

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Nazar Akbar

Mr. Justice Zulfiqar Ahmad Khan

Special Cr. Anti-Terrorism Appeal No. 101 of 2020

Special Cr. Anti-Terrorism Appeal No. 102 of 2020

Appellant in Spl. Cr.
ATA No.101 of 2020 : Syed Zain-ud-din through
Mr. Aamir Mansoob Qureshi, Advocate

Appellant in Spl. Cr.
ATA No.102 of 2020 : Agha Jan through
Mr. Amir Mansoob Qureshi, Advocate

State : Through Mr. Zafar Ahmed Khan,
Additional Prosecutor General, Sindh.

Date of Hearing : 16.12.2020

J U D G M E N T

Zulfiqar Ahmad Khan, J:- Through instant appeals, Appellants have assailed their conviction and sentences recorded by the learned Anti-Terrorism Court No.-XI, Karachi, by judgment dated 20.07.2020, passed in Special Case No.15(XI) of 2019 and Juvenile Case No.06 (xi)/2020, arising out of FIR No.106 of 2019 for offences under section 4/5/6 of Explosive Substances Act, 1908 read with section 7 ATA, 1997, registered with P.S CTD, Karachi. On conclusion of the trial, accused were found guilty and consequently convicted and sentenced under section 265-H(2) Cr.P.C as under:

- i) For the offence under section 5 of the Explosive Substances Act, 1908, appellant Syed Zain-ud-Din was convicted and sentenced to suffer imprisonment for fourteen (14) years.
- ii) For the offence under section 7(1)(ff) of ATA, 1997, appellant Syed Zain-ud-Din was convicted and sentenced to suffer imprisonment for fourteen (14) years.

- iii) For the offence under section 5 of Explosive Substances Act, 1908, appellant Aga Jan was convicted and sentenced to suffer imprisonment for fourteen (14) years.
- iv) For the offence under section 7(1)(ff) of ATA, 1997, appellant Aga Jan was convicted and sentenced to suffer imprisonment for fourteen (14) years.

All the sentences were ordered to run concurrently and benefit of Section 382-B Cr.P.C. was also extended to the accused.

2. The prosecution story unfolded in the FIR is that ASI Tanveer Hussain posted at CTD/TKWG, Sindh, Karachi was busy inside Karachi city for searching proclaimed offenders and terrorists alongwith HC Murad Alam, SB HC Majid Khan, PC Athar Rizvi, PC Waqar Raza and PC Rao Qurban on official Mobile No.SPB-232. During course of search, spy informed that two alleged culprits namely, Muhammad Ashraf and Saifullah, and Asmatullah affiliated with proscribed organization Jamat Ul Ahrar (JuA), transported two suicide jackets through Adda owner Wali Jan, Driver Aliullah @ Waliullah in a Bus bearing No.BSB-791 from Chaman, Balochistan to Karachi. He alongwith subordinates reached at Al-Muslim Coach Adda in Sohrab Goth at 17:30O hours, where by finding two persons in suspicious condition, namely Syed Zain-ud-Din and Aga Jan, carrying two small fridges of grey colour, were apprehended by them and both the fridges were taken into possession. In presence of witnesses HC Majid Khan, PC Athar Rizvi, checked both the fridges through Incharge-BDU inspector Ghulam Mustafa Arain and recovered two prepared jackets of grey coloured, secretly concealed inside of each two fridges. After defusing, the jackets were handed over to the complainant. On conducting further search, from right armpit pocket of the Qameez of accused Syed Zain-ud-din his CNIC, cash of Rs.460/- and one used black colour Nokia mobile phone alongwith SIM were recovered. Whereas, from right armpit pocket of the Qameez of accused Agha Jan cash of Rs.430/- and one used red colour Nokia mobile phone alongwith SIM were recovered.

3. After usual investigation, challan was submitted against the accused/appellants before the competent court of law. Then, trial court framed charge against both the appellants at Exh.05 and later on framed amended charge against the appellant Syed Zain-ud-din at Exh.06, and against appellant Agha Jan at Exh.02 under Juvenile Justice System Act, 2018, to which they pleaded not guilty and claimed to be tried.

