

IN THE HIGH COURT OF SINDH, KARACHI

Before:**Mr. Justice Mohammad Karim Khan Agha****Mr. Justice Zulfiqar Ali Sangi****Special Criminal Anti-Terrorism Jail Appeal No. 222 of 2018**

Shahnawaz son of Ghulam Hussain : Mr. Habib -ur- Rehman
appellant through Jiskani, Advocate

The State, respondent : Mr. Mohammad Iqbal
Awan, DPG

Special Criminal Anti-Terrorism Jail Appeal No. 269 of 2018

Sheeraz @ Shahzad son of Mir Dost : Mr. Habib -ur- Rehman
appellant through Jiskani, Advocate

The State, respondent : Mr. Mohammad Iqbal
Awan, DPG

Date of Hearing : 21-10-2019

Date of Judgment : 25-10-2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., This single judgment will dispose of both the captioned special criminal anti-terrorism jail appeals together because the same have arisen out of one and the same judgment. Both the appellants were convicted by the learned Judge, Anti-Terrorism Court-V, Karachi in Special Cases No. 2009 & 2010 of 2017, Crime No. 202 & 203 of 2017 dated 10.10.2017 registered at PS Malir City Karachi under Sections 4/5 Explosive Substances Act R/w Section 7 of ATA 1997 and 24(a) of SAA, 2013 respectively; whereby appellant Shahnawaz was convicted and sentenced to undergo R.I. for fourteen (14) years. His property also be forfeited under sub section 2 of ATA, 1997 and appellant Sheeraz @ Shahzad was convicted and sentenced to undergo R.I. for seven (07) years and to pay fine of Rs.30,000/-. In case of default of payment of

fine, he shall further undergo six months S.I. However, benefit of Section 382-B Cr.P.C was also extended in favour of the appellants.

2. The prosecution case in brief is that on 10.10.2017, SIP Abdul Ghaffar of PS Malir City was patrolling in the area alongwith his staff in police mobile No.SBP-669. During patrolling the said police party reached near Bakra Piri Road, Malir Karachi at about 09:15 am, where spy informer told them that inside Gali Asu Goth, near Noorani Masjid, two persons were standing with motorcycle in suspicious condition with intent to commit an offence. The said police party reached at the pointed place at about 09:25 am and found the present two accused near one motorcycle who on seeing police party tried to run, the said SIP then apprehended both , on search from accused Shahnawaz one grenade type and cash of Rs.200/- recovered. From accused Sheeraz one unlicensed pistol of 30 bore, loaded magazine with four rounds also recovered. The said SIP arrested both the accused, seized the motorcycle bearing No. KGU-3960, to which they had no documents. He brought both the accused at P.S and registered two separate FIRs bearing No. 202/2017 u/s 4/5 Explosive Act, against accused Shahnawaz and FIR No. 203/2017 u/s 24 (a) of Sindh Arms Act, against accused Sheeraz. The investigation was assigned to Ghulam Mujtaba Bajwa, who on completion of investigation submitted two separate charge-sheets.

3. Since both the cases were in same transaction recovery was under joint mashirnama, the learned DDPP on behalf of the State made application u/s 21(m) of ATA 1997 requesting for joint trial, which was allowed vide order dated 18.12.2017. A joint charge was

framed on 05.01.2018 at Ex.5, to which the accused pleaded not guilty and claimed trial.

4. After framing the charge, prosecution has examined PW-1 H.C. Shajra at Ex.8, who produced memo of arrest of accused and seizure at Ex.8/A, memo of inspection of scene of crime at Ex.8/B. PW-2 SIP Abdul Ghaffar at Ex.9, who produced daily diary No.4 at Ex.9/A, clearance certificate at Ex.9/B, FIRs at Ex.9/C & 9/D. entries at Ex.9/E. PW-3 SIP BDU Jaan Muhammad at Ex.11, who produced daily diary at Ex.11/A, letter and report at Ex.11/B & 11/C. PW-4 Inspector Ghulam Mujtaba at Ex.12, who produced copy of order of Senior Superintendent of Police, District Malir, Karachi at Ex.12/A, daily diary No.37 at Ex.12/B, daily diary report No.45 at Ex.12/C, daily diary No.48 at Ex.12/D, letter for requesting report of FSL to Incharge FSL Laboratory, Karachi at Ex.12/E, FSL report at Ex.12/F, letter to SSP for obtaining permission from Home Department at Ex.12/G, letter of SSP at Ex.12/H. Thereafter, prosecution closed its side vide statement at Ex.13.

