

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No.190 of 2019
Special Criminal Anti-Terrorism Appeal No.191 of 2019

Mr. Justice Abdul Maalik Gaddi
Justice Mrs. Rashida Asad

Appellant : Syed Zain Ali son of Syed Shakir Ali
through Mr. Mumtaz Ali Khan Deshmukh,
Advocate.

Respondent : The State through Mr. Abdullah Rajput,
Deputy Prosecutor General Sindh.

Date of hearing : 07.5.2020

Date of Judgment : 07.5.2020

JUDGMENT

Abdul Maalik Gaddi, J.– Through this common Judgment, we intend to dispose of the captioned appeals filed by the appellant as these appeals relate to same incident as well as common judgment delivered by the Presiding Officer of the learned trial Court dated 06.7.2019.

2. By means of these appeals, the appellant has assailed the legality and propriety of the Judgment dated 06.7.2019 passed by the learned Anti-Terrorism Court No.XX, Karachi, in Special Cases No.81 and 81-A of 2019 arising out of crimes No.33 and 34 of 2019 registered at police station Site-A, Karachi, under Sections 4/5 of Explosive Substance Act, r/w Section 7 of ATA, 1997 and Section 23(I)-A of SAA, 2013, whereby the learned trial Court after full dressed trial, convicted and sentenced the appellant as stated in point No.2 of the impugned judgment. For the sake of convenience, it

would be advantageous to reproduce the findings of Point No.2 of the impugned judgment, which read as follows:-

“Point No.2

In view of my findings given in Point No.1 and the reasons discussed above, I have come up to the conclusion that the present accused committed an offence as described under Section 6(2)(ee) of ATA, 1997 punishment under section 7 (1) (ff) of ATA, 1997 accordingly, accused Syed Zain Ali s/o Syed Shakir Ali is hereby convicted and sentenced to undergo R.I. for “14” years, I also convict and u/s 23(I)-A SAA and sentence to undergo R.I for five years.

Both the abovementioned sentences shall run concurrently. The benefit of Section 382-B Cr.P.C. is also extended to the accused from the date of his arrest. Accused produced in custody is remanded back to Jail with direction to serve out the above sentences.”

3. Concisely facts of the case are that on 11.01.2019, complainant SIP Muhammad Ashraf was busy in patrolling duty around the area along with his subordinates staff and during patrolling around the area at about 1715 hours, when they reached at railway line near SITE Model School, SITE, Karachi, where they saw a person to be available in suspicious condition. After encircling, they apprehended the accused at the spot. The apprehended person disclosed his name as Syed Zain Ali son of Syed Shakir Ali. Thereafter, complainant SIP Mohammad Ashraf due to non-availability of private/ independent witnesses and in the presence of official witnesses conducted his personal search, he was having one Awan grenade bearing No.0070402.HE.M.6.P.ETG40MM of black and golden colour and one pistol of 30 bore along with magazine loaded with five live bullets, which were recovered from his possession. Therefore, the

police arrested him and after completing all formalities, brought him at the police station, where the present FIRs were registered against him.

3. After completing the investigation of the case reports under Section 173 CrPC were submitted by the I.O. against the accused.

4. In order to prove these cases, the prosecution had examined the following witnesses:-

(a) PW.1, (BDU) Inspector Masab Hussain, examined at Ex.05 who produced entries No.03 and 04 (on one leaf) at Ex.5/A. Entry No.18 at Ex.5-B, Clearance Certificate at Ex.5-C, roznamcha entry No.19, at Ex.5-D, Entry No.7 dated 13.01.2019 at Ex.5-E. Letter received from SSP Technical Special Branch for final inspection report at Ex.5-F and Final Inspection Report at Ex.5-G.

(b) PW-2, SIP Mohammad Ashraf, examined at Ex.6. He produced roznamcha entry No.3 at Ex.6-A, Entry No.26 at Ex.6-B, Memo of Arrest and Recovery at Ex.6-C, FIR bearing No.33/2019 at Ex.6-D along with qaimi report at Ex.6-E, FIR No.34/2019 along with qaimi entry at Ex.6-F and Ex.6-G and Memo of Site Inspection at Ex.6-H.

