

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Arshad Hussain Khan.

Spl. Criminal ATA No.212 of 2019.

Spl. Criminal ATA No.213 of 2019.

Spl. Criminal ATA No.214 of 2019.

Appellant:	Zaheer Ahmed @ Gul S/o. Ghulam Nabi through Mr. Nasir Mahmood, Advocate.
State/Complainant:	Through Mr. Saadat Ali, Special Public Prosecutor Rangers. Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Hearing:	15.12.2021
Date of Judgment:	17.12.2021

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- The Appellant Zaheer Ahmed @ Gul S/o. Ghulam Nabi was convicted in the Anti-Terrorism Court No.X, Karachi in Special Cases No.1194/2018 in Crime No.129/2018 U/s. 4/5 Explosive Substance Act r/w section 7 ATA, 1997, Special Case No.1194-A of 2018, Crime No.130/2018 U/s. 23(1)A of Sindh Arms Act, 2013 and Special Case No.1195/2018, Crime No.131/2018, U/s. 4/5/6 Explosive Substance Act r/w section 7 ATA, 1997, registered at P.S. CTD/OPS, Karachi vide Judgment dated 31.07.2019; whereby the appellant was convicted and sentenced as under:-

1. The accused Zaheer Ahmed @ Gul S/o. Ghulam Nabi was convicted U/s. 7 (ff) of ATA, 1997 and sentenced to undergo R.I. for "14" years.
2. The accused Zaheer Ahmed @ Gul S/o. Ghulam Nabi was also convicted for the offence U/s. 23(i)A of Sindh Arms Act, 2013 and sentenced to undergo R.I. for "14" years with fine of Rs.200,000/-. In

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default in payment of such fine he shall suffer further R.I. for "01" year more.

3. The accused Zaheer Ahmed @ Gul S/o. Ghulam Nabi was also convicted U/s. 7 (ff) of ATA, 1997 and sentenced to undergo R.I. for "14" years.

All the above sentences were directed to be run concurrently. Benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the prosecution case are that on 26.10.2018 at about 0130 hours, Rangers Inspector Saqib Iqbal of 63 Bhattai Wing, Karachi recorded his statement U/s. 154 Cr.PC wherein, he stated that on such day, he was on patrolling duty along with his subordinate staff in Government Mobile No.91289. During patrolling duty, within the jurisdiction of District Malir, Karachi, Rangers Inspector Saqib Iqbal received spy information that some terrorists, affiliated with Lyari Gang war were available at Mola Ram Compound near Tayyaba Masjid, Malir, Karachi and they were selling contrabands and Arms and Ammunitions illegally and they were using the amount received from such illegal business for aiding Anti-State elements. On such spy information the complainant immediately informed his superiors, who deputed "04" Ranger Mobiles and one Mobile of CTD for his support. At about 0050 hours, Ranger officials reached at the pointed place along with CTD officials, after reaching there, they encircled one House No.M-193, near Tayyaba Masjid, Memon Goth, Malir, Karachi where, the complainant found the main Gate of the house already open, as such they entered into the house and the complainant apprehended one person, who was coming from inside a room, who on inquiry disclosed his name to be Zaheer Ahmed @ Gul S/o. Ghulam Nabi. The Rangers Inspector then conducted personal search of Zaheer Ahmed @ Gul and recovered one Hand Grenade from the right pocket of his kameez, having brown colored body and ARGES, HDGR-69 was written on it, where U/P ARGES was written on its green colored Assembly. Upon his further personal search, the complainant also recovered one pistol of 32 bore along with loaded magazine having "03" live rounds from the right fold of his worn shalwar bearing No.7698 and Caliber 7.6 mm, made in Pakistan was also written on the said pistol. The complainant also inquired from the apprehended accused regarding valid license of the recovered pistol and permit for keeping the Hand Grenade but he failed to produce the same. Thereafter, the Rangers as well as Police officials started searching the

