IN THE HIGH COURT OF SINDH, KARACHI

Spl. Criminal Anti-Terrorism Appeals No. 119, 120, 121, 122, 123 and 124 of 2020

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellants:	Muhammad Mustaqeem son of Muhammad Hanif in Spl. Cr. Anti-Terrorism Appeal Nos. 119, 120, 123 & 124 of 2020 and Muhammad Muqeem son of Muhammad Hanif in Spl. Cr. Anti-Terrorism Appeal Nos. 121 and 122 of 2020, both through Mr. Muhammad Farooq, advocate.
Respondent:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh assisted by Mr. Rana Khalid Hussain, Special Prosecutor, Pakistan Rangers.
Date of hearing:	02.02.2022
Date of announcement:	10.02.2022

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- This single judgment will dispose of the captioned Special Criminal Anti-Terrorism Appeals, same being the outcome of a single judgment. Appellants Muhamad Mustaqeem and Muhammad Muqeem, through instant appeals, have challenged the judgment dated 07.08.2020 *(impugned judgment)* passed by the learned Judge Anti-Terrorism Court-VIII, Karachi in Special Case Nos. 17, 17-A, B, C, D and E of 2020 *(Old Nos. 43, 43-A, B, C, D and E of 2019)* culminated from FIRs bearing Crime Nos. 355, 356, 357, 358, 359 and 360 of 2018 under sections 4/5 Explosive Substances Act r/w 7 of Anti-Terrorism Act 1997 *(ATA 1997)* and 23(1)(a) Sindh Arms Act 2013 *(SAA 2013)*. Through the impugned judgment, appellants have been convicted and sentenced as follows:-

i. Accused Muhammad Mustaqeem and Muhammad Muqeem were convicted and sentenced for the offence punishable under section 23(1)(a) of Sindh Arms Act 2013; to suffer R.I. for 07 years with fine of Rs. 50,000/- each, in default whereof to serve imprisonment for three months more.

ii. Accused Muhammad Mustaqeem and Muhammad Muqeem were convicted and sentenced for the offence punishable under section 4/5 of Explosive Substance Act, 1908 r/w S. 6(2)(ee) of Anti-Terrorism Act 1997; to suffer R.I. for 07 years with fine of Rs. 50,000/ each, in default whereof to serve imprisonment for three months more;

iii. Accused Muhammad Mustaqeem was convicted and sentenced for the offence punishable under section 4/5 of Explosive Substance Act, 1908 r/w S. 6(2)(ee) of Anti-Terrorism Act, 1997 r/w section 7(1)(ff) of Anti-Terrorism Act 1997; to suffer R.I. for 14 years with fine of Rs. 100,000/- in default whereof to serve imprisonment for six months more.

iv. Accused Muhammad Mustaqeem was also convicted and sentenced for the offence punishable under section 23(1) (a) of Sindh Arms Act 2013; to suffer R.I. for 14 years with fine of Rs. 100,000/- in default whereof to serve imprisonment for six months more.

All the sentences were ordered to run concurrently, however, benefit of Section 382-B was also extended to them.

2. Precisely, facts of the prosecution case are that on 11.12.2018, SI Muhammad Zawar *(the complainant)* of Rangers alongwith his subordinate staff was on patrol in the area of Azizabad, Central District when he received information regarding two motorcycle riders escaping the Rangers personnel at Sector 10, North Karachi. The complainant organized a small checkpoint to snap check motorcycles coming their way. A motorcycle, deemed suspicious by the Rangers, was stopped and the two occupants were alighted and asked to identify themselves. The riders *(present appellants)* disclosed their names as Muhammad Mustaqeem and Muhammad Muqeem, In the absence of private mashirs, Constable Danyal Khan and Constable Muhammad Noman were appointed and personal search of the two riders was conducted at about 0010 hours. From Muhammad Mustaqeem's personal search, a green hand grenade and a 30 bore pistol with one loaded magazine and 5 live bullets were recovered. From personal search of Muhammad Muqeem, a light green hand grenade and a 30 bore pistol with one loaded magazine and four live bullets were recovered. When asked for licenses to bear such

