

# IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

Spl. Crl. Anti-Terrorism Appeal No.224 of 2018

Spl. Crl. Anti-Terrorism Appeal No.225 of 2018

Appellants : (1) Javed S/o Haji Muhammad Younus  
(2) Shoukat S/o Haji Muhammad Siddiq  
(3) Muhammad Suleman S/o Muhammad Saleem  
(4) Shakeel S/o Muhammad Siddiq  
through Syed Mehmood Alam Rizvi,  
Advocate alongwith Mr. Zakir Leghari,  
Advocate.

Respondent : The State  
through Mr. Saghir Ahmed Abbasi  
Asst. Prosecutor General, Sindh

Dates of Hearing : 28.01.2019 & 06.02.2019

Date of Decision : \_\_.02.2019

## **J U D G M E N T**

**AMJAD ALI SAHITO, J.**— Being aggrieved and dissatisfied with the judgment dated 15.08.2018 passed by learned Judge, Anti-Terrorism Court-XIX, Karachi in Special Case No.80/2017 arising out of the FIR No.13/2017 for the offence under section 4/5 of Explosive Substance Act read with section 7 of Anti-Terrorism Act, 1997 registered at PS Nabi Bux, Karachi and Special Case No.81/2017 arising out of the FIR No.14/2017 for the offence under section 23(1)(a) of Sindh Arms Act 2013 registered at PS Nabi Bux, Karachi, whereby appellants were convicted and sentenced under different sentences as mentioned in the impugned judgment. The benefit of Section 382-B Cr.PC was also extended in favour of the appellants. Both the sentences as awarded to the appellants/accused persons shall run concurrently.

2. Brief facts as per FIR lodged by complainant Ziaul Haq on 01.02.2017 at about 0300 hours are that on 01.02.2017, he along with Hawaldar Rehmatullah Khan, Hawaldar Yahya Khan and other employees in Government Jeep No.916626, Helix No.918156, with two other government motorcycles upon which 2/2 rangers employees along with Government arms were busy in snap checking at Marston Road opposite UBL Bank, where one Pajero Jeep of silver colour, five door, bearing No.BA9795, was coming. Complainant got stopped the said vehicle being suspicious and found four persons boarded therein, who got down. On inquiry person sitting at driving seat disclosed his name as Javed son of Muhammad Younus, from him, complainant recovered three hand grenades and two keys of locks, while three persons sitting on the rear seats disclosed their names as Shoukat Ali @ Sho, Muhammad Suleman @ Kodo and Muhammad Shakeel. Complainant party recovered one SMG No. No.1975TN2088 loaded with 20 bullets in magazine, one hand grenade from accused Shoukat Ali, from accused Suleman one rifle loaded with 20 bullets in magazine, one hand grenade, from accused Shakeel one SMG with 20 live bullets in magazine, one hand grenade were recovered. On search of vehicle, complainant recovered one rifle bearing No.1954XH1155 along with magazine and 20 bullets and one launcher grenade bearing No.5537 near the driver seat and lever of the vehicle. Above weapons were kept by the accused Javed, complainant further recovered 400 bullets of SMG in one plastic bag lying under the driver seat. Complainant searched vehicle and found one person tied with iron chain from the back side portion of the vehicle under blanket. Complainant opened the lock of chain with key, which was recovered from the possession of the accused

Javed, on enquiry that person disclosed his name to be Shah Nawaz son of Muhammad Younus he further disclosed that he was kidnapped by above said accused persons from his house situated in Younisabad Mauripur, Karachi and on that day the accused persons were shifting him to another place with intention to kill and throw his dead body to an abandoned place. Complainant enquired from the accused persons about valid license of the weapons but they could not produce the same. Such memo of recovery was prepared and accused and property were brought at P.S Nabi Bux where FIR was lodged. After usual investigation, challan was submitted against the accused persons.

3. The learned trial Court conducted joint trial of the above two cases vide order dated 25.5.2017 and both the cases were consolidated under section 21-M of Anti-Terrorism Act, 1997 and Special Case No.80/2017 arising out of the FIR No.13/2017 was treated as leading case vide order at Ex.6. Charge was framed against the accused persons at Ex.7, who pleaded not guilty and claimed to be tried at Ex.8 to 11 respectively. In order to establish the accusation against the accused, the prosecution examined the following witnesses:

- (i) PW-1 SIR Muhammad Zia-ul-Haq from Pakistan Rangers Abdullah Shah Ghazi Wing-61 at Ex.13, he produced memo of arrest of all accused persona and recovery at Ex.13/A, statement under section 154 Cr.P.C. addressed to the Duty Officer of PS Nabi Bux for lodging of the FIR at Ex.13/B, memo of inspection of place of incident at Ex.13/C and memo of sketch of place of incident at Ex.13/D.
- (ii) PW-2 Hawaldar Rehmatullah Khan from Pakistan Rangers at Ex.14.

