

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. CrI. A .T. Jail Appeals No. 52 & 53 of 2023

PRESENT:

*Justice Zafar Ahmed Rajput
Justice Amjad Ali Bohio*

Appellants in Spl. CrI. A.T: Nadeem s/o Dhani Bux and
Jail Appeal No. 52/2023 Imam-uddin s/o Muhammad Usman

Appellant in Spl. CrI. A.T : Yousuf s/o Muhammad Usman,
Jail Appeal No. 53/2023 all the appellants through Mr. Muhammad
Khan Shaikh, Advocate.

Respondent : The State, through Mr. Muhammad Iqbal
Awan, Addl. Prosecutor General, Sindh.
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Date of Hearing : 24.10.2023

Date of Order : 24.10.2023
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JUDGMENT

Amjad Ali Bohio, J.- These Spl. CrI. A. T. Jail Appeals are directed against the consolidated judgment, dated 28.02.2023, passed in Special Case Nos. 553/2021, 553-A/2021 (*arising out of FIR No. 1793/2021 registered at Police Station Shah Latif Town, Karachi under Section 4/5 of the Explosive Substance Act, 1908 r/w Section 7 of the Anti-Terrorism Act, 1997*) and Special Case No. 553-B/2021 (*arising out of FIR No. 1794/2021, registered at the said Police Station under Section 23(1)(a) of the Sindh Arms Act, 2013*), whereby the Anti-Terrorism Court No. II, Karachi ("*the trial Court*") convicted the appellants/accused and sentenced them, as under:

I. Accused Nadeem convicted for possessing hand grenade under suspicious circumstances as provided u/s 5 of Explosive Substance Act and sentenced u/s 265-H (II) Cr.P.C to suffer R.I for 3 (three) years. All the properties of convict Nadeem stands forfeited to Government as provided u/s 5-A of Explosive Substance Act.

II. Accused Imam-uddin convicted for possessing hand grenade under suspicious circumstances as provided u/s 5 of Explosive Substance Act and sentenced u/s 265-H (II) Cr.P.C to suffer R.I for 3 (three) years.

All the properties of convict Imam-uddin stands forfeited to Government as provided u/s 5-A of Explosive Substance Act.

III. Accused Yousuf convicted for offence u/s 23 (i) A, SAA to suffer R.I For 3 (three) years, and fine of Rs.3000/-; in default thereof, he shall suffer further S.I for three months.

2. It is alleged that, on 11.11.2021 at about 0500 hours, near the gate of Chaukhandi Graveyard, Malir Karachi, police party headed by ASI Aziz-ur-Rehman of P.S Shah Latif Town, Karachi apprehended the appellants and recovered one hand-grenade from the possession of each appellants, namely, Nadeem and Imam-uddin and an unlicensed T.T pistol, rubbed number, having a magazine loaded with six live bullets from the possession of appellant Yousuf, for that the appellants were booked in the aforesaid F.I.R.

3. After usual investigation, reports under Section 173, Cr.P.C were submitted before the trial Court. The appellants faced the trial, as they pleaded not guilty claiming to be innocent and falsely implicated. At the trial, the prosecution to prove its case examined PW-1 ASI Aziz-ur-Rehman (*complainant*) at Ex: 9; PW-2 Inspector Syed Sajjad Hussain Kazmi (*Bomb Disposal Officer*) at Ex: 10; PW-3 PC Muhammad Mustafa (*Mashir*) at Ex: 12; and PW-4 Inspector Muhammad Younis (*I.O*) at Ex: 13, who produced relevant documents and recovered articles during their evidence before trial Court. The statements of the appellants under Section 342, Cr.P.C, were recorded at Ex: 15 to Ex: 17, wherein they pleaded their innocence. However, they neither testified on oath as provided by Section 340(2), Cr.P.C, nor produced any witness in their defense. After hearing the parties and evaluating the evidence adduced by the prosecution, the trial Court recorded conviction of the appellants vide judgment impugned through these appeals.

4. We have heard the arguments advanced by the learned counsel for the appellants and the learned Addl. P.G. and scanned the material available on record with their assistance.

