

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Justice Miran Muhammad Shah

**Special Criminal Anti-Terrorism
Appeal No. 15 of 2025
[Ameenullah & another vs. The State]**

Appellants : through M/s. Abdul Qayyum Khan
& Nasir Ali Khan, Advocates.

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

Date of Hearing : 21.10.2025

Date of Decision : 24.10.2025

JUDGMENT

Omar Sial, J: Acting on spy information, officials of the Pakistan Customs led by Preventive Officer Zohaibullah Yousufzai, on 01.04.2024 signalled a white Corolla vehicle, with two people in it, to stop. The car instead of stopping, sped away leading to a chase by the Customs officials. The vehicle was stopped and checked and the Customs discovered seventy sacks of betelnut in it. The two men in the vehicle identified themselves as Ameenullah and Samiullah. The Customs took the vehicle, its belongings and the two men in its custody and headed towards the Customs check post. They were intercepted on the way by twenty-five to thirty men riding in six to seven cars. One person from the mob allegedly fired at the Customs officials, leading to retaliatory gunfire. The Customs say that they only resorted to aerial firing yet one of the two accused in their custody, Ameenullah, was hit by a bullet fired by the mob. The entire mob, including the two accused, then escaped. F.I.R. No. 240 of 2024 was registered under sections 353, 324, 427, 186 and

34 P.P.C. read with section 7 ATA, 1997 at the Mango Pir police station.

2. Four months later, on 03.07.2024, Inspector Samiullah of the Mango Pir police station claimed that he got spy information that the two wanted accused in F.I.R. No. 240 of 2024 were sitting in a car near a roadside hotel. The Inspector went to the identified place and arrested the two occupants of the vehicle, who were identified as Ameenullah and Kalamullah alias Kalamuddin, the two appellants in this appeal. Both the arrested accused pleaded not guilty and claimed to be tried.

3. The prosecution examined 8 witnesses at the trial. **Inspector Zohaibullah PW-1** was the complainant. **A.S.I. Mohammad Gulistan (PW-2)** was the police officer at the Mango Pir police station to whom Inspector Zohaibullah handed over the crime empties he himself had collected from the scene. An SMG assigned to one of the Customs officials, P.C. Noshad, was also handed over to him. **Sepoy Hameedullah PW-3** was a member of the Customs party that had stopped the suspect car. **A.S.I. Samiullah PW-4** was the policeman who arrested the appellants on 03.07.2024. **Dr. Kamran Khan PW-5** was the doctor who treated the injured Ameenullah on 01.04.2024 when he went to the hospital with a firearm injury. **H.C. Adeel Ahmed PW-6** was the head mohrar of the Mango Pir police station. **P.C. Awais Ali PW-7** was the witness to the arrest of the two appellants. **Inspector Salamat Ali PW-8** was the investigating officer of the case.

4. The two appellants in their respective section 342 Cr.P.C. statements denied any wrong doing. They further stated that the Customs officials had fired on a car being driven by him and Kalamullah and that fire had hit him. Kalamullah had taken him to the JPMC.

5. The Anti-Terrorism Court No. 6 on 07.05.2025 convicted and sentenced the appellants as follows:

- (a) Two years imprisonment for an offence under section 353 P.P.C. to both the appellants;
- (b) Seven years imprisonment for an offence under section 324 P.P.C. to both the appellants;
- (c) Ten years imprisonment for an offence under section 7(1)(b) of Anti-Terrorism Act, 1997 to both the appellants;
- (d) Six months imprisonment for an offence under section 427 P.P.C. to both the appellants;
- (e) Ten years imprisonment for an offence under section 7(1)(d) of Anti-Terrorism Act, 1997 to both the appellants;

6. We have heard the learned counsels for the appellants and the learned Additional Prosecutor General. Their respective arguments for brevity are not being reproduced but are reflected in our observations and findings below.

