

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No.36 of 2020
Special Criminal Anti-Terrorism Appeal No.37 of 2020

Present: *Mr. Justice Nazar Akbar*
Mr. Justice Zulfiqar Ahmad Khan

Appellant: Muhammad Noman @ Chikna @ Babal,
Through Mr. Hashmat Khalid, Advocate.

Respondent: The State through Mr. Zafar Ahmed Khan,
Additional Prosecutor General, Sindh.

Date of Hearing: **15.12.2020**

J U D G M E N T

NAZAR AKBAR, J.- Appellant Muhammad Noman @ Chikna @ Babal son of Abdul Rasheed was tried by learned Judge, Anti-Terrorism Court-IV, Karachi, in Special Cases Nos.440 and 440-A of 2019, arising out of FIRs Nos.252 and 253 of 2019, registered at P.S. Jamshed Quarter, Karachi for offences under Sections 4/5 of the Explosive Substances Act, 1908 read with Section 7 of the Anti-Terrorism Act, 1997 and Section 23(1)(a) of the Sindh Arms Act, 2013. On conclusion of trial, vide judgment dated **13.02.2020**, appellant was convicted under and sentenced as under:-

- a) Accused Muhammad Noman @ Chikna @ Baba son of Abdul Rasheed found guilty of the charge of offences u/s 5 of explosive substance Act 1908, he is convicted and sentenced to suffer imprisonment for **three years**.
- b) Accused Muhammad Noman @ Chikna @ Baba son of Abdul Rasheed also found guilty of the charge of offence punishable u/s 23(1)(a) of Sindh Arms Act 2013, is convicted and sentence to imprisonment for **three years**, with fine of Rs.5,000/- (Rupees five thousand), in case of default in payment of fine, he shall further suffer imprisonment for one month.

All the sentences were ordered to run concurrently. The benefit of Section 382-B Cr.P.C was also extended to accused.

2. Precisely the facts of the prosecution case as per the FIRs are that on 01.07.2019 police party headed by ASI Tanveer Ahmed Abbasi of PS Jamshed Quarter accompanied with officials, namely, PC Naseer Ahmed, PS Syed Jawwad, PC Bilal Rabbani in official mobile-II SPE-656 was busy in patrolling duty in the area, when they reached at Teen Hatti, they received spy information about presence of Lashkar-e-Jhangvi terrorist near Noman Masjid, Lasbela Chowk, who was waiting for his other companions with intention to carry out an act of terrorism. On pointation of spy informant, police party reached there at about 05:30 hours, on seeing police party accused tried to escape, however, police party encircled and apprehended the accused, who disclosed his name as Muhammad Noman @ Chikna @ Babal son of Abdul Rasheed (the present appellant). Police party conducted personal search and recovered one blue color polythene bag from his right hand containing two detonators of silver color and two detonator cords of red and black color. On further search, one 30 bore pistol without number having silver color, loaded magazine with four live bullets was also recovered from the fold of his trouser. On further search one wallet of brown color containing two notes of Rs.100/-, (Note No.LK-8942935 and QY-0190761), color copy of CNIC, different visiting cards and one Huawei touch mobile phone black color were recovered from right pocket of his trouser. Police party demanded valid permission/license but he failed to produce the same. Therefore they arrested the accused and after completion of legal formalities separate FIRs bearing Nos.252/2019 under Section 4/5 of the Explosive Substance Act, read with Section 7 ATA 1997 and 253/2019 under Section 23(1)(a) of the Sindh Arms Act, 2013, were registered against above named accused for taking further legal action.

3. The investigation was entrusted to Inspector Yousuf Jamal of P.S Jamshed Quarter, who after completion of investigation on **17.07.2019** submitted two separate challans against the accused under the above referred sections.

4. Trial Court ordered joint trial in both the cases as provided under Section 21-M of the Anti-Terrorism Act, 1997 by order dated **07.08.2019** and on **05.09.2019** framed charge against the accused at Ex.4. Accused pleaded not guilty and claimed to be tried.

5. In order to substantiate its case prosecution examined 04 witnesses i.e **PW-01** complainant ASI Tanveer Ahmed Abbasi was examined at Ex:05. On **02.10.2019** learned APG filed statement to give up two prosecution witnesses, namely, PC Bilal Rabani and PC Syed Jawad at Ex:06. **PW-02** Inspector Ghulam Mustafa Arain, Incharge BDU South Zone was examined at Ex:07; **PW-03** PC Muhammad Naseer was examined at Ex:08 and **PW-04**, I.O Inspector Yousuf Jamal was examined at Ex:09, thereafter, learned APG closed the side of prosecution vide statement dated **16.12.2019** at Ex.10.

