

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

**MR. JUSTICE ASIF SAEED KHAN KHOSA**  
**MR. JUSTICE SARMAJ JALAL OSMANY**  
**MR. JUSTICE QAZI FAEZ ISA**

**CRIMINAL APPEALS NO.3 & 4 OF 2015**

*(On appeal from the judgment dated 24.07.2013 of the Lahore  
High Court, Lahore passed Cr.As.No.998 & 999/2011, PSJA  
No.189/2011 and Cr. Rev.No.739/2011)*

Faisal Noman. (in Cr.A.3/2015)  
Rao Shafqat Ali and 3 others. (in Cr.A.4/2015)  
.....**Appellant(s)**

**Versus**

Javed Hussain Shah and others. (in Cr.A.3/2015)  
The State. (in Cr.A.4/2015)  
.....**Respondent(s)**

For the Appellant : Messrs M. Latif Khosa, Sr. ASC,  
(in Cr.A.3/15) Khurram Latif Khosa, ASC and  
Faisal Noman, appellant in-person.

For the Appellants : Syed Iftikhar Hussain Gillani, Sr. ASC.  
(in Cr.A.4/15)

For the Respondents : Syed Zahid Hussain Bokhari, ASC.  
(in Cr.A.3/15)

For the State : Mr. Ahmed Raza Gillani, Addl.PG. Pb.

Date of Hearing : 19<sup>th</sup>, 20<sup>th</sup> and 25<sup>th</sup> May 2015.

**J U D G M E N T**

**QAZI FAEZ ISA, J-** These two appeals arise out of a common judgment dated 24<sup>th</sup> July 2013 of the Lahore High Court, Lahore, whereby a learned Division Bench had decided four matters:

(1) Criminal Appeal No.998 of 2011, an appeal filed by six police officers and officials, namely DSP Talat Ali, Constable Ghulam Mustafa Matti, Inspector Rana Muhammad Akram, Inspector Azhar Abbas Gill, Sub-Inspector Rao Shafqat Ali and Inspector Shafqat Mehmood Azeem Kamboh, which was accepted against the first two individuals and their convictions were set aside, however, to the extent of the remaining four persons the appeal was dismissed and their convictions were upheld, but the convictions under section 337-L (1) of the Pakistan Penal Code ("**PPC**") were converted to one under sub-section (2) of the same section; (2) Criminal Appeal No.999 of 2011, an appeal filed by DSP Moeen Hafeez Butt, which was dismissed as having abated as during the pendency of the appeal the appellant had passed away; (3) Petition for Special Leave to Appeal ("**PSLA**") No. 189 of 2011 filed by Advocate Sheikh Muhammad Usman against the acquittal of District Police Officer ("**DPO**") Javed Hussain Shah which was dismissed and the DPO's acquittal by the trial court was maintained; (4) Criminal Revision No.739 of 2011 was also filed by Advocate Sheikh Muhammad Usman that had sought the enhancement of the sentences of the appellants in the said criminal appeals, but it was dismissed on the ground that a criminal revision was not maintainable and it was also held that the sentences passed were appropriate and did not merit enhancement.

2. Criminal Appeal No.4 of 2015 has been filed by the four unsuccessful appellants before the High Court in Criminal Appeal No.998 of 2011. Criminal Appeal No.3 of 2015 has been filed by Advocate Faisal Noman against the acquittal of the DPO who was acquitted by both the courts below and against the acquittal of DSP

Tallat Ali and Constable Ghulam Mustafa Matti who had been acquitted by the High Court.

