

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

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Khadim Hussain Tunio,*

SPL. CRIMINAL A.T.A. NO.192 OF 2021.  
SPL. CRIMINAL A.T.A. NO.193 OF 2021.

Appellant: Muhammad Salman S/o.  
Muhamamd Anwar through Mr.  
Nadeem Ahmed Azar, Advocate.

Respondent: The State through Mr. Muhammad  
Iqbal Awan, Additional Prosecutor  
General.

SPL. CRIMINAL A.T.A. NO.194 OF 2021.  
SPL. CRIMINAL A.T.A. NO.195 OF 2021.

Appellant: Naseer Ahmed S/o. Muhammad  
Hamza through Mr. Khalid  
Hussain, Advocate.

Respondent: The State through Mr. Muhammad  
Iqbal Awan, Additional Prosecutor  
General.

Date of hearing 28.03.2022.

Date of Announcement 01.04.2022.

**JUDGMENT**

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellants Muhammad Salman S/o. Muhammad Anwar and Naseer Ahmed S/o. Muhammad Hamza have preferred these appeals against the judgment dated 07.12.2021 passed by Learned Anti-Terrorism Court No.I, Karachi Division in Special Case No.313 of 2021, Spl. Case No.313-A of 2021, Special Case No.314 of 2021, Spl. Case No.314-A of 2021 arising out of Crime No.264 of 2021 to 267 of 2021 U/s. 4 & 5 of Explosive Substance Act r/w section 7(ff) of ATA 1997 and U/s. 23(I)/A of Sindh Arms Act registered at Police Station SIU/CIA, Karachi whereby both the appellants were convicted and sentenced to R.I. for 14 years each for the offence punishable u/s. 7 (ff) of Anti-Terrorism Act, 1997. Both the appellants were also convicted and sentenced to R.I. for five years with fine of Rs.20,000/- each for the



offence punishable under section 23(1)(a) of Sindh Arms Act, 2013. In case of non-payment of fine, they were ordered to suffer S.I. for 6 months more. Both the sentences were ordered to run concurrently. The benefit of section 382-B Cr.P.C. was also extended to both the accused.

2. The brief facts of the prosecution case are that on 13.06.2021, complainant SIP Khalid Khan lodged above FIRs at police station SIU/CIA, Karachi, wherein it is alleged that he along with subordinates left police station under entry No.71 for patrolling in police mobile bearing registration No.SPC-928. During patrolling he received spy information about presence of two accused persons on motorcycle, involved in different crimes, near Javed Motors, SUPRACO Road, Mawach Goth, Mochko, Karachi. On receiving such information, complainant took the spy with them and reached at pointed place and found those accused persons on their motorcycle bearing registration No.KLB-8576, Maker United 125, black colour, as such, at about 0200 hours both accused were apprehended. On inquiry, the accused who was driving the motorcycle disclosed his name as Naseer Ahmed @ Don son of Muhammad Hamza and accused sitting on rear seat disclosed his name Muhammad Salman S/o. Muhammad Anwar. On their personal search, one hand grenade of brown colour and one 30 bore pistol with five bullets, CAL 30 MADE AS CHINA was written on the pistol and Rs.200/- recovered from accused Naseer @ Don son of Muhammad Hamza and one rifle grenade, one 30 bore pistol with five live bullets MADE AS CHINA PISTOL CAL 30 BORE was written on the same and Rs.250/- were recovered from accused Muhammad Salman son of Muhammad Anwar. The motorcycle of accused persons bearing registration No. KLB-8576 was also seized. Accused failed to produce licenses of their respective weapons, as such, they were arrested under memo of arrest and recovery, after sealing the case property except grenades, hence present FIRs were registered.

3. After registration of FIR, investigation of all four cases was entrusted to Inspector Muhammad Anwar, who inspected place of incident on the pointation of complainant party, prepared such memo in presence of mashirs. He recorded statements of witnesses u/s. 161 Cr.P.C. and referred the pistols and bullets under his letter to the FSL for report which he received. The Official of Bomb Disposal Unit was called who inspected the hand grenade and rifle grenade, issued such clearance certificates as well as final reports. He obtained past criminal record of accused persons. He also obtained sanction order from Home



Department, Government of Sindh and after completing usual investigation submitted charge sheets in the court of law.

4. The prosecution in order to prove its case examined 04 witnesses and exhibited various documents and other items. The statements of accused were recorded under Section 342 Cr.P.C in which they denied the allegations leveled against them and claimed false implication. They did not give evidence on oath but they did call 3 DW's in support of their defence case.

5. After appreciating the evidence on record and hearing both sides the trial court convicted the appellants and sentenced them as stated above, hence, the appellants have filed this appeal against conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 07.12.2021 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 appellants have contended that the appellants have been falsely implicated in this case by the police and had been picked up from their respective homes prior to the incident; that dates on numerous exhibits are similar which does not appeal to reason; that the police did not produce any arrival entry and that it was dark at the time of the arrest; that the weapons were foisted on them and as such for any or all of the above reasons the appellants should be acquitted by extending them the benefit of the doubt.