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room of the said House and when they opened a wooden Almirah affixed in the wall of the room, they also secured one unlicensed SMG (close Butt) along with telescope and magazine, one unlicensed 222 bore rifle (close Butt) along with 02 magazines, one 222 bore rifle along with magazine, one 32 bore pistol along with magazine, one rifle of 12 bore (single Barrel), 160 live rounds of SMG, 40 live rounds of 222 bore rifle, 06 live rounds of 32 bore pistol, 21 live cartridges of 12 bore rifle, one black colored wallet having Police Card, other documents and LTV license so also secured one Police Uniform of an Inspector Rank Police officer, 03 Police Caps, 02 Holsters, 02 Police Shoes and one Chittar (stick) from inside the said Almirah. Moreover, currency notes of different countries viz. US \$ 101, 300 Omani Riyal, 01 Saudi Riyal, 20 Indian Rupees, 06 Irani Riyal, 1000 Afghanistani currency, 01 Hong Kong Dollar, 02 Malaysian Currency and 18 Bangladeshi Taka were also recovered from inside said Almirah. On inquiry, the apprehended accused disclosed that his other accomplices might be available in the neighboring House bearing No.M-193-A and he could get them arrested. As such, Rangers/Police officials entered into said house on the pointation of the apprehended accused from inside the House No.M-193 but nobody was available inside the said house, at that moment but there were signs of persons living there. The apprehended accused further disclosed that his accomplices namely Javed Iqbal, Saleem @ Waja, Muneer Khan, Asid Dacoit, Mumtaz Baloch and Mushtaq Sarki had absconded away from that house, due to prior information of such raid. The Rangers Inspector then recovered "03" Sacks (Katte) from front side of T.V. Trolley like Almirah containing approximately 27 KGs of Explosive Substance. The Ranger/Police officials also secured 02 packets of Charas (wrapped in yellow and white colored tape) from the said T.V. Trolley, approximately 02 Kgs. The complainant further stated in his statement that CTD officials checked the recovered articles and SHO/PI Rana Ashfaq sealed the recovered arms and ammunitions separately in 03 cloth parcels. Thereafter, the complainant called the BDU on the spot for inspection and examination of recovered Hand Grenade and Explosive Material. SHO/PI Rana Ashfaq then prepared memo of arrest, recovery and seizure and obtained signatures of Mashirs on such memo. SHO/PI Rana Ashfaq then returned to CTD Civil Lines, Karachi along with custody of accused, case property and police papers, where between 0220 to 0300 hours, statement of the complainant U/s 154 Cr.PC was incorporated into "03" separate FIRs bearing Crime No.129/2018 U/s. 4/5

Explosive Substance Act, R/w 7 ATA, 1997, Crime No.130/2018 U/s 23(i) A of Sindh Arms Act, 2013 and Crime No.131/2018 U/s.4/5/6 Explosive Substance Act, r/w section 7 ATA, 1997.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed to be tried.

4. In order to prove its case, the prosecution examined 09 witnesses and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he denied the allegations leveled against him by the prosecution and claimed false implication by the police and the rangers. He did not examine himself on oath or call any DW in support of his defence case.

5. After appreciating the evidence on record, the learned trial court convicted and sentenced the appellant as set out earlier in this judgment and hence, the appellant has filed these appeals against his convictions and sentences.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 31.07.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is completely innocent of any wrong doing and has been falsely implicated in this case by the police and the rangers on the orders of their superiors in order to show their efficiency; that there are material contradictions in the evidence of the prosecution witness especially with respect to the BDU expert's alleged place of inspection of the recovered grenade and explosives; that the mashirnama is a joint one as opposed to two separate mashirnama's being made for each recovery at each house and that for any of the above reasons the appellant should be acquitted of the charges by extending him the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Abdul Basit versus the State** (2018 SCMR 1425) and **Anwar Hussain and others versus the State** (2019 YLR 1117).