4. At trial, prosecution examined five (05) witnesses namely, PW-01 PI Ghulam Mustafa Arain of BDU at Exh.07, PW-02 ASI Syed Tanveer Hussain at Exh.08, PW-03 HC Majid khan at Exh.09, PW-04 PC Athar Rizvi at Exh.10 and PW-05 IO Ali Haider at Exh.11/D, who produced certain documents during their evidence. Thereafter, prosecution side was closed vide statement at Exh.12. Statements of accused under Section 342 Cr.P.C were recorded at Exh.13 and at Exh.09, in which they denied all the allegations leveled against them and claimed that they are innocent and have been falsely implicated in these cases by the police. Appellant Syed Zain-ud-din however did not examine himself on oath, whereas Appellant Agha Jan examined himself on oath.

5. Trial Court after hearing learned counsel for the parties and assessment of evidence as well as perusal of record by judgment dated 20.07.2020 convicted and sentenced the appellants, as stated above. Hence the present appeals.

6. Learned counsel for the appellants contended that that the impugned judgment is illegal, unlawful, arbitrary and is unwarranted by law, so also, bad in law as well as on facts, and is not in consonance with the evidence which was brought on record and is liable to be *set aside*, thus the appellant/accused are entitled for acquittal, and that too they are innocent and have been falsely implicated in this managed case. He also contended that the learned trial Court did not consider the discrepancies and contradictions in the statements of PWs and has overlooked the evidence to convict the appellants in the above case. In this context,

learned counsel has categorically pointed out discrepancies in the evidence of PW-1 Ghulam Mustafa Arain, who deposed that both the fridges were packed in cartons, while PW-2 in his examination in chief stated that they saw accused carrying gray coloured refrigerators, but in the cross, by changing his stance stated that the fridges were packed in light ghatta, which too, he did not produce before the trial court. He further contended that the case property was not sealed at the spot; that the accused namely Wali Jan, who was nominated in the FIR, has already been acquitted by the trial Court; that the FIR was lodged at 1915 hours, however, the BDU was still in process of checking the jackets; and that the case property was sent to the chemical examiner with seven days' delay without any justification. In support of his contentions, learned counsel for the appellants has placed reliance on the cases reported as 1995 SCMR 599, 2019 SCMR 631, 2018 SCMR 1425 and 2006 PLD Karachi 698. Lastly, learned counsel for the appellants prayed for acquittal of the present appellants.

7. On the other hand learned Additional Prosecutor General has fully supported the impugned judgment and contended that the trial Court has rightly convicted the accused on the basis of evidence brought on record by the prosecution. Lastly, he prayed for dismissal of these present appeals.

8. We have heard learned Additional Prosecutor General for the State and have minutely scanned the entire evidence available on record.

9. Summarized deposition of PW-01 Inspector Ghulam Mustafa Arain at Ex.07 is that on 20.05.2019 he was present at BD Base Headquarter South Zone Karachi where he received phone call of DSP Ali Raza of CTD, Garden, Karachi at about 16:46 hours in which he called Bomb Disposal Team at CTD, Garden. On such information, he kept entry No.31 in the Roznamcha of BD Headquarters South Zone, he called Driver of BD vehicle from Airport Base and passed on such information to high ups.

Thereafter, he along with Driver/PC Abdul Aziz, in EOD Van bearing No.SPE-42 proceeded to the pointed place vide departure entry No.33 at about 1716 hours. He was on the way, he again received phone call of DSP Ali Raza, who directed him to reach directly to Sohrab Goth, New Muslim Coach Adda, on that direction, he reached at the pointed place at about 17:50 hours. When he reached there, at that time DSP Ali Raza of CTD and other high ups of police were already present. He met with DSP Ali Raza, who pointed out towards two fridges/refrigerators of small size and informed him that they had information of explosive material in the fridges/refrigerators. He got vacated the related area, thereafter, he alongwith his BD Team inspected the fridges/refrigerators. He inspected both the fridges/refrigerators with Explosive Detector, on checking Explosive Detector alarmed which was sign that Explosive Substance was present in the fridges/refrigerators. After detecting the Explosive Substance, he met with DSP Ali Raza, informed him about the situation, took further information from him about the situation. DSP Ali Raza told him that they had information of two suicide jackets. On that information, **he again started inspection, both fridges/refrigerators were packed in cartons. He separated the carton packing of both fridges/refrigerators,** he inspected the fridges/refrigerators one by one, but not found anything visible. On further inspection of the fridges/refrigerators, he found from backside of fridge/refrigerator upper portion of refrigerator upon compressor, that fitting was suspicious. He removed the backside fitting, of one refrigerator, he found Explosive Substance wrapped in gray colour parachute cloth, he found black colour belt was fixed with the parachute cloth. Then, he took out the parachute cloth including Explosive Substance alongwith belt. He removed parachute cloth from front side, on that he found explosive material of off-white colour. Slabs of small size ball bearings were fixed over the explosive material, Det Cord (Detonating, Wire) having length of one meter was fixed inside the explosive and its one side was outside of the

