

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Naimatullah Phulpoto, J
Mr. Zulfiqar Ahmad Khan, J

Special Cr. Anti-Terrorism Appeal Nos.194, 195 & 196 of 2017

Appellant : Tanveer @ Chand through Nadeem
Ahmed Azhar Advocate

State : Through M/s. Muhammad Iqbal
Awan, DPG and Khalid Hassan,
Special Public Prosecutor, Pakistan
Rangers (Sindh)

Date of Hearing : 23.01.2018

Date of Judgment : 23.01.2018

JUDGMENT

Zulfiqar Ahmad Khan, J:- Through these appeals the consolidated judgment dated 30.08.2017 passed by learned Judge, Anti-Terrorism Court No.VII, Karachi in New Spl. Cases No.210 of 2015 is impugned, whereby the appellant was convicted u/s 7(b) of ATA and sentenced to suffer RI for 10 years with fine of Rs.5,000/-, in default whereof to suffer SI for 02 months; u/s 7(ff) of ATA to suffer R.I. for 14 years; and u/s 24 of Sindh Arms Act to suffer R.I. for 05 years with fine of Rs.10,000/-, in default whereof to suffer SI for 03 months. All these sentences were ordered to run concurrently and benefit of section 382(b) Cr.P.C was extended to the appellant.

2. Brief facts of the case as averred in the FIR registered on the basis of 154 Cr.P.C statement of RI Naveed Hussain Khan posted at 81-Wing Sachal Rangers Nazimabad are that on 19.11.2014, he alongwith his subordinate staff namely Sepoy Rukhsar and Muhammad Usman, Naik Zafar Iqbal and driver Muhammad

Arshad were busy in patrolling through their official Mobile No.0825 during which they received spy information that some accused persons required in heinous crimes were available alongwith weapons at Muhammad Talib Colony Park near Sami Clinic Liaqatabad No.1, Karachi. He alongwith his subordinates reached the spot at 2300 hours, where he found two persons in suspicious condition. He tried to apprehend those with the help of his subordinates, upon which those persons started firing from their weapons with intention to kill. He alongwith his subordinates took shelter of the official mobile and made two rounds from his official 9 m.m pistol and got two SMG fired from Sepoy Rukhsar, during which one accused received bullet injury on his right thigh and fell down, who was apprehended, from whose possession they recovered one black colour 9 mm pistol bearing No.T0620-11-F00993 having magazine loaded with three live rounds and one round in chamber from his right hand. The apprehended person disclosed his name as Tanveer Ahmed whereas the second accused who succeeded to flee in the narrow streets, his name was not given by the apprehended accused. On conducting further search of the accused they recovered one hand grenade bearing No.386-129-78 from the front pocket of his pant, and on conducting further personal search, they recovered two mobile phones, one CNIC and cash of Rs.50/- from him. Upon demand, license of the pistol was not produced by the accused. RI Naveed Hussain defused the hand grenade recovered from the accused and recovered arms, ammunition 9mm pistol 4 empties of 9mm and two empties of SMG found from the place of occurrence were sealed separately. Accused was referred to Hospital for treatment by calling police mobile under custody of ASI Muhammad Yaqoob. RI Naveed Hussain Khan assigned to ASI Ghous Bux the case

property being 9mm pistol in shopper, one defused hand grenade, empties in stitched shopper. ASI Ghous Bux recorded statement u/s 154 Cr.P.C of RI Naveed Hussain vide **(1)** Crime No. 154 of 2014 under Section 353, 324, 34 PPC read with Section 7 of Anti-Terrorism Act, 1997 **(2)** Crime No.155 of 2014 under Section, 23(1)(a) of Sindh Arms Act, 2013 and **(3)** Crime No.156 of 2014 and 4/5 of Explosive Substances Act, 1908 read with Section 7 of Anti-Terrorism Act, 1997 registered with P.S Super Market, Karachi.

