

IN THE HIGH COURT OF SINDH AT KARACHI
Spl. Cr. A.T.A. No.219 of 2017

PRESENT:-

Mr. Justice Naimatullah Phulpoto; and
Mr. Justice Shamsuddin Abbasi

Date of hearings: 12.02.2018.
Date of Judgment: 26.02.2018
Appellant: Muhammad Imran Afridi, through Mr. Shah Imroz Khan, Advocate
Respondent: The State, through Mr. Muhammad Iqbal Awan, Dy. Prosecutor General Sindh

JUDGMENT

Shamsuddin Abbasi, J.-- Appellant has filed the instant appeal against the judgment dated 28.09.2017, passed by the learned Anti-Terrorism Court-1, Karachi in Special Case No.A-158/15, under Sections 4 & 5 Explosive Act read with Section 7(ff) of the Anti-Terrorism Act, 1997, arising out of crime/FIR No.160/15 of Police Station Korangi Industrial Area, Karachi. The appellant was convicted under Section 7(ff) of the Anti-Terrorism Act, 1997 and sentenced to 14 years R.I. Benefit of Section 382-B Cr.P.C, also extended to appellant.

2. The brief facts of the prosecution case are that on 14.03.2015 at 0245 hours, the complainant SIP Muhammad Yousuf Narejo, lodged above FIR at Police Station Korangi Industrial Area, Karachi, wherein he has stated that he alongwith subordinate staff were on patrolling duty at about 0130 hours, when they reached near Khattak Petrol Pump, Gulzar more, Sector 7/A, Korangi Industrial Area, Karachi, they saw one suspect who on seeing police party tried to hide himself later on he was apprehended. On his personal

search, one hand grenade and Rs.150/- were recovered as such he was arrested under memo of arrest and recovery in presence of mashirs after taking grenade and cash in possession. The accused/appellant and case property were taken to police station and such FIR has been registered by the complainant against the appellant.

3. After registration of the FIR of the case was entrusted to Inspector Naseem Ahmed Farooqui, who inspected place of incident on the pointation of the complainant and prepared such memo in presence of mashirs and recorded statements of witnesses under Section 161 Cr.P.C. He has also issued letter to the Home Department Government of Sindh, Karachi for obtaining sanction order thereafter the said I.O was transferred and investigation was transferred to SHO Ejaz Khan of Police Station Shah Faisal Colony, Karachi and thereafter again the investigation was entrusted to Inspector Khan Muhammad Shaikh, who obtained CRO of accused/appellant. He received final report of Bomb disposal Unit, sanction order from Home Department, Government of Sindh and after completing usual investigation submitted charge sheet for an offence punishable under Section 4 & 5 of Explosive Substances Act read with Section 7 of Anti-Terrorism Act, 1997.

4. The trial Court framed charge against accused to which accused/appellant pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution examined four witness namely SIP Muhammad Yousuf as PW-1 at Ex.04 he produced Roznamcha Entry No.49 dated 13.03.2015, memo of arrest and recovery, FIR of Crime No.160/2015, Roznamcha Entry No.60 dated 14.03.2015, Roznamcha entry No.43 dated 15.03.2015,

Roznamcha entry No.46 dated 14.03.2015 memo of inspection place of incident, clearance certificate, issued by official of Bomb Disposal Unit and Roznamcha entry No.15 dated 15.03.2015 at Ex. 04/A to Ex.04/I respectively. PC Ishtiaq Ahmed as PW-2, Ex.05, Inspector Muhammad Naseem Farooqui as PW-3, Ex.06, he produced letter addressed to Home Department, Government of Sindh for obtaining sanction order at Ex.06/A. Finally the prosecution examined Inspector Khan Muhammad Shaikh as PW-4, Ex.07. Thereafter, the prosecution closed its side at Ex.08.

6. The statement of accused Muhammad Imran Afridi son of Hajmat Khan was recorded under Section 342 Cr.P.C at Ex.09 wherein he has totally denied the allegations leveled by the prosecution and pleaded his innocence. Nothing was recovered from his possession, alleged recovery of hand grenade has been foisted upon him. All the prosecution witnesses are police officials who have falsely implicated him at the instance of Rangers Personnel. He further stated that on 05.02.2015 at 12.00 night, he was picked up by the Rangers Personnel from his house and later on he was handed over to the police who implicated him in this case. The accused however, did not opt to depose on oath under Section 340(2) Cr.P.C. nor examined any witness in his defence in rebuttal of prosecution evidence to disprove the charge leveled against him.

7. In order to prove its case, the prosecution has examined SIP Muhammad Yousuf at Ex.04, who deposed that the incident had taken place on 14.03.2015. He was posted at PS Korangi Industrial Area, Karachi. He alongwith subordinate staff left PS under entry No.49 at 8.00 p.m., for patrolling on 13.03.2015. He further deposed that during patrolling they saw accused who was hiding himself on

seeing them at 01.30 a. m near Khattack Petrol Pump, Gulzar More, Sector 7/A, Korangi Industrial Area, Karachi. Police encircled the accused and apprehended him, who disclosed his name Imran @ Afridi son of Hajmat Khan. On his personal search, one hand grenade from his right side pocket of shirt and Rs.150/- were recovered from left side pocket. Accused was arrested under memo of arrest and recovery. He further deposed that accused and case property were then brought at P.S. The FIR being Crime No.160/2015, under Section 4/5 Explosive substance Act read with Section 7 ATA, 1997 was registered. The entry No.60 about their arrival and registration of FIR was recorded. Accused and case property were handed over to SHO Inspector Naseem Farooqui of P.S. Shah Faisal Colony for investigation. I.O. called the official of Bomb Disposal Unit at police station Korangi Industrial Area for inspecting hand grenade and made such entry No.46 in the Roznamcha. On 15.03.2015 at 9.50 a.m. I.O, inspected place of incident on his pointation and prepared such memo in presence of mashirs. His statement under Section 161 Cr.P.C, was recorded. On same day at 1310 hours official of Bomb disposal Unit came at P.S. Korangi Industrial Area and inspected hand grenade and issued clearance certificate. The hand grenade was handed over to him and he handed over the same to I.O under entry No.15.