(c) PW-3, HC Shakeel Ahmed, examined at Ex.07.

(d) PW-4, I.O/ Inspector Abdul Aziz, examined at Ex.08, who was said to the I.O. of the case and he produced DD entry No.45 at Ex.8-A, sketch of place of incident at Ex.8/B, roznamcha entry No.47 and 49 (one leaf) at Ex.8-C, letter addressed to Incharge CRO at Ex.8-D, DD entry No.26 and 31 (one leaf) at Ex.8-E, Letter addressed to SSP Special Branch at Ex.8-F, letter addressed to SSP District West at Ex.8-G, Order

of Home Department regarding trial of accused under Section 7 of Explosive Substance Act at Ex.8-H, letter addressed to Incharge FSL at Ex.8I and FSL report at Ex.8-J.

These witnesses were cross-examined by the counsel for appellant and thereafter, learned APG for the State filed statement for closing prosecution side as Ex.09.

5. Statement of appellant/ accused was recorded under Section 342 CrPC as Ex.10, in which the accused denied for all the allegations leveled against him. He claimed to be innocent and stated that he was picked up by the Rangers Officials on 09.01.2019 from his house and thereafter they handed over his custody to police of PS SITE-A for fixing him in these false cases. Neither he had examined himself on oath nor he produced any DW in defense in disproof of the charge as leveled against him.

6. After assessment of the evidence on record, the Presiding Officer of trial Court convicted and sentenced the appellant as stated in the introductory paragraph of the judgment.

7. Mr. Mumtaz Ali Khan Deshmukh, learned counsel for appellant contended that the entire case of the prosecution is false; that prosecution has failed to establish its case against present appellant and there is violation of Section 103 CrPC, as no any independent/ private person has been cited by the police as a witness of this incident, though the incident was occurred in the populated area; that all the prosecution witnesses have given contradictory statements,

which could not be safely relied upon for maintaining the conviction of the appellant; that present appellant was picked up by Rangers officials on 09.01.2019 from his house situated at Orangi Town, Karachi and the said Rangers officials kept him in their illegal custody, later on they handed over his custody to police for fixing him into these false cases; that the entire investigation has been conducted by the I.O. dishonestly; that the appellant is working in KPT as Security Guard and nothing on record that the present appellant has any criminal record and he is in custody since his arrest. During the course of arguments he has pointed out number of contradictions in between the evidence of prosecution witnesses and was of the view that on the basis of contradictory evidence, no conviction could be maintained, therefore, he prayed for the acquittal of appellant.

8. Conversely, Mr. Abdullah Rajput, learned Deputy Prosecutor General Sindh argued that all the prosecution witnesses have fully supported the case of prosecution. He further argued that there were minor contradictions in between the testimonies of the witnesses which could not damage the case of prosecution; that present appellant is very much involved in these cases; that appellant was arrested at the spot by the police party and from his possession police had secured one rifle grenade and one pistol of 30 bore along with five live bullets, for which he had no legal, lawful authority to keep or possess such explosive substance and pistol; that the prosecution has proved its case against the present appellant, therefore, according to

him, these appeals merit no consideration and the same may be dismissed.

9. We have heard the learned counsel for the parties at a considerable length and perused the evidence and documents so made available before us.

10. It appears from the record that the appellant was arrested from railway line near SITE Model School, SITE, Karachi and recovered one 30 bore pistol along with five live bullets as well as one Awan grenade in presence of police officials. It has come on record that the place from where the appellant arrested was populated area and surrounded by shops and houses, yet police party did not join any independent person from the locality to witness the event. No plausible reason has been furnished by the prosecution in this regard. It is noted that as per FIR one Awan grenade bearing No. 0070402.HE.M.6.P.ETG40MM and one 30 bore pistol without number with five live bullets were recovered from the appellant, but it is surprising to note that charge against the appellant was framed with the allegation that the rifle grenade as well as 30 bore pistol were recovered, but in the evidence of Bomb Disposal Expert namely Masab Hussain on record at Ex.5 showing that he received information from complainant on 13.01.2019 that a rifle grenade was recovered by him and its inspection was required. There is a quite difference in between Awan grenade and rifle grenade. No plausible explanation has been furnished in this regard by the prosecution.

