

# THE HIGH COURT OF SINDH AT KARACHI

Spl. Cr. A.T. Jail Appeal No.131 of 2017

Before: **Mr. Justice Naimatullah Phulphoto**  
**Mr. Justice Shamsuddin Abbasi,**

Appellant: Wasi Haider through Mr.  
Muhammad Aqil Zaidi, Advocate

Respondent: The State, through Mr.  
Muhammad Iqbal Awan,  
Addl. P.G.

## **JUDGMENT**

**Shamsuddin Abbasi-J,---** Appellant Wasi Haider son of Syed Hassan Raza, has filed this appeal against the judgment dated 02.05.2017, passed by learned Special Judge Anti-Terrorism Court No.II, Karachi in Spl. Case No.547/2016, arising out of Crime/FIR No.119/15, under Section 353/324 PPC read with Section 7 ATA, 1997, Spl. Case No.548/16, arising out of Crime/FIR No.120/15, under Section 23(1)(A), Sindh Arms Act, 2013 and Spl. Case No.549/16, arising out of Crime/FIR No.120/15, under Section 4/5 Explosive Act, 1908, registered at Police Station, F.B. Industrial Area, Karachi.

2. The brief facts of the prosecution case as disclosed in FIR are that on 13.09.2015 at about 0215 hours ASI, Mir Muhammad Jamali, of Police Station F.B. Industrial Area, Karachi, appeared at police station and lodged FIR on behalf of the State stating therein that complainant alongwith his

sub-ordinate staff namely PCs Shamshad Ali, Akbar Ali, Johar Ali and Driver HC Zafar Hussain, left police station for patrolling on police mobile No.3, in the area. During patrolling ASI Mir Muhammad Jamali, received spy information that one suspicious person was present, alongwith arms near Liyari Express Way Block-21, behind Centrum Shadi Hall, and waiting for his accomplices trying to plan some heinous offence. ASI Mir Muhammad Jamali, reached at pointed place at about 0130 hours and found one person in suspicious condition was present there and the accused saw police party coming towards him, he started firing on the police party from his pistol in order to kill them and one bullet hit to the police mobile. The police officials also fired from their official weapon in their self-defence and accused was tactfully surrounded and police apprehended him. Due to non-availability of private witnesses. On inquiry, he disclosed his name Wasi Haider son of Hassan Raza. ASI Mir Muhammad Jamali, appointed PCs Shamshad Ali and Johar Ali as mashirs and conducted the personal search of the accused, police recovered black colour, without number, T.T. Pistol loaded magazine with three rounds and found one bullet in chamber on which it was written "Karachi Pakistan" and accused was holding pistol in his right hand and from his further personal search a Hand Grenade was recovered from his side pocket and word No.F/89 was inscribed over it and also recovered Rs.430/- from pocket.

Police arrested the accused and prepared mashirnama of arrest and recovery of TT Pistol alongwith bullet and hand grenade thereafter brought the accused and the case property to the police station and two FIRs was registered against the accused Wasi Haider, being FIR No.119/2015 under Section 353, 324 PPC read with Section 7 ATA of 1987, FIR No.120/2015 under Section 23(1)(A) SAA, 2013 read with under Section 4/5 Explosive substance Act of P.S. F.B. Industrial Area.

3. After registration of FIRs complainant ASI Mir Muhammad Jamali, handed over the accused, case property to sub-Inspector Hameedullah Khan, who sent recovered Pistol to FSL and had done CRO and inspection report of damaged vehicle and permission received from Home Department. After completing the usual investigation submitted challan to the competent Court of law. The learned trial court has framed the charge on 27.2.2016 to which accused pleaded not guilty and claimed trial of the case.

