

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. ATA Appeal No.D-11 of 2015

PRESENT

Mr. Justice Naimatullah Phulpoto

Mr. Justice Muhammad Karim Khan Agha

Date of Hearing: 03.05.2017

Date of Judgment: 03.05.2017

*Appellant/accused: Tasawar Ali Khaskheli S/o Abdul
Rehman: Through Mr.Pervaiz Tarique
Tagar, Advocate.*

*The State: Through Shahzado Saleem Nahiyoon,
Assistant Prosecutor General, Sindh.*

JUDGMENT

NAIMATULLAH PHULPOTO, J:- Appellant Tasawar Ali Khaskheli was tried by learned Judge, Anti-Terrorism Court, Hyderabad in ATC Case No.101 of 2014 arising out of Crime No.195 of 2014 registered at Police Station, Kotri for offences under Section 7(ff) of Anti-Terrorism Act, 1997 read with Section 427 & 354 PPC. By judgment dated 30.01.2015, the appellant was convicted under Section 7(ff) of Anti-Terrorism Act, 1997 and sentenced to 14 years R.I. Benefit of Section 382(B) Cr.P.C was extended to the appellant. The case of the absconding accused Ghani alias Abdul Ghani Mangrio, Jameel alias Goro Sindhi and Murtaza Rind was kept on dormant file.

2. The allegation against the appellant/accused Tasawar Ali Khaskheli as disclosed in the FIR is that on 20.05.2014 at 2035

hours, he had caused blast on the railway line near Khursheed Colony, Kotri alongwith absconding accused Ghani alias Abdul Ghani Mangrio, Jameel alias Goro Sindhi and Murtaza Rind. It is alleged that the accused caused damage to the Railway track. Accused Tasawar Ali Khaskheli was arrested in the case. After usual investigation, the challan was submitted against the accused under the above referred sections. Co-accused Ghani alias Abdul Ghani Mangrio, Jameel alias Goro Sindh, Murtaza Rind and two unknown persons were shown as absconders.

3. Trial Court issued the N.B.Ws against all the absconding accused but the same returned un-executed. Thereafter, the proceedings under Sections 87 & 88 Cr.P.C were concluded against the absconding accused.

4. Trial Court framed the charge against accused Tasawar Ali Khaskheli under Section 7(ff) of Anti-Terrorism Act, 1997 read with Section 427 & 354 PPC, so also read with Section 3 of Explosive Substances Act, 1908 at Ex-10. Accused pleaded not guilty and claimed to be tried.

5. In order to substantiate the charge, prosecution examined P.W-1 Mashir PC Abdul Hakeem at Ex-12, who produced mashirnama of place of wardat at Ex-12/A. P.W-2 PC Muhammad Ameen was examined at Ex-13. P.W-3 SIP Hassan Hyder at Ex-14, who produced copy of FIR at Ex-14/A. P.W-4 ASIP Aftab Ahmed was examined at Ex-15, who produced mashirnama of arrest at Ex-15/A. P.W-5 mashir HC Peeral Khan was examined

at Ex-16. Lastly, P.W-6 I.O Naseer Ahmed was examined at Ex-17, who produced message of SSP Jamshoro assigning him investigation at Ex-17/A, roznamcha entry No.33 at Ex-17/B and letter of the SSP Jamshoro, which was addressed to the Secretary Home Department, Government of Sindh for permission to try Section 3 of Explosive Substances Act, 1908 and Section 7 of Explosive Substances Act, 1908 at Ex-17/C. Thereafter, the prosecution side was closed.

6. Statement of accused was recorded under Section 342 Cr.P.C at Ex-19. Accused claimed false implication in this case and denied the prosecution allegations and further stated that prosecution witnesses have deposed falsely against him and they are interested and supporting the complainant. Accused did not lead any evidence in defence and declined to examine himself on oath in disproof of the prosecution allegations.

7. Learned Trial Court after hearing the learned Counsel for the parties and examining/assessing the evidence brought on record, convicted the accused under Section 7(ff) of Anti-Terrorism Act, 1997 and sentenced as stated here-in-above, hence, this appeal.

8. Trial Court in the judgment dated 30.01.2015 has already discussed the evidence in detail and there is no need to

repeat it here, so as to avoid duplication and un-necessary repetition.

