

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.192 of 2018

Muhammad Alamgir S/o : Mr. Qamar Iqbal,
Muhammad Qasim, Appellant through Advocate

Respondent/The State : Mr. Muhammad Iqbal
Awan, DPG

Special Criminal Anti-Terrorism Appeal No.193 of 2018

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Respondent/The State : Mr. Muhammad Iqbal
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Date of Hearing : 30-10-2019

Date of Judgment : 07-11-2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., This single judgment will dispose of two captioned Special Criminal Anti-Terrorism Appeals as the same have arisen out of the common judgment dated 05.07.2018. Appellant in the above mentioned both Appeals was convicted by the learned Judge, Anti-Terrorism Court No. XVIII, Karachi in (1) Special Case No.390/2018 arising out of FIR No.90/2018 for the offence u/s 4/5 Explosive Substances Act, 1908 r/w 7 ATA, 1997 and (2) Special Case No.391/2018 arising out of the FIR No.91/2018 for the offence u/s 23(1)A, Sindh Arms Act, 2013 registered at PS Jackson, Karachi; whereby the appellant was convicted and sentenced to suffer R.I. for seven (07) years for offence u/s 23(I)A SAA, 2013 and to pay fine of Rs.500. In case of default of payment, he shall further undergo SI for three (03) months. He was also convicted and sentenced to suffer RI for

fourteen (14) years for the offence u/s 5 of Explosive Substances Act, 1908. He was also convicted and sentenced to suffer RI for fourteen (14) years for the offence u/s 7(ff) of Anti-Terrorism Act, 1997. However, all the sentences were ordered to run concurrently except the payment of fine. The benefit of section 382-B Cr.P.C. was extended to the appellant.

2. Brief facts of the prosecution case as per FIR are that on 06.03.2018 at about 0130 hours complainant Inspector Madah Hussain of P.S Jackson, Karachi lodged two separate FIRs, stating therein that on the relevant night he was on patrol duty alongwith subordinate police officials ASI Gul Akhter, PC Tuseef Haider and Driver/PC Farman Ali in Government Police Car No. SPA-082. During course of patrolling he received spy information about the presence of a suspect at Ziauddin Hospital curve. On such information at about 0030 hours he reached at pointed place and caught hold one suspect. On inquiry suspect disclosed his name as Alamgir @ Alam son of Muhammad Qasim. Due to the non-cooperation by public, he cited ASI Gul Akhter and PC Tuseef Haider as witnesses, thereby conducted his personal search and recovered one hand grenade of brown colour with endorsement on clip as 69-HD-ARGES, one black colour 9 MM pistol loaded with three live bullets from right side fold of shalwar; original CNIC, driving license, Sindh Bank ATM Card with his name, a Sindh Local Government Service Card and a wallet containing cash Rs.350. On inquiry accused failed to produce license of the pistol. The memo of arrest and recovery was prepared at spot. Recovered arms ammunition were sealed at spot. The accused alongwith recovered inventory was brought at P.S where the supra FIRs were registered against him.

3. After the registration of FIRs, usual investigations were carried out as such on the conclusion of investigation I.O submitted charge sheet before the Administrative Judge, Anti-Terrorism Courts, Karachi Division, High Court of Sindh, Karachi. The trial Court received the R&Ps of two cases under the orders of Administrative Judge ATC, High Court of Sindh at Karachi on 27.03.2018 for disposal according to law.

4. Copies were supplied to appellant under Section 265-C Cr.P.C then an Application for Joint Charge under Section 21-M of ATA 1997 was submitted by APG at Ex.3, same was allowed . Joint Charge in both the cases was framed against accused at Ex.5 to which he pleaded not guilty and claimed for trial.

