IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Justice Syed Fiaz ul Hassan Shah

Special Criminal Anti-Terrorism
Appeal No. 95 of 2024
[Ubaid @ K-2 vs. The State]

Appellant	:	through Mr. Raj Ali Wahid Kunwar, Advocate.
Respondent	:	through Mr. Muhammad Iqbal Awan, Additional Prosecutor General
Court assisted by	:	Mr. Saleem Nasir, Research Officer
Date of Hearing	:	04.09.2025
Date of Decision	:	22.10.2025

JUDGMENT

Omar Sial, J: On 02-07-1998, S.I. Noor Nawab Khattak of Sachal Rangers and his team were patrolling in Liaquatabad when they were ambushed by Nadir Shah and his nine associates, which also included the appellant Syed Obaid. Shots were fired by the assailants while shouting anti-police slogans. As a result, Havaldar Mumtaz Ali and Sepoy Dildar Hussain were injured; Dildar later died at the hospital. The Rangers retaliated, but the attackers managed to escape. FIR No. 212 of 1998 was registered under sections 302, 353, 324, 148, and 149 P.P.C., read with section 7 of the Anti-Terrorism Act, 1997, at the Liaquatabad police station.

2. Nadir Shah and Syed Obaid were tried. The difference between the two was that Nadir Shah was arrested and tried in person, whereas Obaid was tried in absentia. Both were convicted on 15.05.2002, for an offence under section 302

P.P.C. and sentenced to life imprisonment. They were also convicted for offences under sections 324, 353, and 147/148 P.P.C. and sentenced to ten years, two years, and three years imprisonment, respectively. Nadir Shah completed his sentence on 24.05.2013 and was released from prison. It later transpired that Obaid had not been able to attend the trial as he was confined in prison in other cases and was indeed confined when the judgment dated 15.05.2002 was announced. The learned Anti-Terrorism Court No. 5 at Karachi, on 17.01.2023, held that the judgment dated 15.05.2002, to the extent of convicting Obaid in absentia, was set aside, and that Obaid be tried in accordance with the law. Obaid, the State, or the complainant did not challenge this order.

3. **S.I. Maqbool Ahmed Jafri (PW-1)**, the Daily Diary Mohrar, testified that Obaid was arrested while in police custody on 15.05.2000. He, however, did not identify the person present in court as Obaid, who was arrested on 15.05.2000. This lapse of memory prompted the prosecution to declare him a hostile witness. **Inspector Malik Rasheed Awan (PW-2)** was the officer who had re-arrested Obaid in this case in 2000. **Inspector Jawed Hussain Sheikh (PW-3)** was the first police responder to the information that two law-enforcers had been injured. He reached the hospital to see Dildar's dead body and Mumtaz in an injured condition. **H.C. Rangers Muhammad Mithal Ghangro (PW-4)** was one of the members of the Rangers party that was fired upon. He testified that the firing had started, in which Dildar and Mumtaz were injured. He testified that 10 to 15 persons had participated in the firing and that Obaid was among them. He, however, acknowledged that the nine persons he had seen at the place of the incident were scattered in the adjoining streets and that there were people on top of buildings who were firing. In his own words, "*I have mentioned that the name of the accused disclosed by me was on the ground, and the rest were on the building tops. It is correct to suggest that I only heard the noise of firing from the*

top of the buildings, and not seen any person on the buildings." **Inspector Mohammad Zakir Awan (PW-5)** re-arrested the accused in 2021. **S.I. Arif Hussain Syed (PW-6)** had interrogated both Nadir Shah and Obaid and testified that they had told him that they had fired upon the Rangers and run away. **Abid Hussain Jutt (PW-7)** was a member of the Rangers party and testified that four persons, who had included Nadir Shah and Obaid, had fired upon the Rangers party. The credibility of this witness was severely impacted when he claimed at trial that he had identified Obaid in an identification parade. This was incorrect as the record reflects that no identification parade was held in this case. **Dr. Abdul Aleem Memon (PW-8)** was a colleague of Dr. Maula Bux Chandio (the doctor who did the post-mortem. Chandio had died, so Memon appeared to verify his signature on the medical reports. The investigating officer of the case, Inspector Muhammad Nawaz, had died, so **S.I. Syed Arif Hussain (PW-9)** verified his signature. The accused pleaded innocent in his statement under Section 342 Cr. P.C.

