

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.D-148 of 2007

PRESENT

Mr. Justice Naimatullah Phulpoto

Mr. Justice Zulfiqar Ahmed Khan

Date of Hearing: 22.05.2017

Date of Judgment: 22.05.2017

Appellant/accused: Saleem S/o Ali Sher Abbasi:
Through: Syed Tarique Ahmed Shah,
Advocate.

The State: Through Syed Meeral Shah Bukhari,
Additional Prosecutor General, Sindh.

JUDGMENT

NAIMATULLAH PHULPOTO, J:- Appellant Saleem Abbasi

was tried by learned Judge, Anti-Terrorism Court, Hyderabad and Mirpurkhas Division at Hyderabad in ATC Case No.09 of 2005. By judgment dated 25.06.2007, the appellant was convicted under Section 4(b) of Explosive Substance Act, 1908 and sentenced to 07 years R.I. Benefit of Section 382(B) Cr.P.C was extended to the appellant/accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 10.04.2005, SIP Kewero Khan of Police Station, Tando Adam received a telephonic call at about 12:45 p.m from Dr. Fazal Muhammad Shah, Medical Officer, Taluka Hospital, Tando

Adam that injured Saleem S/o Ali Sher Abbasi has been brought to the Hospital in a serious injured condition. On receipt of such information, SIP Kewero Khan alongwith ASI Manzoor Ali, Constables Muhammad Aslam, Muhammad Saleem and Driver Constable Muhammad Saleem vide roznamcha entry No.5 left the Police Station in a police mobile and reached in Taluka Hospital, Tando Adam. Injured Saleem was lying unconscious. It is alleged that injured was provided first aid treatment. Injured had injuries on his face, eyes, hands and feet. SIP gave formal letter to the Medical Officer for treatment and certificate. SHO visited house of the accused, where incident had taken place. SIP found door of Bhetak broken due to blast. SHO collected three pieces of Zinc metal, which were smelling of explosive substance. SIP Kewero Khan collected the pieces of burnt clothes from the place of occurrence and prepared mashirnama of place of occurrence in presence of ASI Manzoor Ali and Driver P.C Muhammad Saleem. Thereafter, SIP inquired from the persons in the Mohalla about blast and came to know that accused was involved in manufacturing explosive devices. SIP then leaving ASI Manzoor Ali and constable Muhammad Saleem at the place of occurrence, came to the Police Station and registered FIR against accused Saleem on behalf of the State vide Crime No.69 of 2005 for offence under Sections 436 PPC and 3/4 of Explosive Substance Act, 1908 and under Section 7 of Anti-Terrorism Act, 1997.

3. After usual investigation, challan was submitted against the accused before the Anti-Terrorism Court, Hyderabad, under the above referred sections.

4. Trial Court framed the charge against the accused under Section 3/4 of the Explosive Substance Act, 1908 read with Sections 6(2)(ee) and 7 of the Anti-Terrorism Act, 1997 at Ex-03. Accused pleaded not guilty and claimed to be tried.

5. In order to prove its case, prosecution examined P.W-1 Manzoor Ali at Ex-5, who produced memo of injury of injured at Ex-5/A, memo of place of occurrence at Ex-5/B, memo of arrest at Ex-5/C and memo of Articles recovered from Bomb Disposal Squad at Ex-5/D. P.W-2 HC Muhammad Aslam was examined at Ex-6 and P.W-3 Dr. Fazal Muhammad Shah at Ex-7, who produced provisional medical certificate at Ex-7/A and final medical certificate at Ex-7/B. P.W-4 Inspector Kewero Khan was examined at Ex-8, who produced attested copy of entry of departure from the Police Station at Ex-8/A, report of Bomb Disposal Squad at Ex-8/B. Thereafter, prosecution side was closed.

6. Statement of accused Sleem was recorded under Section 342 Cr.P.C at Ex-10. Plea was raised by the accused that he had suffered injuries on account of explosion of gas cylinder. Accused did not lead evidence in his defence and also declined to examine himself on oath in disproof of the prosecution allegations.

