

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aftab Ahmed Gorar
Mr. Justice Amjad Ali Sahito

Special Criminal Anti-Terrorism Appeal No.126 of 2018

Special Criminal Anti-Terrorism Appeal No.127 of 2018

Appellant : Ali Raza son of Abdul Sattar
Through Mr. Shaukat Ali Shehroze along
with Mr. Muhammad Javed K.K.
Advocates

Respondent : The State
Through Mr. Sagheer Ahmed Abbasi,
Assistant Prosecutor General, Sindh

Date of hearing : 31.01.2019

Date of order : 31.01.2019

J U D G M E N T

AMJAD ALI SAHITO, J.- Being aggrieved and dissatisfied with the judgment dated 10.04.2018 passed by learned Judge, Anti-Terrorism Court-XVIII, Karachi in Special Case No.2028/2017 arising out of the FIR No.262/2017 under Section 4/5 Explosive Substance Act, 1908 r/w Section 7 ATA and Special Case No.2029/2017 arising out of the FIR No.263/2017 under Section 23(i)a, Sindh Arms Act, 2013, whereby the appellant was convicted and sentenced to suffer R.I. for 14 years for committing offence under Section 5 of Explosive Substance Act, 1908 and R.I. for 07 years for committing offence under Section 23(i)a, Sindh Arms Act, 2013 and to pay fine of Rs.5000/- and in default thereof, he shall further undergo for 03 months. He was also convicted and sentenced to suffer R.I. for 14 years for committing an offence under Section 7(ff) of Anti-Terrorism Act, 1997. All the sentences of accused shall run concurrently except payment of a fine. However,

the benefit of Section 382-B Cr.PC was extended to the appellant towards his period as already served as UTP.

2. Brief facts of prosecution as per FIR are that complainant ASI Muhammad Qasim of P.S. Kalakot, Liyari lodged the FIRs at Police Station Kalakot, Karachi on 03.11.2017 at about 0130 hours, alleging therein that on the same night he was on patrolling duty along with subordinate staff HC-6663 Tasawar Hussain, PC-31064 Muhammad Salman, PC-2515 Maqsood Ahmed, PC Zaheer Ahmed and Driver/PC Adeel Khan in police mobile No.SPD-892. During patrolling, complainant received spy information that a suspect of Liyari Gang War, Ghaffar Zikri Group is available at Gul Muhammad Lane, Tendry road near NADRA Office, Kalakot Liyari, Karachi. On receiving such information, complainant along with police party arrived there at about 0030 hours and found a suspect was available there. He was surrounded by the police party and subsequently apprehended, who on inquiry disclosed his name as Ali Raza @ Te Te s/o Abdul Sattar. His personal search was conducted in presence of accompanied police officials. It is alleged that during his personal search police recovered one hand grenade and a 30 bore pistol No.7417 Pak-made, load magazine with 04 live bullets from his possession. However, he failed to produce license of the recovered arms and ammunition. Due to non-availability of public witnesses, HC-6663 Taswar Hussain and PC-31064 Muhammad Salman were cited as mashirs. Pistol and bullets were sealed at the spot, whereas BD Team was called to defuse the hand grenade. The memo of arrest and recovery was prepared. Accused/appellant along with recovered inventory brought at police station, where the instant FIRs bearing Crime No.262/2017 under Section 4/5 Explosive Substance Act, 1908 read with

Section 7 ATA along with another FIR bearing Crime No.263/2017 under Section 23(i)a Sindh Arms Act, 2013 for keeping an unlicensed pistol was registered at police station.