5. At the trial, prosecution examined PW-1/Complainant Inspector Madah Hussain at Ex.7, he produced departure entry at Ex.7/A, memo of arrest and recovery at Ex.7/B, arrival back entry at Ex.7/C, both FIRs at Ex.7/D & 7/E respectively and inspection note at Ex.7/F. PW-2 ASI Gul Akhter at Ex.8. PW-3 SIP Muhammad Amir at Ex.9, he produced entry for receiving information at Ex.9/A, departure entry at Ex.9/B, clearance certificate at Ex.9/C, arrival back entry at Ex.9/D, letter of I.O at Ex.9/E and inspection report of hand grenade at Ex.9/F. PW-4 Inspector Said Karim at Ex.10, he produced departure entry No.6 at Ex.10/A, arrival back entry at P.S Jackson at Ex.10/B, letter to FSL examiner at Ex.10/C and report of the FSL examiner at Ex.10/D, letter to Incharge CRO at Ex.10/E and letter of CRO office at Ex.10/F, letter to Home Department through proper channel in order to obtain permission at Ex.10/H and order of the Home Department at Ex.10/I.

6. Statement of the accused under section 342 Cr.P.C. was recorded at Ex.12, wherein he denied prosecution allegations and professed innocence. Accused in his statement further stated that *“He is innocent and nothing to do with the alleged offence. He was arrested by Rangers on 18.02.2018 at about 03:30 A.M from his home. He was kept in illegal confinement for 17/18 days, thereafter he was handed over to P.S Jackson. One police official informed him that he have been booked in above cases and be produced before Honourable High Court of Sindh Karachi for the purpose of remand. He pray for Justice”* The accused examined himself on oath as postulated under Section 340(2) Cr.P.C at Ex.13, wherein he adopted the previous statement. Accused also lead evidence in his defense and examined Jameel Ahmed as DW-1 at Ex.14.

7. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellant vide judgment dated 05.07.2018, which is impugned before this Court by way of filing the instant Appeals.

8. Learned counsel for the appellant mainly contended that the appellant is innocent and involved falsely in this case; that nothing was recovered from him and the grenade and pistol were foisted upon him; that he was picked up by the Rangers personnel from his house on 18.02.2018 and was kept in illegal confinement, thereafter he was handed over to police and the present false cases were registered; that no private mashirs were made as witnesses in recovery proceedings hence police violated the provisions of Section 103 Cr.P.C; that there are major contradictions in the case of prosecution; that all the witnesses are police officials and are interested; that prosecution has failed to adduce confidence

inspiring and trustworthy evidence before the trial Court; that prosecution failed to prove its case beyond reasonable doubt; that reports of FSL and chemical examiner were managed by the police. Lastly, he prayed for acquittal of the appellant by extending him benefit of doubt.

9. Learned Deputy Prosecutor General contended that prosecution has proved the case against the appellant by producing confidence inspiring evidence; that there is no violation of Section 103 Cr.P.C as police officials tried to associate the private persons in recovery proceedings but private persons refused; that police officials fully supported the case and their evidence has support of FSL and chemical examiner report; that no enmity or ill-will is suggested about the appellant during cross-examination of witnesses; that witnesses were cross-examined at length but no major contradiction has been pointed out by the defence counsel. Lastly, by supporting the impugned judgment has prayed for dismissal of the instant appeals.

10. We have heard the counsel for the parties and perused the material available on record with their assistance.

11. Before the trial Court, Inspector Madah Hussain was examined who deposed that on 05.03.2018 he alongwith other police officials was busy in patrolling in the jurisdiction of PS Jackson. On information, he arrested the appellant and on search one hand grenade of brown colour ARGES HD-69 device and one 9mm black colour pistol loaded with three live bullets was recovered alongwith one original CNIC, driving license, ATM card of Sindh Bank, service card of Local Government and wallet containing Rs.350/- were recovered. He further deposed that pistol

and live bullets were sealed at spot and mashirnama of recovery and arrest was prepared. He deposed that since the private persons refused therefore he made police officials as witnesses of recovery and arrest. After registration of FIRs, he handed over the FIRs for investigation to Inspector Syed Karim. He identified the accused and recovered property available before the Court to be same. He was cross-examined at length but we do not find any substantial contradictions.

12. In support of evidence of Inspector Madah Hussain, prosecution examined ASI Gul Akhtar, who fully supported the evidence of Inspector Madah Hussain and deposed that on 05.03.2018, he alongwith complainant and other police officials was on patrolling duty when they received information about the presence of suspect. On information, they proceeded and on reaching the designated place they found the appellant whom they arrested and on search one hand grenade, one 9mm pistol with 03 live bullets and one CNIC, driving license, service card, ATM card and cash of Rs.350/- were recovered. He further deposed that pistol and live bullets were sealed at spot, mashirnama of arrest and recovery was prepared. He further deposed that investigation officer visited the place of recovery in his presence and also recorded his statement under section 161 Cr.P.C. This witness was also cross-examined at length but no major contradiction has been pointed out by defence counsel.

