

# HIGH COURT OF SINDH AT KARACHI

PRESENT:

**Mr. Justice Aftab Ahmed Gorar**  
**Mr. Justice Amjad Ali Sahito**

Special Criminal Anti-Terrorism Appeal No.03 of 2018  
Special Criminal Anti-Terrorism Appeal No.04 of 2018

Appellant : Alamgir s/o Muhammad Zareen  
Through Mr. Ajab Khan Khattak, Advocate

Respondent : The State  
Through Mr. Saghir Ahmed Abbasi,  
Assistant Prosecutor General, Sindh

Date of Hearing : 29.01.2019

Date of Order : 29.01.2019

## J U D G M E N T

**AMJAD ALI SAHITO, J.**— Being aggrieved and dissatisfied with the common judgment dated 20.12.2017 passed by the learned Judge, Anti-Terrorism Court-XVIII, Karachi in (1) Special Case No.1720/2016 arising out of FIR No.310/2016 for offence under Section 23(i)A/32 of Sindh Arms Act, 2013 r/w Section 7 of Anti-Terrorism Act, 1997 and (2) Special Case No.1721/2016 arising out of FIR No.311/2016 for offence under Section 4/5 of the Explosive Substance Act, 1908 r/w Section 7 of Anti-Terrorism Act, 1997, whereby the appellant was convicted and sentenced to suffer R.I. for 07 years and to pay fine of Rs.5,000/- and in case of default thereof, he shall further undergo S.I. for 03 months. The appellant was also convicted for committing the offence under Section 4/5 of the Explosive Substance Act, 1908 and sentenced him to suffer R.I. for 14 years. The benefit of Section 382-B Cr.P.C. was also extended in favour of the appellant.

2. Brief facts of the prosecution case as depicted in FIRs are that on 27.09.2016 Complainant ASI Muhammad Anwar of PS

Manghopir lodged 02 FIRs alleging therein that accused/appellant Alamgir s/o Muhammad Zareen was already arrested in a case of PS Manghopir in Crime No. 309/2016 under Section 23(i)A, Sindh Arms Act, 2013 and he was interrogated in the above case. During interrogation, accused/appellant disclosed that he along with his two accomplices Gul Nawab and Noman buried hand grenades and rocket launcher at Ghazi Village Graveyard. On such information, the complainant called Mobile-II along with PC Mohammad Urs, PC Mohammad Nazeer, PC Haroon Ali and Driver/PC Bashir Ahmed and also transmitted the same information to SHO PS Manghopir. Accordingly, the complainant along with police party and accused/appellant departed from PS and reached the pointed place, where SHO PS Manghopir also arrived at about 0010 hours. The accused/appellant led the police party and stood near one grave, which was excavated on his pointation, as a result, arms, ammunition and rocket launchers were recovered containing 04 close butts Kalashnikovs, 03 12 Bore Rifles, 06 Rocket launchers, 30 Rifle grenade gola, 06 long gola, 01 mask mouser, 02 LMGs, 05 commando jackets, 11 hand grenades, 01 RGD grenades, 1000 rounds of 7.62 Bore, 1500 rounds of 7MM, 400 rounds of 7.62, 700 rounds of 51MM total 3600 live rounds were recovered. The arms and ammunition were sealed and secured under the memo of recovery at the spot. SHO called BD team at the spot, who defused the 11 hand grenades and RGD grenade at the spot. Police party returned at PS where 02 separate FIRs against the accused/appellant were registered at the same PS.

3. The learned trial Court framed the charge against the accused/appellants at Ex.7, who pleaded not guilty and claimed to be tried. In order to establish the accusation

against the accused persons, the prosecution examined the following witnesses:

- (i) PW-1 SIP at BD Unit Abid Farooq examined at Ex. 9, he produced departure entry No.20 as Ex.9-A, clearance certificate at Ex.9-B, arrival entry at the office at Ex.9-C, application of the I.O. for a detailed report of explosive material at Ex.9-D and inspection report of explosive material at Ex.9-E.
- (ii) PW-2 Complainant ASI Muhammad Anwar examined at Ex. 10, he produced roznamcha entry at Ex.10-A, memo of arrest and recovery at Ex.10-B, General roznamcha entry at Ex.10-C, Carbon Copy of FIR No.310/2016 at Ex.10-D, General roznamcha entry at Ex.10-E, Carbon Copy of FIR No.311/2016 at Ex.10-F and memo of inspection place of incident at Ex.10-G.
- (iii) PW-3 PC Mohammad Nazeer examined at Ex.11, who is mashir of the memo of arrest and recovery as well as a memo of the site inspection.
- (iv) PW-4 HC Altaf Hussain examined at Ex.12, he produced memo of arrest and recovery at Ex.12-A.
- (v) PW-5 I.O./Inspector Shakeel Ahmed Sherwani examined at Ex.13, he produced roznamcha entry of PS Ittehad Town at Ex.13-A, arrival and departure entry of PS Manghopir at Ex.13-B, arrival entry at PS Manghopir from site inspection at Ex.13-C, roznamcha entry for end of investigation at PS Manghopir at Ex.13-D, arrival entry at PS Ittehad Town at Ex.13-E, letter to incharge FSL examination at Ex.13-F, FSL examination report of arms at Ex.13-G, letters from Home Department, Government of Sindh at Ex.13-H and 13-I, arrest of absconder accused and arrival entry at PS Ittehad Town at Ex.13-J, accused interrogation entry as Ex.13-K, arrival entry at PS Manghopir at Ex.13-L, memo of pointation at Ex.13-M, arrival entry at PS Ittehad Town after pointation at Ex.13-N.
- (vi) PW-6 Khair Ul Bashir examined at Ex.14.
- (vii) PW-7 Muhammad Islam examined at Ex.15.

