

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.D-153 of 2023
[Halar Chang v. The State]

PRESENT:

MR. JUSTICE MUHAMMAD FAISAL KAMAL ALAM
MR. JUSTICE AMJAD ALI SAHITO.

Appellant: Halar Chang through M/s. Meer Ahmed Mangrio, Irfan Ali Khaskheli and Jalil Ahmed Memon, Advocates.

Respondent: The State through Mr. Shahid Ahmed Shaikh, Additional Prosecutor General, Sindh.

Date of hearing: 10.12.2024.

Date of Decision: 17.12.2024.

J U D G M E N T

AMJAD ALI SAHITO, J. Through this Criminal Appeal, the appellant has challenged the judgment dated 30.11.2023, passed by learned Judge of Anti Terrorism Court No.1, Hyderabad in ATC Case No.67 of 2023, Crime No.09/2023 registered at PS CTD, Hyderabad for the offence under section 4/5 of Explosive Substance Act, 1908 read with section 6/7 ATA, 1997, whereby the appellant was convicted and sentenced to suffer R.I. for fourteen (14) years under section 6 (2) (ee) punishable under section 7 (ff) of Anti-Terrorism Act, 1997 read with section 4/5 of the Explosive Substances Act, 1908. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. According to the FIR lodged by the complainant, ASI Muhammad Juman, on 21.06.2023 at PS CTD, Hyderabad, the complainant, along with his subordinate staff, departed from the police station in a government vehicle, as per entry No. 14, to search for terrorists. After patrolling at various places, they reached the flyover curve near Kotri Railway Crossing, where

they received information that two terrorists from the banned organization SRA, carrying explosives, were traveling from Jamshoro on a motorcycle. The police team monitored the motorcycles and signaled one of them to stop using a flashlight. In response, the accused attempted to reverse the motorcycle, causing it to slide and both fell on the ground. The police moved toward them, at which point one of the accused started the motorcycle and fled away. However, the other accused was apprehended on the spot, in possession of a plastic shopper. Upon inquiry, the apprehended culprit disclosed himself as Halar Chang. A search of the shopper revealed four rolls of explosive material, one detonator, a black-colored sensory wire with a fuse, weighing a total of 445 grams. A note of Rs. 10/- and a Vivo mobile phone with two SIM cards were recovered from his person. The accused also disclosed the identity of the escapee as Amir Latif Chang, both of whom were members of the SRA. He further admitted that they had planned to use the explosives to attack law enforcement vehicles. The complainant attempted to inform the Special Branch about the recovery but was unable to reach them due to a busy line. The recovered materials were sealed at the scene, and a memo of arrest and recovery was prepared in the presence of mashirs PCs Fareed Ahmed and Fayaz Ahmed. The arrested accused along with the recovered property was then brought to the police station, where ASI Muhammad Juman lodged the present FIR against the accused.

3. Inspector Aijaz Ahmed Soomro of CTD Hyderabad was entrusted with the investigation. He issued a letter to the SSP CTD to call the Bomb Disposal Squad (BDS) for sampling the explosive substance and inspected the scene as per narration of the complainant. He also recorded statements of witnesses under Section 161 Cr.P.C. The BDS took a sample of the recovered substance, prepared a memo in the presence of mashirs, and obtained such report. After securing permission, the sample was sent to the Industrial Analytical Centre, Karachi through PC Punhoon Khan and a report was received. During interrogation, the accused recognized Amir Latif as the escaped co-accused and

Uzair Shah as the person who supplied the explosives. On the narration of accused, the card of SRA and a map were secured under a memo. Despite efforts, the absconding accused could not be found. After completing the investigation, Inspector Aijaz Ahmed Soomro submitted a charge sheet to the Court showing Amir Latif and Uzair Shah as absconders under Section 512 Cr.P.C.