arms and ammunition, both of them *(the appellants)* failed to produce any nor could they present the registration documents of the motorcycle in question. As such, the accused were arrested and brought back to the police station where FIR was lodged against the two. During interrogation, Muhammad Mustaqeem disclosed that he had escaped the raid on the MQM Headquarter *(Nine Zero)* in March 2015 and agreed to lead the Rangers personnel to his stash house where he admitted the presence of heavy arms, ammunition and explosives kept for use in war against Law Enforcing Agencies. A raiding party was constituted by the complainant while also being assisted by another contingent headed by SI Habib. They took Muhammad Mustaqeem in cuffs and took him to the pointed out place, raided the house where Mustaqeem disclosed of the presence of a basement, entrance to which was broken through hammers. From therein, they recovered 195 rifle grenades, 98 small 40mm rifle grenades, 13 large 40mm grenades, 90 Avan grenades, 11 RPG rockets, 50 hand grenades, 38 detonators, 49 safety fuses, 16 bags of plastic explosives, 100 trip flares, 5 Machine Guns, one Heavy Machine Gun, four Sub-Machine Guns, two G3, 107 magazines of all kinds and 21160 rounds of Sub-Machine Gun ammo. Memo of recovery was prepared on the spot and the case property was brought back and separate FIRs were lodged against Muhammad Mustaqeem.

3. After registration of FIRs, investigation was conducted by the Investigating Officer (IO) and on its completion challan was submitted before the Court of law against the accused. After compliance with section 265-C Cr.P.C, a charge was framed against the accused to which they pleaded not guilty and claimed to be tried. At trial, prosecution examined as many as six PWs namely PW-1 **Abid Farooq,** PW-2 **Muhammad Zawar,** PW-3 **Daniyal Khan,** PW-4 **Syed Majid Ali,** PW-5 **Kashif Hameed** and PW-6 **Shafiq-ur-Rehman**, who produced various documents and other items duly exhibited. Thereafter, prosecution side was closed. Statements of accused were recorded u/S 342 Cr.P.C wherein

they denied the prosecution case in toto and pleaded their innocence while alleging false implication. They did not examine themselves on oath in disproof of charge, although they examined their father Muhammad Hanif as DW-1 in their favour, who produced many documents through his evidence.

4. After hearing learned counsel for the respective parties, learned trial Court convicted and sentenced the appellants through impugned judgment as stated supra.

5. Learned counsel for the appellants has contended that the appellants were picked up from their house on 05.12.2018; that the father of appellants sent applications to various authorities for wrongful detention of the appellants; that the father of the appellants filed a constitutional petition and on 07.12.2018 notices were issued, however it was dismissed as not pressed on 20.12.2018 as FIRs were registered against the appellants; that the memo of arrest and recovery was prepared by the Rangers though a police station was situated near the place of incident; that the Rangers have no authority to prepare such documents; that house where from huge quantity of arms and ammunition had been recovered was in possession of one Kashif and another individual; that the place of incident was situated in thickly populated area, but none from public was made a mashir to the recovery; that the Rangers personnel entered the house without obtaining a search warrant from the concerned Magistrate; that tenancy agreement has been produced which pertains to year of 2016 which does not show that the landlord rented the premises to the appellants; that other brother of the appellants is facing trial in case of Dr. Imran Farooq and is confined in Adiala Jail; that the house from where recovery was made was lying abandoned; that no CRO of appellants had been collected by the investigation officer; that the Anti-terrorism court has no jurisdiction of the offence with which the appellants were charged. In support of his contentions, learned counsel has placed his reliance on cases reported as **PLD 2000 SC 61** *(Ghulam Hussain & others v. The State &*

others); **2021 SCMR 522** *(Mian Khalid Pervaiz v. The State through Spl. Prosecutor ANF & another)*; and **2018 PCrLJ 396** *(Shahzad alias Pakora & others v. The State)*.