4. The prosecution in order to prove its case had examined four PWs. PW-1, sub-Inspector Masab Hussain, who is Bomb disposal Expert and was examined as Ex.P/1 who produced clearance certificate at Ex.P/2, departure and arrival entry one page at Ex.P/3 letter for sending final report at Ex.P/4 and finally report at Ex.P/5. PW-2, ASI Mir Muhammad Jamali, who is the complainant and examined at Ex.P/6 and

he produced departure entry at Ex.P/7, memo of arrest and recovery at Ex.P/8, arrival entry No.31 at Ex.P/9, registered FIR No.119/15 at Ex.P/10, and produced second FIR No.120/15, at Ex.P/11, memo of site inspection at Ex.P/12 as well as sketch of place of incident at Ex.P/13. PW-3 is mashir of the case and was examined at Ex.P/14. PW-4, is Ex-Inspector Hameedullah Khan Niazi who was I.O of the case and was examined at Ex.P/15 and he produced entry No.12 at Ex.P/16, received case property at Ex.P/17, departure entry at Ex.P/18, letter for sending pistol to FSL at Ex.P/19, FSL report at Ex.P/20, CRO at Ex.P/21, inspection report of damage vehicle at Ex.P/22. Thereafter, prosecution closed it's side on 13.01.2017 at Ex.P/24.

5. The statement of the accused was recorded under Section 342 Cr.P.C at Ex. P/25. Accused also examined himself on oath under Section 340(2) Cr.P.C at Ex.P/25 and P/26 respectively. Accused examined in defence DW-1 Waseem Haider, at Ex.27, wherein he produced copy of Constitution Petition No.5478 of 2015 filed before this Court at Ex.27/A, and had also examined DW-2 Muhammad Naeem and DW-3 Asad Ahmed Khan at Ex.28 and 29 respectively. Thereafter learned counsel for the accused had closed his side at Ex.30.

6. After full dressed trial learned trial court has convicted and sentenced accused to suffer R.I for three years for the

offence under Section 353 PPC and further convicted and sentenced to suffer R.I for 14 years under Section 4/5 of Explosive Substance Act, 1908, he was also convicted and sentenced for recovery of unlicensed pistol (30 bore) for the offence under Section 23(1)(A) of Sindh Arms Act, 2013 to suffer R.I for seven years with fine of Rs.5000/- in failure to pay the fine he will further undergo for one month. The benefit of Section 382 (b) Cr.P.C was also extended to the accused. Hence, this appeal.

7. Learned counsel for the accused has contended that judgment dated 02.05.2017 was result of misreading and non-reading of evidence. Learned counsel for the appellant submits that evidence of the prosecution based upon police personnel who are interested and set up witnesses. He further contended that the case of prosecution is that complainant had received spy information regarding presence of suspicious persons at place of recovery inspite of the fact complainant had failed to associate any independent witness. Learned counsel for the appellant further contended that there are material contradiction in between the evidence of the PWs of on the point of words inscribed on Hand Grenade. He further contended that brother of the appellant had filed CP No.5478/15 before this Court alleging therein that the appellant was taken away by Law Enforcement Agency on 07.09.2015 before the registration of above-mentioned

crime/FIRs and plea has been brought on record through D.Ws.

8. Learned Additional Prosecutor General, has contended that prosecution have examined in all four PWs who had fully supported the prosecution case and he prayed that appeal may be dismissed.

9. We heard the learned counsel for the appellant as well as learned state counsel and perused the record of the case carefully. It appears that the police had received spy information prior to this incident but failed to associate any independent witness for recovery proceedings without any plausible explanation. Record shows that complainant had sufficient time to call independent mashirs of the locality. No doubt, police personnel are as good and as any independent witness but their evidence should be truth worthy, reliable and confidence inspiring but in absence of any of the above mentioned quality conviction could not be sustained.

10. The appellant had raised defence plea that Rangers had picked up him on 07.09.2015 from the gate/street near his house, it was witnessed by many people out of them, he had produced D.W No.1 Waseem Haider, who produced certified copy of Constitution Petition No.D-5478/2015 and further examined DW-2 Muhammad Naeem and DW No.3 Asad Ahmed Khan. At this juncture, we cannot ignore the aspect of filling Constitution Petition before this Court on 09.09.2015, before registration of FIRs of police encounter

and recovery of pistol, bullets and hand grenade from the possession of appellant on 13.09.2015. Prosecution evidence required independent corroboration which is lacking in this case. In the case of Muhammad Mansha Vs. The State reported in 1997 SCMR 617, it is held as under:-

