

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

*Spl. Anti-Terrorism Jail Appeal No. D-212 of 2017*

*Spl. Anti-Terrorism Jail Appeal No. D-213 of 2017*

*Spl. Anti-Terrorism Jail Appeal No. D-214 of 2017*

Before :

**Mr. Justice Muhammad Saleem Jessar,**

**Mr. Justice Khadim Hussain Tunio-**

**Appellant** : Ghulam Rasool Brohi through Mr. Achar Khan Gabol, Advocate in Spl. Anti-Terrorism Jail Appeal No. D-212 of 2017

**Appellant** : Khalil Ahmed @ Sikandar @ Asghar Ali Brohi through Mr. Abdul Hakeem Brohi, Advocate Spl. Anti-Terrorism Jail Appeal No. D-213 of 2017

**Appellants** : Ghulam Rasool Brohi and Khalil Ahmed @ Sikandar @ Asghar Ali Brohi through M/S Mr. Achar Khan Gabol, Advocate and Mr. Abdul Hakeem Brohi, Advocate in Spl. Anti-Terrorism Jail Appeal No. D- 214 of 2017

**Respondent** : The State through Mr. Aftab Ahmed Shar, Additional Prosecutor General.

**Date of hearing** : 24-11-2021

**Date of decision** : 24-11-2021

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

**KHADIM HUSSAIN TUNIO, J.** Ghulam Rasool and Khalil Ahmed, the appellants, were tried by learned Anti-Terrorism Judge Sukkur in Special Case No. 68 of 2016 (*Re- The State vs. Ghulam Rasool and Khalil Ahmed*), Case No. 69 of 2016 (*Re- The State vs. Ghulam Rasool*) and Case No. 70 of 2016 (*Re- The State vs. Khalil Ahmed*) outcome of FIR bearing

Crime Nos. 14 of 2015 for an offence punishable under sections 4/5 Explosive Substance Act, 120-B, 34 PPC and 11-F/7 of the Anti-Terrorism Act 1997, Crime No. 15 and 16 of 2016 both for offence punishable u/s 23(i)(a) Sindh Arms Act 2013, all registered with Police Station Sultan Kot, Shikarpur. After regular trial, vide judgment dated 25.11.2017, appellants were convicted and sentenced as follows:-

1) For committing offence U/S 4 of Explosive Substance Act r/w section 120-B and 34 PPC, both present accused are convicted and sentenced to suffer for 14 years with forfeiture of their whole properties as required by section 5(a) Explosive Substance Act, 1908.

2) For committing offence U/S 23(1)(a) Sindh Arms Act, 2013, accused Ghulam Rasool @ Baba is convicted and sentenced to suffer RI for 14 years and fine of Rs.5000/- and in case of default of payment of fine, he shall suffer SI for six months more.

3) For committing offence U/S 23(1)(a) Sindh Arms Act, 2013 accused Khalil @ Asghar @ Sikandar is convicted and sentenced to suffer RI for 14 years and fine of Rs.5000/- and in case of default of payment of fine, he shall suffer SI for six months more.

4) For committing offence 7(ff)ATA, 1997 r/w section 34 PPC, both the present accused are convicted and sentenced to suffer RI for 14 years.

However, appellants were extended benefit of Section 382-B Cr.P.C.

2. Brief facts of the prosecution case are that on 27.02.2015, complainant SIP Shafi Muhammad received information regarding the presence of fugitive Abdul Hafeez wanted in Crime No. 08 of 2015 at his Otaq and also received information that he was conspiring to cause another bomb blast in Shikarpur. After disclosing the said information to his high ups, he constituted a police party accompanied by Inspector Malik Mohammad Tahir, in-charge of the bomb disposal squad Sukkur and reached at the pointed out place where they apprehended the present appellants amongst two others who succeeded in escaping. On personal search of the appellants, he recovered one T.T pistol and 5 live bullets from appellant Ghulam

Rasool whereas he recovered another .30 bore T.T pistol with 8 live bullets from appellant Khalil Ahmed. The Otaq was also searched wherefrom they recovered a pressure cooker, 250 grams of sulfur, 20 kilograms of ammonium nitrate, four detonators, two packets of ball-bearing, one tin of contact adhesive branded *Samad Bond*, three circuits and one 12-volt battery. The case property was sealed in presence of mashirs whereas the explosives were disposed of by the Inspector Malik Mohammad Tahir and then brought to the police station where the FIR was lodged against the present appellants while showing the other accused as absconders.