4. After completing all requisite formalities both absconding accused were declared as proclaimed offenders. The trial commenced against the present appellant and after recording the prosecution evidence comprising of as many as six witnesses, which include complainant ASI Muhammad Juman, PWs PC Fareed Ahmed (mashir), PC Muhammad Shakir (Incharge malkhana), Inspector Muhammad Azam Khan of Bomb Disposal Squad, PC Punhoon Khan (Depositor of same/case property to Analytical Centre Karachi) and Inspector Aijaz Ahmed Soomro (Investigating Officer) and statement of appellant under Section 342 Cr.P.C, the Trial Court passed the impugned judgment. Prosecution witnesses produced numerous documents, which were exhibited.

5. The appellant denied the allegations of the prosecution in his statement recorded in terms of section 342 Cr.P.C, but he neither testified on oath nor called any defense witnesses. He claimed his false implication and pleaded his innocence. According to the appellant, he was taken by a law enforcement agency, after which he was wrongly involved in the present case. In this respect, his brother, Hazar Khan, filed C.P. No. 963/2023 before this Court and applications were submitted to higher authorities. The appellant also produced a copy of the C.P. and newspaper clippings as evidence.

6. Learned Trial Court after hearing the learned counsel for the parties and assessment of the evidence, by the Judgment dated 30.11.2023, convicted and sentenced the appellant as stated above. Hence, the appellant preferred instant appeal against the impugned judgment.

7. The facts of the case and the evidence presented before the Trial Court are thoroughly detailed in the impugned judgment and, therefore, need not be repeated here to avoid unnecessary repetition. However, we will address the same in our findings.

8. Learned counsel for the appellant has mainly contended that there are major contradictions in the evidence of prosecution witnesses which have been ignored by the learned Trial Court; that all witnesses are interested, set up and officials; that all the material witnesses and complainant itself contradict regarding the information about the incident; that arrest of accused shown on 20.06.2023, but in fact before present FIR, he was forcibly and illegally picked up on 27.05.2023 (24 days prior from the lodgment of FIR), afterwards on 05.06.2023 his brother also moved applications to the Honorable Chief Justice of Supreme Court, this Court and other authorities as well as held protests on 31-05-2023; however, after getting no response, brother of accused filed a Constitution Petition being C.P. No.D-963/2023 and all documents along with such Petition are annexed in paper book which starts from page No.79 and onwards. He further contended that newspaper and applications were neither even considered nor appreciated by the learned Trial Court and even not discussed in judgment; that the co-accused Uzair Shah was acquitted by the learned Trial Court, even after being absconder but, subsequently arrested and tried; that the appellant has never been involved in any criminal activity even his CRO is also part of paper book. He also pointed out that at the time of his abduction, the age of the appellant was about 16 years only. He further contended that due to the unavailability of a private person, police officials acted as mashirs for the arrest and recovery; however, the location of the alleged incident is a busy area with factories, hotels, and petrol stations, making it unlikely that no private persons were present. The area is one of the busiest roads, operating 24 hours a day and this case involves the life of an innocent person who, at a young age, has been wrongly accused and labeled a terrorist. The absence of any

private mashirs in such a critical matter raises questions, especially when the prosecution fails to produce a neutral witness. The complainant testified during his examination that he attempted to contact the BDS through the control room, but the line was busy, so he sealed the explosive substance with three seals. However, it raises a question of common sense: how could an ordinary person, without knowledge of explosive materials, authenticate or verify their genuineness? According to Articles 59 and onwards of the Qanun-e-Shahadat 1984, an expert should be involved in such matters. In this case, the explosive substance was sealed by untrained officials, which casts doubt. Even the witnesses have contradictions in their testimonies concerning allegedly recovered detonator was either electronic or non-electronic. No description of the culprits was disclosed by the informer as per the complainant in his evidence. Notwithstanding violation of section 103 Cr.P.C. the Investigating Officer also failed to record statements of a single person to confirm as to whether the appellant and co-accused were affiliated with any banned organization. He has also failed to prepare any sketch of place of incident. In support of his contentions, he has referred to the judgment passed in Criminal Appeal No.87/2023 by this Court in the same kind of case, which is available in Court file with the statement of learned counsel. He also relied upon the cases reported in 2018 MLD 1963, 2019 MLD 670, 2019 MLD 1374, 2020 MLD 549, PLD 2016 Peshawar 98, 2016 PCr.LJ 870, 2018 PCr.LJ 1358, 2021 PCr.LJ Note 1, 2021 PCr.LJ 1870, 2023 PCr.LJ Note 72, 2011 YLR 522, 2018 YLR Note 289, 2021 YLR 2160, 2018 SCMR 495 and 2019 SCMR 64. Lastly, argued that the prosecution case is highly doubtful and prayed for the acquittal of the accused.