6. Conversely, learned Additional Prosecutor General for the State, assisted by learned Special Prosecutor Rangers, has argued that the prosecution has examined six witnesses who have fully supported the prosecution case; that out of them two belong to Rangers; that both the appellants were arrested on 11.12.2018 and on the same night they pointed out a huge quantity of arms and ammunition lying in the house concerned; that it was only the appellants who had knowledge regarding the availability of arms and ammunition in the house; that there is no violation of section 103, Cr.P.C. He has cited the case law reported as **PLD 1997 SC 408** *(The State v. Bashir)*; **1995 SCMR 693** *(Muhammad Akbar v. The State)*; and **2020 SCMR 692 [UK]** *(R v. Copeland)*.

7. Perusal of the record shows that the prosecution's prime witnesses are PW-2 SI Muhammad Zawar who is the complainant and PW-3 Sepoy Daniyal who is the mashir of arrest and all the recoveries. Their depositions, parallel in nature, disclose that the initial call regarding the escape of two culprits on the motorbike from Sector 10, North Karachi was made on 11:45 p.m. on 10.12.2018 and the concerned Rangers contingent headed by PW-2 SI Muhammad Zawar set up a snap-checking checkpoint immediately after, eventually apprehending the escaped motorcyclists *(the appellants)*. The appellants were then arrested and from their possessions, a hand grenade and a .30 calibre pistol each were recovered. The pistols and ammunition were seized and the appellants were arrested and the complainant/PW-2 Muhammad Zawar prepared the memo of arrest and recovery on the spot which was signed by PW-3 Muhammad Daniyal and Sepoy Muhammad Noman. The complainant also made sketches of the recoveries on the rear side of the memo which was produced at Ex. 9/A. The grenades were left unsealed and bomb disposal unit (BDU) was informed. During interrogation within the next

hour, the appellant Muhammad Mustaqeem disclosed the presence of further arms, ammunition and explosives in House No. R0369, Block No. 8 Azizabad. As such, a raiding party was constituted and the house was raided on the pointation of appellant Muhammad Mustaqeem in the presence of appellant Muhammad Muqeem. These facts also find fortification by the deposition of PW-5 Kashif Hameed, the occupant of the said house. After breaking down a basement entrance, the Rangers personnel recovered 195 rifle grenades, 98 small 40mm rifle grenades, 13 large 40mm grenades, 90 Avan grenades, 11 RPG rockets, 50 hand grenades, 38 detonators, 49 safety fuses, 16 bags of plastic explosives, 100 trip flares, 5 Machine Guns, one Heavy Machine Gun, four Sub-Machine Guns, two G3, 107 magazines of all kinds and 21160 rounds of Sub-Machine Gun bullets. The mashirnama for the recovery from the raid had started being prepared by 0140 hours and ended by 0540 hours, whereafter the bomb disposal unit (BDU) was informed. Subsequently, the recovered explosives were defused on the same day at 1630 hours, clearance certificates were thereof issued which are available at Ex.8-C and D for the recovery of two hand grenades from the prior incident and at Ex.8-E for the raid recovery. The recovered weapons, duly sealed, were also found in working condition by the Ballistic Examiner. With regard to the safe custody of the same, the recovered case property was dispatched on the same day *i.e.* 11/12/2018 and the Ballistic Examiner notes under General Remarks in his report that he received *"sealed parcels"*. In this respect, reliance is placed on the case of ***ZAHID and ANOTHER v. THE STATE*** **(2020 SCMR 590)**. Although the learned counsel for the appellants stressed that the house was not in their possession, it has undeniably been proved through the testimony of three eye-witnesses; albeit two of them are Rangers personnel *(PW-2 and PW-3)*, but the last one being PW-5 was the occupant of the concerned house, that the appellants had in-fact pointed out the hidden basement where from a huge quantity of arms, ammunition and explosives was recovered. They clearly knew of the existence of such arms, ammunition and explosives for them to have