explosive, having loop on the Det Cord for fixing, the Detonator. He found two batteries of 9 Volts, written on both batteries "Heavy Duty Durable, one homemade electric detonator with electric wire with it was fixed one electric One & Off button (switch). He removed the detonator from the system. The jacket was weighed about 4 KGs in total. After inspection of first suicide jacket he started inspection of second suicide jacket. On inspection he took out the suicide jacket from the backside of the refrigerator, inspected the suicide jacket cautiously, found the explosive material present in it also, colour of parachute cloth was same, colour of belt was also same, explosive, slabs of ball bearing, Det Cord present in it were almost same. On inspection of second suicide jacket, he found one mechanical striker in place of electric detonator. After inspection, he safely separated the mechanical striker from the suicide jackets. On inspection of second suicide jackets, he found another non-electric detonator was lying inside the suicide jacket. He found on the outer side of both suicide jackets, on gray colour parachute cloth on outer side of both written in Urdu language "Chharray Side". After completing the inspection carried the Explosive Substance with himself came along with CTD officials at CTD, Garden, then Inspector Ali Haider was assigned to participate in further inspection process. He completed the inspection, packed the Explosive material, sealed it in one carton box, and handed over two samples of explosive material to Inspector Ali Haider before sealing the case property. Thereafter, he issued clearance certificate at about **2130** hours, which was signed by Inspector Ali Haider and him. After completion of proceedings, he proceeded from CTD Garden to his place of posting BDU Airport, East Zone, therefrom came to Bomb Disposal Headquarters, South Zone, Karachi, he reached there at about 2300 hours and kept such arrival entry No.38 in the Roznamcha. Thereafter, on 27.05.2019, he received DO letter mentioning crime number 106/2019 of I.O Inspector Ali Haider for issuance of final inspection report. He issued final inspection report of the case property and forwarded to high ups on the same day. Case property

two small size fridges/refrigerators, and one sealed carton box produced in court. The sealed carton box was desealed and on desealing it came out two suicide jackets gray colour, one suicide jacket with electric detonator produced as article-1, and other suicide jacket with mechanical striker system produced as article-2. Case property two suicide jackets and two small size fridges/refrigerators present in the court are same. In his cross examination, he stated as under:-

- *“It is correct to suggest that it is not mentioned in final inspection report Ex.07/E, that I weighed the explosive material.*
- *It is correct to suggest that it is also not mentioned in final inspection report Ex.07/E, that after separation of sample from the suicide jackets I again weighted the explosive material.*
- *It is correct to suggest that at the time of issuance of final inspection report case property was not with me at BDU”.*

10. PW-2 Complainant ASI Syed Tanveer Hussain at Ex.08 deposed that on 20.05.2019 he alongwith PC Athar Rizvi, HC Murad Alam, HC Majid Khan and PC Waqqar Raza left CTD Garden at about 1635 hours vide departure entry No.26 for prevention of crime activities in city. They proceeded from the CTD, Garden, in the meanwhile after 5/6 minutes he received phone call of spy informer, who informed him that suicide jackets hidden in the secret portions of the refrigerators are being brought from Chaman. Baluchistan by Muhammad Ashraf, Azmatullah, Saifullah and Wali Khan Owner of Al-Muslim Coach Adda, Sohrab Goth, to Karachi. Considering the spy information true, he made phone call to my high ups and asked them to send a BD team at Sohrab Goth. Then they proceeded to Muslim Coach Adda Sohrab Goth and reached there at about 1730 hours. **When they reached there, they saw two suspects going, carrying two gray colour refrigerators.** He with the help of police party stopped both the suspects, they took both refrigerators into their possession and got checked both fridges from BD. BD checked both

