

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT HYDERABAD**

Cr. Appeal No. D- 48 of 2019

Present:-

Mr. Justice Abdul Maalik Gaddi.

Mr. Justice Khadim Hussain Tunio

Date of hearing: 12.03.2020

Date of Judgment: 12.03.2020

Appellant: Muzaffar Hussain through Mr. Ghulam Asghar Mirbahar, Advocate.

Respondent: The State through Mr. Shawak Rathore Deputy Prosecutor General, Sindh.

JUDGEMENT

ABDUL MAALIK GADDI, J- This criminal appeal has been preferred against the judgment dated 13.03.2019 passed by learned Judge Anti-Terrorism Court, Naushehro Feroze in Special Case No.18 of 2018 (Re-The State v. Muzaffar Husain) arising out of Crime No.43 of 2018 registered U/S 5 of Explosive Substance Act, R/w Section 6/7 of Anti Terrorism Act, 1997 at police station Mehrabpur, whereby the learned trial court after full dressed trial has convicted and sentenced the appellant as stated in point No.2 of the said judgment. For the sake of convenience, it would be proper to reproduce the said para of judgment which reads as under:-

“In view of my findings on point No.1 supra, I have come to conclusion that prosecution has proved its case against present accused beyond shadow of reasonable doubt. I therefore, convict accused Muzaffar Hussain son of Mukhtiar Hussain Nangraj under section 5 of Explosive Substance Act 1908 and thereby sentence him to suffer R.I for ten years and forfeiture of his whole property to Government as required under section 5-B of Explosive Substance Act, 1908. I also convict the accused for offence

punishable under section 7(I)(ff) of Anti-Terrorism Act, 1997 and sentence him to suffer R.I for fourteen years. All the sentences awarded to accused shall run concurrently with benefit of section 382-B Cr.P.C. Accused Muzffar Hussain is produced in custody, remanded back with conviction warrant and slip to serve out the sentences awarded to him”.

2. Brief facts of the prosecution case as disclosed in the FIR are that Inspector Ghulam Parwar SHO PS Budhani, District Hyderabad lodged instant F.I.R, stating therein that on 12.03.2018 he along with his subordinate staff namely ASI Maroof Chand, PC Abdul Ghani and PC Rasool Bux left police station in private vehicle vide roznamcha entry No.18 at 1800 hours and went to CIA Centre Hyderabad where accused Muzaffar Hussain Nangraj, resident of Village Wahid Bux Nangraj Taluka Mehrabpur District Naushahro Feroze was confined in Crime No.42 of 2018 u/s 353, 324, 34 PPC r/w section 6/7 ATA of PS Hatri. They brought accused from lockup vide CIA entry No.24 at 1930 hours for interrogation, during interrogation accused disclosed that he has hidden one country made bomb behind the wall outside his house situated in village Wahid Bux Nangraj for blast and then he volunteered to produce the same before complainant party. Complainant gave such information to higher officer. He also asked Bomb Disposal Squad Hyderabad to reach at PS Mehrabpur District Naushahro Feroze. Complainant along with accused Muzaffar Nangraj left CIA Centre Hyderabad in government vehicle of CIA driven by DPC Najam Saqib vide entry No.31 at 2105 hours. On 13.03.2018 at 0330 hours they reached at PS Mehrabpur where SIP Muhammad Ramzan Incharge BDS Hyderabad along with staff also reached. Complainant party along with ASI Saleem Raza along with his staff and BDS staff and accused Muzaffar went to the pointed place viz. village Wahid Bux Nangraj and reached there at 0400 hours. Accused led them to northern side of house and by digging the earth one cartoon wrapped in black shopper was produced which contained two plastic big bottles in which explosive material was lying. BDS Incharge defused the bomb, handed over to him and disclosed that the bomb is remote control bomb. He checked the bomb and found ball barring, nut, bolt, two electronic detonators one golden and one white colour, 10 live bullets of 30 bore pistol, one remote control bomb, two fuses, two brown wires, one remote control of black colour, one receiver and two little white colour cells. He prepared

memo in presence of mashirs. Thereafter, they came back at PS along with accused, case property and lodged instant F.I.R under section 5 of Explosive Substance Act, r/w section 6/7 ATA on behalf of the State.

3. On 25.04.2018 charge against accused was framed at Ex.03, wherein he pleaded himself to be innocent and claimed trial of the case vide his plea at Ex.4.

