

IN THE HIGH COURT OF SINDH, KARACHI

Before:

**Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi**

Special Criminal Anti-Terrorism Appeal No.167 of 2018

Shahzad @ Kalay Khan S/o Ali Akbar : Mr. Khair Muhammad,
Appellant through Advocate

Respondent/The State : Mr. Khadim Hussain
DPG

Special Criminal Anti-Terrorism Appeal No.168 of 2018

Shahzad @ Kalay Khan S/o Ali Akbar : Mr. Khair Muhammad,
Appellant through Advocate

Respondent/The State : Mr. Khadim Hussain,
DPG

Special Criminal Anti-Terrorism Appeal No.169 of 2018

Muhammad Abid Hussain @ Tao : Mr. Khair Muhammad,
S/o Ghulam Mujtaba Advocate
Appellant through

Respondent/The State : Mr. Khadim Hussain,
DPG

Special Criminal Anti-Terrorism Appeal No.170 of 2018

Muhammad Abid Hussain @ Tao : Mr. Khair Muhammad,
S/o Ghulam Mujtaba Advocate
Appellant through

Respondent/The State : Mr. Khadim Hussain,
DPG

Date of Hearing : 25-10-2019

Date of Judgment : 01-11-2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., This single judgment will dispose of four captioned Special Criminal Anti-Terrorism Appeals as the same have arisen out of the same judgment. Both the appellants in the above mentioned four Appeals were convicted by the learned Judge, Anti-Terrorism Court No. XII, Karachi in (1) Special Case

No.1364/2017, (2) Special Case No.1365/2017, (3) Special Case No.1366/2017 and (4) Special Case No.1367/2017 arising out of the FIRs being (1) FIR No.174/2017 U/s 4/5 Explosive Substances Act, read with Section 7 of ATA, 1997 (2) FIR No.175/2017 U/s 23(I)-A SAA of 2013, (3) FIR No.176/2017 U/s 4/5 Explosive Substances Act, read with Section 7 of ATA, 1997 and (4) FIR No.177/2017 U/s 23(I)-A, SAA of 2013 respectively registered at PS Landhi, Karachi; whereby both the appellants were convicted and sentenced to suffer R.I. for 10 years u/s 23(i)A of Sindh Arms Act, 2013 and Rs.10,000/- as fine. In default of payment of fine, they shall further suffer S.I. for six weeks. They were also convicted and sentenced R.I. for fourteen years U/s 4/5 of Explosive Substances Act, 1908 read with Section 6(2) (ee) of ATA, 1997. The benefit of Section 382-B Cr.P.C. was also extended to both the appellants.

2. Brief facts of the prosecution case as per FIR area that on 11.06.2017, ASI Jasim Ali of PS Landhi along with P.C. Shakeel Ahmed, Khalid Rehmani and DPC Kashif boarded in police Mobile No.III bearing Registration No.SPB-390 were busy in patrolling to curb the crime in the area. During patrolling when they reached at Khuramabad diversion 89 Landhi, where police party saw two persons in suspicious condition, to whom police arrested, upon which they disclosed their names as Shahzad @ Kalay Khan S/o Ali Akbar and Muhammad Abid Hussain @ Tao S/o Ghulam Mujtaba. During search of accused Shahzad @ Kalay Khan, one Owan Bomb, upon its back side written as 25-85-BMT-K-3144 from right side pocket of his Qameez and from his fold of shalwar one pistol 30 bore rubbed number along with loaded magazine containing 3 live bullets and from front pocket one used Q-Mobile Phone were recovered. Whereas from second accused namely Muhammad Abid

Hussain @ Tao, one Owan Bomb, upon its back side written as 52-07 VMG-K-55, from left side pocket of his Qameez and from his fold of Shalwar one pistol of 30 bore rubbed number along with loaded magazine containing 3 live bullets and from front pocket of his Qameez one CNIC colour copy of accused, one wrist watch and cash of Rs.8710/- were recovered in presence of mashirs. Hence, FIRs/cases under section 4/5 Explosive Substances Act, r/w Section 7 ATA of 1997 & 23(I)-A SAA of 2013 were registered.

3. Charge was framed at Ex.04, to which the accused persons pleaded not guilty and claimed to be tried vide their plea at Ex.04/A & Ex.04/B.

