

**IN THE HIGH COURT OF SINDH AT
KARACHI**

**SPL. ANTI TERRORISM APPEAL NO.D-92 OF 2017.
SPL. ANTI TERRORISM APPEAL NO.D-93 OF 2017.
SPL. ANTI TERRORISM APPEAL NO.D-94 OF 2017.**

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR &
MR. JUSTICE KHADIM ALI M. SHAIKH

Appellants : Abdul Sami Khan

Mohammad Mazhar Islam

Muhammad Sohail Akhtar
through: Mr. Mumtaz Ali Khan
Deshmukh, Advocate.

Respondent : The State,
through Mr. Abrar Ali Khichi, DPG.

Date of hearing : 10th October 2017

Date of Judgment: 10th October 2017

JUDGMENT

SALAHUDDIN PANHWAR, J:- Through captioned appeals, the appellants have assailed the common Judgment dated 28.03.2017 passed by learned Judge Anti Terrorism Court IX, Karachi Division, in Special Case Nos. 1119, 1120, 1121 &

1122 all of 2016 in different crimes, registered at Police station Rizvia Society, under section 4/5 Explosive Act, read with section 7 of ATA 1997 & 23(i)-A SAA, whereby they have been convicted for the period of 14, 07 & 05 years separately.

2. Precisely, relevant facts are that accused persons were found in possession of explosive substance, illicit arms and ammunition without having any license.

3. To substantiate its case, prosecution examined four witnesses whereas, after statement of accused under section 342 Cr.P.C., appellants in their defense examined Mst. Sorraya Begum and produced FIR bearing crime No. 366/16, registered under Section 365 PPC at P.S Madina Town (Faisalabad), showing therein that her sons (appellants, namely, Muhammad Mazhar-ul-Islam and Muhammad Suhail Akhtar) have been abducted as well she produced commission report and memo of petition No. 21772 of 2016 filed in Lahore High Court, seeking therein production of appellants.

4. Heard and perused the record.

5. We have scanned the evidence brought on record minutely as well considered defense version in juxtaposition with prosecution case.

6. Admittedly, FIR No. 366/16 of P.S. Madina Town filed by Surriya Begum shows that her sons (appellants, namely, Muhammad Mazhar-ul-Islam and Muhammad Suhail Akhtar)

have been abducted by the agencies, petition and FIR show that both are much prior to lodgment in question FIR. Besides, recovery mashirnama speaks that at the time of arrest one Kalashnikov was in hand of Muhammad Mazhar Islam and same was referred for FSL but the FSL report shows that one 44 bore rifle was examined which *entirely* negates claim of recovery of Kalashnikov and its referral to FSL. Besides, there is another interesting aspect that date of occurrence, as per Bomb Disposal Unit, Special Branch, Karachi is 10.06.2016, whereas FIR and Mashirnama show that occurrence allegedly happened on 18.06.2016. There can be no legal justification that how before the date of occurrence explosive can be examined by the Bomb Disposal Squad?. At this juncture, it would be conducive to refer relevant lines of cross-examination of PW- Abid Farooq SIP posted at Bomb Disposal Unit, West Zone, Karachi, wherein he admits date of occurrence as '**10.6.2016**':

*“It is a fact that the both final inspection reports in respect of the explosive substance (Ex:7-F and Ex: 7-G) were issued and signed by me. It is a fact that in the both final inspection reports in respect of the explosive substance (Ex:7-F and Ex;7-G) **the date of occurrence as shown by me is 10-06-2016.**”*

Such report was never worth convincing to convict the appellants because it was *prima facie* speaking about some *incident*, occurred on **10.6.2016** while appellants were being tried for an incident, allegedly happened on **18.6.2016**.

Worth to add that such *clear* and *categorical* statement of the said witness of prosecution *itself* was never challenged nor even was attempted to be claimed as *mistake*. While putting defense version in view of FSL report and cross-examination of this witness apparently this cannot be ruled out that in question property was foisted upon the appellants. The *defence* version was appearing to be more reasonable hence the appellants were entitled to acquittal not as a matter of grace but as *right*. Reference may be made to the case of Muhammad Akram v State (2012 SCMR 440) wherein it is held as:

“It is cardinal principle of law that in such like cases of two versions, one is to be believed in toto and not in piecemeal. This proposition of law is well settled by now as reflected in the case of Safdar Ali v Crown (PLD 1953 FC 93) wherein it has been held that in a criminal case it is duty of the court to review the entire evidence that has been produced by the prosecution and the defence. If, after examination of whole evidence the, court is of the opinion that there is reasonable possibility that the defence put forth by the accused might be true, it is clear that such a view reacts on the whole prosecution case. In these circumstances, the accused is entitled to the benefit of doubt not as a matter of grace **but as of right** because the prosecution has not provided its case beyond reasonable doubt. The aforesaid principle has been further elaborated in the case of Nadeem-ul Haq Khan & others v The State (1985 SCMR 510).

Needless to mention that it is responsibility of prosecution to prove the case beyond the reasonable shadow of doubt but in the instant case we are of the view that prosecution has failed to prove the same, hence, we while extending benefit of doubt acquitted above named appellants. These are the reasons for short order passed today i.e. 10.10.2017.

J U D G E

J U D G E

Karachi, dated:

Sajid