3. After usual investigation, challan was submitted against the appellants before the concerned Court, whereafter a formal charge was framed against them by the trial Court to which they pleaded not guilty and claimed to be tried.

4. In order to substantiate the charge, prosecution examined PW-1 complainant SIP Shafi Mohammad at Exh-15, PW-2 ASI Abdul Samad at Exh-16 and PW-3 I.O/Inspector Badaruddin Jatoy at Exh-17 who produced various documents in their evidence. Thereafter, prosecution side was closed; vide statement at Exh-18.

5. Statements of accused u/s 342 Cr.P.C were recorded at Exh-19 and Exh-20 wherein the accused claimed false implication in the case and denied the prosecution allegations. However, they neither examined themselves on oath nor produced any evidence in their defence.

6. Learned counsel for the appellants contended that there is a delay in the lodging of FIR for which the prosecution failed to provide any explanation; that there are material contradictions in the evidence of prosecution witnesses and the prosecution story is highly doubtful; that the learned trial Court failed to consider the glaring contradictions in the evidence of the PWs while convicting the

appellants; that the appellants were never in exclusive possession of the alleged recovered explosives and the same were recovered from the Otaq; that despite having prior spy information, the complainant failed to associate any private witnesses; that the impugned judgment suffers from many infirmities as well as illegalities and is liable to be set-aside. In support of their contentions, learned counsel have relied on the case law reported as *2021 P.Cr.L.J 1729, 2021 MLD 1734, 2020 MLD 1113, 2006 SCMR 1846, 2017 SCMR 524, 2008 SCMR 707, 2010 SCMR 1009, 2010 SCMR 385, 2020 P.Cr.L.J 328, 2019 P.Cr.L.J 1743* and *2020 SCMR 687*.

7. Learned A.P.G on the other hand supported the impugned judgment while arguing that there is no enmity between the parties, therefore the question of false implication is lacking. In support of his contentions, he has relied on the case law reported as *PLD 2020 SC 523, 2020 SCMR 853, 2020 MLD 871* and *2005 YLR 2805*.

8. We have given due consideration to the arguments advanced by learned counsel for the appellants, learned A.P.G and perused the record.

9. After perusing the record, it transpires that the complainant SIP Shafi Mohammad has testified that on 27.02.2015, he was posted at PS Lakhi Gate when he received spy information regarding the presence of fugitive Abdul Hafeez at his Otaq and he constituted a police party along with Inspector Malik Mohammad Tahir. The police party reached at the Otaq and apprehended the appellants who were found in possession of one T.T pistol each. Thereafter, the Otaq was searched wherein they found a pressure cooker, 250 grams of sulfur, 20 kilograms of ammonium nitride, four detonators, two packets of ball-bearing, one tin of contact adhesive branded *Samad Bond*, three circuits and one 12-volt battery. The explosives were disposed of by the in-charge of BDS Malik

Mohammad Tahir and the rest of the case property was sealed on the spot.

10. At the very outset, it is observed that the learned trial Court committed serious infirmities and illegalities while recording the statements of the appellants u/s 342 Cr.P.C and did not observe due care and caution. The statements, *prima facie*, appear to be patently stereotypical wherein only a few routine questions were put to the appellants, but material pieces of incriminating evidence such as the three reports of expert witnesses i.e. Bomb Disposal report, Ballistic Expert's report and Forensic Science Laboratory's report have not been put to the appellants by the learned trial Court. Such a practice is against the principles of natural justice. It is also pertinent to observe here that the purpose of recording statement of accused in terms of Section 342 Cr.P.C. is to inform the appellants of the prosecution's evidence brought on record, so that they may be able to explain any circumstances appearing in the evidence against them and also for the purpose of preparing their defence. It is well settled law by now that each and every material incriminating piece of evidence being relied upon by the prosecution against the accused must be put to them at the time of recording their statement in terms of Section 342 Cr.P.C, providing them an opportunity to explain their position and failure to comply with such mandatory requirement of law being incurable under the provisions of Section 537 Cr.P.C, would vitiate the conviction and sentence awarded to the accused.