3. The trial of the abovementioned eight persons proceeded, on the basis of a private complaint filed by Advocate Sheikh Muhammad Usman the then President of the District Bar Association Sahiwal ("**the complainant**"), in the Anti-Terrorism Court, Multan. The complainant alleged that the said Bar Association in a meeting held on 3<sup>rd</sup> of May 2007 had decided to take out a peaceful rally in support of the then Chief Justice of Pakistan and the establishment of the independence of the judiciary, for which purpose about 300 lawyers had congregated the following day after *maghrib* prayers at 7 pm in the bar room when they were informed by the police personnel on duty that the DPO had issued directions not to permit the rally. Thereafter, at 7:15 pm the DPO spoke to the complainant and stated that he was acting on the directions of the Chief Minister, Punjab (who we have been informed was Mr. Pervaiz Ellahi) who had ordered that on no account lawyers be permitted to take out the said rally, and if required extreme steps may be taken to prevent them. The complainant further stated that when the lawyers had assembled to take out the rally some of the nominated accused, out of the 200-250 policemen armed with batons and firearms, had plastic bottles in their hands with syringes containing inflammable liquid. It was further narrated in the complaint that the lawyers had lit torches (مشعلیں) with them when they were sprinkled with the liquid contained in the plastic bottles through the syringes causing burn injuries to a number of lawyers and that 2 or 3 plastic bottles containing the said liquid were taken into safe custody and stored in the bar room.

4. The four policemen who have filed Criminal Appeal No.4 of 2015 were convicted and sentenced, after modification of sentences by the High Court, as under:

Sr.No.	Section	Sentence	Amount	Imprisonment if fine not paid
(1)	148 PPC	3 years RI.	-	-
(2)	149/324 PPC	5 years RI.	Rs.10,000/- as fine	2 months SI.
(3)	337-L(2)/149 PPC	2 years RI.	Rs.20,000/- as <i>daman</i>	-
(4)	452 PPC	4 years RI.	-	-
(5)	7(h) ATA, 1997 r/w 149 PPC	7 years RI.	Rs.50,000/- as fine	4 months SI.

All the aforesaid sentences were to run concurrently.

5. Syed Iftikhar Hussain Gillani, learned Senior Advocate, at the very outset stated that the person who was given the preeminent role in the complaint, namely DPO Javed Hussain Shah was let off at the leave granting stage by the petitioner as the petition to his extent was not pressed (Criminal Petition No.943-L of 2013) despite the fact that the name of the said DPO appears thirteen times in the complaint and it was stated in the petition under section 22-A of the Code of Criminal Procedure ("**Code**") that it was on his "instructions" that the policemen on duty acted as they did. He further stated that the entire case of the complainant was that the DPO acted on the orders of the Chief Minister, however, no complaint was preferred against the Chief Minister. It was next contended that if the complainant is to be believed then it was the DPO who had issued orders and was therefore guilty, however, his subordinates had no option but to abide by his orders and it does not stand to reason that the principal accused is let off and those who were allegedly following orders were prosecuted, convicted and sentenced.

His next submission was that neither the said plastic bottles, which as per the complaint were in the custody of the complainant, nor any syringe was produced before the trial court in support of the prosecution case. He also averred that the burn injuries that some of the lawyers may have received were on account of the lit torches that fell upon them for which the policemen cannot be made responsible. The learned counsel further stated that orders under section 144 of the Code had been issued and the said order was in effect on the day the rally was proposed to be taken out and referred to Exhibit-CW4/P in this regard whereby the order issued under section 144 of the Code came into effect on 16<sup>th</sup> April 2007 and was to remain in place till 16<sup>th</sup> May 2007. He also relied upon sections 76 and 79 of the PPC read with section 3 (m) and (n) of the Police Order 2002, which provisions are reproduced hereunder:

PPC:

**"76. Act done by a person bound, or by mistake of fact believing himself bound, by law.**

Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations

- (a) A, a soldier, fires on a mob by the order of his superior officer, in conformity, with the commands of the law. A has committed no offence.
- (b) A an officer of a Court of Justice, being ordered by that Court to arrest Y and after due enquiry, believing Z to be Y arrests Z. A has committed no offence."

**"79. Act done by a person justified, or by mistake of fact believing himself justified, by law.**

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact

and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith of the power which the law gives to all persons of apprehending murders in the Act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may be true if Z was acting in self-defence."

Police Order:

**"3. Attitude and responsibilities of police towards the public.**

It shall be the duty of every police officer to-

- (m) obey and promptly execute all lawful orders;
- (n) perform other duties and exercise powers as are conferred by this Order, the Code or any other law for the time being in force;"

The learned counsel concluded by stating that none of the sections where under the policemen had been convicted were attracted in the facts and circumstances of the case.