8. On the other hand learned counsel for the <sup>State</sup> ~~appellant~~ fully supported the impugned judgment and prayed for the dismissal of the appeal however when confronted by this court he conceded that this case did not fall within the purview of the ATA. In support of his contentions he placed reliance on the cases of **Fazal-ur-Rehman v. The State** (2021 SCMR 359), **Muhammad Farhan alias Irfan v. The State** (2021 SCMR 488) and **Muhammad Yaqoob v. The State** (2020 SCMR 853).

9. We have heard the arguments of the learned counsel for the appellants as well as learned APG and have gone through the entire evidence which has been read out by counsel for the appellants, and the impugned judgment with the able assistance of learned counsel and have considered the relevant law including the case-laws cited at the bar.

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10. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellants for which they were convicted **except** in respect of the ATA offences for the following reasons keeping in view that each criminal case must be decided on its own particular facts and circumstances;

(a) That the FIR was lodged with promptitude which gave the police no time to cook up a false case against the appellants. The police duly exhibited their departure entry before leaving for patrol where the appellants were arrested on the spot on the basis of spy information.

(b) That the appellants were caught red handed on the spot each with an unlicensed pistol and a grenade and rifle grenade respectively. No enmity was suggested against any police officer who had no reason to falsely implicate either of the appellants in this case.

(c) That the arrest and recovery was made on the spot by the police whose evidence fully corroborates each other in all material respects as well as the prosecution case. It is well settled by now that the evidence of a police witness is as reliable as any other witness provided that no enmity exists between them and the accused and in this case no suggestion of enmity has been made against any PW. They had no reason to falsely implicate the appellants by for example foisting the recovered weapons on them. Thus we believe the police evidence and rely upon the same which is corroborative in all material respects. Reliance in this respect is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474)

(d) The recovered pistols produced a positive FSL report and the recovered grenade and rifle grenade contained explosive material as confirmed by the clearance certificate and final certificate issued by the BDU. The recovered pistols and grenade and rifle grenade were kept in safe custody from the time of their recovery until the time they were sent for FSL and DBU examination respectively.

(e) The bike recovered at the scene which the appellants were riding at the time of their arrest was owned by the brother of one of the appellants and it was not possible to foist this particular bike on the appellants at the time of their arrest on the spot whilst they were riding this bike.

(f) Both appellants have lengthy CRO's for similar type cases and as such appear to be habitual offenders.

(g) 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 conviction of the appellants. 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 police leaving on patrol to the arrest of the appellants based on spy information to the recovery of the pistols and grenade and rifle grenade from them to the positive FSL and BDU reports.

(h) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is one of false implication whereby allegedly the appellants were taken away from their respective homes by law enforcement agencies and then fixed in this false case. The appellants did not give evidence on oath in order to refute the prosecution case and although the defence produced three witnesses in support of their case we disbelieve their evidence and the defence case in the face of overwhelming prosecution evidence. This is because the DW's were either relatives or neighbors of the appellants; they made no complaint to any body about the kidnapping of the appellants despite a lapse of 6 days before the appellants were shown as arrested in the case which is a belated attempt to save the skins of the appellants. They also admitted that the police had no enmity with the appellants and thus would have no reason to implicate them in a false case and it does not appeal to reason that in the middle of a night time raid the police would take the bike of one of the appellants as well as the appellant in the middle of the night when he was allegedly sleeping.

11. As such the appeals are dismissed and the convictions are maintained except in respect of the offence under the ATA for which the appellants are acquitted as this was not a case of terrorism which fell within the definition of terrorism as set out by the Supreme Court in the case of **Ghulam Hussain V State** (PLD 2020 SC 61) where in essence for there to be an act of terrorism there had to be an object, intent, purpose and design to create terror on account of their act. Based on the particular facts and circumstances of this case it appears that the appellants were simply caught with weapons for which they had no licenses or no explanation to be in their lawful possession.

12. With regard to sentencing we consider that the sentences handed down to the appellants seem to be somewhat harsh especially as they have now been acquitted of any offence under the ATA and that they have large families to support and that the weapons recovered from them were never used and as such based on the above mitigating circumstances we hereby convict and sentence the appellants as under;

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(a) U/s. 5 of Explosive Substance Act 1908 for 3 years RI.

(b) U/s. 23(1) (a) of Sindh Arms Act 2013 for 3 years RI with fine of Rs.20,000/- each. In case of non-payment of fine, both the appellants shall undergo RI for 3 months more.

Both the sentences shall run concurrently. Each of the appellants shall have the benefit of section 382-B Cr.P.C. and any remission applicable to them under the law now that the appellants have been acquitted of any offence falling under the ATA.

13. As such the appeals are dismissed except in terms of the offences under the ATA for which the appellants are acquitted and the convictions and sentences are modified as set out in this judgment.