

# IN THE HIGH COURT OF SINDH AT KARACHI

## Special Criminal Anti Terrorism Appeal No.34/2017

Appellant : Sher Hakeem, through Mr. Mahmood A. Qureshi, Advocate.  
Respondent : The State, through Mr. Abdullah Rajput, learned APG.

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Respondent : The State, through Mr. Abdullah Rajput, learned APG.

Date of hearing 11.05.2017

Date of Judgment

Present: Ahmed Ali M. Shaikh, CJ  
Yousuf Ali Sayeed, J

### JUDGMENT

**YOUSUF ALI SAYEED, J.** The captioned Appeals call into question the Judgment dated 19.01.2017 (the “**Impugned Judgment**”) passed by the Anti-Terrorism Court No. IX at Karachi in Special Case Numbers A-99/2014 and 08(IX)/2015, whereby convictions were recorded against the Appellant in respect of offences under S.23(1)-A of the Sindh Arms Act 2013 and (ii) S. 4 and S.5 of the Explosive Substances Act 1908, in respect of which he was concurrently sentenced to undergo seven (7) years rigorous imprisonment and fine of Rs.25,000/- and in case of default of payment of fine to undergo R.I. for a further period of six months, and also sentenced to undergo rigorous imprisonment for a period of fourteen (14) years with forfeiture of his property if any as required under S.7 of the Anti-Terrorism Act 1997 (the “**ATA**”).

2. Succinctly, the preceding facts are that on 18.09.2013, FIR Nos. 407 and 408 of 2013 were registered at P.S. Quaidabad, District Malir, Karachi, on behalf of the State by ASIP Akhtar Hussain, wherein the allegation against the Appellant and one Amjad Khan, son of Sarzameen Khan, were that an unlicensed 30 bore pistol and a hand grenade was recovered from each of them. However, as Amjad met his demise prior to commencement of the trial, the proceedings against him thus stood abated.
3. After the usual investigation, challan was submitted in the trial Court, and on 07.11.2015 a joint charge was framed against the Applicant in respect of both the registered cases, to which he pleaded not guilty and claimed trial.
4. The prosecution examined four witnesses, namely ASI Akhtar Hussain, the Complainant (PW-1), PC Saud Akhtar (PW-2), SIP Muhammad Suleman, the IO of the case (PW-3) and ASI Saleem Akhtar (PW-4). The statement of the appellant under S. 342 Cr. P.C. was recorded, wherein he denied the allegations. The appellant examine himself on oath and, in his defence, also examined two witnesses, namely Siar Khan (DW-1) and Iqbal Jameel (DW-2).
5. Whilst assailing the Impugned Judgment, learned counsel for the Appellant professed to his innocence and submitted that the case was a fabrication and one of false implication. With reference to the depositions and cross-examinations of the Prosecution witnesses as well as the FIRs (Ex. 06/B and Ex. 06/C), the Memo of Arrest, Recovery and Seizure (EXH.NO.P/1/B) and the Inspection Reports of the pistol (EXH.P/3/D) as well as the hand grenade (Ex. 07/H), he submitted that the Impugned Judgment was the product of a misreading of the evidence due to which the learned trial Court failed to resolve the benefit of doubt in favour of the Appellants, and prayed that the Impugned Judgment be set aside.
6. We have considered the record and the submissions made by learned counsel for the Appellants as well as by the learned APG.
7. As per the version of the Appellant, as disclosed in his Statement under S.342 Cr. P.C. (Ex. No.10) as well as his subsequent deposition (Ex. No.11), he, along with Amjad Khan, was picked up from the latter's residence on 17.09.2013 and taken to Rangers Headquarters, where both of them were kept for some time prior to being handed over to the police at P.S. Quaidabad, who it is said then falsely involved the two of them in the case. It

was further stated that Amjad's brother, Siar Khan, had presented an Application in relation to the incident of 17.09.2013 at P.S. Sukhan on the same day. Consistent with such statement, Siar Khan (DW-1) has made a corresponding statement in his deposition (Ex. No.12) and produced the Application lodged at P.S. Sukhan was produced as Ex. No. 18/A. This version is also corroborated by the testimony of a resident of the same neighbourhood, namely Iqbal Jameel (DW-2), who identified himself as a Government servant and confirmed such version in his deposition (Ex. No 13).

8. Furthermore, it merits consideration that the FIRs, the Memo of Arrest and Seizure as well as the FSL Report are bereft of any description of the 30 bore pistol said to have been recovered from the Appellant and merely describe the weapon as being without number. However, from the cross-examination of PW-1 to the counsel of the Appellant it is evident that the description "Made in China by Norinco" was engraved on the pistol produced in Court during the trial. Furthermore, as far as the aspect of case in relation to the Explosive Substances Act is concerned, whilst the FIRs and the Memo of Arrest and Seizure specify the incendiary/explosive device recovered from the Applicant to be a 'hand grenade', and the same thus forms the basis of the Charge and is thereafter consistently referred to by such description in the depositions of the prosecution witnesses, a perusal of the Inspection Report dated 11.02.2014, bearing Reference No. SB/BDU/128/2014 (Ex No. 8/B) shows that the subject of what is said to have been examined were 'rifle grenades'.
9. Learned counsel for the Appellant relied on the unreported Judgments of this Court in Special Anti-Terrorism Appeal Nos. 28, 29, 40 and 41 of 2015 and in Spl. Criminal Anti-Terrorism Appeal Nos.165 to 167 of 2015, where the distinction between a 'hand grenade' and a 'rifle grenade' was highlighted by a learned Division Bench and was held to be so basic and obvious a matter that even a layman could probably distinguish between the two species. Indeed, the distinction is so stark that we are unable to subscribe to the view taken by the learned trial Court condoning the police's lack of expertise in the matter of distinguishing one from the other or to agree with the finding that the discrepancy in identification of the type of explosive said to have been recovered does not have a material bearing on the matter. To our minds, this glaring and obvious contradiction cannot be reconciled, and is fatal to the prosecution's case, especially as the same is based on the alleged factum of recovery. In fact, the very plea as to lack of expertise on the part of police personnel was also one of the pleas dispelled by the learned Division Bench in the aforementioned unreported Judgments.

10. Furthermore, it merits consideration that the letter dated 29.09.2013 addressed by the IO to the SSP, East Zone, Karachi seeking permission for the matter to be tried under Section 7 of the ATA, whilst referring to the recovery of 'hand grenades', also records that the same were defused through BDU Report No.8201. However, the said BDU Report does not appear to form part of the record of the trial. Moreover, it appears that the Appellant was never confronted with the said BDU Report or the Inspection Report dated 11.02.2014, bearing Reference No. SB/BDU/128/2014 at the time of recording of his S.342 Statement, which omission precludes such documents from being used as evidence against him at trial, as held by the Honourable Supreme Court in the Judgment reported as Qaddan v. The State 2017 SCMR148. When confronted with these omissions and irregularities, the learned APG was unable to point out any material that would serve to controvert the same.
11. Accordingly, we are of the view that the aforementioned factors serve to create appreciable doubt as to the veracity of the prosecution's case, and hence the Impugned Judgment cannot be sustained.
12. These are the reasons for the short Order dictated in these Appeals in open Court on 11.05.2017 whereby the captioned Appeals were allowed and the Appellant was acquitted of the charges.

JUDGE

CHIEF JUSTICE

Karachi  
Dated.17-05-2017