6. Mr. Muhammad Latif Khosa, the learned Senior ASC (in Criminal Appeal No.3 of 2015) and Mr. Ahmed Raza Gillani, the learned Additional Prosecutor General, Punjab for the State opposed Criminal Appeal No.4 of 2015 and also contended that those policemen who were acquitted were wrongly acquitted as there was sufficient material against them. The learned Senior ASC further stated that the Chief Justice of Pakistan had been unlawfully deposed on 9<sup>th</sup> March 2007 and was illegally detained and upon his release from captivity he was to address the Lahore High Court Bar Association on 5<sup>th</sup> May 2007 and in his support the said rally was to be taken out on 4<sup>th</sup> May 2007, however, the then Government did not

permit the lawyers to come out from the court premises where the bar room is situated. He stated that twenty-nine lawyers were injured and some received serious burn injuries as a consequence of the petrol sprinkled on them through the syringes by the policemen. It was next contended that all the injuries were suffered by the lawyers and none by the policemen, and even in the FIR No.45 of 2007 lodged by the police in respect of the incident no mention was made that any policemen had been injured. He stated that the presence of the convicted policemen as well as those who were acquitted was established, therefore, the non-production of the plastic bottles and syringes was immaterial. The learned Additional Prosecutor General Punjab adopted the arguments of Mr. Muhammad Latif Khosa and stated that the extreme highhandedness of the police resulted in serious injuries to lawyers and it was done to suppress the movement in support of the independence of the judiciary. He further stated that the lawyers would not have been injured if they had been permitted to take out their peaceful rally.

7. We have gone through the record of the appeals and given our careful consideration to the facts on record and the referred to legal provisions. It is admitted: that the lawyers had gathered within the premises of the court to take out a rally, that some of the lawyers had lit torches with them, that a large contingent of policemen were deployed, that the DPO was overall in charge and that injuries, including burn injuries, were suffered by the lawyers. What however is denied by the appellants-policemen is that inflammable liquid from plastic bottles/syringes was sprayed on the lawyers; which has to be determined. The defence plea that the policemen on duty were compelled to prevent the lawyers from taking

out a rally as they were directed to do by their superior officer, i.e. the DPO, and that the rally was in violation of the order issued pursuant to section 144 of the Code, also needs consideration.

8. Lawyers had gathered and the proposed rally was to be taken out for the salutary purpose of ensuring the independence of the judiciary and against authoritarian rule. The lawyers of Pakistan were in the forefront of the movement that galvanized public opinion for securing the independence of the judiciary, a cherished goal of the people of Pakistan. The lawyers had no personal interest and were striving for the independence of the judiciary and in exercise of their fundamental right to "assemble peacefully" (Article 16 of the Constitution) had gathered to "move freely" (Article 15 of the Constitution) to rally the cause of an independent judiciary, but they were prevented from doing so. The lawyers were unarmed and the policemen had prior knowledge that the rally was being contemplated. The reliance upon the orders issued pursuant to section 144 of the Code is of little significance, as no communication was addressed to the District Bar Association either drawing their attention to the said fact or calling upon them for justifiable reason not to take out the rally. Mr. Muhammad Latif Khosa, the learned senior ASC, had questioned the genuineness of the orders purportedly issued under section 144 of the Code, however, without entering into this controversy, the order clearly states that it was issued to curtail "sectarian strikes" and the activities of "banned/proscribed sectarian/militant organization [who] are likely to indulge in terrorist activities", which object had absolutely nothing to do with the planned protest. It was, therefore, disingenuous of the policemen to rely upon the said purported order and sections 76 and



79 PPC and section 3 of the Police Order, 2002 are of no assistance to them.

9. We shall now proceed to examine whether the provisions where under the appellants were convicted were attracted in the facts and circumstances of the case. Section 148 PPC is in respect of rioting, section 149 PPC prescribes the punishment for an unlawful assembly, section 324 PPC is in respect of attempted murder, section 337-L (2) PPC for causing hurt, section 452 PPC when house trespass is committed and section 7 (h) of the Anti-Terrorism Act ("**ATA**"), 1997 in respect of terrorism. It cannot be stated that the mere presence of the policemen constituted an unlawful assembly or that they had gathered to riot. And in the absence of the plastic bottles and syringes allegedly containing inflammable material section 324 PPC or section 337-L (2) PPC would be difficult to establish, particularly since the prosecution/complainant whilst stated to be in possession thereof did not tender the same in evidence. The policemen's presence at the court premises also did not constitute house trespass under section 452 PPC. The prosecution itself had contended that policemen had been deployed outside the court premises and had prevented the lawyers from taking out the rally, therefore, as per the prosecution version the same cannot be brought within the definition of terrorism under section 7 (h) of the ATA. It is also of significance that the DPO who was stated to be the instigator of the entire incident had not been proceeded against by the prosecution.

