evidence has been corroborated by medical evidence, duly supported by the circumstantial evidence. The complainant and witnesses while appearing before the learned trial Court remained consistent on each and every material point. They were subjected to lengthy cross-examination but nothing adverse to the prosecution story has been extracted which can provide any help to the appellant. The medical evidence in this case is in line with the ocular account, duly supported by the circumstantial evidence, which fully corroborates the story narrated in the FIR. The role of the appellant is borne out from the medical evidence adduced by the prosecution. The recoveries of official weapon as well as police mobile have also been proved through reliable evidence adduced by the recovery witnesses. The prosecution in support of its case has produced ocular as well as medical evidence coupled with circumstantial evidence, which was rightly relied upon by learned trial Court. The findings recorded by the learned trial Court in the impugned judgment are based on fair evaluation of evidence and documents brought on record, to which no

exception could be taken. The plea taken by the defence that appellant has no nexus with the occurrence in absence of any supporting evidence does not carry weight vis-à-vis providing help to the defence. The prosecution has successfully proved its case against the appellant beyond shadow of reasonable doubt, thus, the appeal filed by the appellant warrants dismissal and his conviction and sentence recorded by the learned trial Court is liable to be upheld.

14. We have heard the learned counsel for the appellant as well as learned DPG at length, given our anxious consideration to their submissions, and have also scanned the entire record carefully with their able assistance.

15. Addressing the point of delay, the learned DPG has responded that the delay in lodgment of FIR has been well-explained. The incident occurred at day time and the accused party made indiscriminating firing, committed murder of one of the members of police party, and injured another one. The encounter took place for about 40 minutes and the priority was to save the life of injured constable and removal of dead body to hospital, which is a reasonable course in the circumstances, as such the element of delay in lodgment of FIR is fully established and the same is not fatal to the prosecution case. The contention of the learned counsel that the FIR has been lodged after consultation and due deliberation is, thus, irrelevant and unsafe to rely upon.

16. The prosecution case is primarily structured upon ocular account furnished by complainant SIP Aijaz Ahmed, who appeared as PW.15 Ex.21, and four eye-witnesses namely, HC Sahab Khan {PW.4 Ex.8}, PC Mehboob Ali {PW.5 Ex.9}, injured PC Bashir Ahmed {PW.14 Ex.20} and ASI Ghulam Rasool {PW.12 Ex.17}. Complainant has deposed that on 20.01.2017 he was posted as SHO of P.S. Gublo Kacho. He received information about presence of some dacoits at village Sakwan Jeffery, who gathered there with intention to commit some offence. He alongwith police party went to the pointed place and saw 23 /24 dacoits, asked them to surrender, but they started firing. The police returned the fires in self defence and encounter took place for about 40 minutes during which PC Subah Sadiq expired at spot due to firing

of accused Takkar, who was armed with G-III rifle, whereas PC Bashir Ahmed sustained fire-arm injuries due to firing of appellant from Kalashnikov. He further deposed that after encounter the accused persons took away the police mobile No.SPD-643 with them and also snatched officials weapons viz two SMG rifles, one repeater and one G-III rifle and escaped away. He performed legal formalities at spot and then referred the injured as well as dead body to Taluka Hospital Kandhkot. He further deposed that additional police force also reached at the scene of offence and they went behind the accused, but to no avail and on next day he lodged FIR. After registration of the FIR, the I.O. visited the place of incident on his pointation and conducted site inspection.

17. Complainant has been supported by four eye-witnesses namely, HC Sahab Khan {PW.4 Ex.8}, PC Mehboob Ali {PW.5 Ex.9}, injured PC Bashir Ahmed {PW.14 Ex.20} and ASI Ghulam Rasool {PW.12 Ex.17}. All of them in their respective depositions have supported the case of the prosecution and specifically involved the appellant in the commission of offence testifying that on the day of incident they went to the place of incident, accompanied SIP Aijaz Ahmed, where they saw 34/ 24 accused persons and ordered them to surrender, but instead of surrendering they made direct firing upon the police and committed murder of PC Subah Sadiq and in result of their firing PC Bashir also became injured. They have also testified that during incident the accused party overpowered some of members of police party, snatched their official weapons and also took away the police mobile with them. The injured PC Bashir Ahmed, who is star witness of the prosecution, in his evidence has fully involved the appellant in the commission of offence and categorically deposed that he became injured due to firing of appellant while PC Subah Sadiq died at spot as a result of firing of accused Takkar.

