

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti Terrorism Jail Appeal No.225/2015

Appellant : Abdul Rahim @ Gujjar, through Mr. Qadir Hussain Khan, Advocate.

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

Date of hearing 23.05.2017

Date of Judgment

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

JUDGMENT

YOUSUF ALI SAYEED, J. The captioned Appeal call into question the Judgment dated 31.07.2015 passed by the Anti-Terrorism Court No.X at Karachi in Special Case Number B-08 of 2015, whereby the Appellant was convicted under S. 4 and S.5 of the Explosive Substance Act 1908 (the "**Explosives Act**"), read with S.7 of the Anti-Terrorism Act, 1997, and sentenced to 14 years rigorous imprisonment and to pay a fine of Rs.25,000/-, and, in case of non-payment, to undergo further rigorous imprisonment for 6 months. The benefit of S.382-B Cr. P.C. was extended to him.

2. The case of the Prosecution is that on 28.11.2014, a police party came across the Appellant at 0100 hours near old Rubi Cinema, Saeedabad, Baldia Town, Karachi. The Appellants is said to have appeared suspicious and was thus accosted and searched, and a hand-grenade is said to have been recovered from his possession. As such, he was placed under arrest and FIR Number 256/2014 was registered the same day at PS SIU/CIA at 0200 hours.
3. On 24.02.2015, the Appellant was Charged with possession of the said hand-grenade, an offence under S.4 and S.5 of the Explosives Act, to which he pleaded not guilty. The case accordingly proceeded to trial, culminating in the impugned Judgment.

4. During the course of the trial, the Prosecution examined three witnesses, namely (i) Sub-Inspector Ghulam Mustafa Arain (PW-1), the officer of the Bomb Disposal Unit who examined the hand-grenade and prepared the Clearance Certificate dated 29.11.2014 (Ex P/3) and the subsequent Inspection Report dated 03.12.2014 (Ex P/5); (ii) Sub-Inspector Ghulam Rasool Bhatti (PW-2), the senior officer of the patrolling party said to have apprehended the Appellant on the date of the incident and the author of the Memo of Arrest and Seizure (Ex P/8); (iii) HC Muhammad Ifrahim, a member of the patrolling party and one of the Mashirs of the Memo of Arrest and Seizure; and (iv) Inspector Tabassum Ahmed, the officer entrusted with the investigation. In his defense, the Appellant examined himself and also examined one Muhammad Hanif (DW-1), and his own brother, Muhammad Saleem (DW-2).

5. We have considered the record and the submissions made by learned counsel for the Appellant as well as by the learned APG. As per the version of the Appellant, as disclosed in his statement under S.342 Cr.P.C. and his deposition, he was arrested from Saeedabad, near Quetta Haram Hotel by SIP Ghulam Rasool Bhatti on 24.11.2014 at about 0230 hours and falsely implicated in the case as he had failed to pay a monthly Bhatta amount of Rs.5000/-. Both the defense witnesses supported this version and testified that the Appellant was in fact arrested on 24.11.2014, as stated by him.

6. However, more crucially, we have noted that the Clearance Certificate dated 29.11.2014 (Ex P/3) contains the following remarks as regards the hand-grenade – **“Searched visually and with electronic equipments. No detonating or Explosive Device/Material found”**.

7. As such, it is apparent that the hand-grenade was a dud and did not fall within the definition of “explosive substance” as per S.2 of the Explosives Act, and no case under S.4 and S.5 thereof could consequently have been made out. Thus, in our view, the impugned Judgment is a result of obvious non-reading of the evidence and the conviction recorded therein obviously cannot be allowed to stand. When confronted with this basic issue, the learned APG was also unable to support the conviction.

8. These are the reasons for the short Order dictated in open Court on 23.05.2017 whereby the captioned Appeal was allowed and the Appellant was acquitted of the charges.

JUDGE

CHIEF JUSTICE

Karachi
Dated _____