

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

Spl. AT Jail Appeal No.D- 18 & 19 of 2022.

Present:

Mr.Justice Muhammad Saleem Jessar.

Mr. Justice Zulfiqar Ali Sangi.

Appellants: Ghulam Rasool @Baba through Mr.Aacher Khan Gabol, Advocate in Spl.AT J.A No.D-18 of 2022.  
Khalil Ahmed alias Sikander in person in Spl.AT J.A No.D-19 of 2022.

Respondent. : The State through Mr.Aftab Ahmed Shar, Addl. Prosecutor General, Sindh. :

Date of hearing : 22.10.2024.

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

**ZULFIQAR ALI SANGI-J.-**:- Through this common judgment, we intend to dispose of these two Special Anti-terrorism Jail Appeals, arisen out of consolidated judgment dated 19.02.2022 passed by learned Judge, Anti-terrorism Court-I, Camp at Central Prison Sukkur in Special Cases No.18-A and 18-B of 2021 emanated from offshoot cases/Crime Nos.15 and 16 of 2015 under Section 23(i) (a) of Sindh Arms Act, 2013 of P.S Sultan Kot, District Shikarpur, whereby learned trial Court while acquitting the appellants/accused Ghulam Rasool @ Baba and Khalil Ahmed @ Sikander @ Asghar in main case i.e. Special Case No.18 of 2021 arisen out of Crime No.14/2015 of P.S Sultan Kot punishable under Section 4/5 Explosive Substance Act r/w Section 11-F of ATA 1997, convicted them in the offshoot cases under Section 23(i)(a) of Sindh Arms Act, 2013 and sentenced to suffer R.I for 14 years and to pay fine of Rs.5000/= each. In case of default in payment of fine, they shall suffer S.I for one month more. Benefit of Section 382-B Cr.P.C was extended to them.

2. The facts of prosecution case are that on 27.02.2015 SIP/SHO Shafi Muhammad Sanjrani was available at Police Station when he received

spy information that accused wanted in Crime No.08 of 2015 of P.S Lakh Gate were present at Otaq in village Abdul Khaliq Pandrani Brohi and hatching conspiracy to prepare explosive device. Such information was conveyed by him to control room whereupon other police parties including Inspector Malik Tahir Mehmood, Incharge Bomb Disposal Squad (B.D.S) Sukkur with staff joined and they rushed to pointed place at Otaq at about 2.00 p.m where they saw four persons on seeing police party tried to escape out of whom two were apprehended while two of them made their escape good. Thereafter, due to non-availability of private persons, ASI Abdul Samad Brohi and ASI Muhammad Chuttal were associated as mashirs and then apprehended accused were enquired about their identity, who disclosed their names as Ghulam Rasool @Baba S/O Nabi Bux Brohi and Khalil Ahmed @Sikander @Asghar Ali Brohi. On personal search of accused Ghulam Rasool, one T.T pistol of 30 bore was recovered from fold of his shalwar as well as a mobile phone Q-E-450. From personal search of accused Khalil Ahmed @Sikander @Asghar Ali, complainant recovered T.T pistol of 30 bore loaded with 08 live bullets from fold of right side of shalwar and further recovered Nokia mobile phone 105. Accused disclosed about the recovered weapons being unlicensed. Then complainant in presence of mashirs searched the room of the otaq and found articles to make bomb were lying on the floor which were taken into custody by Incharge Bomb Disposal Squad including pressure cooker, Samad Bond, Sulphar 250 grams, ammonium nitrate 20 K.G, four detonators, two packets of Ball-Barings, one Box of Samad Bond and one Battery of 12 Walt. He handed over these articles to complainant which he sealed at the spot. On further interrogation, the accused disclosed that accused Abdul Hafeez @Ali Sher and Muhammad Rahim have escaped from spot and they were preparing a bomb to make explosion in Shikarpur. Complainant arrested the accused Ghulam Rasool and Khalil Ahmed, prepared memo of their arrest at the spot and brought them at Police Station along with

recovered property where registered the FIR of the main case along with two offshoot cases on behalf of the State.