9. Mr. Shahid Ahmed Shaikh, learned Additional Prosecutor General, Sindh contended that after arresting accused from his possession four roll type explosive substances wrapped in plastic weighing 445 grams, one detonator and a black colour wire were recovered. He has further contended that police officials had no enmity or motive to falsely implicate the

accused in this heinous offence. In response to the violation of section 103 Cr.P.C., he contended that the public witnesses do not come forward to support such like recoveries because of the risk to their lives and liberty. Lastly, it is contended that defense theory was an afterthought and that was rightly rejected by the Trial Court.

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

11. The prosecution claims that on 21.06.2023, ASI Muhammad Juman and his team while patrolling near Kotri Railway Crossing, received information about two terrorists carrying explosives and on such information, they proceeded on the pointed place and apprehended the appellant Halar Chang along with explosive substances while another succeeded to flee away on motorcycle. It is also relevant to mention here that the complainant ASI Muhammad Juman belongs to the Counter Terrorism Department, as such, it was his duty to first inform the local police but he did not do so; even though there is nothing available on record to show that after proceedings he informed the local police. However, it is a matter of record that much before the prosecution case was registered, the appellant's brother, Hazar Khan, filed a petition being Constitutional Petition No.D-963 of 2023 claiming that his brother, the appellant was forcibly picked up on 27.05.2023 by the police and persons of a law enforcement agency, 24 days before the lodgment of the FIR. Yet, the Investigating Officer has failed to examine this plea during the investigation and the Trial Court has similarly disregarded the defense evidence without providing cogent reasons for doing so. This omission raises significant alarms regarding the credibility and thoroughness of the investigation, especially when scrutinized in the context of the serious allegations against the appellant. The importance of this charge becomes even more significant when we consider that the appellant is a young man who was allegedly kidnapped 24 days before the alleged incident. This critical detail, if true, casts substantial doubt on the version of the prosecution and calls into

question whether the appellant was in police custody or otherwise he was unavailable to commit the alleged crime. The failure to investigate this aspect of the case adequately, or to discuss it during the trial, brutally dents the prosecution's stance. In such a serious matter, where the life and liberty of a person are at stake, it is essential that every aspect of the case, including any claims of wrongful detention or abduction, be fully discovered and substantiated. The absence of such investigation constitutes a significant inaccuracy in the prosecution case, which ought to be given due weight in the appraisal of the evidence. In these circumstances, we observe that when there is allegation that firstly the appellant was picked up by the law enforcement agency, as such, it can be presumed that he was subsequently handed over to the CTD police, who have falsely booked him in the instant case.