fridges in presence of PC Athar Rizvi and HC Majid Khan. During checking, one suicide jacket was recovered from each fridge. He inquired names from both suspects in presence of PC Athar and HC Majid. One accused disclosed his name as Zain-ud-Din, on his personal search recovered Rs 460/-, CNIC and mobile phone black colour with SIM. Other accused disclosed his name as Agha Jan, on his personal search recovered Rs.430/-, and one mobile phone red colour. He arrested both accused for commission of offence punishable under section 4/5 Explosive Substances Act, 1908. Then, he prepared memo of arrest recovery and seizure, which was signed by HC Majid and PC Athar Rizvi. After completion of proceedings, they alongwith arrested accused, case property and BD team returned to CTD Garden. Then he proceeded to CTD, Civil Lines and registered FIR No.106/2019, offence under section 4, 5 & 6 of Explosive Substances Act, 1908, R/W Section 7 of ATA, 1997 PS CTD Karachi. He also made entry No.14 regarding registration of FIR in the Roznamcha. After registration of FIR he proceeded from CTD Civil lines to CTD Garden. During investigation, he and HC Majid Khan at about 2130 hours accompanied I.O Inspector Ali Haider to the place of incident. They reached there at about 2230 hours. He pointed out the place of incident in presence of HC Majid Khan to the I.O. I.O inspected the same and prepared memo of inspection of place of incident which was signed by him and HC Majid Khan. Thereafter, they returned back at CTD Garden, where I.O recorded his statement under section 161 Cr.P.C. in his cross examination he admitted that ***“Both fridges were packed in light ghatta box at the time of recovery. It is correct to suggest that ghatta boxes are not produced in court”***.

11. PW-3 HC Majid Khan at Ex.09 had deposed that on 20.05.2019, he alongwith PC Athar Rizvi, PC Waqar Raza, PC Rao Farman, HC Murad Alam and ASI Tanveer Hussain proceeded at about 1635 hours from CTD Garden in police mobile No.SPB-232 for patrolling in the area. During patrolling ASI Tanveer Hussain received spy information, that Muhammad

Ashraf, Azmatullah, Saifullah have transported two fridges containing suicide jackets from District Chamman Baluchistan through Bus with the help of Bus Adda Owner Wali Jan, Adda Owner, Munshi are in contact with the companions of the accused who would come to the Adda for receiving the suicide jackets. ASI Tanveer Hussain passed on such spy information to high ups and requested to send BD team. They reached at Al-Muslim Coach Adda, Sohrab Goth at about 1730 hours. They saw two accused carrying small size fridges on their shoulders and apprehended them. BD Incharge Mustafa Arain also reached at the place of recovery, ASI Tanveer Hussain handed over both fridges to Mustafa Arain of BD Team, who checked the fridges in his presence and in presence of PC Athar Rizvi. On checking of fridges, recovered one gray colour suicide jacket from secret portion of each fridge, Mustafa Arain of BD defused the suicide jackets, thereafter, handed over to ASI Tanveer Hussain. ASI Tanveer Hussain inquired names from apprehended accused in his presence and in presence of PC Athar Rizvi, on inquiry one accused disclosed his name as Zain-ud-Din, on his personal search recovered one Mobile, CNIC and cash amount of Rs.460/-. Other accused disclosed his name as Agha Jan, on his personal search recovered cash amount of Rs.430/-, one mobile phone, SIM and CNIC. Accused were arrested and such memo of arrest, recovery and personal search was prepared at the spot which was signed by him and PC Athar Rizvi. Thereafter, they returned back at CTD, Garden. Accused were locked up and ASI Tanveer Hussain proceeded from CTD, Garden to CTD, Civil Lines for registration of FIR against the accused. During the course of investigation complainant ASI Tanveer Hussain, he, PC Athar Rizvi and others accompanied I.O Inspector Ali Haider to the place of recovery. When they reached at the place of incident complainant ASI Tanveer Hussain pointed out the place of incident in his presence to the IO at about 2230 hours, IO inspected the same and prepared such memo of inspection of place of incident at the spot which was signed by him and complainant. Thereafter, they returned

back at CTD, Garden at about 2330 hours, there IO Ali Haider recorded his statement u/s 161 Cr.P.C. Case property being two small size fridges/refrigerators and suicide jackets article-1 and other suicide jacket article-2 were produced in the Court in desealed condition. Case property is same. Articles being two mobile phones, cash of Rs.460/- & Rs.430/- and one CNIC, recovered from personal search of the accused, were also produced in the Court without sealed condition. Article of personal search are same.