9. Learned Advocate for the appellant mainly argued that it was night time incident and no one had witnessed the incident. It is further contended that source of identification of the accused has not been disclosed. He argued that according to the case of the prosecution, 200 persons had gathered at the place of incident but no one has been examined by the prosecution at the trial. It is also submitted that no employee of Railway department has been examined by the prosecution. Lastly, it is contended that nothing incriminating was recovered from the possession of the accused and prosecution had failed to prove its case against the appellant/accused.

10. Mr. Shahzado Saleem Nahiyoon, learned Assistant Prosecutor General appearing on behalf of the State conceded to the contentions raised by learned Advocate for the appellant and did not support the impugned judgment and recorded no objection for acquittal of the accused.

11. We have carefully heard learned Counsel for the parties and scanned the entire evidence.

12. Close scrutiny of prosecution evidence reflects that the prosecution has failed to establish its case against the appellant/accused for the reasons that according to the case of the prosecution, the incident occurred on 20.05.2014 at 2035 hours

and FIR was lodged on 21.05.2014 at 1500 hours by Kotri police, not by Railway police and the delay in lodging of FIR has not been explained by the prosecution. There is force in the contention of defence Counsel that reason of delay in lodging of FIR was to falsely implicate the appellant in this case. It appears from the evidence that SIP Hassan Hyder of CID Hyderabad has deposed that on 20.05.2014 he left police station, Kotri vide roznamcha entry No.36 at 1830 hours for patrolling alongwith P.Cs Abdul Hakeem and Ameen. When they reached at Khursheed Colony, they heard sound of blast at 2035 hours at Railway line from Karachi to Hyderabad and four boys were running away, out of them, one was appellant Tasawar Ali Khaskheli but in the cross-examination, SIP has replied that he had seen the accused persons on the head light of the car at the distance of 1 or 1.1/2 furlong. He further replied that accused Tasawar Ali Khaskheli was not previously known to him. In such circumstances, it is clear from the evidence of SIP Hassan Hyder that actual incident was not witnessed by him. Identification of accused by him on the head light of the vehicle at the distance of 1 or 1.1/2 furlong was highly doubtful. Moreover, the evidence of SIP Hassan Hyder is materially contradicted by the evidence of P.C Muhammad Ameen, who has deposed that on 20.05.2014 he alongwith SIP Hassan Hyder and PC Abdul Hakeem left for patrolling, they heard blast on Railway track, where appellant Tasawar Ali Khaskheli and absconding accused were coming down from the Railway track. He has deposed that he had seen the accused at the distance of 100 or 200 yards but

admitted that there was no electricity and source of identification has also not been disclosed by him. He had also not witnessed the incident. ASI Aftab Ahmed (P.W-4) arrested the accused on spy information on 27.05.2014 but nothing incriminating was recovered from his possession. Without incriminating material, the appellant could not be connected with the commission of the offence. H.C Peeral Khan has acted as mashir of the arrest of the appellant/accused. Case was investigated by Inspector Naseer Ahmed but no incriminating material was collected by him during the course of investigation. He has simply submitted the challan against accused Tasawar Ali Khaskheli by showing the co-accused as absconders. No reliable piece of evidence to establish bomb blast has been brought on record against the appellant/accused by the prosecution. SIP Hassan Hyder has failed to produce roznamcha entry No.36 dated 20.05.2014 before the Trial Court to satisfy the Court that police party had actually left for patrolling at the relevant time, this omission would be fatal to the prosecution case. It is matter of the record that 200 private persons had gathered at the place of incident but no private person has been examined by the prosecution at trial. Evidence of the police officers in the circumstances of the case, did not inspire confidence being tainted with doubts. Learned Advocate for the appellant has rightly relied upon the case of *MUHAMMAD AHMED ALIAS DANYAL V/S. THE STATE (2005 YLR 954)*, in which it is observed that it is not necessary that there should be many doubts in the case, but if a single doubt appeared in the evidence then its benefit was to be given to the accused. In this case, there are

several infirmities in the prosecution case, which created reasonable doubt and the benefit of doubt should also be given to the appellant/accused.

13. After considering the material available on the record, we are of the considered view that the prosecution has failed to prove the case against the appellant beyond any reasonable doubt, therefore, the appellant is entitled to the benefit of doubt, which was accordingly given to him while passing short order.

14. Above are the reasons of our short order dated 03.05.2017 by which we had allowed the appeal.

JUDGE

JUDGE

Shahid