12. Turning to the merit of the case, the evidence of prosecution witnesses led at trial, wherein major contradictions have not been discussed by the learned Trial Judge going to the roots of the cases at the time of awarding conviction to the appellant. The complainant in his examination-in-chief deposed that; ***“The shopper was checked, which contain two roll types explosive substances”*** but in mashirnama (written in Sindhi Language) disclosed that:

”جنهن ۾ چار عدد رولنما پلاسٽڪ ۾ ويڙهيل بارودي مواد هيو“

[Translation: *it contained four roll-type explosive substances wrapped in plastic*]

The complainant in his evidence also deposed that ***“on 21.6.2023, the I.O inspected the place of incident on my pointation and prepared such memo.... He identified four roll-type explosive substances, one electronic detonator....”*** Whereas, PW Inspector Muhammad Azam deposed that ***“A non-electric detonator was also recovered from the said sealed parcel.”*** Whereas, the letter dated 21.06.2023, issued by the Superintendent of Police, CTD Hyderabad, to the Senior Superintendent of Police, Special Branch, Hyderabad [Ex.14/A]

requested the BDS staff of the Special Branch for inspection the explosive material, its diffusion, and taking a sample for examination at the Forensic Science Laboratory, which mentions the alleged recovered items: 445 grams of explosive material, one **electronic detonator**, and one Santry Fuj wire. However, this reveals a discrepancy regarding the **detonator**, as it is unclear **whether the detonator was electronic or non-electronic**, as such, this indicates uncertainty about the nature of the recovered item. In his evidence, the complainant deposed that; ***“The informer did not disclose the description of the accused. The informer did not disclose the color of the clothes of the accused.”*** PW PC Fareed deposed that; ***“We started checking the motorcycle, noticed two persons were coming on the motorcycle, on torch light we signal them to stop.”*** Whereas, the complainant deposed ***“We did not check the motorcycle before the motorcycle of the accused.”*** The failure to provide a description of the accused by the informer raises questions about the accuracy and reliability of the information. It appears that the informer’s tip was not as specific or credible as claimed. In criminal cases, the detailed description of the accused helps to establish a stronger link between the crime and the accused, so this omission could dent the prosecution case. The discrepancy between the evidence of the complainant and the testimony of PC Fareed regarding the checking of motorcycles shows inconsistency in the story of the prosecution case as the complainant stated that the motorcycles were checked at a specific time or location, but PC's testimony of PC Fareed contradicts this, which casts doubt on the reliability on the investigation.

13. The CTD Hyderabad stated that they were on patrolling within the jurisdiction of district Jamshoro. They received information at about 2250 hours and arrested the appellant within 10 minutes at about 2300 hours. Surprisingly two people were boarded on a motorcycle one fled away on his motorcycle leaving the appellant to arrest him. The complainant claimed that he had an explosive substance but the appellant did

not try to throw the explosive substance at police to save him from the arrest. It was night-time police mobile could be seen by the accused person at the distance but they came there and after seeing the police one escaped away and the second one was arrested. The story narrated by the police is not appealing to the prudent mind.

14. The incident is stated to have taken place on 20.06.2023; and on the same date, the case property was sealed by the complainant. As per evidence of Muhammad Shakir PC CTD Hyderabad, on 21.06.2023, he was on duty as Malkhana Incharge at CTD Hyderabad and on the same date, ASI Muhammad Juman handed over him the case property in sealed condition, which he kept in Malkhana; on the same date the BDS arrived there, he handed over them the sealed parcel, they started taking the sample. They returned the case property and he kept the same in Malkhana. This witness also deposed that on 21.06.2023 PC Punhoon Khan vide entry No.22, took the sample and went to Karachi Laboratory for depositing the sample. The depositor of sample PC Punhoon Khan testified that on 23.06.2023 he was posted at PS CTD Hyderabad, on the same date vide entry No.22 he left for Karachi to deposit the sample of case property Industrial Analytical Centre, which was in sealed condition. Now question arises that the case property sample was given to PC Punhoon Khan for depositing the same to the laboratory on 21.06.2023 day after the recovery and he deposited the same at Karachi Laboratory on 23.06.2023. Furthermore, PW-5 PC Punhoon Khan deposed that on 23.06.2023 he was posted at P.S CTD Hyderabad on the same date vide entry No. 22 he left for Karachi to deposit the sample of case property Industrial Analytical Centre Karachi. But PW-3 PC Muhammad Shakir deposed that on 21.06.2023 PC Punhoon Khan vide entry No. 22 took a sample and went to Karachi Laboratory to deposit the sample. Even witnesses are not sure whether PC Punhoon left CTD on 21.6.2023 or 23.06.23. No corroboration regarding safe custody of sample/property from 21.06.2023 to 23.06.2023 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.”