- (iii) PW-3 ASI Naimat Ali author of FIR of PS Nabi Bux at Ex.16, he produced two FIRs bearing Crime No.13/2017 and 14/2017 u/s. 4/5 of Explosive Substance Act and u/s. 23(1) SAA 2013 against the accused persons at Ex.16/A and 16/B and two entries No.35 and 36 at Ex.16/C and 16/D.
- (iv) PW-4 Syed Imam Imran Zaidi, Judicial Magistrate at Ex.18, he produced confessional statement of accused Javed at Ex.18/A.
- (v) PW-5 SIP Ghulam Mustafa of BDU Zone at Ex.19, he produced entry No.47 at Ex.19/A, departure entry No.13 at Ex.19/B, clearance certificate at Ex.19/C, arrival entry No.31 at Ex.19/D, final report at Ex.19/E, letter of I.O. for final report at Ex.19/F.
- (vi) PW-6 I.O. Inspector Saeed Alam at Ex.20, he produced departure entry No.37 at Ex.20/A, arrival entry No.40 at Ex.20/B, letter addressed to Incharge FSL regarding reports of weapons at Ex.20/C, FSL report regarding weapons at Ex.20/D, letter addressed to BDU for final report at Ex.20/E, permission order of Home Department at Ex.20/F, letter addressed to the learned CJ&JM for certified copy of confessional statement at Ex.20/G and remand order at Ex.20/H.

4. All the prosecution witnesses were cross-examined by the learned counsel for the appellants. Thereafter, Special Public Prosecutor (SPP) for the State closed the side of the prosecution vide statement at Ex.21.

5. Statements of the accused persons were recorded under Section 342 Cr.PC. by the learned trial Court at Ex.22 to 25 in which they denied the allegations as leveled against them by the prosecution and claimed to be innocent.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellants as stated above vide judgment dated 15.08.2018 which is impugned before this Court in the instant Appeals.

7 Learned counsel for the appellants mainly contended that that the appellants are innocent and have falsely been implicated in these cases; that the appellants have been arrested from the house of appellant No.1 due to a conspiracy and later on were booked in these cases with malafide intention and ulterior motives by foisting weapons upon them after three days of their illegal detention; that the learned trial Court has disbelieved the defence version and relied upon the defective evidence of the prosecution; that the learned trial Court has also ignored the fact that after three days of their illegal detention a false and fabricated story has been concocted and the arms and ammunition have been foisted upon them and same were not supported by the BDU; that the learned trial Court has also misread and did not appreciate the defective and contradicted evidence of the prosecution witnesses; that the learned trial Court has ignored the fact that even otherwise in the so-called confession, the appellant No.1 did not say about the rifle, grenades or launcher instead disclosed the alleged recovery of klashinkove and grenade, even confessional statement does not support the prosecution case viz a viz present incident and the learned trial Court ought to have rejected it and should have acquitted the appellants; that the impugned judgment is the result of misreading the evidence and record, hence not sustainable under the law and facts; that the learned trial Court did not apply its judicial mind while passing the impugned judgment, which unfortunately has

resulted into miscarriage of justice; as the prosecution has miserably failed to prove the case against the appellant. He lastly prayed for acquittal of the appellant by setting aside the impugned judgment. Learned counsel in support of his arguments has relied upon case law reported as 2007 YLR 448, 2004 YLR 2094, 2017 SCMR 283 and 2008 SCMR 1254.

8. On the other hand, learned Asst. Prosecutor General, Sindh while supporting the impugned judgment has argued that the prosecution has proved its case against the appellants beyond any shadow of a doubt; hence, their appeals may be dismissed.

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. The prosecution case hinges upon the evidence of the Rangers officials P.Ws 1 & 2, who according to FIR were busy in snap checking and apprehended the accused persons and recovered the arms and ammunitions alongwith hand grenade from their possession. Both the witnesses i.e. complainant SIR Muhammad Ziaul Haq and Hawaldar Rehmatullah Khan of Pakistan Rangers in their evidence reiterated the incident as reported in the FIR. They categorically stated that on the day of incident, they were busy in snap checking during which one Pajero bearing registration No.9795 came there, they stopped it being

suspicious and apprehended the appellants/accused and recovered weapons and hand grenades. Evidence of both the witnesses is in line with each other and there is no contradiction with regard to date and time of the incident as well as details of the weapons recovered from each accused. Though they were subject to lengthy cross examination by learned defence counsel but could not shatter their evidence. The mashirnama was prepared by the complainant in presence of mashirs at the place of incident and same were 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. P.W.5 SIP Ghulam Mustafa of BDU Zone was examined, who deposed in his evidence that on the day of incident viz. 01.02.2017 he visited P.S. Nabi Bux and inspected rifle grenades and a launcher, diffused them and issued such clearance certificate. During investigation, appellant/accused Javed volunteered to record confessional statement and accordingly he was produced before the learned Magistrate, who after fulfillment of requisite formalities recorded confessional statement of appellant Javed, who admitted commission of several murders in different years with Uzair Baloch and admitted his arrest in the present case by the Rangers Officials. P.W.4 Syed Imam Imran Zaidi, 11<sup>th</sup> Civil Judge and Judicial Magistrate South, Karachi in his evidence stated that on 08.02.2017 I.O. of the case produced accused Javed and his confessional statement was recorded, when the abductee