7. Trial Court formulated the points for determination, after hearing the learned Counsel for the parties and examining the evidence, convicted the appellant under Section 4(b) of Explosive Substance Act, 1908 and sentenced as referred to here-in-above, hence this appeal.

8. Trial Court in the judgment dated 25.06.2007 has already discussed the facts and evidence in detail and there is no need to repeat it here, so as to avoid duplication and un-necessary repetition.

9. Syed Tarique Ahmed Shah, learned Advocate for the appellant mainly contended that there was no eye witness of the incident and the medical evidence did not provide identification of the accused. It is further contended that medical evidence was self-contradictory to the medical certificate produced in the evidence with regard to the weapon used. Learned Counsel for the appellant further argued that expert of the Bomb Disposal Squad has also not been examined to prove the guilt of the accused. Lastly, it is contended that the evidence of the police officials was tainted with doubts and did not inspire confidence. Learned Counsel for the appellant in support of his contentions, has relied upon the cases of *MUHAMMAD PERVAIZ V/S. THE STATE (2005 SCMR 1038)*, *RAO MUHAMMAD ARASTU V/S. THE STATE (2014 P.Cr.L.J 802)* and *PAYO KHAN ALIAS KAKAY V/S. THE STATE (2014 YLR 2270)*.

10. Syed Meeral Shah Bukhari, learned Additional Prosecutor General for the State argued that the injuries were caused to the appellant by means of explosive substance as certified by the Medical Officer, Taluka Hospital, Tando Adam and the police officials had no enmity to falsely implicate the accused in the commission of the offence. Learned D.P.G argued for dismissal of the appeal.

11. We have carefully heard learned Counsel for the parties and scanned the entire evidence available on the record.

12. After perusal of the evidence, we have come to the conclusion that the prosecution had failed to establish its case against the appellant for the reasons that there was no eye witness of the incident. No expert of the Bomb Disposal Squad was examined by the prosecution, to prove that injuries suffered by the accused were caused by explosive substance. No doubt there were 18 injuries on the person of the appellant/accused caused with hard blunt substance like explosive material but the medical evidence is always considered as a corroborative piece of the evidence, medical evidence simply states the number and seat of injuries, weapon used, probable time of occurrence and other ancillary details but it cannot identify the assailants, who inflicted those injuries. In this case, plea has been raised by the accused that he had sustained such injuries by means of explosion of gas cylinder. The reasons assigned by the trial Court by convicting the accused are neither sound nor cogent. Evidence of the police

officials was tainted with doubts and did not inspire confidence. In the case of *MUHAMMAD PERVAIZ V/S. THE STATE (SUPRA)*, it is observed as under:-

“9. It is evident that no private person was associated in recovery proceedings, although so could be done very easily. The evidence of both above named police officials does not inspire confidence and is tainted with doubts. A Police Officer is supposed to give entire facts and not to conceal them. The reply of material questions in the words “I do not know”, in fact, tantamounts to conceal the facts deliberately. It is very hard to believe that so many times the raids were made at the house of the petitioner, yet, he was not known to the police officials, especially when his brothers and mother were well known to them. Recovery of above articles has not been proved satisfactorily.

10. Accordingly, the petition is converted into appeal and the same is allowed. The judgments of trial Court and High Court are set aside. The petitioner/appellant shall be released forthwith, if not required in any other case.”

12. Thus, considering the evidence available on record and overall circumstances of the case, the prosecution has failed to prove its case beyond reasonable shadow of doubt. This appeal is allowed. Resultantly, the impugned judgment dated 25.06.2007 passed by the Trial Court is set aside. Appellant is acquitted of the charge. Learned Counsel for the appellant submitted that he could not inform the appellant about the date of hearing. Therefore, by our short order dated 22.05.2007, bail bond of the appellant was

ordered to be cancelled, so also surety was discharged. These are the reasons for our said short order, whereby we had allowed the appeal.

JUDGE

JUDGE

Shahid