

IN THE HIGH COURT OF SINDH AT KARACHI

Special Anti Terrorism Jail Appeal No.277/2015

Appellant : Nadir Ali, through Mr. Muhammad Azam Makhdoom, Advocate.
Respondent : The State, through Mr. Abrar Ali Khichi, DPG.

Special Anti Terrorism Jail Appeal No.278/2015

Appellant : Nadir Ali, through Mr. Muhammad Azam Makhdoom, Advocate.
Respondent : The State, through Mr. Abrar Ali Khichi, DPG.

Date of hearing : 24.10.2017

Date of Judgment

Present: Salahuddin Pahwar, J
Yousuf Ali Sayeed, J

J U D G M E N T

YOUSUF ALI SAYEED, J. The captioned Appeals call into question the Judgment dated 21.10.2015 (the “**Impugned Judgment**”) passed by the Judge, Anti-Terrorism Court No. V at Karachi in Special Case Number A-167/2014 and A-168/2014, whereby convictions were recorded against the Appellant in respect of offences under Section 4 and 5 of the Explosive Substances Act, read with Section-7 of Anti-Terrorism Act, 1997 and Section-23(1)-A of the Sindh Arms Act, 2013 and in respect of which he was convicted under Section 7(1)(ff) of Anti-Terrorism Act, 1997 and sentenced to undergo rigorous imprisonment for fourteen (14) years and also convicted under Section 23(1)(a) of Sindh Arms Act and sentence to undergo rigorous imprisonment for a period of ten (10) years and fine of Rs.30,000/- and in case of non-payment of fine he shall further undergo simple imprisonment for six months. He was extended the benefit of S. 382(B) Cr. P.C., and both sentences were to run concurrently.

2. Succinctly, the case of the Prosecution is that on 11.06.2014, at 0030 hours, a police party, comprised of SIP Manzoor Ahmed Abro, HC Muhammad Nawaz, PC Hafeezullah and DPC Safdar Iqbal, came across the Appellant at a crossing to Qadir Nagar, near Bhabhoo Goth, Malir, Karachi. The Appellant is said to have appeared suspicious and was thus accosted and searched, and an unlicensed 30 bore pistol with loaded magazine containing 06 rounds and a grenade is said to have been recovered from his possession. On such preceding facts, FIR Nos. 153 and 154 of 2014 were registered the same day at 0210 hours at P.S. Steel Town, Karachi, on behalf of the State through SIP Manzoor Ahmed Abro.
3. After the usual investigation, the challan was submitted in the trial Court, and on 29.08.2014 a joint charge was framed against the Appellant in respect of both the registered cases, to which he pleaded not guilty and claimed trial.
4. The prosecution examined four witnesses, namely PW-1, SIP Manzoor Abro, whose deposition appears as Exh.7 and who produced the Memo of Arrest, Recovery and Seizure as Exh.7/A, the two FIRs as Exh.7/B and Exh.7/C respectively, Station Diary Entry No.57 as Ex.7/D and Inspection Report as Exh.7/11; PW-2, ASI Raheem Bux, whose deposition appears as Exh.8 and who merely produced Entry/Report No.20 as Exh.8/A whereby the investigation was initially assigned to him; PW-3, HC Muhammad Nawaz, whose deposition appears as Exh.9; and PW-4, Inspector Haroon Korai, to whom the investigation was transferred and whose deposition appears as Exh.11, who produced Station Diary Entry as Exh.11/A, Naqsha-e-Nazri (Map) as Exh.11/B, Clearance Certificate of the Bomb Disposal Unit as Exh.11/C, Letter addressed to the FSL Laboratory as Exh.11/D, the FSL Report as Ex.11/E, Letter of the AIGP Legal according consent for Crime No.153/14 to be proceeded with under the Anti-Terrorism Act as Exh.11/F, and the Inspection Report of Rifle Grenade as Exh.11/G. Both PC Hafeezullah and DPC Safdar Iqbal were given up by the Prosecution as witnesses.

