

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: **SALAHUDDIN PANHWAR, &
ADNAN-UL-KARIM MEMON, JJ.**

SPL. CR. A.T. APPEAL NO.23 OF 2024

Appellant : Ameerullah S/o. Masta Jan,
Respondent : The State and another,

SPL. CR. A.T. APPEAL NO.24/2024

Appellant : Ameerullah s/o Masta Jan,
Respondent : The State and another,

Date of hearing & short order: 20.11.2024.

Appearance:

Mr. Ghulam Nabi Shar, advocate for appellant.
Mr. Abrar Ali Khichi, Additional Prosecutor General Sindh.

ORDER

SALAHUDDIN PANHWAR, J. Through instant appeals, appellant has challenged impugned consolidated judgment dated 12.12.2023 passed by the Anti-Terrorism Court in Special Case Nos.151/2023 (*FIR No.63/2023, u/s 4/5 Explosive Substance Act r/w Section 7 ATA 1997, PS Sohrab Goth*) and 151-A/2023 (*FIR No.64/2023 u/s 23(1)(a) S.A.A. 2013, PS Sohrab Goth*), whereby appellant was convicted and sentenced as under:-

- a) U/s 5 of E.S.A. 1908 to suffer R.I. for 7 years.
- b) U/s 23(1)(a) S.A.A. 2013 to suffer R.I. for 7 years and fine of Rs.50,000/- and in case of default of payment to further suffer S.I. for 1 year.
with direction that sentences to run concurrently and with the benefit of Section 382-B Cr.P.C.

2. Precisely, relevant facts are that complainant ASI registered the FIRs that on 10.02.2023 he along with his staff namely HC Mir Nadir,

PC Sardar and DHC Tahir Sultan, making *Roznamcha* Entry No.31, left PS Sohrab Goth in police mobile for patrolling to curb crimes; that at service road near Ganna Mandi, Sohrab Goth, Karachi, they saw one person riding a motorcycle with one bag lying thereon, he coming from Al-Asif Square; they gave signal to him to stop for checking but he did not stop; that the police party tried to apprehend him during which he fell down on the road from his motorcycle and sustained bruises; that police party apprehended him at about 0030 hours with the help of staff in presence of official witnesses due to non-availability of private witnesses; that apprehended person disclosed his name as Ameerullah S/o. Masta Jaan; from him they recovered one bag of black color which was checked and found containing one grenade and one Kalashnikov without number being rubbed, magazine loaded with 28 live rounds. On checking the number of grenade, it was found written on it ARGES, HDGR and 69. Accused failed to produce any document of recovered grenade and license of arms and ammunitions; accused also failed to produce documents of motorcycle bearing Registration No.KLS-4209; nothing else was recovered. Recovered case properties were sealed at spot by complainant. The recovered motorcycle was got checked from CPLC and was found stolen on 24.01.2023 from the jurisdiction of P.S Sammanabad, which, was seized U/S 550 Cr.P.C. After completion of all formalities, accused and recovered case properties were brought to PS and FIRs were lodged.

3. Challan was submitted by I/O against the accused, on application u/s 21-M ATA 1997 moved by APG, amalgamated/joint trial of above cases was ordered; charge was framed against accused

for the offences under section 4/5 of Explosive Substances Act, read with Section 7 ATA 1997 and under section 23(1)(a) of SAA 2013 to which he pleaded not-guilty and claimed trial. During trial prosecution examined four PWs to prove its case, including PW-1 Incharge Bomb Disposal Unit (BDU) Inspector Muhammad Aamir, PW-2 Complainant ASI Nasir Iqbal, PW-3 I.O/Inspector Niaz Ahmed Mugheri and PW-4 *Mushir*/H.C Mir Nadir. The statement under section 342 Cr.P.C of the accused was recorded wherein he denied the allegations being false. The accused neither shown his willingness to examine himself on oath nor led any witness in his defense to disprove the charges as required U/S 340(2) Cr.P.C.