12. PW-04 PC Athar Rizvi at Exh.10 had deposed that on 20.05.2019 at about 04:35 p.m, police party consisting upon ASI Tanveer, HC Murad Alam, HC Majid, HC Waqar Raza and he himself left CTD, Garden and proceeded in police mobile for patrolling. They were on the way after 5/6 minutes ASI Tanveer Hussain received spy information that suicide jackets were being brought from Quetta Baluchistan to Karachi. On that information, they reached at Al-Muslim Coach Adda, Sohrab Goth at about 05:30 p.m. when they reached there they saw two suspects while carrying two fridges. They stopped them. ASI Tanveer informed about the suspects to the high ups and also informed Bomb Disposal Squad. Bomb Disposal Squad came at the pointed place, Bomb Disposal Squad opened the fridges with care in his presence and in presence of HC Majid. BDS recovered two suicide jackets, one from each fridge kept in secret space of both fridges. BDS defused the suicide jackets on by one. ASI Tanveer inquired names from the accused in his presence and HC Majid. One accused disclosed his name as Zain-ud-Din, on his personal search Rs.460/-, Nokia black colour mobile phone and CNIC were recovered. Another accused disclosed his name as Agha Jan, during his personal search, Rs.430/-, one Nokia Mobile phone red colour were also recovered. Accused were arrested and such memo of arrest and recovery was prepared which was signed by him and HC Majid. Thereafter, they alongwith arrested accused, case property and BD Team they returned back at CTD, Garden. During investigation, IO Inspector Ali Haider

recorded his statement u/s 161 Cr.P.C. Thereafter, on 29.05.2019, IO Inspector Ali Haider received spy information that the Coach which was used in transportation of the suicide jackets from Baluchistan to Karachi is present at Baluchistain Coach Adda, Sohrab Goth, Karachi. On that information, police party consisting upon IO Inspector Ali Haider, HC Murad, PC Waqar, HC Majid and he proceeded to the pointed place. They reached at the Coach Adda at about 01:15 p.m., Coach Red colour maker Daewoo bearing registration number BSB-791 was parked, IO Inspector Ali Haider seized the Coach in his presence and in presence of HC Majid and prepared such memo of seizure which was signed by him and HC Majid Khan. After completion of proceedings, they brought the Coach at CTD, Garden. IO Inspector Ali Haider recorded his statement u/s 161 Cr.P.C. Case property being two small size fridges/refrigerators and suicide jackets article-1 and other suicide jacket Article-2 were produced in court in desealed condition. Case property is same. Articles of personal search produced in court without sealed condition. Two mobile phones, cash amount of Rs.460/- and Rs.430/-, and one CNIC. Articles of personal search are same. Coach bearing registration number BSP-791 is produced and parked outside Court premises.

13. PW-5 Inspector Ali Haider I.O of the case at Ex.11 had deposed that on 20.05.2019 he was posted as Inspector at CTD, Garden in investigation branch. He received investigation of case crime number 106/2019. He received FIR, memo of arrest and recovery, articles of personal search of accused and two small size fridges were handed over to him by complainant ASI Tanveer of PS CTD, Garden, Karachi, while Bomb Disposal unit Incharge Inspector Ghulam Mustafa Arain was also present at CTD, Garden and he was finalizing the inspection of Explosive Substance viz. two suicide jackets, prepared two samples for examination through Explosive Analysis Laboratory. After completion of inspection of suicide jackets, Inspector Ghulam Mustafa Arain of BDU handed over him, one packed gatta parcel containing two defused suicide jackets, two

samples of Explosive substances packed in two glass bottles and also handed over him a clearance certificate. Thereafter, he alongwith complainant ASI Tanveer Hussain, HC Majid Khan, PC Murad Ali and Driver/PC Waqqar Raza proceeded from CTD, Garden in police mobile vide entry No.29 at about 2130 hours to the place of incident for inspection of the place of arrest and recovery. They reached at the place of incident, where complainant ASI Tanveer Hussain in presence of other witness Majid pointed out the place of recovery and arrest to him at about 2230 hours. He inspected the place of incident and prepared such memo of inspection which was signed by complainant ASI Tanveer Hussain and HC Majid Khan. After completion of proceedings of inspection, they returned back at CTD, Garden vide arrival entry No.31 at about 2330 hours. Thereafter, he recorded statements of complainant ASI Tanveer Hussain, HC Majid Khan and PC Athar under section 161 Cr.P.C. On 21.05.2019 he interrogated both the accused one by one and during interrogation accused Zain-u-Din further disclosed that he is Munshi at the Adda. Accused Agha Jan disclosed that he is conductor of Bus and driver Waliullah transported two fridges through Bus bearing registration No.BSB-791. Accused Agha Jan disclosed that an unknown person had come at Adda for collecting the fridges, the said unknown person had gone to Adda Munshi Syed Zain-ud-Din for enquiry, when he returned at that time said person was not present. Then, he started search of the accused and Bus. On next day he again interrogated the accused who disclosed that they had reached Karachi at about 07:00 a.m. when he was unloading the Coach that unknown person came. On 28.05.2019 he deposited the samples of case property with Industrial Analytical Centre [IAC] H.E.J Research Institute of Chemistry, University of Karachi for examination alongwith Pay Order. On 29.05.2019, he was busy in search of accused, he received spy information that Bus number BSB-791 is present at Baluchistan Coach Adda, Sohrab Goth, Karachi. On such information he alongwith HC Majid Khan, PC Athar Rizvi, PC Murad and