3. Thereafter, on completion of usual investigation, challan was submitted against accused and they were sent up to stand trial.

4. The trial Court framed a formal charge against the accused to which they pleaded not guilty and claimed their trial.

5. The prosecution, in support of its case, examined PW-1 complainant SIP Shafi Muhammad Sanjrani at Ex.15, PW-2, Mashir/ASI Abdul Samad Brohi at Ex.16. PW-3 Inspector/I.O Badaruddin at Ex.17, then the learned APG for the State closed side of prosecution. The statements of accused U/S 342 Cr.P.C were recorded in which they have denied the allegations leveled against them and claimed that nothing incriminating was recovered from their possessions and TT pistols have been foisted upon them. However, neither they examined themselves on oath nor led any evidence in their defence.

6. After hearing learned counsel for parties, appellants/accused Ghulam Rasool @ Baba and Khali Ahmed @ Sikandar @ Asghar Ali were convicted vide judgment dated. 25.11.2017 which was challenged by them in their Criminal Jail Appeals No.D-213 and D-214 of 2017 before this Court which were decided vide judgment dated 24.11.2021, whereby the impugned judgment dated 25.11.2017 was set-aside and case was remanded back to trial Court with direction to examine the appellants/accused U/S 342 Cr.P.C afresh confronting them with each and every incriminating piece of evidence to enable them to furnish their explanation thereto and then to pass a fresh judgment after giving the parties a fair opportunity of hearing.

7. Thereafter, fresh statements of accused under Section 342 Cr.P.C were recorded by the trial Court in which they denied the allegations of prosecution levelled against them and further claimed that T.T pistols were foisted upon them. However neither they examined themselves on oath nor led any evidence in their defence. After hearing learned counsel for the parties, learned trial Court acquitted the appellants/accused from charge in main case under Section 4/5 of Explosive Substance Act R/W Section 11-F of A.T.A 1997, however, in the offshoot cases the appellants/accused have been convicted and sentenced under Section 23(i)(a) of Sindh Arms Act under impugned judgment dated 19.02.2022, giving rise to filing of instant appeals.

8. It is contended by learned counsel for the appellants/accused that appellant Ghulam Rasool @Baba as well as Khalil Ahmed @Sikander are innocent and they have been falsely implicated in the case while foisting alleged recovery of weapons only in order to strengthen the main case; that in main case i.e. Special Case No.18 of 2021 arisen out of Crime No.14/2015 of P.S Sultan Kot punishable under Section 4/5 Explosive Substance Act r/w Section 11-F of ATA 1997 the trial Court has acquitted present appellants/accused from the charge under same consolidated impugned judgment but only convicted them in these offshoot cases under Section 23(i)(a) of Sindh Arms Act while relying on the same set of prosecution witnesses whose testimony was not believed by learned trial Court in main case; that arrest and recovery was made under the same episode when alleged incident of main case was occurred but learned trial Court surprisingly passed conviction against appellants in offshoot cases on the basis of statements of prosecutions witnesses whose evidence was not found trustworthy in respect of main case; admittedly the incident allegedly occurred at 2.00 p.m in broad day light at the Otaq of accused in a village and despite having prior spy information, prosecution failed to make efforts to arrange

private persons to act as mashirs of the recovery and arrest which is clear violation of Section 103 Cr.P.C.; that all the prosecution witnesses and mashirs of recovery being police personnel are partisan, interested and inimical to the present appellants hence their testimony can not be taken as gospel truth in absence of corroboration by independent evidence; that there are major contradictions in the deposition/evidence of prosecution witnesses which create very serious doubt, therefore, prayed that by extending benefit of doubt appellants may be acquitted.

9. On the other hand, learned Addl: P.G has supported the impugned judgment. He contended that appellants/accused were arrested at the spot and recovery of crime weapons was effected from their possession and they were involved in an offence which is a crime against society therefore, appeals of the appellants do not merit consideration and the same may be dismissed.

10. We have heard the learned Counsel for the appellants /accused, and learned Addl.P.G appearing on behalf of the State as well as perused the record made available before us with their able assistance.

