

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti Terrorism Appeal No.118/2016

Appellant : Asif Khan, through Mr. Nadeem Pirzada,
Advocate.
Respondent : The State, through Mr. Abrar Khichi, learned
APG.

Special Criminal Anti Terrorism Appeal No.119/2016

Appellant : Asif Khan, through Mr. Nadeem Pirzada,
Advocate.
Respondent : The State, through Mr. Abrar Khichi, learned
APG.

Special Criminal Anti Terrorism Appeal No.252/2016

Appellant : Muhammad Qasim, through Mr. Nadeem
Pirzada, Advocate.
Respondent : The State, through Mr. Abrar Khichi, learned
APG.

Date of hearing 27.04.2017

Date of Judgment

**Present: Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J**

JUDGMENT

YOUSUF ALI SAYEED, J. The captioned Appeals under S.25 of the Anti-Terrorism Act 1997 (the “**ATA**”) call into question the Judgment dated 16.03.2016 (the “**Impugned Judgment**”) passed by the Anti-Terrorism Court No. 1 at Karachi in Special Case Numbers A-174 and A-175 of 2015 (the “**Subject Cases**”), whereby convictions were recorded against the Appellants S. 4 and S.5 of the Explosive Substance Act 1908 (the “**Explosives Act**”), read with S.7 of the ATA, and they were each awarded concurrent sentences of 14 years rigorous imprisonment and to pay a fine of Rs.50,000/-, and, in case of non-payment, to undergo simple imprisonment for 6 months.

2. On 16.10.2015, each of the Appellants was Charged under S.7(ff) of the ATA for possession of a hand grenade said to have been recovered from them at the time of their arrest on or about 06.04.2015 at 0100 hours by the police of P.S. Zaman Town from Four Pillar (Char Poll) Road, Korangi No. 5½, Karachi. On their plea of innocence, the Subject Cases proceeded to trial, culminating in the Impugned Judgment.
3. Whilst assailing the impugned Judgment, learned counsel for the Appellants contended that neither of them has a prior criminal record, and submitted that the encounter was a fabrication and the case was one of false implication. He pointed out various irregularities in the Prosecution case with reference to the depositions and cross-examinations of the Prosecution witnesses as well as certain discrepancies between the FIRs (Ex. 06/B and Ex. 06/C) as well as the Memo of Arrest, Recovery and Seizure (Ex. 05/A) on the one hand and the Inspection Reports of the hand grenades (Ex. 07/H and Ex.07/I) on the other. He submitted that the Impugned Judgment was the product of a misreading of the evidence due to which the learned trial Court failed to resolve the benefit of doubt in favour of the Appellants, and prayed that the Impugned Judgment be set aside.
4. We have considered the record and the submissions made by learned counsel for the Appellants as well as by the learned APG. During the course of the trial, the Prosecution examined three witnesses, namely (i) P.C. Muhammad Yaqoob (PW-1), who was one of the police personnel said to be party to the arrest and is also one of the Mashirs in whose presence the Memo of Arrest, Recovery and Seizure is said to have been prepared on the spot; (ii) ASI Muhammad Ashfaq (PW-2), who was the senior officer amongst the police personnel who are said to have arrested the Appellants and recovered the hand grenades from their possession on the aforementioned date, and who lodged FIR Nos. 174 and 175 of 2015 at P.S. Zaman Town on behalf of the State on the same day; and (iii) Inspector Syed Ahsan Zulfiqar (PW-3), the IO of the case. In their defense, the Appellants examined themselves and also examined Mst. Samina (DW-1), the mother of Mohammad Qasim, and Mst. Shams-u-Nisa (DW-2), the mother of Asif Khan.
5. As per the version of the Appellants, as disclosed in their depositions, they were arrested from by the personnel of Pakistan Rangers from their places of residence on 30.03.2015, and after being detained for some days, were handed over to the police on 05.04.2015 and then falsely implicated in the Subject

Cases. Mst. Samina (DW-1) and Mst. Shams-u-Nisa (DW-2) have also stated in their respective depositions that the Appellants were picked up from their places of residence on those dates, and the latter has also placed on record a Letter dated 30.03.2015 (Ex. 14/A) addressed by her to the SSP, Korangi Town, informing of the incident. Whilst the mothers of the Appellants are obviously interested parties, the existence of the aforementioned complaint lends credibility to their version as to what transpired, and the absence of any independent witnesses to the arrest, recovery and seizure said to have occurred on 06.04.2015 viewed in juxtaposition with this version does give rise to some doubt as to the occurrence. Furthermore, whilst the Memo of Arrest, Recovery and Seizure (Ex. 05/A) prepared by PW.2 mention non-availability of private witnesses, in his cross-examination PW.1 confirmed that the area was a thickly populated one and there were some persons available at that time on the road. PW.2 himself also conceded that albeit that the place of incident was a thickly populated area, no independent person was engaged as a witness. This was put down to unwillingness on the part of such persons. Be that as it may, the obvious contradiction between the statements made under cross-examination and what is mentioned in Ex. 05/A remains unreconciled.

6. Additionally, as per the FIR and the depositions of PW.1, the police party that arrested the Appellants arrived at the scene of the arrest at 0100 hours. However, although it has been stated that the process of arrest and formalities that followed took one hour, the time of preparation reflected in the Memo of Arrest, Recovery and Seizure (Ex. 05/A) is also 0100 hours. Furthermore, as conceded by PW.1, there is apparent overwriting in the date thereof. PW.2, who is the author of this document, also confirmed the presence of such overwriting and conceded that the same had not been initialed by him.
7. Even otherwise, it merits consideration that the FIRs as well as the Memo of Arrest and Seizure are bereft of any description of the hand grenades said to have been recovered or any details as to identifying marks or numbers thereon. However, a perusal of the Clearance Certificates dated 11.04.2015 issued by the Bomb Disposal Unit (Ex. 7/B and Ex. 7/C) as well as the subsequent Inspection Reports of the hand grenades dated 29.4.2015 bearing Reference Nos. SB/BDU/453 and SB/BDU/454 (Ex. 7/H and Ex. 7/I) clearly identify the grenades as ARGES-69 and HE-36 respectively, and evince that the latter bears descriptive/identifying markings in terms of marking lot No. 36 M MK 1 POF. These anomalies create doubt as to the very factum of recovery. Furthermore, in terms of these documents, it

even otherwise also stands established that one of the hand-grenades examined was rusted and both of them were bereft of detonators and were in that condition when produced in evidence, as admitted by PW.2 in his cross examination.

8. When confronted with these issues and irregularities, the learned APG was unable to point out any material that would serve to controvert the same. Furthermore, he conceded that the Appellants did not have any prior criminal record.
9. To our minds, these contradictions and inconsistencies are not readily reconcilable. In our view, the aforementioned factors coupled with the absence of any prior criminal record serve to create appreciable doubt as to the veracity of the prosecution's case. As such, the Impugned Judgment cannot be sustained.
10. These are the reasons for the short Order dictated in these Appeals in open Court on 26.04.2017 whereby the captioned Appeals were allowed and the Appellants were acquitted of the charges.

JUDGE

CHIEF JUSTICE

Karachi
Dated _____