5. It is case of the prosecution, as narrated in the F.I.Rs. (Ex: 9/C & D) and deposition of P.Ws that on the alleged day P.W-1 ASI Aziz-ur-Rehman during patrolling along with his subordinate staff received spy information that three culprits, involved in various heinous criminal cases and armed with unlicensed weapons and hand-grenades, were planning for terrorist attack near the gate of Chaukhandi Graveyard. Upon such information, police party reached the pointed place and apprehended the appellants. Out of them, appellants Nadeem and Imam-uddin each were found in possession of one green colored hand-grenade with its pin from appellant Nadeem and Imam-uddin while appellant Yousuf was found in possession of an unlicensed T.T pistol in rusting condition, rubbed number, loaded with a magazine containing six live bullets. The alleged recovered firearms/arms were seized and the appellants were arrested under the memo of arrest and recovery (Ex: 9/B.). P.W-3 PC Muhammad Mustafa (*Mashir*) has corroborated these details, affirming the arrest and recovery of said firearms/arms from the possession of the appellants on the alleged day, time and place and has verified the contents of Ex: 9/B. PW-4 Inspector Muhammad Younis, (I.O) has testified that, on 11.11.2021, he received the case papers and case property in sealed condition and deposited in *Malkhana* Register No. 19. Vide Entry No. 848/21 (Ex: 13/B).

6. As per prosecution case, the spy communicated the information that *“three culprits involved in various heinous criminal cases and armed with unlicensed weapons and hand-grenades were planning for terrorist attack near the*

gate of Chaukhandi Graveyard". However, it is an admitted position that appellants are not previously convicted of any offence. It is matter of record that PW-2 Inspector Syed Sajjad Hussain Kazmi (*Bomb Disposal Officer*) has admitted in his cross-examination that the alleged hand-grenades were without detonators, and the same could not be exploded in ordinary manner. Besides, it is case of the prosecution that police party recovered from the possession of appellants Nadeem and Imam-uddin and seized two green colored hand-grenades, while as per Entry of *Malkhana* Register (*Ex: 13/B*), the color of the hand-grenades was white. It is also an admitted position that as per Inspection Report of Hand-Grenades (*Ex: 10/A*), there was marking of "ARGES, HdGr-69" on the main body of the hand-grenades, which number/marking on the hand-grenades is neither mentioned in the seizure memo nor in the F.I.R. Similarly, as per sketch of alleged recovered pistol made on memo of arrest and recovery (*Ex: 9/B*), it contains straight lines from top to bottom of its butt with mark of a star, but as per the photograph of the alleged pistol available with Forensic Report (*Ex: 13/L*), the pistol has half lines on the butt with no mark of star. Such discrepancies in the prosecution case lead to inference that either the hand-grenades and pistol deposited in the *Malkhana* were not the same which were allegedly recovered from the possession of the appellants or in fact no such arms were recovered from their possession and the same were foisted upon them. Due to above noted variances regarding the description of the said arms, the prosecution has failed to establish the recovery of the same from the possession of the appellants. Under such circumstances, no credibility can be attached with memo of arrest & recovery and FSL Reports.

7. For the forgoing facts and reasons, we are of the considered view that the prosecution has failed to prove the charge against the appellants beyond any reasonable doubt. It is by now a well settled principle of law that even a slightest doubt in the case of prosecution entitles the accused to be acquitted and it is not necessary that there should be series of contradictions and doubts, which could benefit the accused. In this context we are fortified with the case of *Riaz Maseh alias Mithu vs. State (1995 SCMR 1730)* and *Saeedullah vs. Shah Nazar and others (2001 P.Cr.L.J. 1740)*.

8. Consequently, we allow these Spl. Crl. A. T. Jail Appeals by setting aside the conviction and sentences recorded by the trial Court in Special Case Nos. 553/2021, 553-A/2021 and Special Case No. 553-B/2021 vide impugned judgment. The appellants are directed to be released forthwith if their custody is not required by any Court in any other case/crime.

9. Above are the reasons of our short order, dated 24.10.2023.

JUDGE

JUDGE