4. All the prosecution witnesses were cross-examined by the learned counsel for the appellant. Thereafter, Deputy

District Public Prosecutor (DDPP) closed the side of the prosecution vide statement at Ex.16.

5. Statements of the accused/appellants were recorded under Section 342 Cr.PC. by the learned trial Court at Ex.17 and Ex.18 in which they denied the prosecution allegations leveled against him.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellant Alamgir as stated above vide judgment dated 28.08.2017 which is impugned by him before this Court by way of filing the instant Special Criminal Anti-Terrorism Appeal and acquitted co-accused Gul Nawab.

7. Learned counsel for the appellant mainly contended that the appellant is innocent and has falsely been implicated in this case; that nothing has been recovered from the possession of the appellant nor on his pointation, arms and ammunition have been foisted upon the appellant; that all the witnesses are police officials hence, entrusted one but no private person was associated by the complainant to act him as mashir of arrest and recovery; that evidence of all the police officials is full of material contradiction, assumption and also discrepancies in the evidence of the PW-1 Abid Farooq, SIP of BDU, therefore, the prosecution evidence did not inspire confidence to worn the conviction of accused. He lastly contended that prosecution has failed to prove its case against the appellant, thus, according to him, under the

above-mentioned facts and circumstances, the appellant is entitled to his acquittal.

8. On the other hand, learned Assistant Prosecutor General Sindh while supporting the impugned judgment has argued that the prosecution has proved its case against the appellant beyond any shadow of doubt; that the information was given by the accused during the course of investigation and on his pointation, the complainant has recovered huge arms and ammunition and police officials have no enmity to foist the same upon him. He thus lastly prayed for dismissal of the instant appeal.

9. We have heard the learned counsel for the appellant as well as learned Assistant Prosecutor General Sindh and have minutely examined the material available on record with their able assistance.

10. It is born out from the record that the investigation of Crime No.309/2016 under Section 23(i) a of Sindh Arms Act, 2013 of PS Manghopir was entrusted to ASI Muhammad Anwar of PS Manghopir and during course of investigation, the appellant Alamgir disclosed that he has concealed huge quantity of arms, ammunition and explosive material in a grave at Ghazi Goth Graveyard. On such information, a police team was constituted and the appellant volunteered led the police party to graveyard via katcha path reached there at about 0010 hours. On the pointation of accused, the police officials started digging the grave. During the digging of the

grave, police officials recovered arms, ammunition and explosive material. They were total 10 to 12 bags which were opened and found 04 close butt Kalashnikovs, three 12 bore rifles, 30 rifle grenades, 06 long gola, 06 rocket launchers, 11 hand grenade, one RGD grenade, 02 LMG magazines, 01 mask powder, 05 commando jackets, 1000 live rounds of 7mm, 400 live rounds of 7.62, 700 rounds of 51MM in all total rounds were 3600 of different bores. Except for explosive material, arms and ammunition were sealed on the spot while the explosive material was handed over to ASI of BDU Abid Farooq, who saved it. Mashirnama of recovery was prepared in the presence of mashirs namely Mohammad Nazeer and Mohammad Urs and same was signed by both the mashirs at Ex.10-B. The prosecution examined Mohammad Nazeer, mashir of recovery of arms and ammunition, who has fully supported the version of the complainant. In cross-examination, he has denied that the mashirnama was prepared at the police station. In order to strengthen the version of the complainant, the prosecution also examined (PW-1)SIP Abid Farooq of BDU West Zone, Karachi. He has also narrated the same story that on an eventful day, they received a message from the control that the personnel of Bomb Disposal Squad Unit should immediately reach Ghazi Goth Graveyard. After receiving such information, entry was made and thereafter the unit reached at Ghazi Goth Graveyard at about 0010 hours. The police officials started digging of a grave and found a huge quantity of arms and