13. Prosecution in support of the case examined SIP Muhammad Amin of BDU who deposed before the trial Court that he on information/message reached at PS Jackson alongwith BD team where Wasi Shahid Mehmood handed over him one grenade in FIR

No.90/2018 which he inspected and found that it was ARGES-69 device without detonator, brownish colour was overlapping on its plastic body. He also deposed that he sealed such grenade and issued clearance certificate so also final detailed report which he also exhibited in his evidence before the trial Court alongwith other entries. He was cross-examined but defence counsel failed to succeed in getting any material contradictions in his evidence.

14. The most important witness was investigation officer Inspector Said Karim, who was examined by the prosecution and deposed that on 06-03-2018 he was entrusted the investigation of FIR No: 90/2018 and 91/2018, he also received case property as per mashirnama and police file of the cases. He called complainant and witnesses, visited place of arrest and recovery on their pointation and prepared mashirnama, recorded their statements under section 161 Cr.P.C. He further deposed that he dispatched the sealed parcel of recovered un licensed pistol and live bullets for FSL examination, he collected FSL report and chemical examiner reports which he produced in the trial court along with some entries made by him, he also collected the detailed report of BD team of hand grenade and thereafter he obtained permission from Home department as required U/S 7 of Explosive Substance, Act, submitted the challan. This witness was cross examined at length but learned counsel could not point out any major contradictions in his evidence.

15. The contentions of learned counsel for the appellant about non association of private witness as mashir of the arrest and recovery has no force as complainant in his evidence clearly stated that private persons did not cooperate with him. Record reflects

that statement on oath U/S 342 (2) of the appellant was recorded wherein he admitted that he visited the India although he denied that he was involved in terrorist activities from 1990 till his arrest and visited India for purpose of training from RAW. He also denied the suggestions of learned APG and stated that “ it is incorrect that I am indulge in collection of Chanda and Qurbani skin forcibly”.

16. The next contention of the learned counsel of the appellant was that the appellant was arrested on 18-02-2018 from his home by the Rangers personals, who blind folded him and detained him in illegal confinement for about 17/18 days before handing over him to the police, who thereafter foisted grenade and pistol with bullets against him and registered false cases. We find no force in the contentions for the reason that, appellant in his statement on oath U/S 342 (2) Cr.P.C not stated a single word about the presence and arrest of Jameel Ahmed by the Rangers in his chief-examination. He produce Jameel Ahmed as his DW who gave a different story and stated that he (Jameel Ahmed) was arrested by Rangers to whom his wife showed his CNIC and on conformation of his name as Jameel Ahmed they inquired about appellant and took him towards the door of appellant and arrested the appellant in his presence. No application to higher authorities or any Constitutional Petition was filed by either the wife or other relatives of appellant for release of appellant despite a lapse of 17/18 days despite knowing of his alleged arrest by the rangers, which suggests that the appellant managed a false story to save his skin.

17. We find that the description of the hand grenade was available in the mashirnama of arrest and recovery and same are matching with the clearance certificate issued by the BDU so also

detailed report of BD team is in line with the prosecution case. Although some minor contradictions are available in evidence they are not material and are insufficient to discard the evidence of the prosecution which is based on oral and documentary evidence. Minor contradictions are available in each and every case as no one can give evidence like photograph. The recovery of hand grenade, 9MM pistol and live bullets is proven by prosecution by producing confidence inspiring and trustworthy evidence supported by the BDU reports so also report of chemical examiner.

18. It is well settled principal of law that the Police officials are as good as private witnesses and their testimony could not be discarded merely for the reason that they are police officials, unless the defense would succeed in giving dent to the statements of prosecution police witnesses and prove their mala fide or ill-will against accused. It is matter of record that no suggestion against the police officials of enmity or ill-will was made during cross examination nor any application or petition against Rangers officials was filed before any forum, though the family of appellant has sufficient time to do so according to their defense taken in the proceedings,.

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

JUDGE

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