11. The statement of appellants recorded by the trial Court is reproduced for ready reference:-

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Exh. 19

**IN THE COURT OF JUDGE ANTI-TERRORISM SUKKUR.**  
**Spl. Case No.68/2016**  
**STATEMENT OF ACCUSED U/S 342 CR.P.C.**

Name: **Ghulam Rasool @ Baba**  
Father's Name: **Nabi Bux**  
Caste: **Brohi**  
Age: **Abt 26 Years**  
Occupation: **Student**  
R/O: **village Haji Khanwabi Bivoli Taluka Sukkar**  
District: **Shikarpur**

Q.No.1. You have heard the evidence of prosecution witnesses at the trial to the effect that on 27.02.2015, at about 1400 hours, you along with co-accused Khalil Ahmed @ Sikandar @ Asghar and absconding accused Abdul Hafeez @ Ali Sher, Muhammad Rahim and Asif Chotoo were assembled at the otaq of absconding accused Abdul Hafeez @ Ali Sher situated in village Abdul Khaliq Pindrani Brohi and in furtherance of your common intention, made conspiracy for committing blast in Shikarpur district and police recovered explosive substance material viz: pressure cooker, explosive powder (sulfur), ammonium, four detonators, two packets ball-Barings, two liter diesel, one tin of samad-bond, three circuit and one battery of 12 Walt from your possession and had also created terror, havoc and panic in the society. What have you to say?  
Ans. **No Sir it is false.**

Q.No.2. It has also come in evidence that on the above said date, time and place you along with co-accused Khalil @ Sikandar @ Asghar were arrested by police and police recovered one unlicensed T.T pistol 30 bore with magazine containing five live bullets from your possession. What have you to say?  
Ans. **No Sir it is false.**

Q.No.3. Whether you claim the said TT pistol which was recovered by police from your possession?  
Ans. **No Sir.**

Q.No.4. Why the PWs have deposed against you?  
Ans. **All P.Ws are police officials involved and while they deposed falsely.**


Q.No.5. Do you want to give evidence on oath?  
Ans. **No Sir.**

Q.No.6. Do you want to lead evidence in defence?  
Ans. **No Sir.**

Q.No.7. Do you want to say anything else?  
Ans. **I am innocent, Police falsely involve us, I my father submitted applications to Hon'ble Chief Justice of High Court of Sindh and Pakistan, I have Pseopies & such applications, I pray for Justice.**

**G. Rasool**  
**Jgwpdc**

BEFORE  ME  
JUDGE  
ANTI-TERRORISM COURT, SUKKUR 16/9/17

**CERTIFICATE.**  
Certified that statement of accused has been taken in my presence and hearing and also it is true and correct record of statement of accused made before me.  
  
16/9/17

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Exh. 20

IN THE COURT OF JUDGE ANTI-TERRORISM SUKKUR.  
Spl. Case No.68/2016

STATEMENT OF ACCUSED U/S 342 CR.P.C.

Name: Khalil Ahmed @ Sikandar @ Asghar  
Father's Name: Ahsanullah  
Caste: Brohi  
Age: Above 27 years  
Occupation: P.C.O. Shop Keeper  
R/O: Ward No. 2, Model Colony, Alsaia Dera Murad  
District: Dera Murad Qasbi, Balochistan

Q.No.1. You have heard the evidence of prosecution witnesses at the trial to the effect that on 27.02.2015, at about 1400 hours, you along with co-accused Ghulam Rasool @ Baba and absconding accused Abdul Hafeez @ Ali Sher, Muhammad Rahim and Asif Chotoo were assembled at the Otaq of absconding accused Abdul Hafeez @ Ali Sher situated in village Abdul Khaliq Pindrani Brohi and in furtherance of your common intention, made conspiracy for committing blast in Shikarpur district and police recovered explosive substance material viz: pressure cooker, explosive powder(sulfur), ammonium, four detonators, two packets ball-Bearings, two liter diesel, one tin of samad-bond, three circuit and one battery of 12 Watt from your possession and had also created terror, havoc and panic in the society. What have you to say?

Ans. No Sir it is false.

