

IN THE HIGH COURT OF SINDH, KARACHI

Before:

**Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi**

**Special Criminal Anti-Terrorism
Appeals No.352, 353, 354 and 355 of 2018**

Appellant in Appeals No.352 and 353 of 2018:

Muhammad Azeem S/o Abdul Aziz
Through Mr. Muhammad Hanif Samma,
Advocate

Appellant in Appeals No.354 and 355 of 2018:

Shahzad alias Kamran S/o Qadir Bux
Through Mr. Moula Bux Bhutto, Advocate

Respondent : The State
Through Mr. Muhammad Iqbal Awan
Deputy Prosecutor General, Sindh

Date of Hearing : 09-12-2019

Date of Order : 19-12-2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., By this common judgment, we will dispose of all four Appeals mentioned above filed by the appellants on being aggrieved and dissatisfied with the common judgment dated 07.12.2018 passed by the Judge, Anti-Terrorism Court No.XIV, Karachi in Special Cases No.142, 143, 144 and 145 of 2018 under (1) FIR No.276/2017 for the offences under section 4/5 Explosive Act, R/w section 7 ATA, (2) FIR No.277/2017 for the offence under section 23(1)(a) SAA, (3) FIR No.281/2017 for the offences under sections 4/5 Explosive Act R/w section 7 ATA and (4) FIR No.278/2017 for the offence under section 23(1)(a) SAA registered at PS Brigade, Karachi whereby the appellants were convicted as under:-

- i. *Accused Muhammad Azeem S/o Abdul Aziz was convicted for offence punishable u/s 23(i)(A),*

SAA in Crime No.277/2017 and sentenced U/s 265-H(II) Cr.P.C. to suffer R.I. for seven years and fine of Rs.3000/-. In case of default of payment of fine, he shall further suffer S.I. for three months.

- ii. Accused Muhammad Azeem S/o Abdul Aziz was convicted for possessing hand grenade under suspicious circumstances as provided U/s 5 of Explosive Substances Act in Crime No.276/2017 and sentenced U/s 265-H(II) Cr.P.C. to suffer R.I. for five years. All the properties of convict Muhammad Azeem stand forfeited to Government as provided U/s 5-A of Explosive Substances Act.*
- iii. Accused Shahzad Kamran S/o Qadir Bux was convicted for offence punishable u/s 23(i)(A), SAA in Crime No.278/2017 and sentenced U/s 265-H(II) Cr.P.C. to suffer R.I. for seven years and fine of Rs.3000/-. In case of default of payment of fine, he shall further suffer S.I. for three months.*
- iv. Accused Shahzad Kamran S/o Qadir Bux was convicted for possessing hand grenade under suspicious circumstances as provided U/s 5 of Explosive Substances Act in Crime No.281/2017 and sentenced U/s 265-H(II) Cr.P.C. to suffer R.I. for five years. All the properties of convict Shahzad Kamran stand forfeited to Government as provided U/s 5-A of Explosive Substances Act.*

All the sentences were ordered to run concurrently and benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. The facts of the case as stated in the FIRs are that on 30.12.2017, ASI Muhammad Rafique of PS Brigade alongwith police officials were on patrolling duty. When they reached at M.A. Jinnah Road, City Complex they received spy information regarding the presence of suspicious persons at vacant plot, Jinnah Complex, Karachi. As per FIRs, the police party had reached at the pointed place where some persons were available whom they apprehended who disclosed their names as Muhammad Azeem and

Shahzad. It is further alleged that on personal search of Muhammad Azeem one hand grenade one 7 mm rifle with 8 live rounds and Narcotics were recovered from the bag which he was carrying. It is also alleged in the FIRs that accused Shahzad was also carrying a bag from which one hand grenade, one MP 5 rifle Gun with 10 rounds, and Narcotics were recovered. However, both the accused had failed to give any explanation for explosive materials or produced license for the recovered arms. The police had seized and secured the recovered properties and prepared memo of arrest and recovery in presence of police officials. After completion of formalities, the accused persons and case properties were brought at P.S. where four separate FIRs were registered against the above named accused at PS Brigade.

3. After the completing legal formalities the charge was framed at Ex.4, to which the accused pleaded not guilty and claimed for trial.

4. In order to prove its cases, prosecution examined as many as 04 witnesses before the trial court who gave their evidence and exhibited certain documents and other items in support of their evidence and thereafter prosecution closed its side.

5. The statement of accused persons were recorded under section 342 Cr.P.C. wherein they denied the allegations. However, accused persons declined to be examined on oath or lead defense witnesses.

