

Explosion: No Evidence apparent in room

623

CERTIFICATE OF THE COURT IN RECORD NO. ---

Sp. ATA 81/17

Imran Vs. The State

SINDH HIGH COURT

Composition of Bench.

Singla/D.B.

Mr. J. Mohammed Kaim Khan Aghe

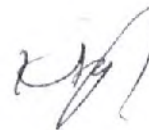
Mr. J. Zulfikar Ali Sangi

Dates of hearing: 28-4-20

Decided on 08-05-20

(a) Judgment approved for
reporting.

Yes
No



CERTIFICATE

Certified that the judgment */Order is based upon or enunciates a principle of law */decides a question of law which is of first impression/distinguishes/over-rules/ reverses/explains a previous decision.

*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

SGP., Kar.—L (iii) 1459—5,000—6-93—T.S.S.

PRESENTED

13-03-2017

Cy. Registrar (Jud.)

918

IN THE HON'BLE HIGH COURT OF SINDH AT
KARACHI

Special Anti Terrorism Appeal No. D- / 2017

Imran S/o Gul Sher
Muslim, adult, R/o
Karachi,
Presently confined in
Central Jail, Karachi-----Appellant /Accused

VERSUS

The State through
VIITH ANTI TERRORISM COURT
INSIDE CENTRAL PRISON,
AT KARACHI-----Respondent.

FIR No. 255/2013
U/S: 302/324/436/34 PPC
3/4 Expl Act 1908,
R/W Section 7 ATA of 1997
P.S. Jamshed Quarters

APPEAL UNDER SECTION 25 OF THE ANTI
TERRORISM ACT 1997

The appellant being aggrieved and dissatisfied by the
Judgment dated 03-03-2017, in respect of Special Case No.
314 (vii)/2015 (Old Case No. 29/2014), FIR No. 255/2013,
U/S: 302/324/436/34 PPC 3/4 Expl. Act 1908, R/W Section
7 ATA of 1997 P.S. Jamshed Quarters, the Learned trial
Court of VIITH ANTI TERRORISM COURT INSIDE
CENTRAL PRISON, AT KARACHI, whereby he had
arrested the appellant under section U/S: 302/324/436/34
PPC 3/4 Expl Act 1908, R/W Section 7 ATA of 1997.

IN THE HIGH COURT OF SINDH, KARACHI

Spl. Crl. Anti-Terrorism Appeal No. 81 of 2017.

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

Appellant: Imran S/o Gul Sher
through Mr. Khawaja Naveed
Ahmed, Advocate.

Respondent / State: Through Mr. Muhammad Iqbal
Awan, Deputy Prosecutor General,
Sindh

Date of Hearing : **28.04.2020.**
Date of Judgment : **08.05.2020.**

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J: - Accused Imran S/o Gul Sher was tried by the learned Judge, Anti-Terrorism Court No.VII, Inside Central Prison, at Karachi in Special Cases No.314 (vii)/2015 (Old Case No.29/2014), arising out of Crime No.255/2013 U/s. 302/324/436/34 PPC, 3/4 Explosive Substances Act 1908 r/w section 7 ATA, 1997, registered at P.S. Jamshed Quarters, Karachi. After trial vide judgment dated 03.03.2017 the appellant named above was convicted and sentenced as under:-

1. Accused Imran S/o. Gul Sher was convicted for offence under section 3 of the Explosive Substances Act 1908 (IV of 1908) and sentenced to suffer imprisonment for life.
2. Accused Imran S/o. Gul Sher was convicted for offence under section 6(2) (ee) of Anti-Terrorism Act, 1997 punishable under section 7 (1) (ff) of Anti-Terrorism Act, 1997 and sentenced to suffer imprisonment for life.

Both the sentences were ordered to run concurrently. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.VII, Karachi, the aforesaid appeal has been preferred by the appellant against his conviction.

3. The brief facts of the prosecution case are that on 20.07.2013 at about 1920 hours PI/SHO Safdar Mashwani whilst on patrol received information about a bomb blast near Hassan Zai Hotel at Business Recorder road. He along with police staff reached at the place of occurrence viz. house No.531, 2nd floor, Shah House, Patel Para and found that two persons expired as a result of the bomb blast and two persons namely Mateen-u-Din and Imran were injured. Both injured were taken in ambulance and brought to civil hospital. The Bomb Disposal Squad visited the place of explosion, secured ball Barings, nut belts, two batteries and two Sims from place of occurrence. An FIR was lodged against the above named accused and thereafter investigation was entrusted to Inspector Muhammad Nadeem Ahmed Siddiqui.