3. The learned trial Court framed the charge against the accused person at Ex.5, who pleaded not guilty and claimed to be tried. In order to establish the accusation against the accused, the prosecution examined the following witnesses:

- (i) PW-1 SIP of BDU Ghulam Mustafa examined at Ex.7, he produced entry for receiving information about recovery of explosive at Ex.7-A, departure entry for P.S. Kalakot at 7-B, clearance certificate at Ex.7-C, arrival back entry at office at Ex.7-D, letter for details report from SHO Garden through SSP Technical Branch at Ex.7-E, detail report at Ex.7-F.
- (ii) PW-2 Complainant ASI Muhammad Qasim examined at Ex.8, he produced departure entry for patrol duty at Ex.8-A, memo of arrest and recovery at Ex.8-B, arrival back entry at P.S. at Ex.8-C & 8-D, original FIRs Crime No.262/2017 and 263/2017 at Ex.8-E and 8-F, memo of site inspection at Ex.8-G.
- (iii) PW-3 Mashir HC Taswar Hussain examined at Ex.9.
- (iv) PW-4 I.O./Inspector Ghulam Nabi examined at Ex.10, he produced entry for receiving investigation of cases at Ex.10-A, departure entry for P.S. Kalakot at Ex.10-B, arrival at P.S. Kalakot and departure for site inspection at Ex.10-C, arrival back entry from site inspection at Ex.10-D, entry for receiving case property and custody of accused from complainant at Ex.10-E, return back entry at office at Ex.10-F, letter for FSL examination at 10-G, FSL examination report at Ex.10-H, permission order from Government of Sindh, Home Department for trial of accused under the Explosive Substance Act as required u/s 7 of ATA at Ex.10-I, letter for CRO of accused and report at Ex.10-J and 10-K, sketch of the place of recovery at Ex.10-L.

4. All the prosecution witnesses were cross-examined by the learned counsel for the appellant. Thereafter, the Assistant Prosecutor General (APG) closed the side of the prosecution vide statement at Ex.11.

5. Statement of the accused was recorded under Section 342 Cr.PC. by the learned trial Court at Ex.12 in which he denied the allegations as leveled against him by the prosecution and claimed to be innocent.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellant as stated above vide judgment dated 10.04.2018 which is impugned before this Court by way of filing the instant Special Criminal Anti-Terrorism Appeals.

7. Learned counsel for the appellant mainly contended that the appellant is innocent and has falsely been implicated in this case; that as per evidence of PW-2 Muhammad Qasim, on 3-11-2017 he was on patrolling along with other police officials, he received spy information that a suspect is available at Gul Muhammad Lane, Tendry road NADRA House. On such information, he reached at the place of incident and arrested the appellant at about 00:30 hours, whereas PW-1 Ghulam Mustafa, Incharge BD Team, in his evidence deposed that on 3-11-2017 at about 20:30 hours he has received information to defuse the hand grenade; that the evidence of the prosecution witnesses are full of material contradiction, hence the prosecution failed to prove its case

against the appellant. Lastly, he prayed for the acquittal of the appellant.

8. On the other hand, learned Assistant Prosecutor General, Sindh has opposed the arguments of learned counsel for the appellant and stated that the prosecution witnesses fully supported the prosecution case and argued that the learned trial Court has rightly appreciated the evidence and convicted the appellant in accordance with law and thus he prayed for dismissal of the instant appeals.

9. We have heard the learned counsel for the appellant as well as learned Assistant Prosecutor General Sindh and have minutely examined the material available on record with their able assistance. A bare reading of the evidence adduced at trial reveals that there are material contradictions in the evidence of the witnesses. Complainant Muhammad Qasim and Ghulam Mustafa incharge BD team, Complainant Muhammad Qasim in his evidence, deposed that on 03.11.2017, he has received information that one suspect is available at the place of incident. On such information, he along with other police officials reached at about 00:30 hrs at the pointed place and arrested the appellant along with 30 bore pistol, 04 live bullets, and one hand grenade. From the perusal of memo of arrest and recovery Ex.8-B, it appears that at the time of preparation of memo of arrest and recovery of the appellant, complainant Muhammad Qasim (PW-2) informed BD Team that they have arrested one person Ali