4. At the outset learned counsel for appellants contended that appellant was apprehended by some representatives of unknown agencies on 11.01.2023 when he left his house at 12.00 midnight from Ganna Mandi Super Market at Sohrab Goth, his elder brother Amanullah kept searching for appellant but to no avail, on 18.01.2023 said Amanullah sent applications to concerned authorities regarding missing of appellant from 11.01.2023 but with no result. It was further argued that on 19.01.2023 brother of appellant also filed C.P. No.D-453/2023 before this court for release/disclosure of his brother's illegal confinement, notice was issued on 26.01.2024 for 21.02.2023 and during pendency of said petition, on 25.01.2023 SHO of PS Sohrab Goth called the brother of appellant at police station and lodged FIR No.33/2023 under section 365/34 PPC on behalf of complainant Amanullah with regard to abduction of his brother, however in present FIRs lodged by police on 10.02.2023 appellant has been shown to have been arrested on

10.02.2023 at 12.30 a.m. It was contended that sending of application by brother of appellant to police authorities coupled with filing of constitutional petition for recovery of appellant and finally lodgment of FIR No.33/2023 with regard to abduction, prove that appellant was abducted prior to 10.02.2023 and present FIRs lodged on 10.02.2023 are fabricated. It was further argued that complainant alleged sustenance of injuries by appellant due to falling down while escaping from police however such injuries were actually sustained due to maltreatment by kidnappers in confinement prior to 10.02.2023; that place of alleged incident is a very thickly populated and busy area even at night times but complainant failed to associate any private witness from the locality to witness the recovery; that FIRs are silent as to defusing of alleged recovered grenade by the Bomb Disposal Team at the spot or at police station; that trial court has failed to apply its judicial mind on the narrated facts and passed the judgment in an expeditious manner which does not sustain and liable to be set aside.

5. Learned APG contended that incident took place on 10.02.2023 at about 12.30 a.m., police party led by complainant ASI arrested appellant/convict and recoveries as detailed in FIRs were made while he was riding on an stolen motorcycle in respect whereof another FIR was already lodged at PS Sammanabad; that four witnesses in this case were examined by prosecution who all supported and corroborated the version of prosecution including Incharge BDU who produced Clearance Certificate and Final Inspection Report which confirmed hand grenade contained explosive material that could be used; that PW-2 Complainant Nasir Iqbal was examined who gave

consistent and unimpeachable evidence confirming the arrest and recovery from the accused and produced relevant documents including memo of arrest & recovery; that PW-3 I/O was examined who supported case of prosecution and produced relevant documents including FSL report of unlicensed Kalashnikov which confirms recovered Kalashnikov was in working condition, he also produced the FIR in which recovered motorcycle was shown as stolen; that PW-4 *Mushir* HC Mir Nadir was examined who supported and corroborated the version of complainant; that the statement of accused U/S 342 Cr.P.C was recorded who produced documents in support of his defense claim regarding his missing. Regarding FIR for missing person and CP it was contended that those were lodged as tactics by family of the convicted accused to save his skin from punishment; that the prosecution proved its case beyond reasonable doubt hence appeals are liable to be dismissed.

6. We have carefully considered the submissions advanced by the learned counsel for the appellant and the learned Additional Prosecutor General. With their assistance, we have meticulously examined the evidence available on the record. Upon a meticulous examination of the record and documents presented, it is evident that the appellant's brother had been actively searching the appellant and had approached the relevant authorities in this regard. To substantiate this, the appellant has placed on record copies of letters addressed to the police authorities, along with TCS receipts dated 18.01.2023 (available at pages 61 to 77 of the file), duly exhibited as Exhibits 11/A to 11/L. Furthermore, a copy of Constitutional Petition No. D-453/2023 (available at pages 43 to 59), seeking disclosure of

the appellant's detention, if any, was filed on 19.01.2023. Additionally, a copy of FIR No. 33/2023, registered under Sections 365/34 of the Pakistan Penal Code (PPC) regarding the alleged abduction of the appellant, is available on record (at page 97). Conversely, the learned Additional Prosecutor General (APG) contended that the filing of the constitutional petition and the FIR concerning the missing person were strategic maneuvers by the appellant's family to shield the accused from legal consequences. However, this assertion by the learned APG is untenable, as the documentary evidence unequivocally demonstrates that efforts to locate the appellant had been initiated as early as January 2023, whereas the present FIRs were registered in February 2023. The circumstances reflected in the record lend credence to the appellant's claim that he was taken into custody prior to 10.02.2023, thereby casting substantial doubt on the prosecution's version of events as narrated in the present FIRs. It is a cardinal principle of criminal law that the prosecution bears the burden of establishing its case against the accused beyond a reasonable doubt. In the instant case, the circumstances discussed above raise significant doubt, undermining the credibility of the prosecution's case. Consequently, the possibility of the appellant's false implication in the present matter cannot be ruled out.

