

## IN THE HIGH COURT OF SINDH, KARACHI

*Spl. Criminal Anti-Terrorism Appeals No. 44, 45, 46, 47, 48 and 49 of 2021*

### ***Before:***

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

- Appellants: Nisar Khan son of Ghulam Habib in Spl. Cr. Anti-Terrorism Appeals Nos. 44 and 45 of 2021. Through Mr. Tariq Hussain, advocate.
- Appellants: Roni Ilyas son of Ilyas Freedy in Spl. Cr. Anti- Terrorism Appeals Nos. 46 and 47 of 2021 Through Mr. Qadir Khan, advocate.
- Appellants: Muhammad Asif alias Chitta son of Muhammad Anwar in Spl. Cr. Anti-Terrorism Appeals Nos. 48 and 49 of 2021 through Mr. Tariq Hussain, advocate.
- Respondent: The State through Mr. Abrar Ali Khichi, Additional Prosecutor-General, Sindh.
- Date of hearing: 28.01.2022
- Date of announcement: 04.02.2022

### **JUDGMENT**

**KHADIM HUSSAIN TUNIO, J-** This single judgment will dispose of the captioned Special Criminal Anti-Terrorism Appeals, same being the outcome of the same judgment. Appellants Nisar Khan, Roni Ilyas and Muhammad Asif, through instant appeals, have challenged the judgment dated 27.02.2021 (*impugned judgment*) passed by the learned Judge Anti-Terrorism Court-I, Karachi in Special Cases Nos. 399, 399-A, 399-B, 399-C, 399-D and 399-E of 2020 culminated from FIRs bearing Crime Nos. 424/2020 to 429/2020 under sections 4/5 Explosive Substance Act r/w 7(ff) ATA, 1997 & 23(1)(a) Sindh Arms Act, 2013 through above jail

appeals. Through the impugned judgment, appellants have been convicted and sentenced as follows:-

Accused Nasir Khan, Roni Ilyas and Muhammad Asif are convicted u/s 465-H(2) and sentenced to [suffer] R.I. for 14 years each for the offences punishable under section 7(ff) of the Anti-Terrorism Act 1997 and convicted and sentenced to undergo R.I. for three years each for the offences punishable under section 5 of Explosive Substance Act, 1908; and for the offences punishable under section 23(1)(a) of Sindh Arms Act, 2013 to undergo R.I. for three years each with fine of Rs.10,000/= each. In default in payment of such fine, they shall suffer further R.I. of six months.

All the sentences were ordered to run concurrently and benefit of Section 382(b) Cr.P.C was also extended to them.

2. Facts, in brief, of the prosecution case are that the complainant SIP Hussain Dino, on 22.12.2015, along with his subordinate staff was on patrol near Nishtar Road, Garden West, Karachi and received spy information about presence of three suspects at Thorough Line Ground adjacent to Platinum Jamait Khana. He called for assistance from Police Mobile-II and apprehended said suspects, who disclosed their names as Nisar Khan son of Habib, Roni Ilyas son of Ilyas Freddy and Muhammad Asif alias Chitta son of Muhammad Anwar. Police seized a hand grenade with a detonator, a 30 bore pistol having a rubbed number with four live bullets and Rs.100/= from appellant Nisar Khan; hand grenade, 32 bore revolver having a rubbed number with two live bullets and Rs.200/= from appellant Roni Ilyas and; one hand grenade, a 32 bore revolver having rubbed number with two live bullets and Rs.150/= from appellant Muhammad Asif. Complainant inquired about licenses of recovered arms and ammunition from the apprehended accused, who failed to produce anything, claiming the same to be unlicensed. Thereafter, complainant brought arrested accused and the recovered case property at police station and lodged the above FIRs.

3. After registration of FIRs, on 23.11.2020 SIP Syed Sajjad Hussain Kazmi, Official of Bomb Disposal Unit, East Zone, Karachi inspected the hand grenades at police station and defused the same by

separating detonators, sealed the same and issued such clearance certificates, after which usual investigation was conducted by the Investigating Officer (IO), who submitted challan before the Court of law. Thereafter a formal charge was framed, to which the appellants pleaded not guilty and claimed to be tried.

4. In order to substantiate its case against the appellants, prosecution examined as many as five PWs namely PW-1, **S.I. Syed Sajjad Hussain Kazmi**, PW-2, S.I.P. **Hussain Dino**, PW-3 P.C. **Jameel Ahmed**, PW-4 **ASI Shakeel Khan** and PW-5 **Inspector Tariq Ali**. They produced various documents and other items through their evidence which were duly exhibited. Thereafter prosecution side was closed. Statements under section 342, Cr.P.C. of accused were recorded in which they denied the allegations levelled against them in *toto* and claimed that they are innocent and were falsely implicated. They further stated that they had been picked up by the Rangers personnel and then handed over to the police. Neither had they examined themselves on oath nor examined any witnesses in their defence.

5. After hearing the learned counsel for the respective parties, learned trial Court convicted and sentenced the appellants as stated supra.