15. Regarding the alleged recovery of evidence from the possession of the accused, it was essential for the complainant to involve a private witness from the locality to act as a mashir, being an independent witness, to watch the recovery process, which becomes more important especially when the complainant had prior knowledge of the recovery. The failure to do so raises questions about the authenticity of the recovery process and the truthfulness of the evidence adduced by the prosecution. It is not sufficient for the prosecution to rely solely on the testimony of police officials without any corroborative evidence from an independent source. Nothing has come on record to show that the police had attempted to involve a private person in the recovery proceedings. The argument of the learned A.P.G. Sindh that public witnesses may be unwilling to come forward due to the potential risks to their safety and liberty does not absolve the police of their responsibility to ensure transparency and impartiality in their actions. It is the duty of law enforcement agencies to make genuine efforts to involve neutral witnesses in order to uphold the integrity of the recovery process. The lack of such efforts not only raises doubts about the credibility of the recovery but also casts doubt on the overall fairness of the investigation. In light of these serious deficiencies and the failure to investigate crucial aspects of the case, it is clear that the prosecution has not met the required standard of proof beyond a reasonable doubt and in such a case, the defense plea should be given careful consideration. 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.”

16. Furthermore, while recording a statement under section 342 Cr.P.C, the appellant has produced a copy of C.P. No.963/2023 filed by his brother along with its annexure which includes a dozen of receipts and an application of his brother to various authorities for recovery of the appellant. He has also produced the news published in the daily “Akhbar” and “Sindh Express” wherein family members of the appellant were protesting for the recovery of the appellant stating that he had been kidnapped by officials of law enforcement agency. Constitutional Petition No.D-963 of 2023 filed by the brother of the appellant clearly discloses that it was filed on 08.06.2023 much before the incident whereby the petitioner prayed for the recovery of the appellant, who was stated to have been picked/kidnapped by the police and officials of law enforcement

agency on 27.05.2023. The petitioner has also sworn his affidavit which is available in the R&Ps. Besides an application was also moved to various authorities. All the documents were produced by the appellant in support of his contentions at the time of recording his statement under section 342 Cr.P.C 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 officials and subsequently handed over to the police, as such, the question of recovery of Explosive Substance from his possession does not appeal to the prudent mind.

17. In this case, we found deficiencies in the investigation, the lack of transparency in the recovery process and the absence of consideration for critical defense claims, which manifestly create a cloud of doubt over the prosecution case. In light of these significant faults, the prosecution has failed to establish the case beyond a reasonable doubt and the accused is entitled to the benefit of this 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)***.

18. In light of the above discussion, we have thoroughly examined the evidence brought on record along with the various infirmities and inconsistencies as highlighted above and after careful consideration, we have come to the firm conclusion that the prosecution has failed to prove its case against the appellant beyond any shadow of doubt. The prosecution has not been able to establish the guilt of the accused with the necessary level of confidence required for a conviction and several critical aspects of the case have raised reasonable doubt including the failure to investigate key defense claims and the lack of independent verification of crucial evidence. In such circumstances, we find that the conviction and sentence awarded to the appellant by the Trial Court through the impugned judgment are not sustainable.

Consequently, the conviction and sentence awarded to the appellant Halar Chang through impugned judgment are set aside and as a result, whereof, he is acquitted of the charge. He is ordered to be released forthwith if not required in any other custody case.

19. Instant Criminal Appeal stands **allowed**.

JUDGE

JUDGE

Abdullah Channa/P.S

Hyderabad

Dated 17.12.2024.