7. There is an unexplained delay of five hours between the incident and the registration of the F.I.R. The prosecution witnesses repeatedly acknowledged that there was delay but none of the witness gave any reason for such delay. Prima facie there appears to be little reason besides consultation among the Customs officials on how to handle the situation. It lends credence to the defense version that the Customs shot and injured a person who had not stopped when signalled to stop. It is the defence version that to prevent any legal action against the Customs sleuths, the entire story of a mob coming and taking the two apprehended accused, was an after-thought and a false narrative. The evidence reveals that there is doubt regarding its authenticity. It is claimed that Ameenullah and his companion, when apprehended by the Customs had 70 sacks of ten kilograms each in the vehicle when they were signalled to stop. No where in the entire case was this betelnut produced as case property. It is also rather unbelievable that the accused would carrying 700 kilograms of betelnut in a car and that it

could even fit in there and the vehicle be able to bear its load. The prosecution's failure to produce even the memo of seizure at trial further raises doubt about the authenticity and accuracy of the prosecution's case. More doubt is raised when the prosecution witness Sepoy Hameedullah testified at trial that the "*complainant did not prepare any memo of recovery, which was later prepared at the check post.*" Further, the entire case property i.e. the empties, stones and weapons used were given by the Customs to the police at the police station and the police was told that the Customs had collected all these things from the place of incident. The car which was stopped according to the prosecution had been seized by the Customs was not given to the investigating officer of the case as per the complainant Inspector Zohaibullah. The same Inspector admitted at trial that the Kalashnikov given by him to the investigating officer, as case property, had a different serial number to the one that was produced at trial. He also admitted that the stones, shown as case property, at the trial, were not mentioned in the recovery memo he had prepared. Prosecution witness A.S.I. Mohammad Gulistan, who received the case property, admitted at trial that "it is correct to suggest that the private vehicle bearing number AKY 092 as well as the alleged betelnuts were not produced before me by the complainant. Most surprisingly, the police was unable to find even one witness who was not from the Customs who had witnessed the entire incident. A mob attacking a Customs police party and managing to take away their accomplices from detention, would surely have been seen by many. Yet, the investigating officer could not procure an independent witness. No blood was seen or collected from the scene of the incident or from inside the car in which Ameenullah was said to have been shot by his own accomplices. We find it incredibly unnatural that inspite of the prosecution version that a large mob attacked them and fired upon them from the front and the rear (apart from throwing stones), that the only damage done was an alleged bullet damage to their government vehicle.

8. The mode of identification of the accused, in particular Kalamullah, remained unsatisfactorily explained. According to Inspector Zohaibullah, a month after the incident he was called by the investigating officer and shown some photos on an USB, from which he had identified Kalamullah to be one of the persons in the mob. The F.I.R. or the section 161 Cr.P.C. statements did not record any description of any of the members of the mob. No identification parade was held after Kalamullah's arrest to determine whether he was indeed one of the members of the mob and if what was his role, if any, in the whole incident. Another witness, the doctor, testified that Kalamullah had brought the injured Ameenullah to the hospital for treatment. This in fact is in line with what Ameenullah said in his section 342 Cr.P.C. statement i.e. Kalamullah and he were in the car that had not stopped and was fired upon by the Customs.

9. The investigating officer, Inspector Salamat Ali Lashari, testified at trial that none of the witnesses had given him a description of the accused; that Ameenullah was admitted in the JPMC on 03.04.2024 but that he had not gone there to arrest him; he had not recorded a statement from anyone at the hospital; that he had not inspected vehicle no. AKY-092. The final nail in the prosecution case was when the investigating officer, Inspector Salamat Ali Lashari, testified at trial that *"I did not collect any evidence regarding the involvement of accused Kalamullah and Ameenullah being involved in the instant crime of firing."* He then went on to testify that *"it is correct to suggest that according to my investigation the accused were not involved in firing with the Customs officials nor any weapon was recovered from them and only involved in the case due to attack of mob on the Customs official."* He further acknowledged that the complainant had failed to enable him to draw a sketch of the accused and that he had not even disclosed any description or features of the accused.

10. Given the above, substantial doubt crept up in the prosecution's case, the benefit of which doubt, in accordance with well established principles should have gone to the accused. The appeal is allowed and the appellants acquitted of the charge. They may be released forthwith if not required in any other custody case.

JUDGE

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