4. At the end of the trial the learned Anti-Terrorism Court No.3 at Karachi convicted Obaid for offences under sections 302 read with section 7(1)(a) of the ATA 1997; section 324 read with section 7(1)(a) of the ATA 1997; section 353 read with section 7(1)(b) of the ATA 1997 and sentenced him to life, ten years and five years respectively. Varying fines were also imposed.

5. We have heard the learned counsel for the appellant and the learned Additional Prosecutor General. Our findings and observations are as follows.

6. The evidence led at trial reflects that, at best, the prosecution was able to prove that Obaid was present in the mob of people that allegedly attacked the law enforcers. Nobody saw him armed, nor did anybody (except Abid Hussain Jutt (PW-7)) say that Obaid had fired upon them. Abid's testimony, for the reasons given above, does not inspire

confidence or appear trustworthy. As noted above, one of the prosecution's witnesses stated that the gunfire directed at the law enforcers originated from the tops of buildings, whereas the appellant was seen on the ground. Suppose a person sought to be convicted by the Court was, in fact, involved in the commission of the offence as alleged by the complainant. In that case, the pertinent question is whether any of the prosecution witnesses have assigned him a specific role in the entire occurrence. In the absence of any such attribution in conformity with the requirements of law, the conviction of that person cannot be sustained. It is a settled principle that a person who causes injury to another must be held liable for the act of causing such injury, and one who causes death must be convicted accordingly.

7. Furthermore, the complete absence of any blood at the scene, coupled with the fact that the appellant was neither arrested at the spot nor had his specific role clearly described by the witnesses—who merely stated that he was accompanied by a co-accused—and the lack of recovery of any weapon from him to corroborate the ocular account, collectively create reasonable doubt in the mind of a prudent person. These circumstances raise serious concerns about whether the incident occurred as alleged by the complainant in the FIR, thereby casting substantial doubt on the prosecution’s version of events.

8. It is pertinent to point out that the learned Trial Court itself, in paragraph 30 of its judgment, concluded that the only evidence against the appellant was that he had confessed his guilt in front of the investigating officer. The Trial Court, however, relying on Article 47 of the Qanun-e-Shahadat Order 1984, convicted the accused based on the testimonies and documents produced by the prosecution in the trial in which Obaid was sentenced in absentia. These witnesses had subsequently died or were unable to appear to testify. In our opinion, an error crept into the judgment at this stage.

9. Section 19(10) of the Anti-Terrorism Act, 1997 provides that an accused can be tried in his absence if the Anti-Terrorism Court, after such inquiry as it deems fit, is satisfied that such absence is deliberate and brought about with a view to impeding the course of justice. We have not delved deeper into this aspect, as on 17.01.2023, the learned Trial Court accepted that Obaid's trial in absentia had violated his right to a fair trial and ordered that he be tried again. The Supreme Court in **Mohammad Sadiq vs The State (2018 SCMR 71)** observed that:

> *"The law on the point is very much clear and settled. When an accused is absconding, the trial Court has to issue proclamation and attachment under sections 87/88, Cr.P.C. When the absconsion is established and proved on the record, then the trial Court can proceed with the matter under section 512, Cr.P.C. and record the evidence of all the witnesses which later on can be used against the accused in the circumstances provided in section 512(1), Cr.P.C. But it was not the case where proceedings under section 512, Cr.P.C. were to be initiated and completed against the appellant instead the appellant was tried in absentia by the Special Court under the Act of 1975 as provided under section 5-A(4) of the said Act. The basic difference between the two is that in the former case, only evidence in absentia is recorded under section 512(1), Cr.P.C. which can be used against the accused in the circumstances as provided in section 512(1), Cr.P.C. but the Court cannot record conviction after recording evidence in absentia under section 512, Cr.P.C. whereas in the latter case, it is full fledge trial of the accused in absentia under section 5-A(4) of the Act of 1975 and the Court under Special Law is empowered to record conviction of the person in absentia as was done in the earlier trial of the appellant.*

While coming back to the facts and circumstances of the case, the High Court in earlier Jail Appeal after arrest of the appellant had set aside the conviction so recorded in absentia and sent back the case to the trial Court for fresh regular trial. Here in this situation the prosecution again was duty bound to lead entire evidence to prove its case beyond any shadow of doubt against the appellant."