4. At the trial, prosecution examined PW-1 SIP Syed Abbas Shah (BD Expert) at Ex.06, who produced such documents i.e. Clearance Certificate at Ex.06/A, roznamcha entries No.33 at about 2200 hours at Ex.06/B, roznamcha entry No.04 at about 1215 hours, roznamcha entry No.11 at about 2030 hours & roznamcha entry No.12 at about 2230 hours at Ex.06/C, two letters through SSP Special Branch Technical for issuance of Final Report at Ex.06/D & Ex.06/E and Final Reports at Ex.06/F & Ex.06/G. PW-2 ASI Jasim Ali (Complainant) at Ex.07, who produced such documents i.e. roznamcha entry No.44 at about 2040 hours at Ex.07/A, memo of arrest & recovery as Ex.07/B, four FIRs bearing No.174/2017 to FIR No.177/2017 along with their entries at Ex.07/C to Ex.07/J respectively, memo of site inspection and site sketch at Ex.07/K & Ex.07/L. PW-3 PC Khalid Rehmani (mashir) at Ex.08. Learned APG filed a statement to give up the PW/PC Shakeel Ahmed at Ex.09. PW-4 Inspector Javed Sikandar (I.O.) at Ex.10, who produced such documents i.e. roznamcha entry No.12 at about

1435 hours at Ex.10/A, roznamcha entry No.14 at about 1700 hours at Ex.10/B, roznamcha entry No.17 at about 1800 hours at Ex.10/C, roznamcha entry No.18 at about 1830 hours at Ex.10/D, roznamcha entry No.19 at about 1900 hours at Ex.10/E, roznamcha entry No.17 at about 1950 hours at Ex.10/F, letters sent by I.O. to FSL at Ex.10/G & Ex.10/H. FSL report at Ex.10/I & Ex.10/J, sanction orders of Home Department for obtaining permission to prosecute the accused as Ex.10/K & Ex.10/L. Thereafter, learned APG filed a statement to close the prosecution side at Ex.11.

5. Statement of both the accused under section 342 Cr.P.C. was recorded at Ex.12 & Ex.13, wherein they denied the recoveries as the same were managed and nothing was recovered from their possession. However, they did not opt to appear in the witness box for statement on oath under section 340 (2) Cr.P.C. They also did not lead any defense evidence and accused further stated that they were apprehended by Rangers on 29.05.2017 from Baldia Town near Football Ground, for which their mother moved Applications to high-ups. They placed on record the copies of those Applications and T.C.S. receipts as annexed "A" to "A-4".

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellants vide judgment dated 25.05.2018, which is impugned before this Court by way of filing the instant Appeals.

7. Learned counsel for the appellants mainly contended that appellants are innocent and have been implicated falsely in the instant case; that nothing was recovered from the appellants; however, rifle grenades so also pistols were foisted upon them by

the police; that no private person was made as witness of the recovery thus there is violation of Section 103 Cr.P.C; that all the witnesses are police officials, therefore, their evidence is not reliable; that the accused persons were arrested on 29.05.2017 and on 01.06.2017 and 30.06.2017 the mother of accused Muhammad Abid moved an application to higher authorities, therefore, police to save their skin shown arrest on 10.06.2017 in the present false case. He relied upon the cases of Asif Khan Vs. The State (2018 YLR 661), Muhammad Hamdani Vs. The State (2018 YLR 2687), Zubair Ahmed alias Ladu Vs. The State (2018 YLR Note 160), Shahab-u-Din Vs. The State (2019 YLR 1277), Abdul Sami Khan and others Vs. The State through IXth Anti-Terrorism Court at Karachi (2019 MLD 1374), Sadam Ali Vs. The State (2019 MLD 670) and Tariq Parvez Vs. The State (1995 SCMR 1345). Lastly, he prayed for acquittal of the appellants.

8. Learned Deputy Prosecutor General contended that appellants were arrested and recovery of rifle grenades and pistols were effected from them; that weapons were sent to B.D expert which report is in line with the evidence of prosecution witnesses; that evidence of police officials cannot be discarded only on the ground that they belong to police department; that witnesses were cross-examined at length but no major contradiction was brought on record by defense; that receipts of applications were managed and trial Court had given cogent reasons to discard such applications and receipts; that prosecution has proved its case beyond reasonable shadow of doubt; that appellants were rightly convicted by the trial Court. Lastly, he prayed for dismissal of the appeals.