11. On perusal of the record, it appears that in the first round learned trial Court had convicted and sentenced present appellants/accused under impugned judgment dated 25.11.2017 which was challenged by the appellants before this Court vide Cr.Appeals No.D-213 and 214 of 2017 in which this Court vide judgment dated 24.11.2021 set aside the conviction and sentenced recorded by the trial Court and remanded the case back to learned trial Court for recording statements of accused/appellants under Section 342 Cr.P.C afresh confronting them with each and every incriminating piece of evidence to enable them to furnish their explanation thereto and then pass fresh judgment. Thereafter learned trial Court after exhausting requisite exercise afresh passed

impugned judgment dated 19.02.2022; whereby learned trial Court has acquitted the appellants/ accused in the main case i.e. Special Case No.18 of 2021 arisen out of Crime No.14/2015 of P.S Sultan Kot punishable under Section 4/5 Explosive Substance Act r/w Section 11-F of ATA 1997, however, while parting with the said judgment, learned trial Court has convicted and sentence the present appellants in these offshoot cases for offence under Section 23(i)(a) of Sindh Arms Act, 2013. Apparently, learned trial Court has relied on the evidence of same set of prosecution witnesses whose testimony was not believed in main case despite the fact that arrest and recovery of crime weapons besides other incriminating material was made under the same episode and on same date and time even from same place. Obviously, the statements of prosecution witnesses and mashirs were not found trustworthy in respect of main case (recovery of explosive substance), then how could the same be made basis for passing conviction in offshoot cases on the basis of evidence of same witnesses. Record reflects that on prior spy information police party had raided the pointed place i.e. Otaq of Abdul Hafeez @Ali Sher Brohi at 2.00 p.m i.e in broad day light which was located in village Abdul Khaliq Pandrani Brohi but despite having prior spy information, prosecution failed to make serious efforts to arrange private persons to act as mashirs of the recovery and arrest in order to attest the veracity of such arrest and recovery which shows there is flagrant violation of Section 103 Cr.P.C. It is settled principle of law that if the place to be searched is already known and is situated in a locality which is inhabited, then it becomes mandatory for the police officer to join witnesses from the locality in the investigation and make search and recovery in their presence. And if sincere effort is made by the police officer to join witnesses from locality in the search but he fails and gives reasonable explanation for not taking witnesses from the locality and the mind of the Court is satisfied that the police officer has not acted dishonestly, then such evidence can be accepted which is lacking in the case in

hand. In such peculiar circumstances, the testimony of prosecution witnesses and mashirs of recovery being partisan, interested and inimical to the present appellants can not be taken as gospel truth in absence of any corroboration by independent evidence which is lacking in this case. Reliance may conveniently be placed on the case of **Muhammad Azam v. The State (PLD 1996 Supreme Court 67)** in which Hon'ble Apex Court held as under:

17. It is necessary in this case to touch question of interpretation and requirements mentioned in section 103, Cr.P.C. in order to clarify position. Bare perusal of section 103, Cr.P.C. shows that it applies with full force when search is to be made of place which is in a locality. In other words it can be said that section 103 is relatable to the place and not to the person. If place is known where search is to be made and that place is situate in a locality which is inhabited by the people, then it is necessary to join two or more respectable persons from that locality to witness the search. Main object behind section 103, Cr.P.C. is to guard against possible chicanery and concoction and for that reason witnesses from the locality are to be joined in the investigation and if this is done and for some reason subsequently in the trial Court those witnesses from the locality are not produced for the reason that they had been won over, then evidence of police officer who made the recovery can be believed if his conduct in the investigation is beyond reproach.