Raza along with hand grenade and requested to defuse the explosive substance but during his evidence before the trial Court, he has not disclosed that after completing the formalities of arrest and recovery, he has informed to the Incharge of BD Team with request to defuse the hand grenade/explosive material. Whereas (PW-1) Ghulam Mustafa, Incharge of BD Team, in his evidence, deposed that on 03.11.2017 at about 19:05 hours, Akbar Base South, as well as P.S. Kalakot, noted message in his office that they have arrested one accused from whom the explosive substance had been recovered and requested that BD Team be dispatched in order to defuse the hand grenade. Such entry No.44 kept in his office and after receiving such information, he along with his staff left the office for P.S. Kalakot at about 22:30 hours reached at PS. From the perusal of entry No.44, it appears that one ASI Zulfiqar got noted message through telephone that hand grenade has been recovered from the possession of accused and requested to defuse the same. The daily diary No.44 further shows that this message was noted at 19:05 hrs, whereas the claim of the complainant that he along with police officials arrested the appellant on 03.11.2017 at about 00:30 hours (night) and if the version of the complainant is true and correct and as per him that he has informed the BD Team then naturally BD Team would have kept the entry at about 01:00 hours i.e. 01:00 A.M. Night but the entry reveals that the same was kept at about 19:05 hours evening time. Furthermore, in

cross-examination, the complainant Muhammad Qasim admitted in his evidence that he called BD Team from P.S. within 10 minutes after his arrival whereas BD Team arrived at 8 P.M. on the same day with a delay of 17 hours. Furthermore, the mashirnama of arrest and recovery was prepared in the presence of HC Taswar Hussain, who has not deposed in his evidence that at the time of preparing of such mashirnama, ASI Muhammad Qasim called BD Team for defusing the hand grenade. In cross-examination, he admitted that the complainant has called the BD Team from the spot but they did not arrive. Complainant Muhammad Qasim (PW-2) has given contradictory evidence regarding the information for defusing the hand grenade. Time of occurrence of incident and entry kept at BD office show that the witnesses were not sure that when they have arrested the appellant as the complainant has claimed that he has arrested the appellant at about 00:30 hours whereas the BD Team Incharge, while producing the entry No.44 disclosed that he has kept the entry at about 19:05 hours. There are also many contradiction between the evidence of Incharge BD team PW-1, complainant, (PW-2), and Mashir of recovery and arrest PW-3, which needs not to be repeated here, hence the case of prosecution suffers from discrepancies, improbabilities, and material contradiction. We are clear in our mind that the evidence of PW-1 and PW-2 are not supporting to each other to believe that any recovery was effected from the appellant, hence they are not truthful

witnesses and their testimony are not confidence inspiring as they failed to furnish any reasonable and plausible explanation for their presence at the place of the incident as their evidence is full of contradiction. Furthermore, the appellant pleaded enmity against the prosecution witnesses and place of recovery is thickly populated area but no sincere efforts have been made by the complainant to associate any independent person to the recovery proceedings.

10. The upshot of the above discussion is that the prosecution has miserably failed to bring home the guilt of the appellant/accused beyond reasonable doubt and it is settled proposition of law that for giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubts, if there is a single circumstance which creates reasonable doubt about the guilt of the accused, then the accused will be entitled to the benefit. In this respect, reliance can be placed upon the case of **MUHAMMAD MANSHA v. THE STAE** reported in **2018 SCMR 772**, wherein the Hon'ble Supreme Court of Pakistan has held that:

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to be benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The

***State (2009 SCMR 230) and Mohammad Zaman
v. The State (2014 SCMR 749).***

11. Keeping in view the above facts and circumstances of the case, benefit of doubt was extended in favour of the appellant and as a consequence whereof, the instant appeals were allowed by our short order dated 31.01.2019, whereby the appellant was acquitted from the charge and he was directed to be released forthwith if not required in any other custody case.

12. These are the detailed reasons for the short order announced by us vide order dated 31.01.2019.

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Karachi,
____February, 2019.