“The record of the case will show that on 17.6.1990 i.e. a day before the alleged recovery of heroin from the Baithak of the appellant, Muhammad Sanallah had filed a Habeas Petition against Muhammad Akram. SI PW-6 for the recovery of Muhammad Mansha appellant from his custody. In paragraphs 3 to 5 of the Habeas Petition (Cr. Misc.No.392/H of 1990), it has been stated:-

(3) That Muhammad Mansha has moved an application before the S.P, Kasur, Photostat copy of the same is annexed for the kind perusal of this Honourable Court. The police authorities CIA instead of registration of the case the police personnel have become inimical towards the detenus as the accused persons are paying monthly to the police, therefore, the police authorities were deriving a vedge against the detenus and their family members. They have considered the said application as if some complaint was lodged against them. Respondent/Akram Major In charge of CIA, Kasur who is known for commission of atrocities and that is why he is being called as Akram Major although he is nothing to do with the Pak Army. Akram Major/respondent alongwith a big Squad of Police personnel on 13.6.1990 at about 4-00 a.m. early morning raided the house of the detenu Muhammad Bashir son of Jamal Din is the real paternal uncle of the petitioner and, therefore, the petitioner has gone to meet him and has stayed at night in his house.

(4) That the respondent has arrested Bashir and the three detinue and Nawaz. He said that I am taking them in custody to teach you the lesson for filing application before the high forum/officers. This occurrence has been witnessed by hundreds of the villagers as they have collected in front of the house. However, Muhammad Ashraf son of Khushi Muhammad, Abdul Ghafoor son of Muhammad Din both residents of Thing More were also present and interfered those innocent persons may not be arrested but respondent has threatened them of dire consequences.

(5) That since then respondent/Akram Major detaining them in his illegal custody and neither he has produced them in any Court nor there is any case against them.

It is also pertinent to mention here that respondent has demanded Rs.one lace for the release of the detinue on the pretext hat in case the money aforesaid is not paid to him he will involve the detinue in false and frivolous cases of heroin etc”.

This petition came up before the High Court for hearing on 18.6.1990 and the High Court had directed Muhammad Akram, S.I, P.W-6 to appear in person before the Court to answer whether the alleged detinue were being detained by him, and if so, under what authority of law. In this view of the matter, reasonable possibility of the plea of false involvement of the appellant on the account of filing of the habeas petition against Muhammad Akram P.W.6 on 17.06.1990 in the Lahore High Court, Lahore is very much there entitling the appellant to the benefit of doubt”.



11. Accused had taken plea that accused was arrested by Law Enforcement Agency on 07.09.2015 at 11.30 AM outside his house and brother of the appellant namely Waseem had filed C.P. No5478/15 before this Court on 07.09.2015 in which he has contended that Law Enforcement Agency had taken away the appellant on 07.09.2015 (5 days prior to registration of FIR in two cases registered on 13.09.2015).

12. Prosecution has also failed to satisfy us on the point of safe custody of case property from the period which starts from the time of recovery to the B.D.U expert (PW No.1 Muhammad Masood) who examined hand grenade at 11.00 A.M and pistol was sent to the FSL on 14.09.2015. This transmit period was very much important in case of recovery and prosecution failed to produce any documents to satisfy the Court that the recovered hand grenade and pistol were kept in Malkhana and also failed to produce any witness that case property was kept in his safe custody in this respect rightly reliance is placed upon the case reported in 2015 SCMR 1002, Akramullah and others Vs. The state.

13. It is well settle law that it is not necessary that there should be many circumstances creating doubt, if there is a single substance, which creates reasonable doubt in mind about the guilt of the accused, then accused will be entitle to the benefit not for the mattes of place and concession but the matter of right. The reliance is placed on a case of Tariq

Pervez Vs. The State, in which Hon'ble apex court has observed as under:-

“—for giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts—If a simple circumstance creates reasonable doubt in a prudent mind should the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right”.

14. For the above reasons we hold that the prosecution has failed to prove its case against the appellant, therefore, we extend the benefit of doubt appeal is allowed and conviction and sentenced recorded by the trial court are set aside and the appellant is acquitted of the charge. These are the reasons of out short order dated 28.02.2018.

JUDGE

JUDGE

Karachi.

Dated \_\_\_\_\_