6. Statement of accused was recorded under section 342(1) Cr.PC at Ex.11, in which he denied the prosecution allegations, claimed his innocence and false implication in these cases. During recording of his statement under Section 342(1) Cr.P.C the accused/appellant stated that nothing was secured from his possession, the alleged recovery is foisted upon him. The appellant/accused did not examine himself on oath, however, he produced three witnesses in his defence viz. **DW-01** Nazia Abdul Rasheed (sister of appellant) was examined at Ex:12; **DW-02** Muhammad Tariq Hassan (neighbor of appellant) at Ex:13 and **DW-03** Syed Moeed Hussain (neighbor of appellant) at

Ex:14, thereafter learned counsel for the appellant closed his side for evidence vide statement dated **18.01.2020** at Ex.15.

7. The learned trial court after hearing learned counsel for the parties and on assessment of entire evidence convicted and sentenced the appellant vide judgment dated **13.02.2020** as stated above.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 13.02.2020 passed by the trial Court therefore the same are not reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for appellant has argued that the appellant/accused is innocent and the police has falsely implicated him in the instant case for mala fide reasons; the appellant/accused was picked up by the police from his house on **22.06.2019** and they demanded illegal gratification and when the appellant and his family did not fulfill their demand, they implicated him in these false cases; nothing has been recovered from the appellant and the alleged recovery of explosive substance was foisted upon him. He further argued that the alleged recovery of nonelectric detonator and detonating cord do not fall within the definition of explosive material. He pointed out that the place of incident is thickly populated area but police has not associated any person from the locality as mashir of arrest and recovery which is violation of mandatory provision of Section 103 of Cr.P.C. He further contended that conviction of the appellant is based on presumption as, while passing the impugned judgment, learned trial court did not consider the actual facts and circumstances of the case; learned trial court did not evaluate the prosecution evidence in

its true perspective. Lastly, it has been argued that prosecution has failed to prove its case against the appellant beyond any shadow of doubt, as such, prayed for acquittal of the appellant.

10. Learned Additional Prosecutor General Sindh sought for dismissal of instant appeal by contending that explosive substance as well as arms and ammunitions were recovered from the possession of the appellant; all PWs have fully implicated the appellant in the instant case, therefore, the prosecution has proved its case against the appellant beyond any shadow of doubt. He fully supported the impugned judgment.

11. We have carefully heard learned counsel for the parties and examined the evidence of both parties minutely and have also gone through the written arguments submitted by the learned counsel for the appellant. We have noticed that the case of the prosecution was full of lacunas, contradictions and discrepancies.

12. PW.1 ASI Tanveer Ahmed, Abbasi, complainant/arresting officer in his cross-examination has stated that “.....**At the time of arrest and recovery none from the locality was present,** therefore I associated police officials as witnesses of the recovery. Memo of arrest and recovery was prepared on the bonnet of police mobile..... I did not make any entry regarding handing over case property. In my presence I.O did not enquire regarding the incident from anyone..... **It is correct to suggest that at the time of inspection shops were opened and there was traffic flow..... I handed over the explosive material and recovered weapon to Guard Commander of Koth. It is correct to suggest that I have not produced such entry before the Court.**”

13. PW-2 Inspector Ghulam Mustafa, BD Incharge in his cross-examination has stated that “.....**there was no polythene bag at the time of inspection of explosive material**..... It is correct to suggest that all the explosive material was kept in different size plastic bags, on these medium size plastic bags the contents are not written and all these three small bags were kept in one large size plastic bag, on which the contents are available.....**Items were not sent to laboratory for examination**”.

14. PW.3 PC Muhammad Naseer in his cross-examination has stated that, “**The public was there and was passing through the place of incident**.....We remained at the place of incident at about 10 minutes. I.O consumed 20/25 minutes in inspection of place of incident.....It is correct to suggest that number of currency notes is not mentioned in memo of arrest and recovery.....**It is correct to suggest that my duty was off at about 08:00 am, but on the direction of SHO I was remained present in PS.**”

15. PW.4 DSP Yousuf/I.O Jamal in his cross-examination had stated that, “**the detonator was received by me in sealed plastic bag and weapon was received in fabric bag** (in sealed condition)..... I visited place of incident on police mobile but I do not remember the registration number of police mobile. We were remained present at the place of incident for about 20 minutes. Memo of Site Inspection was prepared by me while putting on bonnet of police mobile. It is correct to suggest that at the time of site inspection the shops were opened and people were passing through.....It is correct to suggest that I have not associated mashir from the locality.....**It is correct to suggest that explosive material was not sent to Forensic Laboratory for examination.**”

16. Conversely, the evidence of DWs also worth reproduction, DW-01 Nazia Ahdul Rasheed (sister of appellant) in her cross-examination has stated that “..... On 22.06.2019 at about 02:00 AM some persons knocked the door of our house. When I saw from inside my house, I found that police officials were there. Thereafter, on their direction I opened the door and police officials entered into our house. They inquired about my brother Noman they demanded his CNIC. Noman handed over copy his CNIC to them, original CNIC was kept in my custody. They conducted search of my house and taken wallet of Noman containing cash of Rs.11,000/-. They also taken two mobile phones of my brother Noman. Police officials beaten my brother mercilessly and taken away with them. They also taken motorcycle bearing No.KMC-8692 of my brother with them. When I asked that why they taken my brother with them they replied that after inquiry we will release him. I visited PS PIB Colony on same day, thereafter on second day and third day but they did not allow me to meet with my brother. Thereafter my brother was shifted to PS Jamshed and PS Sir Syed and then finally he was kept at PS PIB. Whenever I went to PS and inquire regarding my brother they reply that they will leave my brother after completion of inquiry. Police officials demanded illegal gratification from me for release of my brother.”

