

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Jail Appeal No.D-87 of 2023
Criminal Jail Appeal No.D-106 of 2023

Present:-

Mr. Justice Amjad Ali Sahito

Mr. Justice Khadim Hussain Soomro

Appellant: Abdul Latif Son of Muhammad Sultan Mallah through M/s. Meer Ahmed Mangrio & Irfan Ali Khaskheli, Advocate.

Respondent: The State through Mr. Nazar Muhammad Memon, Additional Prosecutor General, Sindh.

Date of hearing: 22.10.2024

Date of decision: 22.10.2024

J U D G M E N T

AMJAD ALI SAHITO, J:- Appellant Abdul Latif was tried by learned Judge, Anti-Terrorism Court No.1, Hyderabad for offences under sections 4/5 Explosive Substance Act 1908 read with Sections 6/7 of Anti-Terrorism Act, 1997 and 23-A(i)(a) of Sindh Arms Act 2013. After full-dressed trial, by judgment dated 26.06.2023, appellant was convicted and sentenced for committing offence under section 6(2)(ee) punishable under section 7(ff) of Anti-Terrorism Act, 1997 r/w section 4/5 of the Explosive Substance Act, 1908 to suffer R.I for fourteen years with fine of Rs.100,000/- in failure thereof to suffer imprisonment for six months more and in respect of offence under section 23(i)(a) of Sindh Arms Act 2013 to suffer imprisonment for seven years and to pay fine amount of Rs.50,000/- failing which he would suffer imprisonment for three months more.

2. SIP Shahbran Khan on behalf of the State registered aforesaid FIRs. It is alleged that on 22.12.2022 during routine patrolling police party of A-Section Latifabad Hyderabad reached at Akberi graveyard finding there a suspect standing

near the wall and apprehended him. On query, the said culprit disclosed his identity being Abdul Latif Mallah and from his possession a hand grenade of dark green colour, oppo mobile phone and currency note of Rs.500/- secured. He was also found possessing an unlicensed pistol 30 bore containing three live bullets in its magazine. Abdul Latif disclosed that he kept the hand grenade to spread terror. The recovered articles were sealed at spot under memo of arrest and recovery.

3. Investigation of these FIRs was entrusted to Inspector Niaz Ahmed Panhwar who after conducting investigation submitted charge sheet against the appellant. Both the cases were jointly ordered to be tried by the trial Court in terms of Section 21-M of the Anti-Terrorism Act, 1997.

4. Trial Court framed consolidated charge against accused under the above referred sections at Ex.4. Accused pleaded not guilty and claimed to be tried.

5. At trial, prosecution examined in all examined five witnesses who produced numerous documents. Learned APG closed the side of prosecution.

6. Statement of the accused was recorded under Section 342 Cr.P.C. at Ex.12, in which he claimed false implication in this case and denied the allegations leveled against him. However, he refused to examine himself on oath to prove his innocence nor produced any witness to depose in his favour.

7. Learned trial Court after hearing the learned counsel for the parties and assessment of the evidence, by the Judgment dated 26.06.2023, convicted and sentenced the appellant as stated above. Hence, the appellant filed separate jail appeals against the common judgment dated 26.06.2023 passed by trial Court.

8. The facts of these cases as well as evidence produced before the trial Court find an elaborate mention in the Judgment dated 26.06.2023 passed by the learned trial Court, therefore, the same may not be reproduced here so as to avoid

unnecessary repetition. However, we would address the same in our findings.

9. Counsel for the appellant has mainly argued that there are major contradictions in the evidence of prosecution witnesses which have been ignored by the learned Trial Court; that FIR and mashirnama points out recovery of three live bullets alleged to have been secured from possession of accused however the witnesses namely complainant and mashir deposed securing of four live bullets, as such, their testimony cannot be ruled out; that intention of the appellant for causing harm with Grenade as defined in section of 4 of Explosive Substance Act, 1908 has also not been brought on record by the prosecution. It is pointed out that P.W-Niaz Ahmed has admitted that no permission letter of Home Department was produced by him for trial of the case even the letter issued to Home Department having no outward number. It is contended that Rangers personnel had picked up the accused from house before registration of FIRs. It is submitted that defense theory was ignored by trial Court without any legal justification. Lastly, argued that prosecution cases are highly doubtful and prayed for acquittal of the accused.