6. Learned counsel for the appellants contended that the appellants are innocent and were picked up by the Rangers Personnel and then handed over to the police where they were falsely involved in the present case; that PC Imran was not member of the police party; that the badge number of PC Imran is not mentioned in the memo of arrest and recovery; that PW SIP Syed Sajjad Hussain Kazmi deposed that he was not aware about the hand grenades; that no malkhana entry has been produced to establish safe custody of the case property. Learned counsel for the appellants cited the case law reported as **PLD 2015 Isl. 85** (*Muhammad Mumtaz Qadri v. The State*); **PLD 1998 SC 388** (*Mohtarma Benazir Bhutto & another v. President of Pakistan & another*); **PLD 2010 SC 265** (*Dr. Mubashir Hassan & others v. Federation of Pakistan & others*); **2018 SCMR 772** (*Muhammad Mansha v. The State*); **2009 SCMR 230** (*Muhammad*

*Akram v. The State*); **1995 SCMR 1345** (*Tariq Pervaiz v. The State*); **1999 PCrLJ 595** (*Loung through Superintendent, Central Prison Hyderabad v. The State*), Judgments dated **12.07.2017** passed by this Court in **Criminal Appeal No. 315/2015** and **19.05.2020** in **Special Criminal Anti-Terrorism Appeals No. 45, 46, 47 and 48 of 2020**.

7. On the other hand, learned Additional Prosecutor-General, Sindh for the State has argued that appellants were arrested on 23.11.2020; that pistols and hand grenades were recovered from their possession; that no enmity or ill will has been alleged or proved with the complainant and prosecution witnesses; that no complaint had been lodged by the relatives of the appellants that they had been picked by the law enforcing agencies. He has referred case law reported in **2020 SCMR 853** (*Muhammad Yaqub v. The State*); **SBLR 2016 Sindh 1334** (*Naeemullah Niazi vs. The State & another*); **SBLR 2014 Sindh 1472** (*Abdul Baqi alias Talha and 2 others vs. The State*) and **1996 SCMR 1747** (*Muhammad Ashraf Khan Tareen & another v. The State & another*).

8. We have carefully examined the respective contentions agitated on behalf of the appellants and for the State in the light of evidence on record.

9. Perusal of the record reflects that the two prime witnesses that the prosecution's case relies on are PW-2 SIP Hussain Dino, who is the complainant and PW-3 PC Jameel Ahmed who is also the mashir of arrest and recovery. They deposed that on 23.11.2020, while they were patrolling, PW-2 SIP Hussain Dino received spy information regarding the presence of a few culprits at the place of incident who were present with the intent to commit some crime. As such, they proceeded to the pointed out place and found three culprits (*present appellants*) at the place of incident. The appellants were duly apprehended and from their possessions, one pistol and a grenade each were recovered. The pistols and ammunition were sealed on the spot, whereas the grenades were left unsealed till the arrival of the bomb disposal unit (BDU) who defused the hand grenades and PW-1 S.I. Syed Sajjad Hussain Kazmi issued such

clearance certificates whereafter three grenades were sealed. The recovery was made on the spot and such mashirnama was prepared by 1900 hours and the defusing took place at 1015 hours, with a delay of only an hour. The recovered weapons, sealed on the spot, 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 next day of the incident *i.e.* 24/11/2020 and the Ballistic Examiner notes under General Remarks in his report that the parcels received were in sealed condition and that "*the seals were intact.*" In this respect, reliance is placed on the case of **ZAHID and ANOTHER v. THE STATE (2020 SCMR 590)**. Therefore, possession of the hand grenades and firearms is undeniably proven against the appellants which has not been disputed in any manner. With regard to the news clippings produced by the counsel for appellants, it is settled principle of law that news clippings alone can never be considered sufficient evidence to prove a fact and can, at most, be confirmatory evidence in the presence of some direct evidence which is absent in the present case.

10. As far as the conviction and sentence for the possession of hand grenades against the appellants is concerned, it is the prosecution case that the appellants were merely possessing hand grenades 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 for which proving terrorist intent is necessary for which object design and purpose of possession is needed; 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)*

11. Nothing was brought on record to suggest that the appellants were a part of a terrorist organization or possessed terroristic intent, design or purpose. 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*'. It is pertinent to note here that the appellants were essentially punished twice for the same offence which is a violation of their inalienable right prescribed by Article 13 of the Constitution of Islamic Republic of Pakistan. 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)*.

12. In view of the above discussion and circumstances, we are of the considered view that the prosecution has failed to prove its case against the appellants u/s 6(2)(ee) as such conviction and sentence

awarded to the appellants u/s 7(1)(ff) vide impugned judgment, being not sustainable under the law, is set aside. However, conviction and sentence awarded to the appellants u/s 23(1)(a) Sindh Arms Act and under S. 5 of the Explosive Substance Act is maintained. Benefit of S. 382(b) Cr.P.C is also maintained.

13. Captioned Special Criminal Anti-Terrorism Appeals No. 44, 45, 46, 47, 48 and 49 of 2021 stand disposed of in the above terms.

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