6. Learned Judge Anti-Terrorism court No.XIV, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated:

07-12-2018, convicted and sentenced the appellants as stated above, hence these appeals against their convictions have been filed by the appellants.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant Muhammad Azeem contended that the appellant is innocent and has been involved by the police with malafide intention; that no private person was made mashir of the recovery proceeding hence police violated section 103 Cr.P.C; that nothing was recovered from the possession of appellant and the police foisted the grenade and weapon on him; that the bag from which grenade was allegedly recovered was not taken in to possession nor was produced in the court at the time of trial; that there are contradictions in the evidence of witnesses which creates serious doubt in the prosecution case; that the property allegedly recovered was also not produced at the time of recording evidence and lastly he prayed that the appeals of appellant may be allowed and he may be acquitted by extending him the benefit of the doubt.

9. Learned counsel for appellant Shahzad alias Kamran contended that the appellant has falsely been implicated in the case; nothing was recovered from him ; that appellant was arrested from his house and his father moved such applications to higher authorities; that the descriptions of the grenade were not mentioned in the mashirnama of arrest and recovery; that it was

duty of the prosecution to prove its case beyond reasonable doubt but prosecution failed to do so; that the appellant was not previously convict and lastly he requested that appeals of appellant may be allowed and he may be acquitted by extending the benefit of doubt.

10. Learned DPG for the state contended that the prosecution to prove its case against the appellants examined as many as 04 witnesses who fully corroborated each other on every point; that arms and grenade was recovered from the appellants was sent to expert and was examined by the BDU expert and such reports are supportive to the prosecution case; that no enmity or ill-will was suggested against police officials; that no major contradiction was pointed out by learned counsel for the appellant which made the case as doubtful; that during investigation the investigation officer collected CRO of the appellants and found them involved in several cases of similar nature; that investigation officer exhibited the CRO of appellants and several FIRs registered against the appellants before the trial court at the time of evidence; that the police tried to arrange private persons to make them mashir of the recovery but they refused; lastly he submitted that the prosecution had proved its case against the appellants beyond a reasonable doubt and therefore the appeals be dismissed. He relied upon the case of **Muhammad Arif alias Mama V. The State (PLD 2003 SC 942).**

11. We have heard learned counsel for the parties and pursued the record available in the file with their able assistance and considered the relevant law.

12. The record reflects that police officials were patrolling, when they received spy information and on such information they proceeded towards place of information and arrested both the appellants from whom they recovered grenades and rifles. The rifles were sealed at spot whereas for grenades complainant called BDU team and prepared mashirnama and returned to the police station where FIR was registered. PW-1 namely Abid Farooque who was posted at BD West Zone came at police station who checked the same grenades and found them without detonators and were separately sealed, after necessary requirements he issued clearance certificate and later on he issued inspection reports which documents he exhibited in the evidence.

13. The complainant PW-2 namely Muhammad Rafique and mashir PW-3 namely Phool Pervaiz were examined and fully supported the arrest of appellants and recovery from them. We have examined the evidence of both the witnesses and found no major contradiction which led us to believe that they are not trustworthy or reliable. Further the investigation officer PW-4 namely Yousaf Jamal was examined who sent the property viz rifles for FSL and collected the report which supports the prosecution case. He collected the CRO of the appellants which established that the appellants were involved in many cases of similar nature and this witness exhibited such reports along with several other documents in support the case of prosecution. All the PWs were cross examined at length but we do not find any major contradiction in their evidence. We noted that no ill-will or any enmity was suggested during the cross examination of all the witnesses.

14. There are some minor discrepancies found in the evidence of witnesses which generally occur in each and every case which are to be over-looked and only material contradictions are to be taken into consideration as has been held by Honourable Supreme Court of Pakistan in case of **Zakir Khan V. The State (1995 SCMR 1793)**. We are therefore of the view that these witnesses are reliable, trustworthy and their evidence is confidence inspiring.

15. Regarding the property viz rifles, all the witnesses deposed that the rifles were deposited in the malkhana of the city court Karachi and due to fire in malkhana the same was burnt/destroyed. The two recovered grenades which had been placed in the safe custody of the malkhana of the police station were available at the time of recording of the evidence of witnesses and were exhibited in evidence. The appellants have not disputed the fire in the malkhana of the city court nor have they challenged that the same rifles were not deposited in the malkhana of city court.

16. It is well settled principal of law that the Police officials are as good as private witnesses and their testimony could not be discarded merely for the reason that they were police officials, unless the defense would succeed in giving dent to the statements of prosecution witnesses and prove their mala fide or ill-will against accused which the defense counsel have neither been able to do or show during cross-examination. Reliance can be placed in case of **Zafar V. The State (2008 SCMR 125)**.

17. After the scrutiny of the entire evidence we are of the view that the prosecution has proved its case beyond a shadow of

reasonable doubt against the appellants. Since the appellants are of young age and are capable of reformation under such circumstances, we hereby dismiss the instant appeals of the appellants on merits but reduce the sentences of both the appellants only in cases under section 23(i)(A), SAA, 2013, from seven years to five years, while all other sentences, fines and penalties are maintained. All the sentences were ordered to run concurrently and benefit of section 382-B Cr.P.C. was also extended to the appellants.

18. The above appeals are therefore disposed of in the above terms.

JUDGE

JUDGE