10. The facts of the current case are similar to the case above. The evidence was not recorded under section 512 Cr.P.C., but Obaid was convicted after a full-dress trial under the ATA 1997. The prosecution was therefore duty-bound to lead all the evidence to prove its case. As mentioned above, some witnesses had died and others were unable to come to trial. Article 47 of the Qanun-e-Shahadat Order, 1984, provides for situations in which a witness dies naturally or is otherwise incapacitated before their statement is recorded in court. In such cases, the evidence of that person, previously recorded in any judicial proceedings or by any person authorized to record it, becomes relevant for proving the facts. It would facilitate reference if Article 47 is reproduced:

47. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated*.— Evidence given by a witness in a judicial proceeding, or before any person authorised by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:*

Provided that—

i. the proceeding was between the same parties or their representatives-in-interest;
ii. the adverse party in the first proceeding had the right and opportunity to cross-examine.
iii. the questions in issue were substantially the same in the first as in the second proceeding.

11. Article 47 would not come to the aid of the prosecution as the provisos at serial (i) and (ii) above were not fulfilled. An argument could have been made that the evidence of those who could not come to trial subsequently could be considered had the prosecution, at the very least, brought on record the previous testimonies and documents from the second trial. This, the record shows, was not done. Taking into account the above-mentioned provisions of law, along with the facts and circumstances of the prior judicial proceedings against the appellant (though conducted in absentia), it was the prosecution's duty to have presented this evidence in the judicial record. The statements of the complainant, Inspector Noor Nawab (eyewitness), Muhammad Nawaz (eyewitness), Hawaldar Noor Muhammad (eyewitness), Driver Iftikhar (eyewitness), and Mumtaz Ali (eyewitness) were neither presented before the court nor brought into the record in accordance with the law. The case record remains silent on this matter. While the statements of these witnesses were recorded during the trial in absentia, they could not be considered by the trial court unless properly submitted into the judicial record. These statements remain part of the trial in absentia file. Moreover, no questions regarding the earlier statements of these witnesses recorded during the trial in absentia were posed to the appellant during his statement under Section 342 of the Cr.P.C. It is a well-established legal principle that any incriminating evidence must be presented to the accused in his statement under Section 342 of the Cr.P.C. Otherwise, it cannot be used against him. In this case, the trial court based its

judgment of conviction on the earlier statements of eyewitnesses, which were not legally before the court.

12. This boy Obaid, more commonly known as Obaid K2, for reasons best known to him, has had 10 cases against him. He has been acquitted in 7 cases and in none has the State or any other person filed appeals. Though K2 might argue otherwise and say that the only reason he is in jail is because of his political affiliation, there is ample evidence to suggest that K2 has most certainly been on the wrong side of the law for many years. That perception or reality about K2, however, would not mean that he is deprived of his fundamental rights under Article 10 and Article 10-A of the constitution. He must be treated in accordance with law. It would also not be out of place to note that in accordance with Article 68 of the Order of 1984, in criminal proceedings the fact that the accused person has a bad character is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant. No such effort to present K2 as a man of stellar character was made by his counsels at trial. In this particular case, as it seems in seven other cases the prosecution has failed to prove its case beyond reasonable doubt. Matters for the prosecution in this case were further aggravated because of the two decade interim period between the incident and trial. State prosecutors were perhaps not aware at the stage of trial about how the case was to be handled in its particular situation. This lapse on part of the State has worked to K2's advantage.

13. There is another argument raised in the proceedings by the State. This is that in the earlier trial(s), appeals of some accused were dismissed till the Supreme Court. It is correct that they were. There are two things though. One, there was no question of law settled by the Supreme Court nor was there any ratio laid down. As a matter of fact the State failed to point out even one obiter which would be violated. Two, no where did the Supreme Court in those judgments say that K2 would be deprived of the equal treatment of the law and not be entitled to

due process when caught. With much respect and humility, we are of the view that the State's reliance on the Supreme Court is mis-conceived.

14. The evidence reflects that K2 is not a savoury character. For many from the generation that saw and heard of K2s antics, his notoriety should bring him the harshest of punishments. We respectfully disagree. A judge cannot be swayed by his own personal biases, prejudices and experiences when deciding cases. Judgments cannot be based on perceptions unless the law warrants those perceptions. The constitution guarantees every citizen certain rights and these rights cannot be taken away from any citizen. K2 is also entitled to the same treatment, unless Parliament says he is not. The Parliament, to date, has not said that. We conclude that due process was not followed in K2s trial.

15. Given the above, we are of the opinion that prosecution failed to prove its case against Obaid K2. The benefit of such doubt must go to the accused. He is therefore acquitted of the charge. He may be released if not required in any other case.

JUDGE

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