12. The contradictions between statements of prosecution witnesses in their evidence recorded at the trial also made the prosecution case highly doubtful that's why learned trial Court extended benefit of doubt to the same accused/appellants while acquitting them in main case, which have also made the recovery of crime weapons from possession of appellants highly doubtful. The trial Court after going through the evidence of prosecution witnesses has observed as under:

" It is pertinent to mention here that Ex.15/A i.e mashirnama was the first document written in the cases which reflect that alleged material to make explosive device/bomb was sealed at the spot. The oral evidence brought on record reflects that this material was destroyed by In-charge BDS at the spot. It is pertinent to mention here that prosecution has not examined In-charge BDS, however, a technical report dated 27.02.2015 has been produced by complainant SIP Shafi Muhammad Ex.15/F, which reflect that except pressure cooker and Samad Bond, all the articles were disposed of. This is a computer printed certificate and does not reflect as to when and where substance was destroyed or disposed of.

In the circumstances, I am of the view that recovery of alleged articles to make explosive device is doubtful and its distraction by In-charge BDS as per technical report Ex.15/F not only makes the case doubtful and is also against the scheme of law. Accordingly, the evidence to make explosive device was to be preserved as is mentioned in the Ex.15/A i.e memo, that all the articles seized from the room were sealed but thereafter the cases of prosecution is silent as to when the parcel was de-sealed and what was the reason for destruction of these articles at the spot. If for the sake of arguments, it is believed that parcel was de-sealed at the spot then complainant had to prepare second memo showing the reasons for destruction of the articles without sending them to any laboratory for opinion and certificate. This episode of the prosecution case makes itself doubtful. If it was dangerous to shift the articles from the place of incident to Police Station then to laboratory, than complainant had to mention this fact in Ex.15/A but this document reflects that all those articles were sealed at the spot means were not so dangerous which could not be shifted from the place of incident with holding of evidence of Inspector Malik Tahir creates serious dent in the prosecution makes it doubtful. The prosecution was bound to prove all the affairs at the place of incident but non-production of the evidence and reasons of destruction of alleged articles of explosive fails its case about recovery. These circumstances make the recovery of articles of preparing explosive device mentioned in the FIR and memo as highly doubtful, therefore, this point is replied as not proved."

13. We do not see any substance in the impugned judgment and in the evidence of prosecution witnesses for maintaining the conviction of the appellants. It is not out of context to mention here that for extending benefit of doubt, it is not necessary that there should be many circumstances creating doubt and 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 **TARIQ PERVEZ v. THE STATE (1995 SCMR 1345)**, the full bench of the Hon'ble Apex Court, in the middle of paragraph 5 held that:--

"As such it cannot be said with judicial certainty that the parcel containing sample heroin was sent to the Chemical Examiner. The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, 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."



14. In such circumstances we are of the view that the prosecution failed to prove the charge against the appellants by producing reliable, trustworthy and confidence inspiring evidence against the appellants and it is a fit case in which benefit of doubt can be extended to the appellants. Resultantly these appeals are allowed. The conviction and sentence recorded by the trial Court against them under impugned judgment dated 19.02.2022 is set aside.

15. The above are the reasons of our short order dated 22.10.2024 which is reproduced as under:

“For the reasons to be recorded later on, instant Special Anti-Terrorism Appeals are **allowed**. Conviction and sentence awarded to appellants, namely Ghulam Rasool alias Baba S/o Nabi Bux Brohi and Khalil Ahmed alias Sikander alias Asghar Ali S/o Ahsanullah Brohi vide common judgment dated 19.02.2022, passed by learned Anti-Terrorism Court-I, Sukkur (Camp held at Central Prison, Sukkur) in Special Case No.18-A of 2021 (*Re: The State versus Ghulam Rasool alias Baba*) and Special Case No. 18-B of 2021 (*Re- The State vs. Khalil Ahmed alias Sikander alias Asghar Ali*), arising out of Crime Nos.15 and 16 of 2015, registered at Police Station, Sultan Kot, District Shikarpur under Section 23(i)(a) Sindh Arms Act, 2013, respectively, are **set aside**. Consequently, the above named appellants are **acquitted** of the offence for which they were charged, tried and convicted. They shall be released forthwith by jail authorities, if they are not required in any other custody case.

***Office to place a signed copy of this order in the connected captioned matter.”***

JUDGE

JUDGE

Dated: /11/2024.

Shabir/PS