18. A keen look of the testimony of complainant and eye-witnesses reveals that they have identified the appellant and involved him in the commission of offence. They have also correctly explained the manner as well as mode of taking place of the occurrence. They remained consistent on each and every material point despite having undergone a lengthy cross-examination by the defence. Nothing has been extracted

from their mouth during cross-examination. Their evidence has extended adequate confidence to the learned trial Court to be believed upon them and we have also acknowledged the quality of their truthfulness to believe them as dependable witnesses. They seem to be natural witnesses and have explained their presence properly at the scene of offence at relevant time.

19. The ocular evidence adduced by the prosecution, referred above, has further been corroborated by the medical evidence adduced by PW.9 Dr. Abdul Subhan {Ex.13}. This witness has deposed that on 20.01.2017 he received dead body of PC-2911 Subah Sadiq for post-mortem. He started post-mortem at 01:05 am pm and finished at 3:00 pm and noted injury as follows:-

> *"A lacerated punctured wound 0.5 cm x diameter into cavity deep on front of chest near right nipple {entry wound}.*
>
> *A lacerated punctured wound 0.5 cm x diameter into cavity deep on left side of back of chest {entry wound}".*

On the same day he also received PC-1732 Bashir Ahmed in injured condition with police letter for providing medical treatment. He examined the injured and found as follow:-

> *"A lacerated punctured wound 0.5 cm x diameter x cavity deep on left lumber region of abdomen laterally and communicating through and through with wound of exit 1.5 cm x diameter on epigastria region of abdomen at left side".*

Reviewing the evidence of Medical Officer, we are of the view that the ocular account furnished by the prosecution has been corroborated by the medical evidence that deceased died due to shock and hemorrhage resulting from injuries caused by discharge from firearm whereas the injury sustained by PC Bashir Ahmed as Jurh-i-Jaifah. No element of doubt is available as to the presence of complainant and eye-witnesses at the place of incident at the relevant time. They have furnished graphic details of the occurrence without being trapped into any serious narrative conflict and deposed same facts in their evidence, which are in line to that of their earlier statements recorded by investigating officer during investigation under Section 161, Cr.P.C. and plausibly explained their presence at the crime scene. Here we are not in agreement with

the submission of learned defence counsel that medical evidence is in conflict with the ocular accounts furnished by the prosecution.

20. As to the contention of the learned counsel for the appellant that the prosecution has only produced the evidence of police officials and no independent witness has been associated either during investigation or produced at trial. As noted above, the offence was committed at day time and there was indiscriminating from the side of accused party and police returned the fires in self defence and the encounter continued for about 40 minutes, hence there was no chance of public to witness the crime directly due to fear of heavy firing. With regard to non-association of a private witness from the place is concerned, suffice to observe that people do not cooperate and give consent to become a witness because it invites annoyance of the criminals involved in the cases of heinous nature like the present one, wherein the appellant alongwith his 23/ 24 companions not only attacked the police party but also committed murder of one of the members of police party and injured another one. This act has not only created scare upon the police but also generated sense of insecurity amongst public at large, which is directed against the society. Even otherwise, the police officials are competent witnesses and their testimony cannot be discarded merely for the reason that they are police officials unless or until the defense succeeds in giving dent to the statements of prosecution witnesses and prove their mala fide or ill-will intentions against the appellant. Furthermore, the statements of police officials are as good as the statements of private witness, unless through evidence it has been proved that previous grudge had existed in between the parties. The testimony of police officials is entirely independent and truthful, therefore, their testimony without looking for any other corroborative evidence, would alone be sufficient to establish the charge. Even otherwise, there is no bar upon the police officials to become witness of any crime. It has further been observed that the police officials in the present case were the natural witnesses of the crime, who at the relevant time were accompanied with the complainant, hence their presence at the spot could not be disputed. Reliance in this regard is placed on the case of *Muhammad Mushtaq and another v State* (2008 SCMR 742), whereby the Hon'ble Supreme Court has observed that the police officials are also competent witnesses and their testimony cannot be discarded merely for the reason that they are the employees of police

force. Hence, in view of above legal and factual position the objection of the learned defence counsel is absolutely without any substance.

21. Insofar as the contention of the learned counsel for the appellant that prosecution withheld a number of witnesses as they were not supportive to its version is concerned, suffice it to observe that it is a sole prerogative of the prosecution to examine the witnesses of its own choice. It is not necessary for the prosecution to produce each and every witness cited in the calendar of the witnesses. In the case in hand, the prosecution has produced all relevant and material witnesses cited in the challan including complainant and four eye-witnesses, out of them one is injured, who have fully supported the prosecution story and involved the appellant in the commission of crime. Hence, in such state of affairs, the plea taken by the appellant that prosecution withheld the best piece of evidence is not helpful to the appellant. As to the argument that most of the nominated accused were acquitted of the charge in the earlier rounds of litigation, suffice to observe that the appellant has been assigned direct role of causing fire-arm injury to PC Bashir Ahmed. It is noteworthy that complainant and eye-witnesses in their respective depositions have identified the appellant and held him responsible for causing injury to PC Bashir Ahmed with specific role of direct firing with KK and did not assign any specific or overt act to the accused persons earlier acquitted by the learned trial Court. We are, thus, of the view that the role assigned to the appellant is entirely different and distinguishable from the case of acquitted accused. This argument of the learned counsel for the appellant is, thus, irrelevant and unsafe to rely upon.