8. PW-2 PC Ishtiaq Ahmed (Ex.05) deposed that on 14.03.2015 he was posted at P.S. Korangi Industrial Area, Karachi complainant left P.S alongwith him and other staff for patrolling at 8.00. On 15.03.2015 at 0130 hours, during patrolling when they reached near Khattack Petrol Pump, they found one suspect while standing at some distance from Petrol Pump. They apprehended him

and on inquiry he disclosed his name Imran @ Afridi son of Hijmat Khan. On his personal search one hand grenade from right side pocket of his shirt was recovered. Rs.150/- were also recovered from his left pocket. Accused was arrested under memo of arrest and recovery in their presence and such memo was prepared on the spot. In the morning at 9.50 a.m., I.O, inspected place of incident in their presence and prepared such memo.

9. PW-3 Inspector Naseem Farooqui (Ex.06) deposed that on 14.03.2015, he was posted as SHO at P.S. Shah Faisal Colony Karachi. On the same day he received papers, case property and accused for investigation. On 15.03.2015 he inspected place of incident on the pointation of complainant party and prepared such memo in presence of mashirs. He recorded statements of witnesses under Section 161 Cr.P.C. On the same day he issued letter to the Home Department Government of Sindh for obtaining sanction order. On 16.03.2015 he obtained remand of accused. On 20.3.2015 he was transferred and handed over papers and accused to SHO Ejaz for further investigation.

10. Finally, the prosecution examined PW-4 Inspector Khan Muhammad Shaikh, Ex.07, he deposed that on 29.03.2015, he was posted as SHO at P.S. Korangi Karachi. He received papers, case property and accused for investigation from SHO P.S. Shah Faisal Colony, Karachi. He brought the accused from Korangi Industrial Area to P.S. Korangi. He received that report from Bomb Disposal Unit. He also received sanction order from Home Department, Government of Sindh and after completing investigation, he submitted final challan.

11. After full dressed trial, the learned trial Court convicted and sentence the appellant R.I for 14 years for the offence punishable under Section 7(ff) of Anti-Terrorism Act, 1997 and benefit of Section 382-B Cr.P.C is also extended to him.

12. We have heard the learned counsel for the appellant and Additional Prosecutor General for the state and perused the record of the case carefully.

13. Learned counsel for the appellant contended that there are material contradictions in the prosecution case and prosecution story was highly doubtful. He has further submitted that description of the hand grenade has also not been mentioned in the mashirnama of recovery. That there was no evidence that hand grenade was kept in safe custody at malkhana of the police station. It is also contended that alleged recovery was made near thickly populated area but no private person of the locality was associated as mashir. In support of his contentions, he relied upon the case of Tariq Parvez versus the State (1995 SCMR 1345)

14. On the other hand, learned D.P.G. contended that all four PWs have fully supported the prosecution case. Contradiction as highlighted by the defence counsel is minor in nature. He opposed the appeal.

15. We carefully heard the learned counsel for the parties and perused the evidence carefully. Prosecution story appears to be unbelievable. Prosecution evidence is materially contradicted on material particulars of the case. Complainant ASI Muhammad Yousuf Narejo has deposed that police party left police station on 13.03.2015 at 2000 hours for patrolling duty and on 14.03.2015 at 01:30 a.m. they arrested the accused but on the same point, mashir of the case

has deposed that police party had left for patrolling on 14.03.2015 and arrested accused on 15.03.2015 at 01:30 p.m. D.P.G. could not satisfy the Court about such infirmity/confusion in the case. We have also observed that description/number of hand grenade has not been mentioned in the mashirnama of arrest and recovery but clearance report produced before the trial court reflects the number of hand grenade as ARGE-69. Prosecution has also failed to bring on record the evidence with regard to the safe custody of the hand grenade at police station till its inspection by the Expert. We have also noticed that there is overwriting in the Roznamcha Entry No.43 for which no plausible explanation has been furnished by the prosecution. No doubt police officials are as goods witnesses as private witnesses unless the defence proves that the same police officials have bias or enmity with the accused. In this case, defence plea has been raised that accused was picked up by the Rangers before his arrest in this case and his custody was handed over to police and false case has been registered against the accused. We have also observed a number of infirmities and material contradictions in the prosecution evidence. In such circumstances, it would be unsafe to rely upon the evidence of police officials without independent corroboration, which is absolutely lacking in this case. It is settled principle of law that for extending benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If a single circumstance creates doubt in a prudent mind about the guilt of the accused then he will be entitled to such benefit not as a matter of grace but as a matter of right. In the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), the Honourable Supreme Court has observed as follows:-

“It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

16. For the above stated reasons, while extending benefit of doubt to applicant/accused Muhammad Imran Afridi, the appeal is allowed. Conviction and sentence recorded vide judgment dated 28.09.2017 are set aside. Appellant Muhammad Imran Afridi is acquitted of the charge. He shall be released forthwith if not detained in some other case.

JUDGE

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