4. In order to prove its case, the prosecution examined the following witnesses:

- i. PW-1 ASI Saleem Raza Qazi examined at Ex.5, who produced entry No.24 at Ex.5/A, F.I.R No.43/2018 at Ex.5/B and entry No.30 at Ex.5/C.
- ii. PW-2 PC Mehrab Khan Kharal examined at Ex.6.
- iii. PW-3 Inspector Ghulam Parwar Mirani examined at Ex.7, he produced attested copy of entry No.24 at Ex.7/A, attested copy of entry No.31 at Ex.7/B and memo of arrest and recovery at Ex.7/C.
- iv. PW-4 ASI Muhammad Marroof Chand examined at Ex.8.
- v. PW-5 HC Qurban Ali Phulpoto examined at Ex.9, he produced entry No.8 at Ex.9/B, entry No.11 at Ex.9/C and clearance certificate at Ex.9/C.
- vi. PW-6 Inspector Muhammad Ramzan Panhwar examined at Ex.10, he produced his report at Ex.10/A.
- vii. PW-7 PC Pathan Khan examined at Ex.11, he produced memo of place of incident at Ex.11/A, memo of de-sealing case property at Ex.11/B and memo of taking samples from case property at Ex.11/C.
- viii. PW-8 I.O Inspector Hamid Ali Jumani examined at Ex.12, he produced Trace Chemistry Analysis Report at Ex.12/A and letter for permission at Ex.12/B.

Thereafter, learned A.P.G for State closed the side of prosecution vide his statement at Ex.13.

5. Statement under Section 342 Cr.P.C of the accused was recorded at Ex.14, wherein he denied all the allegations levelled against him by the prosecution and claimed his false implication and foistation of one country made bomb/arms and ammunitions. However, he did not examine himself on Oath nor led any evidence in his defence.

6. It is contended by learned counsel for appellant that appellant is innocent and has falsely been implicated in this false case; that all police officials are interested and there is no independent witness against the appellant though the alleged place of incident was a thickly populated area; that whole prosecution story is false, concocted and managed against the appellant; that alleged one country made bomb/arms and ammunitions have been foisted upon the appellant and he has no concern with the same; that there is clear violation of Section 103 Cr.P.C and all witnesses are police officials therefore, false implication of appellant in this case cannot be ruled out; that the samples were sent to FSL after a delay of about four (04) months without any explanation; that as per report of FSL, item No.1 was not found explosive material; that there are number of material contradictions in the evidence of prosecution case which create a reasonable doubt and it is settled law that if a single doubt is created in the case of prosecution it must go in favour of accused. Lastly he prays for acquittal of appellant.

7. Conversely, learned D.P.G. while supporting the impugned judgment submits that prosecution has fully established its case beyond any reasonable doubt by producing consistent / convincing and reliable evidence and the impugned conviction and sentenced awarded to the appellant are the result of proper appreciation of evidence brought on record, which needs no interference by this Court. He prayed for dismissal of this appeal.

8. Arguments heard. Record perused.

9. After careful consideration and meticulous examination of the available record, suffice to say that mere heinous nature of offence is not sufficient to convict the accused because the accused continues with presumption of innocence until found otherwise at the end of the trial. It is settled principle of law that burden is always upon the prosecution to prove the case beyond shadow of doubt. Keeping in view this basic touchstone of criminal administration of justice, we have examined the ocular and documentary evidence on record alongwith impugned judgment.

10. From the perusal of record, we have come to the conclusion that the prosecution has failed to prove its' case against the appellant for the reasons that on the relevant date and time, the police party left police

station in a private vehicle vide roznamcha entry No.18 and went to CIA Centre Hyderabad where accused / appellant was already confined in some other crime. They brought accused from lockup and during interrogation accused disclosed that he has hidden one country made bomb behind the wall outside his house situated in village Wahid Bux Nangraj Taluka Mehrabpur and volunteered to produce the same before complainant party.

It is surprising to note that no number of said private vehicle in which the police party proceeded to CIA Centre, Hyderabad is mentioned in FIR nor it has been mentioned in the evidence of prosecution witnesses or the documents produced by prosecution in this case.

It is noted that even the roznamcha entry No.18 of P.S Budhani under which the police party left police station has not been produced/tendered in evidence to show the police movement. During the course of arguments we have referred the R&Ps of the case to the learned D.P.G. for perusal and point out whether such entry has been produced/tendered in evidence, he after perusing the case file replied in negative, therefore, under these circumstances, the police movement as stated in FIR appears to be doubtful. In this connection we are supported with the case of Abdul Sattar and others v. The State (2002 P.Cr.L.J 51), wherein it has been held as under:-

“.....Entry in Roznamcha. Non-production of entry in Roznamcha by the prosecution in Court to prove the movement of police from the police station to the place of recovery of weapons cuts at the root of the prosecution case making the entire episode doubtful and the prosecution version unbelievable.”