Q.No.2. It has also come in evidence that on the above said date, time and place you along with co-accused Ghulam Rasool @ Baba were arrested by police and police recovered one unlicensed T.T pistol 30 bore with magazine containing eight live bullets from your possession. What have you to say?

Ans. No Sir it is false.

Q.No.3. Whether you claim the said TT pistol which was recovered by police from your possession?

Ans. No Sir.

Q.No.4. Why the PWs have deposed against you?  
Ans. All P.Ws are police officers, interested and hostile, they deposed falsely.

Q.No.5. Do you want to give evidence on oath?  
Ans. No Sir

Q.No.6. Do you want to lead evidence in defence?  
Ans. No Sir

Q.No.7. Do you want to say anything else?  
Ans. Sir I am innocent and falsely been involved by police. I pray for Justice.

BEFORE ME  
JUDGE  
ANTI-TERRORISM COURT, SUKKUR

CERTIFICATE

The statement of accused has been taken in my presence and heard record contains a full and true account of statement made by accused before me.  
16/2/15

12. The Hon'ble Supreme Court in an unreported judgment dated 28.10.2010 passed in **Criminal Appeal No.292 of 2009** (*Muhammad Hassan v. The State*) has held as under:

“4. It is by now a settled principle of criminal law that each and every material piece of evidence being relied upon by the prosecution against an accused person must be put to him at the time of recording of his statement under section 342, Cr.P.C so as to provide him an opportunity to explain his position in that regard and denial of such opportunity to the accused person defeats the ends of justice. It is also equally settled that a failure to comply with this mandatory requirement vitiates a trial... we have truly been shocked by the cursory and casual manner in which the learned trial Court had handled the matter of recording of the appellant's statement under section 342, Cr.P.C which statement is completely shorn of the necessary details which were required to put to the appellant. We have been equally dismayed by the fact that even the learned Judges of the Division Bench of the High Court of Sindh deciding the appellant's appeal had failed to take notice of such a glaring illegality committed by the trial Court. It goes without saying that the omission on the part of the learned trial Court mentioned above was not merely an irregularity curable under section 537, Cr.P.C but the same was a downright illegality which had vitiated the appellant's conviction and sentence recorded and upheld by the learned Courts below.”

13. Such a futile exercise has prejudiced the case of the appellants especially when, despite not putting the material questions to the appellants, the learned trial Court has used the same evidence to convict the appellants such as the positive report of the chemical examiner which is against the mandate of Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, which guarantees fair trial for determination of civil and criminal liabilities of every citizen. In the case of *Habibullah alias Bhutto and 4 others v. The State* (PLD 2007 Karachi 68), this Court has observed that:-

“.....From this fact alone it appears that the learned trial Judge did not go through the evidence while recording the statements under section 342, Cr.P.C. so as to put all incriminating pieces of evidence to the appellants to obtain their explanation. Under section 342, Cr.P.C. a duty is cast upon the trial Judge to put questions to the accused persons on the incriminating facts which have come in the evidence enabling the



accused persons to explain circumstances appearing on the evidence against them. Thus the Provisions of section 342, Cr.P.C. have not been fully complied with.

14. Similar view has also been taken by this Court while deciding Cr. Appeal No.D-66/2019, Confirmation Case No.D-03/2019, Cr. Appeal No.D-65/2019 and Cr. Appeal No.D-67/2019 vide judgment dated; 05.03.2020.

15. In view of above position and circumstances, the instant Spl. Anti-Terrorism Jail Appeals were partly allowed and conviction and sentence recorded against the appellants vide impugned judgment dated 25.11.2017 were set-aside through short order dated 24.11.2021. The matters were remanded to the learned trial Court with direction to record the statements of the appellants u/s 342 Cr.P.C afresh, confronting them with each and every material incriminating piece of evidence to enable them to furnish their explanation thereto and then to pass a fresh judgment within a period of three (03) months from the date of receipt of R&Ps after giving the parties a fair opportunity of hearing, under intimation to this Court. However, both the parties are at liberty to adduce further evidence, if they desire so and their request will be decided by the learned trial Court fully in accordance with law. Let the R&Ps be returned to the learned trial Court immediately.

These are the reasons for the short order even dated.

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