17. DW-02 Muhammad Tariq Hassan in his cross-examination has stated that “I am working as Auto Electrician and residing at above address. On 22.06.2019, I was present at my home at about 02:00/02:30 AM, I heard commotion outside of my house. I opened the door of my house, police official directed me to go inside and close the door. Thereafter from the window of my house I saw that police officials caught Noman and was beating him. When police officials taken

accused Noman with them and left place of incident, I came out from my house and saw that accused Noman was boarded in police mobile and his motorcycle was also taken by police officials with them.

18. DW-03 Syed Moeed Hussain in his cross-examination has stated that *"I am residing at above address. On 22.06.2019, at about 02:00/02:15 AM, I heard commotion outside my house and when I came out of my house I found that police officials were present in our street who directed me to close the door and go inside the house. I went on the roof of my house and saw police officials were taking Noman alongwith them. One police official also taken his motorcycle. When police left place of incident, I came out from my house and saw that there were three police mobiles of PS PIB Colony, Jamshed and Gulbahar."*

19. From perusal of above evidence, we have come to the conclusion that prosecution has failed to prove its case against the appellant/accused beyond any reasonable doubt for the reasons that prosecution case appears to be highly unnatural and unbelievable. It was case of spy information, ASI/complainant had sufficient time to call the independent persons of the locality for making them as mashirs of recovery but he failed to do so without justification. It is the case of prosecution that accused was armed with explosive substance and pistol. It is unbelievable that no attempt was made by the accused to either use the pistol at the time of his arrest in order to escape. It was against the conduct of the criminal minded persons to surrender without resistance when armed with deadly weapon. ASI/complainant in his cross-examination deposed that *"I informed BD from the spot but he was not reached on the spot."* but he failed to produce any proof of such fact. Under what circumstances, he

brought explosive substance safely at police station, has not come on record. Prosecution evidence is silent with regard to the safe custody of the explosive substance at the police station. Appellant/accused in his statement under Section 342(1) Cr.P.C as well as three Defence Witnesses in their cross-examination raised plea that on **22.06.2019** the appellant was arrested from his house by police in presence of his family and after about 08 days of his arrest, false cases were registered against him. Unfortunately, trial court failed to consider the defence theory. In a criminal case, it is the duty of the Court to scrutinize the entire evidence that has been produced by the prosecution and the defence. If, after an examination of whole evidence, the Court is of the opinion that there is a reasonable possibility that the defence put forward by the accused might be true, it is clear that such a view reacts on the whole prosecution case.

20. The record also shows that the prosecution has given up their witnesses by filing statement during trial who were said to have been mashirs of recovery, meaning thereby either the said witnesses were not present at the time of incident at all, therefore, they refused to give evidence, or the prosecution has realized that may be the truth could come out from their mouths during their evidence, therefore, the prosecution decided to give up the said witnesses.

21. So far as the terrorism act of the appellant is concerned, it is pertinent to mention that very object of law makers to promulgate Anti-terrorism Act, 1997 was to control the acts of terrorism, sectarian violence and other heinous offences as defined in Section 6 of the ATA, 1997. To bring an offence within the ambit of the ATA, 1997, it is essential to examine that the said offence should have nexus with the objects of the Act and the offence covered by its

Sections 6, 7 & 8. In the present case it cannot be said that the instant crime falls under Sections 6 and 7 of ATA, 1997. The admission on the part of prosecution that explosive material was not sent to laboratory for proper examination and the documentary evidence is also not supporting prosecution case.

22. After careful reappraisal of the evidence discussed above, we have no hesitation to hold that there are several circumstances/ infirmities in the prosecution case as highlighted above, which have created reasonable doubt about the guilt of accused. By now it is settled law that for giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*, the Hon'ble Supreme Court has observed as follows:-

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of *Tariq Pervez v. The State (1995 SCMR 1345)*, *Ghulam Qadir and 2 others v. The State (2008 SCMR 1221)*, *Muhammad Akram v. The State (2009 SCMR 230)* and *Muhammad Zaman v. The State (2014 SCMR 749)*.”

23. In view of the above discussion when the prosecution has already failed to prove its case against appellant beyond any reasonable doubt, the conviction of appellant cannot be maintained.

Consequently, by short order dated **15.12.2020** these appeals were allowed and conviction and sentence recorded by the trial Court by judgment dated **13.02.2020** was set aside and the appellant was acquitted of the charges. These are the reasons for our short order.

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Karachi, dated
April_____, 2021

Ayaz Gul