5. The statements of the accused persons were recorded under Section 342(1) Cr.P.C. by the learned trial Court, in which they denied the allegations as leveled against them by the prosecution. However, the accused persons neither examined themselves on oath in disproof of the charge nor led any evidence in their defence.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellants vide judgment dated 18.07.2018, which is impugned before this Court by way of filing the instant Appeals.

7. Learned counsel for the appellants submitted that appellants are innocent; that they have been falsely booked in the case; that grenade and pistol with bullets were foisted upon the appellants; that there are major contradictions in the prosecution's evidence; that prosecution has not proved its case beyond reasonable shadow of doubt; that there is violation of Section 103 Cr.P.C as police did not associate any private mashir from the place of information and recovery which admittedly are thickly populated areas. Lastly he prayed for acquittal of appellants.

8. Mr. Muhammad Iqbal Awan, D.P.G for the State contended that it was daytime incident; that recovery was effected from both the appellants; that during trial no enmity was suggested against the police officials; that prosecution proved its case by producing oral as well as documentary evidence; that no major contradictions are pointed out by defense counsel which suggests false implication of appellants. Lastly he contended that appeals may be dismissed.

9. We have heard learned counsel for the parties and pursued the material available on record.

10. Record reveals that police recovered one hand grenade from accused Shahnawaz and one 30 bore pistol, magazine along with four rounds from accused Shiraz. The report of Assistant Sub Inspector General of Police, Forensic Division, Sindh, Karachi showed that one 30 bore pistol with magazine and four 30 bore live bullets received at lab from which one 30 bore bullet was tested meaning thereby remaining live bullets were only three. The property produced before the trial Court includes one 30 bore

pistol, four live rounds and one empty. The Availability of four live bullets and one empty creates very serious doubt.

11. The recovery was effected on 10-10-2017, it was sent to forensic lab on 12-10-2017 as mentioned in the report of Assistant Sub-Inspector General of Police, Forensic Division Sindh, Karachi (Ex.12-F) which shows receiving date as 12.10.2017, prosecution failed to produced any evidence to explain about the safe custody of the property for two days. Reliance can be placed upon the case of ***Samad Ali Vs. The State (2019 M L D 670) and case of Asif Khan Vs. The State (2018 Y L R 661).***

12. The mashirnama and FIR do not speak about description of hand grenade even the colour has not been mentioned; whereas, the inspection report of hand grenade (Ex.11/C) shows as under;_

“During inspection 01 in number RGD-1, EOD Device, Metal body, in Navy color complete, fragmentation types, USA Made, Explosive weight 60 gram (TNT High Explosive) Total Weight 600 gram, length 130mm, diameter 55mm, serious affective radius 30m and general affect 200m marking No. Y3PLM-2-386-113-78-40 Y3PLM-349-2-78 made safe pack, packed.”

13. Record further reveals that police received spy information at Bakra Piri road, which is thickly populated area and place where recovery was effected was also thickly populated area, as has been admitted by witnesses in their cross-examination but no private person was associated.

14. The complainant namely Abdul Ghaffar in his examination-in-chief stated that investigation was assigned to Sub-Inspector Ali Asghar Sahito on 11.10.2017. The complainant further stated in his cross-examination that he handed over the pistol, bullets and hand grenade to Sub-Inspector Ali Asghar Sahito, duty officer; whereas,

examiner's report (Ex: 12/E) shows that it was sent by SIO Ghulam Mujtaba. On the contrary, Sub-Inspector Ghulam Mujtaba states in his examination-in-chief that on the same day he received letter from SSP alongwith police papers and accused for investigation. Prosecution failed to examine the said star witness Sub-Inspector Ali Asghar Sehito which creates very serious doubt.

15. From the above discussion, it is evident that the prosecution has failed to prove the case against the appellants beyond shadow of reasonable doubt. It is settled law that even a single doubt in the prosecution story is damaging and its benefit must go to the accused. In this regard, reliance is placed on the case of **Tariq Pervez v. The State (1995 SCMR 1345)** wherein Honourable Supreme Court of Pakistan 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 single 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. In view of the discussion hereinabove, by extending the benefit of doubt to the appellants, both the appeals in hand are allowed. The conviction and sentence awarded by the learned Judge, Anti-Terrorism Court-V, Karachi are set-aside and both the appellants are acquitted of the charges. They shall be released forthwith if not required in any other custody case.

Judge

Judge