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IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,

SPL. CRIMINAL A .T. APPEAL NO.117 OF 2019

Appellants:	1) Syed Ahmed Hussain Salman @ SP son of Syed Abdul Hafeez through Mr. Muhammad Imran Meo, advocate. 2) Muhammad Ubaidullah Siddiqui @ Habib Kala @ Pagal son of Muhammad Waheedullah Siddiqui 3) Muhammad Salman @ Amya son of Muhammad Bux through M/s. Pervez Akhtar and Nadeem Ahmed Azar, advocates.
Respondents:	The State through Mr. Saadat Ali, Special Public Prosecutor Rangers assisted by Mr. Abrar Ali Khichi, Addl. Prosecutor General, Sindh.

SPL. CRIMINAL A .T. APPEAL NO.120 OF 2019

Appellant:	Muhammad Kamran Siddiqui son of Muhammad Khalid Siddiqui, Through Mr. Abdul Khursheed Khan, advocate.
Respondent:	The State through Mr. Saadat Ali, Special Public Prosecutor Rangers assisted by Mr. Abrar Ali Khichi, Addl. Prosecutor General, Sindh.
Date of hearing.	03.02.2022
Date of announcement	14.02.2022

JUDGMENT

Mohammad Karim Khan Agha, J. Appellants Syed Ahmed Hussain Salman @ SP son of Syed Abdul Hafeez, Muhammad Ubaidullah Siddiqui @ Habib Kala @ Pagal son of Muhammad Waheedullah Siddiqui, Muhammad Salman

@ Amya son of Muhammad Bux and Muhammad Kamran Siddiqui son of Muhammad Khalid Siddiqui were charge sheeted to face their trial in Special Case No.956 of 2016 arising out of FIR No. 141 of 2016 under section 324/353/436/34 PPC, Section 3/4 Explosive Substance Act r/w section 7 of ATA 1997 registered at PS Zaman Town, Karachi. Appellants were convicted vide impugned order dated 25.04.2019 passed by the learned Judge, Anti-Terrorism Court No.XIII, Karachi/Judicial Complex at Central Prison, Karachi, whereby the accused persons were convicted and sentenced as under:-

(1) Accused Ahmed Hussain Salman @ SP S/o. Syed Abdul Hafeez is convicted as under:-

(i) He is found guilty for the offence and convicted u/s.6(2)(ee) of ATA, 1997 and sentenced u/s.7(i)(ff) of ATA, 1997 for R.I. of 14 years.

(ii) Accused is further convicted u/s. 6(2)(c) of ATA, 1997 and sentenced u/s. 7(i)(d) of ATA, 1997 for R.I. of (ten) 10 years with fine Rs.1 lac and in case of default in payment of fine accused shall suffer R.I. six (06) months more.

(iii) Accused is further convicted u/s. 6(2)(n) of ATA, 1997 and sentenced u/s. 7(i)(h) of ATA, 1997 for R.I. of five (05) years with fine Rs.50,000/- and in case of default in payment of fine accused shall suffer R.I. three (03) months more.

(2) Accused Muhammad Ubaidullah Siddiqui @ Habib Kala @ Pagal s/o Muhammad Waheedullah Siddiqui is convicted as under:-

(i) He is found guilty for the offence and convicted u/s. 6(2)(ee) of ATA, 1997 and sentenced u/s. 7(i)(ff) of ATA, 1997 for R.I. of 14 years.

(ii) Accused is further convicted u/s. 6(2)(c) of ATA, 1997 and sentenced u/s. 7(i)(d) of ATA, 1997 for R.I. of ten (10) years with fine Rs.1 lac and in case of default in payment of fine accused shall suffer R.I. six (06) months more.

(iii) Accused is further convicted u/s. 6(2)(n) of ATA, 1997 and sentenced u/s. 7(i)(h) of ATA, 1997 for R.I. of five (05) years with fine Rs.50,000/- and in case of default in payment of fine accused shall suffer R.I. of three (03) months more.

(3) Accused Muhammad Kamran Siddiqui @ Kamoo son of Muhammad Khalid Siddiqui is convicted as under:-

(i) Accused is convicted u/s. 6(2)(c) of ATA, 1997 and sentenced u/s. 7(i)(d) of ATA, 1997 for R.I. of (ten) 10 years with fine Rs.1 lac and in case of default in payment of fine accused shall suffer R.I. of six (06) months more.

(ii) Accused is further convicted u/s. 6(2)(n) of ATA, 1997 and sentenced u/s. 7(i)(h) of ATA, 1997 for R.I. of five (05) years with fine Rs.50,000/- and in case of default in payment of fine accused shall suffer R.I. of three (03) months more.

