

**IN THE HIGH COURT OF SINDH AT KARACHI**

Special Crl. Anti-Terrorism Appeal No.224 of 2017.

Special Crl. Anti-Terrorism Appeal No.225 of 2017.

**Present:**

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi.

Appellant: Rasheed Ahmed @ Doctor S/o. Nazeer Ahmed  
through Mr. Muhammad Arshad Khan,  
Advocate.

For State: Through Mr. Rana Khalid Hussain, Special  
Prosecutor Rangers.

Date of hearing: 11.11.2019

Date of announcement: 14.11.2019

**J U D G M E N T**

**Mohammad Karim Khan Agha, J.-** Appellant Rasheed Ahmed @ Doctor S/o. Nazeer Ahmed has preferred these appeals against the impugned judgment dated 12.10.2017 passed by the learned Judge Anti-Terrorism Court No.IX, Karachi in Special Case No.402 of 2016, F.I.R. No.07 of 2016 u/s. 23(I)-A Sindh Arms Act and Special Case No.403 of 2016 and another F.I.R. No.08 of 2016 u/s. 4/5 Explosive Substance Act r/w section 7 of ATA 1997, registered as P.S. Risala, Karachi whereby the appellant has been convicted and sentenced to R.I. for five years u/s. 23(I)-A Sindh Arms Act with fine of Rs.25,000/- and in case of default he was ordered to undergo R.I. for six months more. In another F.I.R. No.08 of 2016 u/s. 4/5 Explosive Substance Act r/w section 7 of ATA 1997 the appellant has been convicted and sentenced to R.I. for five years. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the case are that accused Rasheed Ahmed was in custody in a case registered against him u/s. 302/324/34 PPC vide Crime No.47/2006 wherein he was interrogated by complainant SIO/SIP Arshad Khan at police station Risala and during the course of such interrogation accused made a disclosure before the complainant that he had concealed an explosive substance material and a Kalashnikov at Nishtar road

opposite CMS School Main gate of Christ Church and therefore, he was willing to produce the same before the police.

3. It is also alleged that the accused voluntarily took the complainant party to the pointed place wherefrom he produced an explosive substance material viz. safety fuse wire measuring about  $\frac{1}{2}$  meters, two detonators and half kilogram of explosive powder and an unlicensed Kalashnikov bearing No.74096-1975-AK-2448 close Butt along with magazine loaded with ten live bullets which were secured by SIP Arshad Khan under such memo of arrest and recovery in presence of HC Abdul Rehman and PC Haseeb Qaim Khani. The accused was brought back at P.S. Risala where he was booked in two separate cases individually for allegedly having been found in possession of an explosive substance and an unlicensed weapon vide Crime No.07/2016 and 08/2016 respectively of P.S. Risala.

4. After usual investigation both the cases were brought before the court of law having jurisdiction and charge was framed against the accused to which he pleaded not guilty and claimed his trial.

5. In order to prove its case the prosecution examined 04 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under S.342 Cr.PC and under Oath and called one DW in support of his defense that he has been falsely implicated in this case.

6. Learned Judge, Anti-Terrorism Court-IX, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 12.10.2017, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his convictions.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant has contended that the appellant is completely innocent of the charge; that he has been falsely implicated in the case at the behest of the Pakistan Rangers; that S.103 Cr.PC was



violated and that the prosecution had failed to prove its case against him beyond a reasonable doubt and as such by being extended the benefit of the doubt the appellant be acquitted of the charge. He did not rely on any case law in support of his contentions.

9. Learned Special Prosecutor Rangers has contended that the recovery was on the pointation of the appellant; that the detonators, explosive substance, wire for detonation, Kalashnikov and live bullets which were recovered were sealed on the spot; the FSL report along with BDU report were positive and as such the prosecution had proved its case against the appellant beyond a reasonable doubt and as such the impugned judgment and convictions and sentences contained therein should be maintained and the appeal dismissed. In support of his contentions he placed reliance on **Ajab V State** (2004 MLD 180).

10. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

11. For the reasons set out below we have found that the prosecution has proved its case against the appellant beyond a reasonable doubt;

- (a) That the appellant had been in the custody of the Rangers prior to his arrest in a case u/s 302 PPC however his detention was legal as it was covered under S.11 (EEEE) ATA
- (b) That the appellant on his sole pointation lead the police to the place where the detonators, explosive substance, wire for detonation, Kalashnikov and live bullets were hidden under the earth which the police dug up. Only the appellant could have known where the aforesaid items were buried which would have not been in the knowledge of the police.
- (c) the recovered detonators, explosive substance, wire for detonation, Kalashnikov and live bullets which were sealed on the spot were all correctly recorded in the Memo of arrest and recovery which also included the No of the Kalashnikov as being No.AK.-2448-1975,74096 Close butt and were sent for FSL and to the BDU respectively.
- (d) The FSL report was positive and the BDU expert issued a clearance certificate confirming the explosive device.
- (e) That there were no contradictions in the evidence of the PW's who all fully corroborated each other in all material respects.

G

- (f) It is well settled by now that a police witness is as good as any other witness provided that no ill will, enmity, malafide or personal interest is proven against him vis a vis the appellant. In this respect reliance is placed on **Riaz Ahmad V State** (2004 SCMR 988), **Zafar V State** (2008 SCMR 1254) and **Abbas V State** (2008 SCMR 108). In this case there was none and the police witnesses had no reason to falsely implicate the appellant. No such enmity, ill will, malafide or personal interest was even suggested to the police witnesses.
- (g) That the police made all the required and necessary entries at the PS
- (h) That the violation of S.103 is inconsequential based on the particular facts and circumstances of this case as the police at the spot during the time of the arrest and recovery asked citizens to act as independent mushirs but they all refused and even other wise for offenses under the ATA it is not a mandatory requirement.
- (i) That the oral evidence is fully corroborated by the documentary evidence and recoveries.
- (j) That if there has been any minor lapses by the police the reason for such lapses have been explained in their evidence and such lapses will have no bearing on the prosecution case.
- (k) In addition, it appears from the record that the appellant is a hardened and dangerous criminal.

12. Thus, as discussed above after our reassessment of the evidence on record we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and as such the impugned judgment is upheld and the convictions and sentences therein are maintained and the appeals being without merit are dismissed.

13. The appeals are disposed of in the above terms.