

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal ATA No.150/2015

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

Appellants : Mumtaz Hussain through Mr. Syed Tasawar Hussain Rizvi, Advocate.

Respondent : The State through Mr. Abrar Ali Khichi, APG

Date of hearing : 30.05.2017

Date of Judgment :

JUDGMENT

YOUSUF ALI SAYEED, J. The Appellant has assailed the Judgment dated 11.07.2015 (the “**Impugned Judgment**”) passed by the learned Special Judge of Anti-Terrorism Court No. IV, Karachi in Special Case No. A-40/2013, emanating from FIR No.236/2013 registered at P.S. Sohrab Goth on 19.04.2013 Goth at 1530 hours (the “**FIR**”) by one Gul Farooq (the “**Complainant**”).

2. As per the FIR, the Complainant was on duty as a driver with his employer when he was informed by his wife over the telephone that their son, Zeeshan, aged about 12/13 years, had been injured at about 12:30 p.m due to what was termed a ‘ball bomb blast’, at Street No.10, Near Kausar Beauty Parlor, Faqera Goth (the “**Crime Scene**”). It is said that he was informed that his son was under treatment at Jinnah hospital and he thus proceeded there. Importantly, is also said that on further enquiry the Complainant came to know that the ball bomb had been thrown by the Appellant, due to unknown reasons. Hence he named the Appellant as the perpetrator in the FIR.
3. The Appellant was arrested on 20.04.2013 at 1500 hours upon being identified by the Complainant whilst he was standing outside an establishment in Faqera Goth operated under the name of Jaffar Hotel. As per the Memo of Arrest & Seizure said to have been prepared on the spot, there is no indication that he was alarmed to see the Complainant accompanied by the police party or that he made any attempt to flee. Furthermore, nothing incriminating was recovered from his possession.

4. On 11.11.2013 the trial Court framed the Charge against the Appellant in consonance with the FIR, in respect of an offence punishable under S.324/34 PPC, read with S.3/4 of the Explosives Act, read with S.7 of the Anti-Terrorism Act, 1997 (the “**ATA**”). The Appellant entered a plea of not guilty and claimed trial.
5. The Prosecution examined the Complainant (PW-1), Muhammad Zaman, cousin of the Complainant (PW-2), Zeeshan, the victim (PW-3), ASI Mansha Khana (PW-4), Dr. Tahmina Kamran (PW-5), SIP Ghulam Qadir (PW-6), and Dr. Afzal Ahmed Memon, the MLO (PW-7). The statement of the Appellant was recorded under S. 342 Cr.P.C (Exh.18), in which he denied the allegations and professed his innocence. He neither examined himself on oath nor examined any defense witness.
6. The learned trial Court returned a finding of guilt and in terms of the Impugned Judgment the Appellant was convicted and sentenced to undergo imprisonment for fourteen years in respect of an offence under Section 7(1)(ee) of the ATA read with Section 3/4 of the Explosives Act and further convicted and sentenced to undergo imprisonment for ten years under Section 324 PPC and with fine of Rs.50,000/-, and in case of default in payment to undergo imprisonment for a further six months, and also to pay compensation of Rs.50,000/- to the victim of the offence and in default thereof to undergo imprisonment for a further six months.
7. Learned counsel for the Appellant submitted that the Appellants was innocent and had been falsely implicated. He pointed out that the Appellant was evidently a stranger to the prosecution witnesses, and it was manifest from the FIR as well as the deposition of the Complainant at trial that as per the Complainant’s own version, he was not an eye-witness and the name of the Appellant had been provided to him by a third-person. Thus, the Complainant had no empirical knowledge as to the complicity of the Appellant and his testimony as to the involvement of the Appellant was based completely on hearsay, and was thus inadmissible.

8. Learned counsel further submitted that the finding of guilt appeared to be based on nothing more than the identification of the Appellant by Zeeshan during the course of his tendering evidence in Court, and there was no corroborative evidence whatsoever against the Appellant. He pointed out that Zeeshan himself had not named the Appellant as his attacker in his statement under S.161 Cr. P.C., nor was there any suggestion as per the facts disclosed by the Complainant in the FIR or his deposition that Zeeshan had been the one who informed him that the Appellant was the perpetrator. He pointed out that as per the testimony of the MLO at JPMC (PW-7), whose deposition is Exhibit No. 15, Zeeshan has only sustained superficial injuries on both legs, his right arm and the right side of his chest, and was thus in a fit state to have identified the Appellant at the outset, had he been complicit. He further submitted that the learned Trial Court had also failed to appreciate that the companion of Zeeshan, namely one Asad, who was said to have been in the vicinity of the Crime Scene at the time of the incident, was not produced as a witness by the prosecution.

9. In support of his contention that the learned trial Court had misread the evidence, learned counsel took us through the depositions of the prosecution witnesses and also pointed out the following relevant excerpts:
 - (a) The Complainant, whose deposition is Exhibit No. 6, submitted during his examination-in-chief that "I came to know accused Mumtaz Hussain at the relevant time was moving at the place of occurrence and he was affiliated with the commission of crime...". Under cross-examination, he also stated that "I cannot disclose the name of informant who told me that instant incident committed by present accused Mumtaz Hussain. It is a fact I am not eyewitness of the instant case".

 - (b) Inspector Nusrat Hussain, the IO of the case, whose deposition is Exhibit No. 16, submitted under cross-examination that "It is a fact that present accused was arrested on 20.04.2013 on the pointation of complainant". He further stated that "it is a fact that in statement of complainant it is stated that on further information the complainant came to know that accused Mumtaz Hussain threw Ball Bomb towards Pw/injured son". He also conceded that "It is a fact that the name of accused has been given by complainant on information received from other person. It is a fact that the source of such information

has not been given by the complainant in his statement u/s 161 Cr. P.C. nor the person who informed the complainant about the accused person has not been made witness in this case”.

10. Having considered the submissions we are satisfied from an examination of the testimony of the prosecution witnesses and an examination of the record, that there was no evidence against the Appellant on the basis of which a finding of guilt could reasonably have been recorded. The learned APG was also unable to put forward any argument whatsoever in support of the impugned Judgment and the conclusion drawn by the trial Court therein.
11. In view of the foregoing, the Impugned Judgment cannot sustain and this Appeal succeeds.
12. These are the reasons for of our short Order dated 30.05.2017 whereby the Appeal was allowed with the result that the Appellant was acquitted of the charges and the conviction and sentence awarded to him was set aside.

JUDGE

CHIEF JUSTICE

Karachi
Dated _____