3. After usual investigation, the case was challaned under above referred sections. Trial Court framed charge against Accused at Ex.4, to which he pleaded not guilty and claimed his trial. Since reference will be made to the charge, contents thereof are reproduced hereunder:-

“That on 18.11.2014 at about 2300 hours, you were found sitting at Muhammad Talib Colony park near Sami Clinic Liaqatabad Karachi in suspicious condition and when the police tried to apprehend you, in order to deter them from performing their duty, you fired on the police party with intention to cause their death, which is an offence punishable u/s 7 (b) ATA, within the cognizance of this court.

I further charge you that on the same date, time and place you were found in possession of one hand grenade & one 9 m.m pistol, which are offences punishable u/s 7(ff) of ATA & 23 (1)(a) of SAA, within the cognizance of this Court.

4. At the trial, prosecution examined P.W.1 SIP Ghous Bux at Ex.8, who produced statement u/s 154 Cr.P.C, Roznamcha entries, FIR No.154, FIR No.155/2014, FIR No.156/2014, Sketch of place of occurrence and Six photographs of place of occurrence. P.W.2 SIP Abid Farooq of BDU at Ex.9, who produced application addressed by the I.O. for examination of explosive substance, Roznamcha entries, clearance certificate and report at Ex.9/A to

9/E respectively, P.W.3 Naveed Hussain Khan (Inspector Rangers) at Ex.10, who produced memo of arrest, search and recovery so also memo of occurrence at Ex.10/A and 10/B respectively. P.W.4 Zafar Iqbal Naik Rangers was examined at Ex.11, P.W.5 Aijaz Ahmed MLO JPMC at Ex.14, who produced application addressed to MLO for examination of the accused, MLC certificate and final Medical Certificate at Ex.14/A to 14/C respectively. P.W.1 Ghous Bux on behalf of I.O. Maqsood Ahmed who was in critical condition and unable to record his evidence was re-examined being well conversant with signature and handwriting of I.O Maqsood Ahmed at Ex.8. Prosecution closed its side vide statement as per Ex.16.

5. Statement of accused u/s 342 Cr.P.C was recorded at Ex.17, wherein he denied prosecution's allegations and while maintaining his innocence stated that he was apprehended from his house prior to the alleged date of encounter. Rangers' officials caused him bullet shots. He denied recovery of hand grenade alleging that it was foisted upon him and with regard to the pistol recovered, he admitted that the said pistol is licensed in his name and in support of this defence plea, he produced Arms License No.995 dated 10.11.2005. Accused did not examine any witness in his defence.

6. Trial Court after hearing learned counsel for the parties and examination of the evidence available on record, by judgment dated 19.10.2015, convicted and sentenced the appellants as stated above. Hence these appeals.

7. Learned counsel for the appellant mainly contended that there are over-writings, discrepancies and infirmities in between the statements made and the evidence produced by the prosecution. Most alarmingly, he pointed out that while the incident took place on the night of 18.11.2014, where as per

prosecution case a hand grenade was recovered from the accused, the PW-2 SIP Abid Farooq of BDU had stated that it was only on 01.01.2015 when after the lapse of nearly one month and fourteen days he arrived at P.S Nazim Abad to inspect the hand grenade vide Roznamcha Entry at Ex.9/B just to find that the said hand grenade was still alive, which he defused on the same day under SOP and sealed it in a plastic jar. This jolt in the prosecution story is sufficient to make any prudent mind disbelieve latter's version where at one hand Ranger's Inspector Naveed Hussain has stated the he defused the hand grenade on the site on 18.11.2014, while as per the deposition of PW-2 the said grenade remained alive for the next one month and fourteen days at Nazim Abad Police Station and only got defused by the SIP BDU. Safe custody and not to mention dangerous possession of the hand grenade in this period is not only seriously doubtful, but utterly mind boggling. It was further alleged that an encounter took place, in which rounds were also fired by the accused, however, none of the Rangers got any injuries. The counsel further referred to 154 Cr.P.C statement of Rangers Inspector Naveed Hussain, where there is an apparent overwriting at one place creating doubts in the prosecution story. It was next contended that while the alleged encounter took place around midnight where two persons were found sitting inside a park, who upon seeing Rangers opened fire, amongst whom one person succeeded to flee, whereas, and only the accused having shot was apprehended, considering the fire power which the raiding party possessed, this escape story is hard to digest. The alleged encounter being taken place at night time, however, no evidence has been brought on surface as to how the accused was identified, as no source of light is pointed out. It was then argued that the trial Court has given no reason of disbelieving the version

put forward by the defence. Lastly, it was submitted that the prosecution case being marred with infirmities and being highly doubtful, its benefit should pass on to the accused not as matter of grace, but as matter of right. Reliance was placed on the reported case of **Tariq Pervez v. The State** (1995 SCMR 1345).