ammunition. In cross-examination, he admitted that in his presence, the entire arms, ammunition and explosive material were recovered from one graveyard. Lastly, the prosecution examined (PW-5) Shakeel Ahmed Sherwani, SHO PS Ittehad Town, who has also supported the prosecution version and further deposed that being an investigating officer, he has visited the place of incident which was situated at Ghazi Goth Qabaristan, where mashirnama was prepared by the above-said mashirs at the place of incident and same was dispatched except explosive material for FSL and thereafter he has received the FSL's report from Assistant Inspector General of Police, Forensic Lab, Karachi in positive and after completion of all the formalities, charge was framed against the accused person. In cross-examination, he admitted that there is no previous criminal record against appellant Alamgir.

11. The case in hand is of recovery of huge arms and ammunition and explosive substance in consequence to information provided by the appellant while he was in custody. At this juncture, it would be necessary to refer the Article 40 of Qanoon-e-Shahadat Order, 1984 which is aimed to deal with such like situation. The same is reproduced herein below for ready reference.

**“40. How much of information received from accused may be proved.** *When any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates*

*distinctly to the fact thereby discovered, may be proved.”*

*The true test for application of Article 40 of the Order has been defined in the case of Askar Jan v. Muhammad Daud (2010SCMR1604) which is as under:*

*“13. Thus, in order to apply Article 40 of the Order, the prosecution must establish that information given by the accused led to the discovery of some fact deposed by him and the discovery must be of some fact which the police had not previously learnt from any other source and that the knowledge of the fact was first derived from the information given by the accused. Reference is also invited to Jaffer Hussain v. State of Masharashtra (AIR 1970 Supreme Court 1934). It is also important to note that the recovery from any hidden place and if in the normal course of investigation the investigation agency is bound to see them and taken in possession without the accused making any statement of pointing them out.”*

12. A perusal of record reveals that on information given by the appellant during the course of investigation in Crime No. 309/2016 and in consequence to his information, huge arms and ammunition were recovered and it cannot be believed that police officials would plant such a huge quantity of arms and ammunition against the appellant at their own sources. It is a settled principle of law that prosecution witnesses belong to police officials by themselves cannot be considered as a valid reason to discard their statement. In the instant case, no proof of enmity with the complainant and the prosecution witnesses has been brought on record, thus in the absence thereof, the competence of prosecution witnesses being officials was rightly believed by the learned trial Court. Even otherwise, mere status of one as official would not alone prejudice the competence of such witnesses until and unless he is proved to be interested, who has a motive, to falsely



implicate an accused or has the previous enmity with the person involved.

14. A perusal of investigation report of EOD material produced by the BDU at Ex.9-E shows that the “as per possible and readable observation that the above mentioned EOD material if it uses with proper technique gives loss of life and property.” Further, the investigating officer sent the arms and ammunition to the office of Assistant Inspector General of Police, Forensic Division, Sindh Karachi and received a report of FSL in positive. Hence, the reports of BDU and FSL regarding arms, ammunition and explosive substance are sufficient to prove that the arms, ammunition and explosive recovered on the pointation of accused can be used for demolishing the law and order situation in Karachi and created a sense of insecurity, fear, and terrorism among the people.

15. Here, all the witnesses have deposed in the same line to support the prosecution case and despite cross-examined by learned defence counsel at length, the defence has failed to point out any dent or to extract any material contradiction fatal to the prosecution case.

16. On our evaluation of the evidence of complainant/ASI Muhammad Anwar, mashir Mohammad Nazeer, SIP Abid Farooq, Incharge BDU, and investigating officer Shakeel Ahmed Sherwani, we find it confidence inspiring and trustworthy. The version of the complainant has been fully

corroborated by mashir of arrest and recovery, which is substantiated with memo of arrest and recovery, FIR as well as roznamcha, departure and arrival entry showing their movement and positive report of the BDU as well as FSL. No enmity, ill-will or grudge has been alleged or proved against the prosecution witnesses to implicate the appellant falsely in this case.

17. Considering the above-mentioned facts and circumstances, we are of the view that prosecution has succeeded to bring the guilt of accused/appellant at home and has proved its case against the appellant beyond any shadow of a doubt. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committing by the trial Court while passing the impugned judgment, which in our humble view, is based on an appreciation of evidence and same does not call for any interference. Accordingly, the instant Special Criminal Anti-Terrorism Appeals were dismissed being devoid of merits by us vide short order dated 29.01.2019.

18. These are the detailed reasons for the short order dated 29.01.2019, announced by us, whereby the appeals were dismissed.

**J U D G E**

**J U D G E**