9. We have heard the arguments of learned counsel for the parties and perused the material available on record.

10. Record reflects that before the trial Court prosecution examined PW-1 SIP Syed Abbas Shah, who deposed that vide entry No.4 at about 1215 hours, he received information from East-Zone that few accused persons have been arrested and grenades were recovered, he along with ASI Jamal Nasir, DPC Ali Hassan through entry No.11 at about 2030 hours and reached at PS Landhi, where duty officer ASI Muhammad Asif met with him and handed over copies of two FIRs so also two rifle grenades to which he issued clearance certificate, he then handed over the grenades to said ASI Muhammad Asif. He also issued final report which he produced in evidence, he had given the description of said grenades as under:-

Parcel No.1:- One Owan Bomb No. VMG-K-52-07 (55) of champagne & grey colour produced as Article-A.

Parcel No.2:- One Owan Bomb No.BMF-5 3144 25-85 of silver & grey colour alongwith dents on its body produced as Article-B.

11. We found same description of grenades in the mashirnama of arrest and recovery which were fully supported in the final report issued by SIP Syed Abbas Shah.

12. Record further reveals that PW-2 ASI Jasim Ali and PW-3 PC Khalid Rehmani both the complainant and mashir are the witnesses of recovery effected from appellants were examined before the trial Court. They fully supported the case of prosecution, they were in line with each other on all relevant points, they were cross-examined by the defense counsel but we do not find any material contradictions which lead us to believe that case is a false one or

the recovered weapons were foisted upon the appellants. Both the witnesses were also cross-examined on the applications made by mother of accused Abid and both witnesses showed no knowledge about the same.

13. Investigation Officer/Inspector Javed Sikandar was examined as PW-4, he deposed that on 11.06.2017 he was posted as Inspector/SHO at PS Model Colony he received information about marking investigation of the case then reached at PS Landhi, where ASI Jasim Ali handed over him FIRs, memo of arrest and recovery, three sealed parcels pertaining to case property and recovered articles, he visited the place of recovery on pointation of ASI Jasim Ali and PC Khalid Rehmani who were also made as mashirs, he kept the Owan Bomb at malkhana of PS Landhi as up to such time the BDU had not reached for its examination then he left along with accused for PS Model Colony, he sent the case property for FSL and collected the final report of BDU and FSL. He further deposed that after permission from Home Department he submitted the Challan. He produced several entries, mashirnama so also reports of BDU and FSL, he was cross-examined but we could not find any major contradiction which creates any dent in the case of prosecution.

14. Contentions of defense counsel that private persons were not made witnesses and violation of Section 103 Cr.P.C have no force as complainant during cross-examination stated that it was night hours due to which private public was not available on the road, whereas, PC Khalid Rehmani also during cross-examination stated that the place of arrest was at abandoned area and admittedly recovery was effected at about 0240 hours and it was hardly possible for police to arrange private witnesses at odd hours of the

night, therefore, in our view, this fact is not fatal to the prosecution case.

15. We observed that learned trial Court carefully discussed the applications and annexures produced on record by the appellants during their statement u/s 342 Cr.P.C. and has given cogent reasons for disbelieving the same therefore we do not find any reason to disturb such findings of the trial court.

16. The Police officials are as good as private witnesses and their testimony could not be discarded merely for the reason that they were police officials, unless the defense would succeed in giving dent to the statements of prosecution witnesses and prove their mala fide or ill-will against accused. BDU reports so also FSL reports are against the appellants and are in line with prosecution case. All the witnesses furnish ocular evidence and supported the case of prosecution, no enmity was suggested against the appellants, they were cross-examined at length but we do not find any major contradiction in their evidence which lead us to believe that they are not trustworthy.

17. Based on the above discussion, we do not find any merit in the instant appeals, therefore, the impugned judgment is upheld and the conviction/sentences awarded by the trial Court to the appellants are hereby maintained and appeals are dismissed.

JUDGE

JUDGE