7. Regarding contention as to non-association of private witness from the locality at the time of recovery inspite of it being a very thickly populated and busy area even at night times as contended, worth to mention that the prosecution has not denied that place of arrest and recovery is a thickly populated and busy area but have

taken a plea that memo of arrest and recovery was prepared Complainant ASI in presence of police officials due to non-availability of private local witness being night time of 0030 hours. Needless to mention that prime object of Section 103 Cr.P.C is to ensure transparency and fairness on the part of police during the course of recovery however Section 19-A of ATA, 1997 excludes application of provisions of section 103 Cr.P.C in respect of offences punishable under provisions of A.T.A 1997. However in present case appellant was booked *inter alia* under section 7-A ATA 1997 but the trial court has not convicted him under that section and prosecution side has not filed any appeal assailing the order of the trial court on any ground including non-conviction of appellant under that provision of law. Once it was established on record that the Appellant did not commit an offense punishable under the Anti-Terrorism Act, 1997, the provisions pertaining to the exclusion of Section 103 of the Code of Criminal Procedure (Cr.P.C.), as referenced above, become inapplicable to the present case, where no conviction has been rendered under the ATA, 1997. This position aligns with the legal principle enunciated by the Honourable Supreme Court of Pakistan in ***Muhammad Ismail and others v. The State (2017 SCMR 898)***, wherein it was observed that: *“For the above mentioned recovery of weapons the prosecution had failed to associate any independent witness of the locality and, thus, the mandatory provisions of section 103, Cr.P.C. had flagrantly been violated in that regard”*. Thus it was incumbent upon the police to associate some independent/private persons; and just saying that no one was available at the spot is not sufficient, thus testimony of police officials in this regard in given

circumstances, cannot be safely relied upon to maintain conviction against the appellant.

8. Relating to the contention that FIR is silent as to defusing of alleged recovered grenade by the Bomb Disposal Team at the spot or at police station, learned APG argued that Incharge BDU produced Clearance Certificate and Final Inspection Report which confirm hand grenade contained explosive material that could be used but learned APG did not controvert contention of appellant side the grenade was required to be defused that the spot. In our view a grenade is not meant to be defused; it is not hazardous until its safety pin/ring is pulled apart hence BDS was not required at the spot to defuse something that is not defusable.

9. It is well settled principle that the prosecution is bound to prove its case against accused beyond any shadow of reasonable doubt, it has also been held by apex court that conviction must be based and founded on unimpeachable evidence and certainty of guilt and any doubt arising in the prosecution case must be resolved in favour of the accused. In the case of **Wazir Mohammad vs. The State (1992 SCMR 1134)**, apex court held as under:-

“In the criminal trial whereas it is the duty of the prosecution to prove its case against the accused to the hilt, but no such duty is cast upon the accused, he has only to create doubt in the case of the prosecution.”

In another case **Shamoon vs. The State (1995 SCMR 1377)**, it was held that :-

“The prosecution must prove its case against the accused beyond reasonable doubts irrespective of any plea raised by the accused in his defence. Failure of prosecution to prove the case against the accused

entitles the accused to an acquittal. The prosecution cannot fall back on the plea of an accused to prove its case.....Before, the case is established against the accused by prosecution, the question of burden of proof on the accused to establish his plea in defence does not arise."

10. Further, it is a settled principle of law that for extending the benefit of the doubt to an accused, there do not need to be multiple circumstances creating doubt, if there is a single circumstance which creates reasonable doubt in a prudent mind about the guilt of accused, he will be entitled to such benefit. Reliance can be made to the case of ***Tariq Pervez v. The State (1995 SCMR 1345)***, wherein the Supreme Court has held as under:-

“The concept of benefit of doubt to an accused person is deep-rooted in our country for giving him benefit of doubt, 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 will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

11. The appellant’s claim that he was abducted by unknown individuals in January 2023, as supported by the documentary evidence on record, establishes that the relevant authorities were approached promptly for his recovery. This claim coupled with the appellant’s subsequent arrest after a considerable delay of one month, casts significant doubt on the credibility and truthfulness of the prosecution’s case against him. In view of these facts and the surrounding circumstances, it was concluded that the prosecution failed to discharge its burden of proving the charges against the appellant beyond reasonable doubt. Accordingly, these appeals were allowed, the impugned consolidated judgment was set aside and the appellant was acquitted of all charges. This decision was pronounced

through a short order dated 20.11.2024, and the foregoing are the detailed reasons underlying that verdict.

Office shall place signed copy of this order in connected appeal.

J U D G E

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