22. Another intriguing aspect of the matter, which is an immense importance, is the absconsion of appellant. The record reveals that the incident took place on 20.01.2017 and since then the appellant remained fugitive from law. He neither joined the investigation nor entered appearance before the learned trial Court and after initiating appropriate proceedings he was declared proclaimed offender. He was confined in judicial lock-up of P.S. Kandhkot in another crime and arrested in this case on 05.11.2020. This means that he remained fugitive from law for more than three years without furnishing any plausible explanation. He deliberately concealed himself and avoided to face the consequences of

his act, which clearly shows his guilty conscious. Had he been not involved in the commission of offence, he would have dared to appear before the Court of law and face the legal process. The appellant's abscondance for a long time draws an adverse inference against him about his guilty conscious. We are conscious of the settled proposition of law that absconsion by itself is not sufficient to convict an accused but it is a strong piece of corroborative evidence of direct evidence, supported by the medical evidence, in the case and where the accused remained fugitive from justice for a very long time without any plausible and reasonable explanation, his conduct after the occurrence is indicative of his guilt when considered in conjunction with the ocular evidence, supported by medical evidence. Guidance is sought from the case of *Mst. Roheeda v. Khan Bahadar* (1992 SCMR 1036).

23. The argument of the learned counsel for the appellant that non-recovery of crime weapon has rendered the case of the prosecution extremely doubtful, benefit whereof must go to the appellant. No doubt the Investigating Officer has failed to recover the crime weapon used in the commission of offence, nonetheless, the failure does not tremor the prosecution case otherwise firmly founded on ocular account furnished by the witnesses who plausibly explained their presence at the crime scene. Even otherwise, non-recovery of crime weapon is not harmful to the prosecution case in view of long abscondance of appellant for more than three years because recovery of crime weapon after such long period could not be expected. We are, thus, of the view that non-recovery of crime weapon is not enough to demolish the case of prosecution more particularly when the appellant remained fugitive from law for more than three years and ocular account in shape of direct evidence has already been believed as trustworthy and confidence inspiring.

24. It is a well settled that onus to prove its case always rests on the shoulder of the prosecution and once the prosecution succeeded in discharging such burden with cogent evidence then the accused become heavily burdened to disprove the allegations levelled against him and prove his innocence through cogent and reliable evidence. The appellant while cross-examining the witnesses and recording his Sections 342, Cr.P.C. statement has taken a defence that he has been falsely implicated

by police. The question arises why the complainant and eye-witnesses would involve an innocent person in a heinous crime instead of actual culprits. We are, thus, of the view that the plea taken by the appellant in his defence is not confidence inspiring and the learned trial Court has rightly discarded the same to be of untrustworthy. He has also not appeared on Oath under Section 340(2), Cr.P.C. and did not examine any witness in his defence, which may give rise to a presumption that the plea taken by him in his defence was not a gospel truth, therefore, he avoided to appear and depose on Oath under Section 340(2), Cr.P.C. If both the versions, one put forward by the appellant and the other put forward by the prosecution, arc considered in a juxtaposition, then the version of the prosecution seems to be more plausible and convincing and near to truth while the version of the appellant seems to be doubtful.

25. Insofar as the contention of learned defence counsel that there are so many defects in the investigation as well as contradictions in the statements of witnesses benefit of which ought to have been given to the appellants, suffice it to say that a procedural formality cannot be insisted at the cost of completion of an offence and if an accused is otherwise found connected then mere procedural omission, minor discrepancies and even allegation of improper conduct of investigation would not help the accused. The reference in this context may well be made to the case of *State/ANF v. Muhammad Arshad* {2017 SCMR 283} wherein the Hon'ble Supreme Court of Pakistan held that:-

> "*We may mention here that even where no proper investigation is conducted, but where the material that comes before the Court is sufficient to connect the accused with the commission of a crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case.*"