(4) Accused Muhammad Salman @ Amya son of Muhammad Bux is convicted as under:-

(i) Accused is convicted u/s. 6(2)(c) of ATA, 1997 and sentenced u/s. 7(i)(d) of ATA, 1997 for R.I. of (ten) 10 years with fine Rs.1 lac and in case of default in payment of fine accused shall suffer R.I. of six (06) months more.

(ii) Accused is further convicted u/s. 6(2)(n) of ATA, 1997 and sentenced u/s. 7(i)(h) of ATA, 1997 for R.I. of five (05) years with fine Rs.50,000/- and in case of default in payment of fine accused shall suffer R.I. of three (03) months more.

All the sentences awarded to all the accused were ordered to run concurrently except the payment of fine. The benefit of Section 382-B Cr.PC was also extended to all the accused persons.

2. The brief facts of the prosecution case as per FIR No.141 of 2016 are that on 21.03.2016 on the basis of statement u/s. 154 Cr.P.C of the complainant DSR Rangers Abdul Rauf s/o Mehrab Khan, posted at Bhittai Rangers 83 Wing Korangi Karachi present FIR was registered at PS Zaman Town, Karachi wherein it is stated by the complainant that he along with his subordinate staff was on patrolling duty. During patrolling at 1350 hours when they reached near Rangers Post, situated at Korangi No.2 ½, suddenly they heard voice of blast, as such, they immediately reached at Rangers Chowki and saw that the walls of Rangers Chowki were damaged and Rangers personnel namely Naik Shaman, Naik Ejas, Sepahi Tanveer and Sepahi Safdar Gulfam were present safely, whereas, the two official motorcycles 125, bearing registration No.914581 and 914521 parked inside the chowki were damaged. On inquiry from Rangers personnel, the complainant came to know that unknown accused persons identifiable came on motorcycles and had thrown hand cracker in the Chowki with intention to commit their murder, to create terror and to cause damage to the Government property. The accused persons thereafter, escaped on their motorcycles; hence the FIR was registered against unknown identifiable accused persons.

3. After usual investigation the matters were challaned and all the appellants were sent up to face trial. They pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 09 PWs and exhibited various documents. The statement of accused persons were recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them and claimed false implication at the hands of the police. None of the appellants gave evidence on oath but three of the appellants produced documents showing that they had been arrested by the rangers prior to the incident whilst one of the appellants produced a DW in support of his defence case.

5. After appreciating the evidence on record the trial court convicted the appellants and sentenced them as set out earlier in this judgment. Hence, the appellants have filed these appeals against convictions.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 25.04.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsels for the appellants have contended that the appellants are entirely innocent of any wrong doing and have been falsely implicated in the case; that the identification of the appellants at the crime scene cannot be safely relied upon; that the identification parade has not been carried out in accordance with the law and that this is a case of no evidence and that for any or all the above reasons the accused should be acquitted by extending them the benefit of the doubt. In support of their contentions they had placed reliance on the case of **Kanwar Ali** (PLD 2009 SC 488)

8. On the other hand Special Prosecutor Rangers appearing on behalf of the State assisted by Additional Prosecutor General Sindh have fully supported the impugned judgment and have mainly relied on the correct identification of the appellants who carried out the attack on the rangers chowki and other corroborative/supportive evidence on record and contended that the appeals should be dismissed. In support of their

contentions, they placed reliance on the case of **Muhammed Mansha V State** (2001 SCMR 199)

9. We have heard the arguments of the learned counsel for the appellants as well as Special Prosecutor Rangers assisted by learned Additional Prosecutor General Sindh, gone through the entire evidence which has been read out by the learned counsel for the appellants, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. At the outset based on the prosecution evidence we find that the prosecution has proved beyond a reasonable doubt that on or about 21.03.2016 at 1350 hours person's came on motorcycles and threw a hand cracker inside 83 Wing ranger post situate at Korangi 2½ within the jurisdiction of PS Zaman Town which blasted and caused damage to official motor cycles 125 parked inside the post and damaged the walls of the post. In fact this is an admitted position by learned counsel on behalf of the appellants and as such is not in dispute.

11. The only question left before us therefore is who threw a fire cracker at the rangers post which blasted and caused damage to the post and motor cycles therein at the said time, date and location?