Driver PC Waqqar Raza proceeded to Baluchistan Coach Adda, Sohrab Goth. When they reached at the Adda, they found the said Coach was parked amongst other coaches. He in presence of witnesses HC Majid Khan and PC Athar Rizvi seized the Coach at about 1315 hours and prepared such mashirnama of seizure at the spot, which was signed by the witnesses. After completion of proceedings they alongwith seized Coach came at CTD Garden and kept such arrival entry number 13 at about 1530 hours in Roznamcha. On 31.05.2019 he collected Positive Analysis Report from IAC. Case property being two small size fridges/refrigerators and suicide jackets article-1 and other suicide jacket article-2 were produced in court in desealed condition and articles of personal search viz. two mobile phones, cash amount of Rs.460/- cash amount of Rs.430/- and one CNIC produced in court without seal. Coach bearing registration number BSB-791 is produced and parked outside court premises.

14. From perusal of above evidence, we have noted material contradictions in the evidence of prosecution witnesses that is to say PW-1 in his examination in chief stated that when he again started inspection, both fridges/refrigerators were packed in cartons and he separated the carton packing of both fridges/refrigerators. Nonetheless, in the FIR, Memo of Arrest and Recovery and in deposition of PW-2 it has been mentioned that the police party saw two suspects going by carrying two gray colour refrigerators. However, said PW-2 in his cross examination admitted that both the fridges were packed in light ghatta box at the time of recovery and that the ghatta boxes were not produced in the trial Court.

15. We have also noted that the FIR was lodged on 20.05.2019 at 1915 hours, while PW-1 (Inspector Ghulam Mustafa Arain of BDU) was still under process of checking the jackets, who resultantly issued clearance certificate at 2130 hours on 20.05.2019. The said PW-01 in his cross

examination admitted that at the time of issuance of final inspection report case property was not with him. PW-5, Ali Haider, Investigating Officer in his evidence never specified that the case property was handed over to him in a sealed condition.

16. It has come on record that the case property was sent to the Industrial Centre, H.E.J Research Institute of Chemistry, University of Karachi for analysis of explosive material on 28.05.2019 with seven days' delay without any plausible justification, such delay stipulates jolts in the prosecution's version. With regard to the safe custody of the weapon at police station and its safe transit, the Honorable Apex Court in the case of **Kamaluddin alias Kamala V/S The State (2018 SCMR 577)** has held as under:

“Apart from that safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory had never been proved by the prosecution before the trial court through production of any witness concerned with such custody and transmission.”

17. From the above discussion, it is evident that the prosecution has failed to establish safe custody of the explosive material and its safe transit to the laboratory. It is also evident that the investigation and inquiry carried out is neither satisfactory nor free from *malice* and the accused's implication in the instant case is not free from doubts. They thus could not be left at the mercy of the police. The review of the impugned judgment shows that essential aspects of the case have slipped from the sight of the learned trial Court, which are sufficient to create shadow of doubt in the prosecution story. It is settled law that for creating doubt, many circumstances are not required and if a single circumstance creates a reasonable doubt in a prudent mind, then its benefit be given to the accused not as matter of grace or concession but as a matter of right. In the case of **Muhammad Mansha vs. The State (2018 SCMR 772)**, the Hon'ble Supreme Court has observed as follows:-

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be

many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that then guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."

18. In view of the above stated reasons, we have no hesitation to hold that there are several infirmities in the prosecution case, as discussed above, which have created doubt, therefore, we reached to an irresistible conclusion that the prosecution has utterly failed to prove its case against the appellants and the trial Court failed to appreciate the evidence according to the settled principles of law. False implication of the appellants could not be ruled out. Resultantly, these appeals were allowed by our short order dated 16.12.2020, whereby conviction and sentences recorded by the learned trial Court were set aside and appellants were acquitted of the charges.

19. These are the reasons of our short order dated 16.12.2020.

JUDGE

JUDGE

Karachi,
Dated __02.2021
Barkat Ali, PA