5. The statement of the Appellant under Section 342 Cr. P.C. was recorded on 09.06.2015 (Exh.13), wherein he denied the allegations. The Appellant examined himself on oath as DW-1, and also examined three witnesses, namely Gul Hassan (DW-2), Sakwan (DW-3), and Nazir Ahmed (DW-4). As per the version of the Appellant, he was arrested from his place of residence by the Rangers on 04.06.2014 and was detained for several days at an unidentifiable location and then handed over to the police, who falsely implicated in the cases under reference. The other defense witnesses supported this version and testified that the Appellant was in fact arrested on 04.06.2014, as stated by him.

6. Whilst assailing the Impugned Judgment, learned counsel for the Appellant submitted that the case was a fabrication and one of false implication. With reference to the depositions and cross-examinations of the Prosecution witnesses as well as the Memo of Arrest, Recovery, Seizure and the Inspection Reports of the pistol and hand grenade (Exh.7/A), as well as the FIRs (Exh. 07/B and Exh. 07/C), he submitted that the Impugned Judgment was the product of a misreading of the evidence due to which the learned trial Court failed to resolve the benefit of doubt in favour of the Appellant. He prayed that the Impugned Judgment be set aside.

7. We have considered the record and the submissions made by learned counsel for the Appellant as well as by the learned D.P.G. It merits consideration that as far as the case in relation to the Explosive Substances Act is concerned, whilst the incendiary/explosive device said to have been recovered from the Appellant is simply described in the FIRs, whilst the FIRs and the Memo of Arrest and Seizure as a 'grenade', in their depositions, the principal prosecution witnesses, namely the Complainant and the Investigation Officer, PW-1, SIP Manzoor Abro and PW-4, Inspector Haroon Korai, described the device recovered from the Appellant as a hand grenade, whereas a perusal of the Inspection Report dated 25.06.2014, bearing Reference No. SB/BDU/630/2014 (Ex No. 11/G) shows that the subject of what is said to have been examined was in fact a 'rifle grenade'.

8. We are cognizant of certain unreported Judgments of this Court in Special Anti-Terrorism Appeal Nos. 28, 29, 40 and 41 of 2015 and in Spl. Criminal Anti-Terrorism Appeal Nos.165 to 167 of 2015, where the distinction between a 'hand grenade' and a 'rifle grenade' was highlighted by a learned Division Bench and was held to be so basic and obvious a matter that even a layman could probably distinguish between the two species. Indeed, the distinction is so stark that we are unable to subscribe to the view taken by the learned trial Court condoning the police's lack of expertise in the matter of distinguishing one from the other or accept that the discrepancy in identification of the type of explosive said to have been recovered does not have a material bearing on the matter. To our minds, this glaring and obvious contradiction cannot be reconciled and creates serious doubt as to the very factum of recovery and is fatal to the prosecution's case, especially as the same is based on the alleged factum of recovery. In fact, the very plea as to lack of expertise on the part of police personnel was also one of the pleas dispelled in the aforementioned unreported Judgments.

9. Furthermore, we have noted that the Clearance Certificate dated 12.06.2014 (Ex 11/C) contains the following remarks as regards the grenade – **“Searched visually and with electronic equipments. No detonating or Explosive Device/Material found”**. As such, it appears that the grenade was even otherwise a dud and did not fall within the definition of “explosive substance” as per S.2 of the Explosives Act, and no case under S.4 and S.5 thereof could consequently have been made out.

10. When confronted with these issues and irregularities, the learned APG was unable to point out any material that would serve to controvert the same. Thus, in our view, the impugned Judgment is a result of obvious non-reading of the evidence and the conviction recorded therein cannot be allowed to stand.

11. These are the reasons for the short Order dictated in these Appeals in open Court on 24.10.2017 whereby the captioned Appeals were allowed and the Appellant was acquitted of the charges.

JUDGE

JUDGE

Karachi
Dated _____