11. Apart from this, the alleged incident took place on 11.01.2019 with regard to recovery of alleged weapons from the appellant, but it is surprising to note that complainant had intimated to Bomb Disposal Unit of this fact on 13.01.2019 for inspection of rifle grenade. Nothing on record why the police party remained mum for two days and if the grenade was so dangerous, then the long silence of the complainant in this regard gives a serious jolt to the prosecution story.

12. We have perused the evidence of PW Masab Hussain, who is the Incharge of Bomb Disposal Unit, who in his evidence has deposed that on 13.01.2019, he received information from PS SITE-A that a rifle grenade was recovered from the appellant and its inspection was required. Therefore, he left his office for inspection under entry No.4 with HC Mustaqeem and PC Umair Jabbar in the official Mobile No.SPE-035, but in order to prove this fact neither HC Mustaqeem nor PC Umair Jabbar have been examined before the trial Court. We have also perused the entry No.4 produced by Inspector Masab Hussain, which is on record at Ex.5/A, but the said entry does not contain number of vehicle on which he left his office. It is also deposed by Inspector Bomb Disposal Unit (Masab Hussain) that rifle grenade was inspected at PS on 13.01.2019 and after its inspection, the property was handed over to HC Abdul Naseer, but it is again surprising to note that HC Abdul Naseer of PS SITE-A has also not been examined to prove this fact. These were best witnesses to prove a particular fact, but their non-appearance before the court shows that

if they were examined, then they would have not supported the prosecution case.

13. On perusal of record it also indicates that as per Mashirnama of arrest and recovery, recovered pistol was without number, whereas FSL report on record shows that it was rubbed number. Mashirnama of arrest and recovery also shows that two mobile phones of Samsung and two mobile phones of Nokia were also recovered from the appellant, but the I.O. of the case utterly failed to investigate this aspect of the case during investigation to whom these mobile phones were belonged. On perusal of record it reveals that the alleged incident took place on 11.01.2019, whereas 30 bore pistol with live bullets were sent to office of Assistant Inspector General of Police, Forensic Division, Sindh, Karachi on 14.01.2019 after the delay of three days. Nothing on record that during this period where the property was lying if it was lying in the Malkhana, why the entry of Malkhana has not been produced to prove the aspect of the case. We have also noted number of contradictions in between the evidence of prosecution witnesses and found contradictory to each other on material particular of the case.

14. It is the case of the appellant that he was employee in KPT Department as Security Guard and in this connection, he has produced photocopy of his Office Card in evidence (original seen and returned) but he was picked up by law enforcement agencies and implicated him in these cases. When the case of appellant as well as the stance of

prosecution were put in juxtaposition for consideration, then it would reveal that the version of the appellant appears to more plausible than prosecution. Moreover, nothing on record that the appellant is a previous convict or he has indulged in such type of activities in past. When these infirmities and lacunas/ contradictions were confronted to learned Deputy Prosecutor General for explanation, he has no satisfactory answer with him.

15. As observed above that these cases are riddled with many lacunas and loopholes as listed above, but the learned trial Judge has utterly failed to consider and appreciate these aspects of the case in its true perspective, therefore, in the given circumstances, benefit of doubt must go in favour of the appellant, therefore, the impugned common judgment cannot be maintained. In this regard, we are supported with the case of *Tariq Pervez v. The State* reported as 1995 SCMR 1345, wherein the Hon'ble Supreme Court has held as under:-

“The concept of benefit of doubt to an accused person is deep-rooted in our country for giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

16. 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, misinterpretation, misreading and non-reading of evidence on record and convicted the appellant purely on non-appreciation and non-application of the required norms of the law

and that of justice. Consequently, we allow these appeals, set-aside the impugned common judgment and acquit the appellant from the above charges. He is in custody, therefore, jail authorities are directed to release him forthwith from the above cases, if he is not required in any other criminal case.

17. These appeals were allowed by us on 07.5.2020 after hearing the parties through our short order and these are the detailed reasons thereof.

Office is directed to send the copy of this judgment along with R&Ps of the cases to the trial Court for information through some swift means, preferably, within three (2) days from today.

JUDGE

JUDGE