8. On the other hand learned Special Prosecutor Rangers as well as learned Additional Prosecutor General have contended that the appellant was arrested on the spot from where large amounts of arms, ammunition and explosives were recovered from his person, the cupboard of his house and on his pointation the adjoining house within the same compound; that all the witnesses are reliable, trust worthy and confidence inspiring and there evidence can be believed; that there was no need for separate mashirnama's as both the areas where the arms and explosives were recovered from were within the same compound and as such the prosecution had proved its case beyond a reasonable doubt and the appeals should be dismissed. In support of their contentions they placed reliance on the cases of **Muhamamd Yaqoob versus the State** (2020 SCMR 853), **Asif and others versus the State** (2020 SCMR 610) and **Hakim Khan versus the State** (2013 SCMR 777).

9. We have heard the parties and gone through the evidence and the impugned judgment with their able assistance.

10. We find that the prosecution has proved its case against the appellant beyond a reasonable doubt in respect of all the offences for which he was charged for the following reasons;

(a) That the complainant recorded his Section 154 Cr.PC statement on the spot immediately after the arrest and recovery which was lodged as FIR's with extreme promptitude and thus there was no time for the complainant to cook up a false case with the police in order to falsely implicate the appellant. The appellant has been named in the FIR with a specific role.

(b) That the complainant as recorded in the FIR had received spy information that the appellant was selling weapons and narcotics from his house which turned out to be correct as when the rangers and the police raided the appellants house they found arms, ammunition, explosives, charas and money in different currencies.

(c) That the appellant was arrested red handed on the spot from his house from where large recoveries of arms, ammunition and charas were made. On his arrest on the spot he was also found to be in possession of an unlicensed pistol and a hand grenade for which he did not have a permit. He was also a serving police officer which would enable him to keep large caches of weapons without undue suspicion.

(d) That on his arrest on the spot the appellant **immediately** took the rangers and police to another part of the house/compound where he pointed out a place where a hidden stash of explosives was kept which

was a place which only he could have known about and as such there was no chance of foisting these explosives which were in huge quantities along with bolts and ball bearings. Even otherwise it is not possible to foist such a large amount of explosive material which it appears from the recovery of nuts and bolts and ball bearings were intended to be used in terrorist attacks which might have caused massive loss of life.

(e) That all PW's gave there evidence in a straightforward manner, corroborated each other, were not damaged during cross examination and although some of them were police/rangers witnesses no ill will or enmity has been suggested against them by the appellant and as such it is well settled by now that in such situations the evidence of police witnesses is as good as any other witness and can be relied upon and we do rely on the same. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

(f) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the convictions of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the receipt of the spy information by the complainant to him calling for back up to him and other police and rangers raiding the house of the appellant and arresting and making the recoveries from the appellants part of the house on the spot to the appellant taking them to another part of the compound where on his pointation he revealed where a massive amount of explosive making material had been hidden.

(g) The recovered weapons (except one) as per FSL report were all found to be in working condition, the recovered hand grenade was found to be live and containing explosive material as per BDU report and the recovered explosive material were all found to be so as per forensic report.

(h) Based on the particular facts and circumstances of this case where the recoveries were all made from one house with one entrance within the same compound we find that there was no need for there to be separate mashirnama's of recovery and that a joint mashirnama was legally justified.

(i) That the appellants' case is one of false implication simpliciter. He did not give evidence under oath or call any DW in support of his defence case that he was allegedly picked up from his house a few days before the raid by the rangers and did not call any of his brothers who were living with him in the same house to give evidence to this effect. As such we find the defence case is simply an after thought which we disbelieve in the face

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of reliable, trust worthy and confidence inspiring eye witness evidence along with the recoveries made at the scene and positive FSL and forensic reports.

11. Thus, the appeals are dismissed however the appellant shall have the benefit of S.382 (B) Cr.PC.