4. During investigation, Inspector Muhammad Nadeem visited the place of occurrence along with Shahzad Khan, Inspector/SHO Safdar Mashwani, prepared such memos and got snap shots of place of occurrence. Accused Imran after receipt of injuries was under treatment in the emergency ward of civil hospital, Karachi, whom he arrested under memo in presence of H.C. Shahzada Khan and P.C. Muhammad Saleem and locked up the accused after getting treatment at the hospital. During investigation he came to know that two of the culprits lost their lives during explosion at spot, third one died later in the hospital and only present accused remained injured. He visited the hospital and handed over the dead bodies of the culprits who lost their lives during explosion to the legal heirs. He dispatched the clothes of deceased accused for chemical examination and certification under letter and obtained the said report. He also recorded 161 Cr.P.C. statements of P.Ws and issued notice to the accused Imran u/s. 160 Cr.P.C. for his presence before the Magistrate concerned at the time of recording of 164 Cr.P.C. statement of P.W. Ali Zaman. He then issued letter to the SSP for seeking permission u/s 7 of Explosive Substances Act from Home Department to submit the challan, thereby permission was accorded. After completion of investigation he submitted report u/s 173 Cr.P.C. in the concerned AIC which sent up the case for trial. The charge against the accused person was framed to which he pleaded not guilty and claimed trial of the case.

5. To prove its case the prosecution examined 09 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statement of the accused u/s 342 Cr.P.C. was recorded in which he denied the allegations leveled against him and claimed false implication in that he was a passer by when the bomb blast took place in the building and he received injuries from the blast fragments as he passed by the building. He did not give evidence on oath but called one defense witness in support of his defense case.

6. Learned Judge, Anti-Terrorism Court No.VII, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 03.03.2017 convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 03.03.2017 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant contended that the appellant was completely innocent in this case and was merely a passer by; that there was no evidence that he was in the house at the time of the explosion; that his injuries were consistent with those of being a passer by when the explosion occurred and as such for any of the above reasons he should be acquitted of the charge by extending him the benefit of the doubt.

9. On the other hand learned DPG has fully supported the impugned judgment and has contended that based on the fact that the appellant named his accomplices, that his injuries were consistent with blast injuries; that the police and BDU expert corroborated each other in all material respects and the police had no enmity with the appellant to falsely implicate him and that he had completely failed to put his defense case of being a passer by to hardly any PW such defence was an after thought and as such the prosecution had proved its case against the appellant beyond a reasonable doubt and his appeal should be dismissed. In support of his contentions he placed reliance on **Anwar Shamim and**

another v. The State (2010 SCMR 1791), Karim Nawaz v. the State (2009 SCMR 1105) and Zeeshan alias Manna v. The State (2019 YLR 59).

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, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

11. In our view after our reassessment of the evidence based on the evidence of the PW's especially, PW MLO, post mortem reports, police witnesses, the BDU expert and recoveries made at the scene indicating bomb making materials we are satisfied that the prosecution has proved beyond a reasonable doubt that on 20.07.2013 at about 1920 hours at House No.531, Shah House Patel Para Business Record road Karachi a bomb exploded killing 3 persons. This position is admitted by the learned counsel for the appellant.

12. The only issue therefore, in our view, left before us is whether the appellant was one of the persons who was also inside the house involved in the preparation of the bomb which exploded killing the 3 others.

13. In our view after our reassessment of the evidence we find that the prosecution has **NOT** been able to prove beyond a reasonable doubt that the appellant was one of the persons who was inside the house when the bomb exploded killing 3 persons and hereby set aside the impugned judgment and allow the appeal for the following reasons;

(a) At the outset we would like to emphasize that the burden lies on the prosecution to prove its case against the accused beyond a reasonable doubt and not for the accused to prove his innocence. We must of course consider the plea taken by the accused but ultimately the burden does not shift to him and as such we find the authorities cited by the DPG to be of little, if any, assistance to him as these tend to concentrate on the accused proving his plea.

(b) That the rental agreement of the house where the explosion took place was not in the name of the accused and there is no evidence that he lived at the house where the explosion took place or was linked to it in any way. On the contrary DW 1 who is his mother has given evidence under oath that the accused lived with her.

(c) That no one saw the accused either enter the building before the explosion or leave it in injured condition after the explosion. In fact there is no evidence that the accused had ever been in that building. There is no eye witness in this respect.

(d) The medical evidence does not tend to support the prosecution case but rather tends to support the accused's case that he was a passer by outside the building when the bomb went off. This is because according to the medical evidence all the 3 persons who died in the bomb blast were severely disfigured which was to be expected as according to the evidence of the DBU expert a large amount of explosive had been used in a small room and as such severe/fatal injuries would have been expected to those present in the room when the bomb went off. However the accused only received very minor injuries which would indicate that he was not in the room at the time when the explosion occurred and that he may well have been a passer by since his relatively minor explosion injuries appear to be consistent with him being a person at some distance from the blast i.e. a passer by when the blast occurred.

(e) That there is no evidence of where he was when he was taken to the hospital i.e. whether he was inside the building or outside the building.

(f) He was not arrested at the scene of the incident but rather at the hospital where he had gone to receive treatment.

(g) That the only piece of compelling evidence against him appears to be that he named one of his accomplices. We however do not consider that this evidence alone is sufficient to convict the accused of the charge.

(h) In our view we find that there are doubts in the prosecution case and that the accused is entitled to the benefit of the same.

14. Thus, for the reasons discussed above we find that the prosecution has not proved its case against the appellant beyond a reasonable doubt and since there are doubts in the prosecution case and the appellant is entitled to the same as a matter of right and not concession we hereby allow the appeal, set aside the impugned judgment and acquit the

appellant of the charge by extending him the benefit of the doubt who shall be released from jail unless he is wanted in any other custody case.

15. The appeal stands disposed of in the above terms.

Arif