10. The Police is a disciplined force and deployed policemen are required to abide by the orders issued to them, however, it does not follow that they should throw caution to the wind and abide by

the order of a career serving officer who wants to ingratiate himself with politicians. Moreover, the taking out of rallies by the lawyers in those days was a common occurrence and the participants of such rallies had never taken the law into their own hands or caused any damage to property, therefore, there was no justification to restrain the lawyers who had gathered on the fateful day from doing so. A sizeable number of lawyers had assembled with almost an equal number of policemen. Merely because we have found the policemen-appellants not guilty of the offences for which they were convicted, it does not follow that they were not at all liable for the injuries that the lawyers suffered. We can reconstruct the events of the said day as held in the case of Syed Ali Bepari v. Niberan Mollah (PLD 1962 Supreme Court 502). It appears that the objective of the police was to prevent the lawyers from leaving the court premises and the lawyers were pushed back with reckless disregard to the fact that some lawyers were carrying lit torches, and it was reasonable to presume that they would be injured if the torches or the inflammable liquid therein fell upon them. Even though we have extended the benefit of doubt to the appellants-policemen that they did not spray any inflammable material on the lawyers the fact remains that a number of lawyers suffered severe burn injuries which was caused on account of the extremely rash actions of the policemen. Such action on the part of the policemen-appellants constitutes an offence under section 337-H (1) PPC, reproduced hereunder for ease of reference:

**"337-H. Punishment of hurt by rash or negligent act.--**(1) Whoever causes hurt by rash or negligent act, other than rash or negligent driving, shall be liable to the *arsh* or *daman* specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to three years as *ta'zir*."

Although the policemen-appellants had not been charged for an offence under section 337-H (1) PPC yet section 238 of the Code permits conviction of the accused for a "*minor offence, though he was not charged with it*". Consequently, we set aside the convictions of the policemen-appellants under sections 148, 149, 324, 333-L(2), 452 PPC and 7(h) of the Anti-Terrorism Act, 1997 and instead convict each of the policemen-appellants in Criminal Appeal No. 4 of 2015 under section 337-H (1) PPC and sentence them to simple imprisonment for a period of two years each and each of them shall also be liable to pay *daman* of an amount of fifty thousand rupees which shall be disbursed amongst all the injured victims in equal shares. With such modification in sentence Criminal Appeal No.4 of 2015 is dismissed.

11. That as regards Criminal Appeal No.3 of 2015 the reasons given by the courts below for acquitting the respondents are in accordance with law and no legitimate exception can be taken therewith. In respect of seeking enhancement of the sentences of the respondents who had been convicted we have determined (above) that their convictions under the said sections were not sustainable under those provisions and we have instead convicted them of the minor offence under section 337-H(1) PPC. Therefore, Criminal Appeal No.3 of 2015 is dismissed.

12. That in conclusion we may state that it is a matter of great pride for the legal community and civil society at large to have peacefully ensured the restoration of the illegally deposed judges. The lawyers who were injured had striven for the independence of the judiciary and the rule of law, the beneficiary whereof were and are the people of Pakistan; the scars borne by them must undoubtedly be

worn as a mark of distinction and honour. However, having successfully attained this cherished goal one ought to be magnanimous and a heavy burden has been cast upon us all to ensure that actions by lawyers and decisions by the judges should not be construed as having any element of vindictiveness or uncalled for severity and every possible benefit of doubt be extended to the accused, as we have endeavored to do in this case.

JUDGE

JUDGE

JUDGE

Announced in open Court  
At Islamabad,

On        June 2015.

By\_\_\_\_\_

**APPROVED FOR REPORTING**  
(M. Tauseef Khan)