11. It has also been brought in evidence that the place of incident was a thickly populated area and people were available there but despite of this fact, police party did not bother to associate any independent person of the locality to witness the recovery proceedings either from the CIA centre from where they took the accused or from the place where the alleged recovery is said to have been affected. During the course of arguments we have specifically asked the question from learned D.P.G. that when the private persons were available at the place of incident why their services were not obtained to witness the event, he has no satisfactory reply with him and he was of the view that

evidence of police officials is as good as that of a private person. No doubt the evidence of police officials is as good as that of a private person however, in a case of recovery of one country made bomb/arms and ammunitions where the fate of an accused person hinges upon the testimony of police officials alone, it is essential to find out if there was any possibility of securing independent persons at the time of recovery. The conviction or acquittal of an accused person depends upon the credibility of the witnesses as assessed by the Court but where it was possible for the police officials to call independent witnesses to act as mashir but they deliberately avoided, the Court has to be very careful in weighing such evidence. It is settled principle of law that judicial approach has to be cautious in dealing such type of evidence.

12. It further appears from the record that alleged country made bomb/arms and ammunition were recovered from the appellant on 13.03.2018 but the same were received by Punjab Forensic Science Agency on 23.07.2018 after the delay of about more than four (04) months for which no explanation has been furnished by the prosecution. Moreover, the recovered country made bomb/arms and ammunitions were retained by whom during this intervening period has also not been explained by the prosecution that after its recovery under whose custody, the same were lying. For the sake of arguments, if it is assumed that the case property was lying in Malkhana then no report/entry of Malkhana has been produced to corroborate the version of prosecution. No official from Forensic Laboratory has been examined in this case. Even PC Riaz Shah through whom the case property was sent to the Punjab Forensic Science Agency has not been examined before the trial court. Furthermore, from the perusal of said report, it appears that no explosive was identified in item 1.

13. We have also gone through the evidence of prosecution witnesses with the able assistance of learned counsel for the parties and found that the same is contradictory to each other on material particulars of the case. For instance, PW-2 PC Mehrab Khan stated in his examination in chief that **“at the pointation of accused PC of Hyderabad dug the earth and secured one plastic shopper containing two bombs. The bomb disposal squad disclosed that bombs are not in working condition.”** Whereas in FIR, mashirnama of recovery and other documents, there is mention of only one bomb. It is

also noted that I.O. of the case/crime No.42/2018 of P.S Hatri in his cross examination has stated that **“It is a fact that that the material secured from bombs is available in the market.”** It has also come in evidence that PC Mehrab Khan in his cross examination has stated that **“Inspector Hamid Ali Jumani came at PS Mehrabpur on official vehicle.”** This fact has been contradicted by I.O/Inspector Hamid Ali Jumani in his cross examination by stating that **“I went to place of incident in my personal car.”** During the course of arguments, we have also asked the question from learned D.P.G. to explain the contradictions in the statements of prosecution witnesses, again he has no reply with him.

14. Admittedly, in this case, there are number of infirmities/lacunas, which have created serious doubt in the prosecution case. It is settled principle of law that for extending benefit of doubt, it is not necessary that there should be multiple circumstances creating doubt. If a single circumstance, which creates reasonable doubt in a prudent mind about 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, as has been held in the case of **Tariq Pervez v. The State [1995 SCMR 1345]** wherein it has been held by Honourable Supreme Court of Pakistan that:

"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 about 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".

15. Keeping in view of the above, we are of the firm view that the Presiding Officer of the learned trial Court acted erroneously in the matter, with misconception and misinterpretation and disposed of the matter purely on non-appreciation and non-application of the required norms of law and that of justice. Consequently, by our short order dated 12.03.2020, we allowed this appeal, set aside the impugned judgment dated 13.03.2019 passed by learned Judge Anti-Terrorism Court, Naushehro Feroze in Special Case No.18/2018 (Re- The State v. Muzaffar Hussain) arising out of Crime No.43/2018 u/s 5 of Explosive Substance Act r/w Section 6/7 of Anti-Terrorism Act, 1997 registered at Police Station Mehrabpur and acquitted the appellant from the above

charge. Since the appellant was in custody, therefore, he was ordered to be released forthwith if not required in any other custody case.

16. These are the reasons of our short order dated. 12.03.2020.

Judge

Judge

Tufail