12. After our reassessment of the evidence we find that the prosecution has **NOT** proved beyond a reasonable doubt the charge against the appellants for which they were convicted for the following reasons;

(a) In our view the prosecution's case rests on the evidence of the sole eye witness to the incident and his ability to correctly identify the appellants who allegedly came on a motor bike and threw the fire cracker inside the rangers post whose evidence we shall consider in detail below;

(i) **Eye witness PW 6 Shaman.** According to his evidence on 21.03.2016 he was present at the rangers post along with other rangers when at 1.55pm one motor cycle arrived and the riders threw a plastic bag at the post which blasted. He chased the accused and fired upon them but the accused escaped. He saw the damage to the post and the motorcycles.

The FIR was registered with promptitude however he is not

named in the FIR as being present despite the other rangers who were present being named. It was a day light incident and he saw the accused from an unknown distance. He was a natural witness as opposed to a chance witness. It appears that he was present in the chowki at the time of the blast and he also had no reason to falsely implicate the appellants as there was no enmity between them.

What goes against the eye witness being correctly able to identify the appellants keeping in view that he only identified two of the appellants Ahmed Hussain and Ubaidullah is that (a) he is not mentioned as being present in the FIR despite other named rangers who were at the post being mentioned in the FIR (b) he did not know the appellants before the incident (c) he did not give any hulia of the appellants in his S.161 Cr.PC statement or say that he could identify the accused if he saw them again which greatly undermines his ability to pick out any accused with certainty/accuracy at an identification parade (see later authorities on this point) (d) he gave his S.161 Cr.PC eye witness statement after considerable delay for which he has provided no explanation especially as he was not injured which greatly undermines his eye witness evidence. In this respect reliance is placed on the case of **Muhammed Asif V State** (2017 SCMR 486) (e) according to his own evidence it appears that he only got a fleeting glimpse of the appellants when they threw the plastic bag into the post (f) his sketch of the appellants was inexplicable made 7 days after the incident (f) prior to the identification parade the appellants claim, as per their defence case, that they had been in rangers and then police custody and as such were shown to the eye witness before the identification parade and (g) it is difficult to believe keeping in view the above factors and especially the facts unfolding on the ground at the crime scene i.e a chaotic situation where a blast had just occurred in his chowki with dust and smoke every where that he would have been able to hang onto his fleeting recollection of the appellants.

An identification parade was held **two months** after the incident in which he only picked out appellants Ahmed Hussain and Ubaidullah and failed to assign each of them a specific role. We however find that there were some procedural defects in this identification parade especially in terms of the dummies all being different in terms of height and features and there CNIC's names, ages etc were not recorded which all tend to put us on caution with regard to the legal worth of the identification parade. In this respect reliance is placed on **Kanwar Ali's case** (Supra)

It is true that we can convict based on the evidence of a sole eye witness however based on the particular facts and circumstances of this case as discussed above we find that even if the eye witness was present at the time of the incident based on the reasons mentioned above he would not have been able to correctly, safely and reliably identify the appellants and as such we veer on the side of caution in this case especially as there appears to be hardly any cogent corroborative or supportive evidence and find that the eye witness was not able to correctly identify any of the appellants.

In this respect reliance is placed on the case of **Javed Khan V State** (2017 SCMR 524) concerning the necessity for an early hulia/description of an accused by an eye witness in his S.161 Cr.PC statement before an identification parade and the need to strictly follow the rules governing identification parades where it was held as under at P.528 to 530:

"7. We have heard the learned counsel and gone through the record. The prosecution case rests on the positive identification proceedings and the Forensic Science Laboratory report which states that the bullet casing sent to it (which was stated to have been picked up from the crime scene) was fired from the same pistol (which was recovered from Raees Khan in another case). We therefore proceed to consider both these aspects of the case. ***As regards the identification proceedings and their context there is a long line of precedents stating that identification proceedings must be carefully conducted.*** *In Ramzan v Emperor (AIR 1929 Sid 149) Perceval, JC, writing for the Judicial Commissioner's Court (the precursor of the High Court of Sindh) held that,* ***"The recognition of a dacoit or other offender by a person who has not previously seen him is, I think, a form of evidence, which has always to be taken with a considerable amount of caution, because mistakes are always possible in such cases"*** *(page 149, column 2). In Alim v. State (PLD 1967 SC 307) Cornelius CJ, who had delivered the judgment of this Court, with regard to the matter of identification parades held, that,* ***"Their [witnesses] opportunities for observation of the culprit were extremely limited. They had never seen him before. They had picked out the assailant at the identification parades, but there is a clear possibility arising out of their statements that they were assisted to do so by being shown the accused person earlier"*** *(page 313E). In Lal Pasand v. State (PLD 1981 SC 142) Dorab Patel J, who had delivered the judgment of this Court, held that, if a witness had not given a description of the assailant in his statement to the Police and identification took place four or five months after the murder it would, "react against the entire prosecution case" (page 145C). In a more recent judgment of this*