8. Learned DPG to the contrary supported the impugned judgment and argued that the Police officials/Rangers were trustworthy and confidence aspiring. There was no enmity between the Police/Rangers' party and the accused and the delay in dispatching the hand grenade to the expert could not be fatal to the case of prosecution. He prayed for dismissal of the appeal. The Special Public Prosecutor, Pakistan Rangers (Sindh) supported the impugned judgment and reiterated the fact that there was no enmity between the rival parties. On the issue of identification of the accused in pitch-dark, he said that accused was identified through the headlight of Rangers' mobile, however, admitted that the above fact has not come in evidence. He further admitted that neither bloodstained clothes nor bloodstained earth was collected from scene proving that an encounter did actually take place at the pointed place. While the Special Public Prosecutor admitted to the delay of 41 days, however, urged that such a delay was on the part of the Police and its benefit should not travel to the accused. In support of his contention he placed reliance on **2010 SCMR 1791** [Anwar Shamim and another v. the State]. Reliance is also placed upon the case of Mehboob Alam @ Mandi v. the State [**SBLR 2017 Sindh 1967**], which interestingly goes against his contentions since in that case, on the basis of merely delay of 18 days in sending grenades for examination, appeals against convictions were allowed. We therefore, do not find any of the assertions or

citations presented by the Special Public Prosecutor to be of any benefit to prosecution's case.

9. After hearing learned counsel for the appellant as well as learned DPG, we have scanned the entire prosecution evidence, while the infirmities in the prosecution story starts from the charge itself where there is no mention that the encounter took place between the accused and Rangers. While we believe that evidence of Police officials/Rangers cannot be discarded simply on the ground that they belong to Police/Rangers Force. However, no Court should start a case with any prejudice or presumption against either party.

10. It is worth noting that P.W.1. SI Ghous Bux in his evidence at Ex.8 has stated that on 18.11.2014 while he was present at P.S. Super Market, he received a call from RI Naveed Hussain, who informed him that at Muhammad Talib Colony park near Sami Clinic Liaqatabad No.1 Karachi an encounter had taken place between Rangers and culprits and as a result thereof one culprit namely Tanveer Ahmed has been arrested having bullet shot injuries, therefore, caller requested that a responsible officer of P.S. Super Market be deputed to initiate all legal proceedings in respect of the accused and property recovered from him at the spot, upon which he intimated SHO P.S. Super Market about this call and on whose instructions, he called police mobiles patrolling in the area to reach to the pointed place and entered said narration of RI Naveed Hussain Khan in the Roznamcha vide entry No.37 at 2330 hours on 18.11.2014. He further deposed that he alongwith SI Muhammad Yaqoob and other staff left P.S. for the pointed place and upon arrival there met RI Naveed Hussain from whom, he ascertained the facts and from whom he took custody of the

