

IN THE HIGH COURT OF SINDH, KARACHI

Present:

**Mr. Justice Naimatullah Phulpoto,
Mr. Justice Mohammad Karim Khan Agha**

**Special Criminal A.T.A No. 29 of 2018
Special Criminal A.T.A No. 30 of 2018**

Afroz Alam alias Nakam Guddo

Vs.

The State

Date of hearing	15.10.2018
Date of judgment	15.10.2018
Appellant	Through Mr. Hashmat Khalid, advocate
The State	Through Mr. Muhammad Iqbal Awan Addl. P. G. and Mr. Rana Khalid Hussain, Special Prosecutor for Rangers.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- By this common judgment we propose to dispose of the above two Criminal Appeals. The appellant in the instant appeals has assailed the common judgment dated 15.01.2018 passed by Anti-Terrorism Court No.II, Karachi in Spl. Case No.794/2016 & 795/2016 (the impugned judgment) whereby the appellant was convicted under Section 4/5 of the Explosive Substance Act 1908 sentenced to suffer R.I for 14 years. The appellant was also convicted and sentenced to suffer R.I for 7 years u/s.23(1)(a) of S.A.A.2013 with fine of Rs.25000/- and in failure to do so the appellant has to undergo further six months R.I.

2. The brief facts of the case according to FIR No.36/2016 is that the appellant Afroz Alam had hidden one K.K.SMG, explosive and detonator under the soil in vacant plot at Altaf

Nagar. The appellant lead the police party to Sector 11½ Altaf Nafar and the Mour of Altaf Nagar where the appellant got stopped the police mobile and went forward and entered a plot on the side of the wall and after digging in the ground took out a plastic bag of sugar which was opened and from it was recovered K.K. wrapped in plastic, magazine having number 56-124004293, one detonator, 60 ball bearings, 150 grams bolt small size, detonator wire about 151 feet, one mobile battery, white colour explosive in one plastic shopper weighing 250 grams. The K.K. was sealed on the spot whereas, explosives were taken into possession and Bomb Disposal Squad was informed from the place of incident.

3. After completion of investigation, police submitted challan against the accused in the Anti-Terrorism court No.II, Karachi. The charge was framed against the accused on 16.09.2016 to which he pleaded not guilty and claimed trial of the case.

4. The prosecution in support of its case examined 04 PWs and submitted number of documents as Exhibits P/1 to P/22. Mr. Rana Khalid Hussain, Special Prosecutor for Rangers had submitted statement for closing the side of Prosecution at Ex.23 and the statement of Accused (appellant herein) was recorded under Section 342 Cr.P.C at Ex./24 and after hearing final arguments the trial court convicted the appellant as per the impugned judgment.

5. Learned counsel for the appellant has read the entire evidence and has mainly argued that the appellant had been in rangers custody before hand and had been falsely implicated in this case by the police; that there were no independent mushirs as was required under S.103 Cr.PC and that there was a delay in sending the explosive material for examination and for all the above reasons the appellant was entitled to be acquitted as the prosecution had failed to prove its case against him beyond a reasonable doubt.

6. Learned Addl. P.G. and Special Prosecutor for the rangers appearing on behalf of the State supported the impugned judgment and argued that since there were no legal infirmities in the same the same did not require interference and as such the appeal should be dismissed. In support of their contentions they placed reliance on the cases of **Ajab alias Rajab and another v. The State** (2004 MLD 180) and **Shamsud Doha v. The Sate** (2005 P Cr. L.J 310).

7. We have heard learned counsel for the appellant and Addl. Prosecutor General for the state as well as Special Prosecutor for the rangers and have gone through the impugned judgment and the evidence with their able assistance.

8. It appears that the appellant was initially detained by the rangers and then after admitting his involvement in a murder custody was handed over to the police. According to the police version of events the appellant during police interrogation voluntarily admitted that he had hidden the recovered items and thereafter led the police to the same. We observe that there is no written note of such statement signed by the appellant which is a requirement of the law. In this respect reliance is placed on the case of **Pardumen Manji V State of Jharkhand** (2011 CRI.LJ 1604) which held as under at Para 25.

“25. It is apparent from the decision of the Hon’ble Apex Court that there must be a disclosure statement leading to discovery. In the instant case, the said disclosure statement is lacking. The Investigation Officer either should have recorded a separate disclosure statement before proceeding at the spot and he should have explained this fact to the witness that he has given such statement and after informing all the witnesses, he should have proceeded to the place from where the said weapon had to be recovered. The said statement must be proved before the Court and it must be exhibited. In the second contingency when he prepares the seizure memo, he can record all the details therein and the statement of the accused pointing out the said weapon at the place and thereafter the recovery should have been effected by the Investigating

Officer. If the said disclosure statement is not proved, it cannot be held by any stretch of imagination that it is a discovery under Section 27 of the Indian Evidence Act and it will remain as recovery of the weapon and will not be read under Section 27 of the Indian Evidence Act."

9. Furthermore there is also no entry at the police station showing that **before** the appellant left the police station accompanied by the police he did so in order to show the police the hidden arms and explosives at the address of the vacant plot. Both these omissions raise doubts in the prosecution case. It also does not appeal to a reasonable prudent mind that an accused who had already confessed to murder before the rangers would volunteer further incriminating information against himself to the police. If the accused were to have disclosed any such information he would have done so to the rangers during interrogation; that the KK No. is mentioned in the mashirnama but this has been over written and as such its falsification cannot be ruled out especially as no PW in their evidence mentioned the number of the KK; that there was an unexplained delay of 8 months in dispatching the recovered explosives to the National Forensic Science Agency for chemical analysis and during this 8 month period there was no evidence that the explosive substance was kept in safe custody; that there appears to be no design or intention to create any terror; that the accused is entitled to the benefit of doubt and as was held in the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), wherein the Honourable 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."

10. For the above stated reasons, we hold that the prosecution has failed to prove its case against the appellant, therefore, while extending the benefit of doubt, the appeal is allowed. The convictions and sentences recorded by the trial court through the impugned judgment are set aside and the appellant is acquitted and he shall be released forthwith unless wanted in another custody case. These are the reasons for our short order which was announced in open court today which reads as under:

“Heard arguments of learned counsel for the parties. For the reasons to be recorded later on, Special Criminal ATA No.29 of 2018 and Special Criminal ATA No.30 of 2018 are allowed. Convictions and sentences recorded by the trial Court vide judgment dated 15.01.2018 are set aside. Appellant Afroz Alam @ Nakam Guddo is acquitted in Crime No.36 of 2016 under Section 4/5 Explosive Substances Act, 1908 of PS Pakistan Bazar, Karachi and in Crime No.37 of 2016 under Section 23(1)(a) of Sindh Arms Act, 2013 of PS Pakistan Bazar, Karachi. Appellant Afroz Alam @ Nakam Guddo shall be released forthwith, if not required in some other cases.