

ORDERS SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Cr. Appeal No. S-109 of 2024

Cr. Appeal No. S-110 of 2024

Cr. Appeal No. S-111 of 2024

Date	Orders with signature of Judge
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1. For orders on office objection.
2. For hearing of main case.
3. For hearing of M.A No. 7181/2024. (Appln. U/s 426 Cr P C)
4. For hearing of M.A No. 7189/2024. (Appln. U/s 426 Cr P C)
5. For hearing of M.A No. 7191/2024. (Appln. U/s 426 Cr P C)

21-01-2025

Mr. Saeed Ahmed Bijarani, advocate for the appellants in all three matters

Mr. Aitbar Ali Bullo, D.P.G for the State

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Heard arguments of learned counsel for the appellants and learned Deputy Prosecutor General, Sindh. Reserved for judgment.



Judge

Abdul Salam/A

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No.S-111 of 2024

Appellant: Abdul Nabi son of Ghulam Rasool Chachar
2. Qasim son of Jameel Ahmed Chachar
Through Mr. Saeed Ahmed B. Bijarani,
Advocate.

The State: Through Mr. Mr. Aitbar Ali Bullo, Deputy
Prosecutor General, Sindh.

Date of hearing: 21.01.2025

Date of decision: 28.01.2025

JUDGMENT

OMAR SIAL, J.: A police party led by H.C. Mohammad Ayoub of the Karampur police station was on routine patrol duty when it received spy information that a notorious gang of criminals was at a specified place. The police reached the identified location and saw the two appellants, Abdul Nabi Chachar and Qasim Chachar. Both were armed with pistols. Apart from these two individuals, there were four other unidentified armed men. As the police approached them, all six men opened fire on the police. The police retaliated, and after a brief shoot-out, the two appellants were apprehended while their accomplices managed to escape. A pistol was recovered from each of the two. F.I.R. No. 97 of 2024 was registered under sections 399, 402, 324, 353, 148, and 149 P.P.C. Apart from this, F.I.R. No. 98 and 99 of 2024 was registered under section 23(1)(a) Sindh Arms Act, 2013 against each arrested accused.

2. At trial, the prosecution produced and examined the following witnesses. H.C. Mohammad Ayoub (the complainant and the arresting officer); P.C. Mumtaz Ali (witness to the arrest and recovery); A.S.I. Abdul Rasheed (the investigating officer of the case). In their respective section 342 Cr.P.C. statements, the two appellants professed innocence, denied any wrongdoing, and claimed that they had been involved in a false case at the behest of their landlord.

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3. The Sessions Judge, Kashmore at Kandhkot, on 04.12.2024 sentenced them to seven years imprisonment for an offence under section 324 P.P.C., two years imprisonment for an offence under section 353, two years imprisonment for an offence under section 402, and one-year imprisonment each for offences under sections 148 and 149 P.P.C. Various quantum of fines were also imposed. Being aggrieved by this decision, the appellants have preferred this appeal.

4. I have heard the learned counsel for the appellants and the learned Deputy Prosecutor General. My observations and findings are as follows.

5. This is another case where the police have narrated a stereotypical story – a gang of hardened criminals, all armed to the teeth with lethal weapons, open straight fire from a short distance on a police party to kill them but somehow fail to hurt, injure or damage any one member of the police or any nearby property, before being arrested, without anybody but the police witnessing the entire incident. Inevitably, the weapons recovered from the culprits do not have any identification marks. In this case, the two appellants were armed with pistols, while their four accomplices had pistols, guns, and Kalashnikovs. All opened direct fire on the seven-member police party from a short range, and the shoot-out continued for 15 minutes. The prosecution witnesses acknowledged that none of the accused or the police was injured in the incident, nor was the police mobile in which they traveled even hit. Let alone the fact that no nearby property was damaged in the shoot-out. It seems that the fifteen-minute shoot-out comprised of aerial firing by both parties. The prosecution story is unnatural and unbelievable.

6. The area where the incident took place was "a public thoroughfare, and "villages were available around the area," according to prosecution witness Mohammad Ayoub. It was a "busy area," according to prosecution witness Mumtaz Ali, yet the investigating officer in a display of complete unprofessionalism admitted that he did not "record the statement of villagers during the investigation." The investigating officer did not fulfill his duty to uncover

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the facts of the matter. There would have been several dozen people who witnessed the incident in a locality as described by the prosecution witnesses themselves, yet not one person or property injured or damaged, coupled with an intentional and deliberate avoidance to collect evidence reflects malafide on the part of the police.

7. The prosecution alleged that information regarding a dangerous gang was given to it to prompt action, yet, at trial, the witnesses acknowledged that the two individuals did not have a past crime record. So much for the authenticity of the "spy information". The police made no effort to identify, locate, and capture the remaining accused. Surprisingly, the only two individuals they arrested were both known to the complainant before the incident. He did not disclose how he knew them, but not because of any past encounter with law enforcement.

8. Mohammad Ayoub testified that the accused and the two recovered weapons were in the custody of P.C. Mumtaz Ali while he made the memo of arrest and recovery. His colleague, Mumtaz Ali, however, saw something different. He testified that he had one pistol while the other was with P.C. Qabil. The seized weapons were not sent to the ballistics expert for five days after the incident. Safekeeping of the weapons became doubtful when Altaf Hussain (the maalkhanain charge) produced an unsigned deposit entry and failed to produce a retrieval entry. Further doubt was created when the investigating officer failed to produce the original entry that showed he handed over the weapons to Altaf Hussain to take to the ballistic examiner, nor did he produce the entry of his return. To the contrary, he acknowledged that the copies of the entries he had produced at trial were "written on a plain paper" and that neither the entries produced were signed nor attested by anybody. A plain piece of paper with the entries made on it was produced. The investigating officer further admitted that the entries he had made to show that he had gone to inspect the place of incident and the one he made upon his return did not contain any time. A departure from regular police practice.

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This lapse is not crucial in every case, but in this case, coupled with the other facts, it has affected my decision.

9. I must respectfully disagree with the learned trial judge that the mere fact that the appellants allegedly had weapons would ipso facto mean that they had gathered to commit dacoity. The investigating officer collected no evidence of any nature to prove this. If reasonable precautions are not taken when evaluating evidence, it would give the police a free hand to simply claim that five or more men had gathered for robbery. The learned trial judge has observed that no leniency can be shown to the appellants because of the law-and-order situation in the district; however, it must not be lost sight that maintaining law and order is the responsibility of the police. As in the present case, the half-cooked, incomplete, and unprofessional investigation cannot be condoned on this ground. This case, even if true, was destroyed by the sub-standard investigation, which reflects bias. If the police were serious about enforcing the law. In that case, they should ensure that professional investigation takes place so that the actual criminals cannot so easily take advantage of police lapses and get away. Courts must decide cases based on the evidence produced at trial.

10. Given the above, the appeal is allowed, and the impugned judgment is set aside. The appellants should be released forthwith if not required in any other custody case.


28/11/25
JUDGE