26. We are convinced that the learned trial Court has appreciated the evidence and scrutinized the material available on record in complete adherence to the principles settled by the Hon’ble apex Courts in various pronouncements and has reached a just conclusion. There is no denial of the fact that the learned trial Court has not taken into account all the aspects of the matter as well as the defence taken by the appellant at trial minutely and found the appellant guilty of the offence with which he has been charged. No mala-fide, ill-will, previous enmity or personal

grudge has been established showing that evidence furnished by the prosecution was based on malice, ill-will or previous enmity. We are conscious of the fact that the appellant being a member of an unlawful assembly resisted his arrest and conjointly made firing upon the police with intention to kill and due to his firing one of the members of police party sustained fire-arm injury while another one was killed due to firing of co-accused. In such an eventuality, appellant could not be totally exonerated from the charge of sharing common intention in the commission of offence under section 302(b), P.P.C. We are, thus, of the view that the learned trial Court has rightly held appellant guilty of offences under Section 302{b}, PPC read with Section 7 of ATA, 1997 that he being a member of an unlawful assembly shared his common object to main accused Takkar and created sense of insecurity amongst the police as well as public. Reliance in this behalf may well be made to the case of *Muhammad Yaqoob v The State* {2021 SCMR 1387}, wherein the Hon'ble Supreme Court declined leave and maintained the conviction and sentence awarded by the trial Court and upheld by the Federal Shariat Court. Relevant excerpt of the said judgment is reproduced below:-

> *We have gone through the evidence furnished, amongst others, by Abdul Hadi (PW-1), Ali Mardan (PW-2) and Iqbal Hussain (PW-3) with extra care and caution to explore any possibility of finding an exit for the petitioner, however, found the witnesses unanimously pointing their fingers for his having participated in the occurrence, being an active member of the unlawful assembly, constituted in prosecution of a common object, a pursuit that resulted into the death of two police constables in their prime youth; they laid their lives to protect unsuspecting worshipers. Despite flux of considerable time, the witnesses confidently recollected the incident and faced the cross-examination without embarrassment though Iqbal Hussain (PW-3) somehow omitted to name the petitioner in his examination-in-chief, however, the defence rectified the error through an indiscreet suggestion, vehemently denied by the faltering witness. Prosecution's failure to effect recovery after almost 25 years of the incident does not surprise us nor adversely reflects upon its case otherwise firmly structured on the statements of the witnesses whose presence at the crime scene cannot be suspected. Argument that it cannot be assumed with any degree of certainty that the shots allegedly fired by the petitioner had trapped any of the deceased is entirely beside the mark; community of intention is a valid concept to entail corporeal consequences, if in the circumstances of a particular case, like one in hand, participation of an offender is reasonably established through credible evidence; the deceased certainly died of the bullets conjointly fired upon them as is evident from the seizure of as many as 90 casings from the spot and, thus, petitioner alongside the co-accused is*

equally culpable to share the cumulative impact of the assault. Presence of electric lights at the mosque presented ample opportunity for the identification of assailants, each named in the crime report. Darkness by itself does not provide immunity to an offender if the witnesses otherwise succeed to capture/ascertain his identity through available means, conspicuously mentioned in the crime report. On our independent analysis, the totality of circumstances does not space any hypothesis other than petitioner's guilt and, thus, do not find ourselves in a position to take a view different than concurrently taken by the courts below. Petition fails. Leave declined".

27. The Hon'ble apex Court in number of cases held that lives of citizens have become unsafe due to the activities of which the appellant has been involved, which have created a sense of fear, panic and terror, which is directed against the Society. It is, therefore, demand of time that the persons involved in such like activities should be dealt with iron hands. Any act to promote crime is to be assumed a more heinous offence as that of act of any other person. A person who has made himself a member of an unlawful assembly and involved in like cases should be given an exemplary treatment so that none other could dare and even think to indulge and repeat such kind of offence. We are afraid that if criminals involved in like cases are set free, the results will be drastic and impacts will be far from repair. It is high time that the Courts have to apply strict standards and to show a zero tolerance against those involved in cases of like nature, otherwise our entire system would be collapsed and every citizen would be at the mercy of criminal. Survival of a society vests in fair administration of justice and such objective can only be achieved when criminals involved in cases of like nature are met with exemplary punishment. We have, thus, no hesitation in our mind to hold that the learned trial Court has rightly taken a view while convicting the appellant under Section 302{b}, PPC read with Section 7 of ATA, 1997 besides other sentences.

28. In view of the analysis and combined study of the entire evidence by way of reappraisal, with such care and caution, we are of the considered view that the prosecution has successfully proved its case against the appellant beyond shadow of reasonably doubt. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view is based on fair evaluation of evidence and documents brought on record, hence call

for no interference by this Court. In view thereof, the convictions and sentences awarded to the appellant through impugned judgment dated 24.12.2021, in Special Case No.03 of 2021 {FIR No.02 of 2017} of P.S. Gublo Kacho warrants no interference. This Criminal Jail Appeal No.D-21 of 2024 is bereft of any merit stands dismissed.

JUDGE

JUDGE

NAK/PA