10. Mr. Nazar Muhammad Memon, learned Additional Prosecutor General, Sindh argued that after arresting accused from his possession Grenade and pistol were recovered. He has further argued that police officials had no enmity or motive to falsely implicate the accused in these heinous offences. Lastly, it is contended that defense theory was afterthought and that was rightly rejected by the Trial Court.

11. We have carefully heard learned counsel for the parties and scanned the entire evidence as well as record.

12. We have come to the conclusion that prosecution has failed to prove its case against the appellant for the reasons that before registration of cases, the wife of appellant Mst. Latifan had filed Constitutional Petition No.D-966 of 2020 leveled allegation of forceful abduction of her husband Abdul Latif

(present appellant) by Sindh Rangers. The question No.7 put to appellant at the time of recording his section 342 Cr.P.C statement clearly demonstrates the above fact of his missing being surfaced on record. The investigation has not been properly conducted in respect of missing of appellant. It appears defence plea is more convincing than the prosecution case.

13. Now coming to the evidence of prosecution witnesses led at trial, wherein major contradictions have not been discussed by learned Trial Judge going to the roots of the cases at the time of awarding conviction to the appellant. FIR and mashirnama show three live bullets were secured while complainant and mashir deposed that four live bullets were recovered. Element of terrorism is missing. There is no evidence establishing the act of accused created sense of fear and terror in the area. Complainant admitted number was embossed on the pistol but such fact is not mentioned in memo. He admitted that though he deposed about four live bullets being recovered from appellant in his chief-examination but there were availability of three live and one empty bullets in the Court contradicting his own stance. It was also admitted that date was missing on the sealing parcels of mobile and pistol. Mashirnama of arrest and recovery exhibited shows in presence of ASI Mansoor Hussain the property was recovered and sealed at spot but he stated in cross examination that property was sealed at place of incident except hand grenade, therefore, he has not supported the authenticity of Mashirnama. It was 22.12.2022 SIP Shahbran Khan appeared at P.S A-Section Latifabad and then handed over hand grenade and sealed pistol with three live bullets to WHC Shah Passand being Incharge of Malkhana. The property sent to FSL for report by complainant on 28.12.2022. It is stated by Shah Passand that entry regarding property being handed over to BDS for defusal was kept but he failed to produce such entry at trial. It is settled law that non-production of such entry cuts roots of the prosecution case. No corroboration regarding safe custody of property from 22.12.2022 to 28.12.2022 is available on record. In this respect, reliance is placed upon ***Muhammad Ashraf alias Acchu Vs.***

The State [2019 SCMR 652], wherein the Hon;ble Supreme Court of Pakistan has been held as under:

“After scrutiny of evidence, it has been observed by us that no such corroboration is available on record because the empties secured from the spot and the .30 bore pistol allegedly recovered from the possession of appellant at the time of his arrest were sent to the office of FSL on the same day i.e. on 21.03.2002 after the arrest of appellant on 23.01.2002. In these circumstances, the report of FSL cannot be relied and is legally inconsequential.”

14. It has also come on record that complainant did not depose about description of hand grenade which was allegedly recovered from the possession of the accused but mashirnama of arrest and recovery shows its description as “irv 24/68.T/51 over pin words “24/68U2RGM Irv. Omission on the part of SIP appears to be intentional and possibility to foist could not be ruled out. From perusal of the evidence of the I.O, it appears that he did not produce permission letter of Home Department for trial. He stated that 161 Cr.P.C statements of PWs recorded at P.S were written by WPC. Those were computerized. He admitted that said WPC who recorded computerized statements was not made at witness at trial. Above piece of evidence reflects that only formality has been completed by the I.O. No record is produced by the prosecution to satisfy the Court that I.O. kept the case property in the safe custody in *Malkhana* of the police station. No such entry was produced before the Trial Court. Defense plea has been raised that accused was picked up by the Rangers Personnel before this incident. I.O failed to examine such plea during investigation even trial Court ignored defense evidence without assigning cogent reasons. In the present case, there are several circumstances/infirmities which created serious doubt in the prosecution case. Offence under section 4/5 of the Explosives Substance Act, 1908 is serious one, but it has come on record that Grenade was recovered from the possession of the appellant; it was without Launcher/Rifle, we are unable to understand as to why appellant was carrying Grenade without Launcher/Rifle it was of no use. As regards to the recovery of pistol from the possession of the accused is concerned, no doubt the Sindh Arms Act, 2013 is enacted to curb the proliferation of arms and ammunitions. During course

of arguments learned Additional P.G. argued that no one was present at the time of incident, hence no private witness from the locality associated to act as mashir of the recovery. We are unable to accept such arguments for the reasons that it has come on record that near the place of occurrence there is residential area, but no one was examined by the I.O. The argument advanced by learned Additional Prosecutor General that public witnesses do not come forward to support such like recoveries because of risk to their lives and liberty, nonetheless could not absolve the Police of their heavy responsibility to produce witnesses from public. There is no dearth of citizens of strong views and character who would come out to support such like cases provided they were taken into confidence, given due respect and were ensured that full protection would be given to them as held in the case of ***Iltaf Hussain versus The State (1996 SCMR 167)***. Relevant portion is reproduced as under:

“The argument that public witnesses do not come forward to support such like recoveries because of risk to their life and liberty, nonetheless could not absolve the Police of their heavy responsibility to produce witnesses from public. There is no dearth of citizens of strong views and character who would come out to support such like cases provided they were taken into confidence, given due respect and were ensured that full protection would be given to them, in case, they aided the law-enforcers to curb the crimes in the best interest of the society as a whole. There may be cases where public witnesses could not be produced because of their non-availability due to odd hours of the night or the day or where the, recovery was effected from a deserted place or during the dead of night. The position in this case was just the reverse because, admittedly, recovery was effected from a populated area where several other people who saw the recovery of Kalashnikov were present but no efforts were made to join them to witness the occurrence. We, accordingly, hold that evidence of Police witnesses who are, in a way, the complainant could not solely be accepted to be relied upon to convict the appellant, especially, when the aforesaid public witness was abandoned without any rhyme or reason. The possibility that the appellant was implicated with some ulterior motive could not be ruled out. For all these reasons, we have no alternative but to acquit the appellant by setting aside his conviction and sentence by giving him benefit of doubt. He is on bail and as such, shall be discharged from the liability of his bail bond. The appeal succeeds and is allowed.”

15. Furthermore while recording statement under section 342 Cr.P.C, the appellant has produced a copy of daily “Koshish” wherein family members of the appellant were protesting and in

the press conference they have disclosed that on 26th October 2019 Abdul Latif has been kidnapped by officials of law enforcement agency thereafter his wife namely Mst. Latifan had filed Constitutional Petition No.D-966 of 2020 wherein she disclosed that on 24.10.2019 at about 04:00 / 05:00 p.m. the appellant was available at Saleem Mallah Hotel situated at Village Karan Khan Shoro, suddenly one vehicle of Sindh Rangers came and they forcibly taken away her husband. She has also sworn her affidavit which is available in the R&Ps. Besides she has also moved the application addressed to the SSP Hyderabad. Things are not ended here, she moved another application to the Prime Minister of Pakistan wherein she received a reply dated 2nd November 2020. All the documents were produced by the appellant in support of his contentions at the time of recording his section 342 Cr.P.C statement but all the above things have not been considered by the Trial Court while awarding conviction. Since the appellant was already in the custody of Rangers and subsequently handed over to the police, as such, question of recovery of Explosive Substance and a 30 bore pistol from his possession does not appeal to the prudent mind.

16. In this case there are number of infirmities / circumstances in the prosecution case which create doubt. It is a known principle of appreciation of evidence that benefit of all favourable circumstances in the prosecution evidence must go to the accused regardless of whether he has taken any such plea or not. Reliance is placed on the case of ***Muhammad Nawaz and another v. The State and others (PLD 2005 SC 40)***.

17. In the view of above discussion, we have come to the conclusion that the prosecution has failed to prove the aforesaid cases against the accused beyond any shadow of doubt, therefore, we extended benefit of doubt to the accused and allowed Criminal Anti Terrorism Jail Appeals Nos.D-87 & 106 of 2023, thereby the conviction and sentence awarded to the appellant by the Trial Court vide impugned judgment dated

26.06.2023 were set aside and consequently, appellant Abdul Latif Son of Muhammad Sultan Mallah was acquitted in Crime No.354 of 2022, under section 4/5 of Explosive Substance Act, 1908 R/W Section 6/7 ATA, 1997 and FIR No.355 of 2022, under section 23-A(i) (a) of Sindh Arms Act, 2013 both registered at PS A-Section Latifabad Hyderabad. Appellant Abdul Latif Son of Muhammad Sultan Mallah was ordered to be released forthwith, if his custody was not required in any other custody case.

18. These are the reasons for the short order announced on 22nd October 2024.

JUDGE

JUDGE

Muhammad Danish