pointed the exact place out. As far as the non-association of private/independent mashirs, the complainant deposed that *"I tried to call the public to act as witness but no one was willing to help us."* And such fact is also backed up by the deposition of PW-3 who was the mashir of arrest and recoveries. Even otherwise, in absence of any animus, infirmity or flaw in the evidence of official witnesses, their testimony can be relied on without demur especially when it was so straight-forward that no other presumption could exist other than the guilt of the accused. We are fortified in our view by the case of ***HUSSAIN SHAH and OTHERS v. THE STATE*** **(PLD 2020 Supreme Court 132)**. Therefore, possession of the explosives and firearms is undeniably proven against the appellants which is, now, not disputed in any manner.

8. However, coming to the conviction and sentence for the possession of hand explosives against the appellants is concerned, it is the prosecution case that the appellants were merely possessing such explosives and had not used them at any point. Although the recovery of hand grenades is not disputed and the prosecution witnesses were at no point cross-examined with respect to the same, but it was never established that such recovery was an act of terrorism, proving terrorist intent which was necessary and required object, design and purpose of possession of such explosives; then only can a conviction u/s 7 of the Anti-Terrorism Act be justified. The Hon'ble Apex Court, in the case of ***GHULAM HUSSAIN and others v. THE STATE and others*** **(PLD 2020 SC 61)** has been pleased to observe that:-

> *For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act.* ***It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act.*** *It is further clarified that the actions specified in subsection (2) of section 6 of*

> *that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.*
>
> ***(emphasis supplied)***

9. At no point was the prosecution able to prove through cogent evidence that the appellants possessed the animus to commit acts of terrorism besides vague statements and an admission during interrogation before the police. As reiterated in ***Ghulam Hussain's case*** *(supra)*, S. 6 of the Anti-Terrorism Act is a strict *mens rea* offence; where it is important for the prosecution to establish such *mens rea* alongside the *actus reus*, which alas was not done in the present case. Even otherwise, it is a matter of record that the appellants were convicted u/s 5 of the Explosive Substance Act for possessing hand grenades and also u/s 7(1)(ff) of the Anti-Terrorism Act 1997, the offence being described u/s 6(2)(ee) as *'using explosives or having explosives substances in a manner contrary to section 6(2)(ee) read with section 6(1)(b) or (c) of the ATA, 1997'*. Having been guided amply by the above judgment to understand the characteristics of an action to be labelled as terrorism, this Court is left with no doubt that alleged offence cannot be equated with terrorism. As such, conviction of the appellants u/s 7(1)(ff) of the Anti-Terrorism Act cannot sustain. In this respect, we are fortified in our view by the cases of ***SUNEIL v. THE STATE*** **(2018 PCrLJ 959)** and ***MUHAMMAD AYAZ v. SUPERINTENDENT DISTRICT JAIL, TIMERGARA, DISTRICT LOWER DIR and 3 others*** **(PLD 2018 Peshawar 1)**. The Hon'ble Apex Court, in the case of ***AFZUL-UR-REHMAN v. THE STATE*** **(2021 SCMR 359)** was also pleased to set aside the conviction awarded to a convict u/s 7 of the Anti-Terrorism Act 1997 while maintaining a conviction u/s 5 of the Explosive Substances Act 1908.

10. For what has been discussed above, we are of considered view that the prosecution has failed to prove its case against the appellants u/s 6(2)(ee) of the Anti-Terrorism Act, as such conviction and sentence awarded to the appellant Muhammad Muqeem on one count and to Muhammad Mustaqeem on two counts u/s 7(1)(ff) of the Anti-Terrorism Act vide impugned judgment, being not sustainable in law are set aside. However, conviction and sentence awarded to the appellants u/s 23(1)(a)

Sindh Arms Act and u/s 5 of the Explosive Substance Act is maintained. Benefit of S. 382(b) Cr.P.C is maintained as well.

11. Captioned Special Criminal Anti-Terrorism Appeals No. 119, 120, 121, 122, 123 and 124 of 2020 stand disposed of in the above terms.

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