

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Special Anti-Terrorism Appeal No.D-51 of 2023

Before:

Mr. Justice Irshad Ali Shah

Mr. Justice Zulfiqar Ali Sangi

Appellants: 1) Aziz son of Naseer, 2) Mitha Khan son of Naseer, 3) Ghaffar son of Muhammad Murad all bycaste Domki **through** Mr. Abdul Baqi Jan Kakar, advocate.

The State: **Through** Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

Date of hearing 22-02-2024.

Date of decision 22-02-2024.

J U D G M E N T

IRSHAD ALI SHAH, J. It is the case of the prosecution that the appellants were found in possession 15 non-electric detonators with nut bolts etc, for that they were booked and reported upon by the police. On conclusion of trial they were convicted u/s 5 of Explosive Substance Act 1908 r/w section 7 of ATA, 1997 and sentenced to undergo rigorous imprisonment for three years with benefit of section 382 (b) Cr.P.C by learned Special Judge (ATC) Khairpur vide judgment dated 31-08-2023, which they have impugned before this Court by preferring the instant Special Anti-Terrorism Appeal.

2. It is contended by learned counsel for the appellants that they being innocent have been involved in this case falsely by the police by foisting upon them the alleged recovery and evidence of the PWs being doubtful in its character has been believed by learned trial Court without assigning cogent reasons; therefore, they are entitled to be acquitted of the charge by extending them benefit of doubt,

which is opposed by learned Deputy P.G for the State by contending that the prosecution has been able to prove its case against the appellants beyond shadow of doubt.

3. Heard arguments and perused the record.

4. As per complainant ASI Abid Hussain and PW/HC Khadim Hussain they went at the place of incident on spy information, if it was so, then they were having ample opportunity to associated with them the independent person to witness the arrest of the appellants and recovery of alleged explosive substance from them, such omission on their part could not be over looked. On asking they were fair enough to say that they reached at the place of incident within 10 minutes of spy information and found the appellants available at the pointed place. It is strange to note that the appellants kept waiting at least for ten minutes to be apprehended by them. Name of appellant Abdul Ghaffar, who allegedly made his escape good from the place of incident as alleged to have been disclosed by the co-appellants; if it was so, even then, such disclosure could not be used against him as evidence. The explosive substance allegedly recovered on 06-09-2022 as per PW/ASI Mumtaz Ahmed was subjected to its examination by him on 22-09-2022. Why with such delay? No explanation to it is offered by the prosecution. Evidence of I.O/Inspector Ashraf Ali prima-facie suggests that there was no criminal record against the appellants. The appellants during course of their examination u/s 342 Cr.P.C have pleaded innocence; such

plea on their part could not lost sight of in the circumstances of the case.

5. The conclusion, which could be drawn of above discussion would be that the prosecution has not been able to prove its case against the appellants beyond shadow of reasonable doubt and to such benefit, they are found entitled.

6. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, it has been held by the Hon'ble Apex court that;

"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 ten guilty persons be acquitted rather than one innocent person be convicted".

7. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellants under impugned judgment are set aside, they are acquitted of the offence with which they were charged, tried, convicted and sentenced by learned trial Court; they are present in Court on bail, their bail bonds are cancelled and sureties are discharged.

8. The instant Special Anti-Terrorism Appeal is disposed of accordingly.

Judge
Judge