Court, Imran Ashraf v. State (2001 SCMR 424), which was authored by Iftikhar Muhammad Chaudhry J, this Court held that, it must be ***ensured that the identifying witnesses must "not see the accused after the commission of the crime till the identification parade is held immediately after the arrest of the accused persons as early as possible"*** *(page 485P).*

8. ***The Complainant (PW-5) had not mentioned any features of the assailants either in the FIR or in his statement recorded under section 161, Cr.P.C. therefore there was no benchmark against which to test whether the appellants, who he had identified after over a year of the crime, and who he had fleetingly seen, were in fact the actual culprits.*** *Neither of the two Magistrates had certified that in the identification proceedings the other persons, amongst whom the appellants were placed, were of similar age, height, built and colouring.* ***The main object of identification proceedings is to enable a witness to properly identify a person involved in a crime and to exclude the possibility of a witness simply confirming a faint recollection or impression, that is, of an old, young, tall, short, fat, thin, dark or fair suspect....***

9. As regards the identification of the appellants before the trial court by Nasir Mehboob (PW-5), Subedar Mehmood Ahmed Khan (PW-6) and Idress Muhammad (PW-7) that too will not assist the Prosecution because these witnesses had a number of opportunities to see them before their statements were recorded. In State v. Farman (PLD 1985 SC 1), the majority judgment of which was authored by Ajmal Mian J, ***the learned judge had held that an identification parade was necessary when the witness only had a fleeting glimpse of an accused who was a stranger as compared to an accused who the witness had previously met a number of times*** *(page 25V). The same principle was followed in the unanimous judgment of this Court, delivered by Nasir Aslam Zahid J, in the case of Muneer Ahmad v State (1998 SCMR 752), in which case the abductee had remained with the abductors for some time and on several occasions had seen their faces.* ***In the present type of case the culprits were required to be identified through proper identification proceedings, however, the manner in which the identification proceedings were conducted raise serious doubts*** *(as noted above) on the credibility of the process. The* ***identification of the appellants in court by eye-witnesses who had seen the culprits fleetingly once would be inconsequential."*** (bold added)

The recent Supreme Court case of **Mian Sohail Ahmed V State** (2019 SCMR 956) has also emphasized the care and caution which must be taken by the courts in ensuring that an unknown accused is correctly identified.

Thus, having found that the sole eye witness would not have been able to correctly, safely and reliably identify the appellants the conduct of the identification parade becomes in consequential.

(b) With no eye witness evidence to the identity of who carried out the attack the medical evidence becomes inconsequential as it can only reveal what kind of weapon/device was used. It cannot identify the person who threw the explosive device.

(c) It is notable that the appellants confessed to the offence whilst in police custody. Confessions before the police are inadmissible in evidence and thus we place no reliance on such confessions. Significantly despite all of the appellants confessing to the offence none of them were brought before a magistrate to record there confessions despite them being brought before a magistrate for an identification parade which seems to be very odd.

(d) The appellants taking the police to the place of wardat is irrelevant as the police/rangers already knew where the place of wardat was.

(e) Nothing was recovered from the appellants however this was to be expected as the case against them was throwing a fire cracker into the chowki which obviously they could not have retained.

(f) That the defence case is that the appellants were detained in illegal custody by the rangers before the offence and were falsely implicated in this case and they have produced various documents and even one DW in support of their contention which based on the particular facts and circumstances of the case we give some weight to.

(g) With regard to appellants Muhammed Kamram and Muhammed Salman they were not identified as being at the scene of the crime by any eye witness. They have only been implicated by their co-accused and it is settled by now that this cannot be used as evidence against them unless there is other unimpeachable corroborative evidence from an independent source of which there is none in this case. In this respect reliance is placed on **Federation of Pakistan v Muhammed Shafi Muhammed** (1994 SCMR 932).

13. That the prosecution must prove its case against the accused beyond a reasonable doubt and that the benefit of doubt must go to the accused by way of right as opposed to concession. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), wherein the Supreme Court has observed as follows:-

> *"It is settled law that it is not necessary that there should be many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."*

14. For the reasons discussed above by extending the benefit of the doubt to the appellants they are all acquitted of the charge, the impugned judgment is set aside, their appeals are allowed and the appellants shall be released unless wanted in any other custody case.

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