accused Tanveer Ahmed. As per his deposition, RI Naveed Hussain recovered 0.9 mm pistol containing four live rounds in the magazine from the possession of the accused, as well as four empties of .9 mm and two empties of SMG were also sealed at the spot. It is important to note that in his evidence he has deposed that RI also recovered one hand grenade from the possession of the accused which was defused at the spot by RI Naveed Hussain, whereafter, said RI's statement was recorded u/s 154 Cr.P.C as well as the incriminating articles were sealed in two cloth parcels. In his cross-examination, he has admitted that at the bottom of 154 Cr.P.C statement of RI Naveed Hussain, there is overwriting at one place. It was admitted that in 154 Cr.P.C statement that he did not issue any letter in writing to the Hospital Authorities in respect of the accused through ASI Yaqoob, who was designated to take the accused to the Hospital. He admitted that he visited the place of occurrence which was inside a park. Upon an application made by the SSP (Ex.15), where it was averred that I.O. of the case namely Inspector Maqsood Mughal was lying critically ill and unable to procure his evidence, P.W.1 Ghous Bux, who was already examined at Ex.8 claiming to be well conversant to the handwriting and signature of the I.O. Maqsood Mughal and being well conversant with the material facts of the case affirmed various actions taken by the said I.O. but during cross examination, he admitted that the I.O. Maqsood Mughal was posted at P.S. Nazimabad in Investigation Branch as well as he admitted that he had not exhibited all entries of Roznamcha to establish his attendance with Inspector Maqsood Mughal during investigation nor at P.S. Nazimabad. He further admitted that the accused and the case property remained with PI Maqsood Mughal at P.S. Nazimabad and he never in fact went to P.S Nazimabad.

11. Also to be mindful is that for the cases being tried at Anti-Terrorism Courts involving recovery of arms as well as grenades where fate of accused person hinges upon the testimony of police officials alone, it is essential to find out if there was any possibility of securing independent persons at the time of recovery. The conviction or acquittal of an accused person depends upon the creditability of the witnesses. In the case at hand which was a case of spy information, accused was arrested at a public park, it is clear that no efforts at all were made by the R.I Naveed Hussain to associate any independent person to witness the arrest and recovery. In fact RI Naveed did not make any contact with the P.S concerned before he boarded himself and his team towards the place of incident. In such circumstances, when defence plea has been raised that accused's custody was handed over by Rangers to Police and recovery has been foisted against him, Court has to be very careful in weighing evidence of police officials. It is settled principle of law that judicial approach has to be cautious in dealing with such type of cases. We are conscious of the fact that provisions of Section 103 Cr.P.C are not attracted to the case of personal search of a person, but in this case accused was arrested near a public park, omission to secure independent mashirs from the locality is significant and cannot be brushed aside lightly by this Court.

12. No doubt, Sindh Arms Act, 2013 is enacted to curb the proliferation of arms and ammunitions and punishment for possession of any firearm is extended to 14 years and with fine. The rule for safe administration of criminal justice is "*the harsher the sentence, the stricter the standard of proof*", therefore, for the purposes of safe administration of criminal justice, some minimum standards of safety are to be adhered to so as to strike a balance

between the prosecution and the defence and to obviate chances of miscarriage of justice on account of exaggeration of the investigating agency. Such minimum standards of safety are even otherwise necessary for safeguarding the fundamental rights of the citizens regarding life and liberty, which cannot be left at the mercy of police officers without production of independent evidence. It is a known principle of appreciation of evidence that benefit of all favourable circumstances in the prosecution evidence must go to the accused regardless of whether he has taken any such plea or not. Reliance is placed on the case of **Muhammad Nawaz and another v. The State and others** (2005 PLD SC 40).

13. In this case as indicated above there are numbers of infirmities and lacunas, as highlighted above, which have created serious doubts in the prosecution case. It is settled principle of law that for extending benefit of doubt, it is not necessary that there should be multiple circumstances creating doubt. If a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of accused, then he will be entitled to such benefit not as a matter of grace and concession, but as a matter of right, as has been held in the case of **Tariq Pervez Vs. The State** (1995 SCMR 1345), wherein the Hon'ble Supreme Court has held as under:-

“The concept of benefit of doubt to an accused person is deep-rooted in our country for giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a 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 matter of grace and concession but as a matter of right”.

14. For the above stated reasons, while relying upon the above case laws, we have no hesitation to hold that prosecution has failed to prove its case against the appellant beyond any shadow of

doubt. Benefit of doubt is extended to the appellant. Consequently, appeals are allowed, conviction and sentence awarded by the learned Judge, Anti-Terrorism Court-VII, Karachi vide judgment dated 30.08.2017 are set aside. Appellant Tanveer @ Chand S/o Zameer Ahmed is acquitted of the charges. Appellant shall be released from custody forthwith, if he is not wanted in some other custody case.

These are the reasons of our short order dated 23.01.2018.

Judge

Judge