Shah Nawaz was rescued by the Rangers personnel. He on 01.02.2017 appeared at police station Maripur and registered FIR bearing Crime No.25/2017 alleging therein that on 29.01.2017, he was present at his house at about 10 PM, his step brother Javed and companion Shoukat Shakeel and Suleman forcibly entered into the house after folding his eyes, put into vehicle and shifted to some unknown place, during Rangers checking he was recovered by the Rangers personnel. After registration of FIR, the case was challend before the competent Court of law, during pendency of the case the abductee Shah Nawaz filed a statement before the trial Court alleging therein that on 28/29.01.2017, some rangers personnel forcibly entered into the house of his brother namely Abdul Razzak alongwith Sub Insepector Zia Ul Haq and DSR Saeed Khan they took him and his brother namely Javed from his house as well as uncle Muhammad Shakeel and Shoukat Ali boarded in the Pajero jeep and brought at their headquarters situated at Pakistan Chowk. He further submit that he was not kidnapped nor the Rangers officials has recovered. They have lodged false FIR against his brother and relatives, Facing with such situation, the learned SPP filed a statement Ex.17 before the learned trial Court that the abductee Shah Nawaz has been won over by the accused persons as co-accused Javed his real brother and other accused are his relatives and he has not examined him and gave up. The learned SPP closed the side on behalf of the state and the statement of the appellants were recorded



under Section 342(1) Cr.PC but they have not examined the abductee Shah Nawaz as defence witness, since he has filed only statement and the appellants did not produce him as a defence witness hence, his statement cannot be relied as he has not gone through the test of cross-examination.

It is matter of record that the Rangers Officials had arrested the appellants and recovered the arms and ammunition from the appellants alongwith the hand grenades and that all the P.Ws have fully supported the version of the complainant, no enmity has been suggested in the corss examination or statement of the accused as the complainant and P.W Rehmatullah belong to Law enforcement agency, since no enmity against them hence their evidence cannot be brushed aside. The version of the complainant and his witnesses also taking support from the confessional statement of the accused Javed which was recorded by learned V- Civil Judge/Family Judge and J.M. South Karachi, wherein he has admitted as under:-

*On 1.02.2007 I accompanied with my other companions Muhammad Shakeel s/o Haji Muhammad Siddique, Shoukat Ali s/o haji Muhammad Siddique and Suleman s/o Muhammad Saleem having kidnapped my brother Shahnawaz s/o Muhammad Younus from Maripur, were taking him to Thatta, since in my sliver 5 door Pajero vehicle with the intention to kill him when at 12.00 midnight in the jurisdiction of P.s. Nabi Bux, Rangers stopped us during snap checking. During our physical search, KKs alongwith loaded magazine, hand grenades, 400 live bullets and abductee Shahnawaz who*

*was bounded in chain were recovered. These weapons were given to us by Lyari Gang war commander Uzair Baloch which were using in act of terrorism, murder, and extortion of money and due to fear of ongoing Karachi operation, were taking these weapons to the interior Sindh with intention to bury it there. I have to say this much and I have told everything truthfully.*

The learned SPP filed statement at Ex.17 that PW Shah Nawaz being a real brother of main accused Javed and he has won over by the all accused persons as he has filed statement that on 28/29.01.2017, some Rangers personnel forcibly entered into the house of his brother namely Abdul Razzak hence, took away his brother Javed and his cousins/co-accused and finally. In such circumstances, he does not want to examine him and he has given up.

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12. A perusal of record reveals that on the day of incident, the accused persons were going in a Pajero and were intercepted by the complainant party during snap checking and huge arms and ammunition were recovered from them. It cannot be believed that Rangers officials would plant such a huge quantity of arms and ammunition against the appellants at their own sources. It is a settled principle of law that prosecution witnesses being police officials by themselves cannot be considered as a valid reason to discard their evidence. 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 his competence 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 report of EOD material produced by the BDU 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 careful examination of evidence of prosecution witnesses, it appears 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 appellants falsely in this case.

17. For foregoing discussion, we are of the view that prosecution has succeeded to bring the guilt of accused/appellants at home and has proved its case against the appellants beyond any shadow of a doubt. Learned counsel for the appellants has failed to point out any material illegality or serious infirmity in the impugned judgment, which in our humble view, is based on an appreciation of evidence and same does not call for any interference. The case law relied upon by learned counsel for the appellants is not helpful to appellants as the same is on distinguishable facts. Accordingly, the instant Special Criminal Anti-Terrorism Appeals are dismissed being devoid of merits.

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