

IN THE SUPREME COURT OF PAKISTAN
(REVIEW JURISDICTION)

24/25

PRESENT:

MR. JUSTICE JAMAL KHAN MANDOKHAIL
MR. JUSTICE ATHAR MINALLAH
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

**Criminal Review Petition Nos.14, 28 & 29 of 2023 in
Criminal Petition Nos.76, 125 & 150 Of 2019**

(To review judgment of this Court dated 19.01.2023, passed in Criminal Petition Nos.76, 77, 125 and 150 of 2019)

Muhammad Musawar Rafiq
(in Crl. R.P.14/2023)

...Petitioners

Muhammad Asad alias Doctor
s/o Muhammad Iqbal and others
(in Crl. R.P.28/2023)

Muhammad Asad s/o Muhammad Iqbal & others
(in Cr.R.P.29/2023)

Versus

The State through P.G. Punjab

... Respondent in all petitions

For the Petitioner(s):

Mr. Mudassar Khalid Abbasi, ASC
assisted by Mr. Basharat Ullah Khan, ASC
(in Crl. R.Ps.28 & 29/2023)

Malik Jawwad Khalid, ASC
(in Crl. R.P.14/2023)

For the State:

Mr. Irfan Zia, Addl. PG Punjab (in all cases)

Date of Hearing:

24.03.2025

...

JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.- Muhammad Musawar

Rafiq, Muhammad Asad alias Doctor, Muhammad Muneeb and Fahad Sadiq petitioners being convicted prisoners in case FIR No.38/2015, dated 08.09.2015, under under sections 4/5 of the Explosive Substances Act, 1908 read with Sections 7/11-F(2) of

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the Anti-Terrorism Act, 1997, at police station CTD, Lahore have filed these review petitions against the judgment of this Court dated 19.01.2023, whereby the criminal petitions filed by the petitioners against judgments dated 28.11.2018 and 02.03.2016, passed by the learned High Court and learned trial Court, respectively, were dismissed.

2. Arguments heard. Record perused.

3. Briefly the petitioners were booked in the abovementioned case with the allegation that on the basis of spy information that the petitioners belonged to some proscribed organization, the complainant police party conducted a raid and arrested the petitioners. Upon search of the petitioners hand-grenades, detonating assemblies, explosive material, safety fuses, electric circuits and prima cords were recovered from their possession.

After conclusion of the trial, the learned trial Court vide judgment dated 02.03.2016, convicted the petitioners under section 4 of the ESA, 1908 and sentenced each of them to undergo simple imprisonment for life and also convicted the petitioners under section 5 of the ESA, 1908 and sentenced them to fourteen (14) years simple imprisonment each. The petitioners were further convicted under section 7(ff) of the ATA, 1997 and each of them was sentenced to simple imprisonment for life. All the sentences awarded to the petitioners were ordered to run concurrently and benefit of section 382-B Cr.P.C, was also extended to the petitioners. In appeal, the learned High Court maintained the convictions and sentences awarded to the petitioners by the learned trial Court and while allowing the appeal filed by the State directed that whole property of the petitioners be forfeited in favour

of the State under section 5-A of the Explosive Substances Act, 1908, vide judgment dated 28.11.2018. Criminal petitions filed by the petitioners before this Court were also dismissed by this Court vide judgment dated 19.01.2023, against which the petitioners have filed the instant review petitions.

4. It is true that the scope of review is very limited but it is also true that if an error apparent on the face of record manifestly be of the nature that no Court would permit it to remain part of the record and if ignored, complete justice could not be done or that if the Court comes to the conclusion after perusal of the record that some important and crucial pieces of evidence have been overlooked at the time of pronouncement of the judgment under review resulting into grave miscarriage of justice or there is some other sufficient reason to review a judgment then in order to do substantial justice, the said judgment can be reviewed. Reference in this context may be made to the judgment reported as "Dilawar Hussain v. The State" (**2013 SCMR 1582**).

5. In this case, we have noted that there are glaring contradictions in the statements of the prosecution witnesses regarding the date and number of parcels deposited before the Bomb Disposal Squad (BDS) and Punjab Forensic Science Agency (PFSA), making the prosecution case highly doubtful. While passing the judgment under review, the said material contradictions in the prosecution case, which have gone to the root of the case, were over-looked. The said contradictions have created serious doubts in the prosecution case entitling the petitioners to the acquittal.

It is noteworthy that no explosion or bomb-blast took place in this case. The only allegation of the prosecution against the petitioners in this case is that hand-grenades and explosive material were recovered from the possession of the petitioners, therefore, in order to prove the prosecution case beyond any shadow of doubt, the safe custody and safe transmission of the case property and sample parcels is the moot point in this case. In this respect, we have noted that the evidence of Shahid Ghaffar 742/CRP (PW-4), is crucial and important in this case. He is the witness, who took the parcels of explosive material and hand-grenades etc to the office of the Bomb Disposal Squad (BDS) and Punjab Forensic Science Agency (PFSA). He stated that on 22.09.2015, Saddam Hussain *Moharrar* handed over to him twenty (20) sealed parcels and he deposited five (05) sealed parcels in the office of the Bomb Disposal Squad (BDS), on the same day and returned fifteen (15) sealed parcels to the *Moharrar*, as the same could not be deposited in the office of the Punjab Forensic Science Agency (PFSA), on the said day. He further stated that on the next day i.e., 23.09.2015, *Moharrar* again handed over to him fifteen (15) sealed parcels, which he deposited in the office of the Punjab Forensic Science Agency (PFSA), on the same day. On the other hand Saddam Hussain 224/CRP (PW-7), stated that he was posted as *Moharrar* at police station CTD, Lahore and on 22.09.2015, he handed over to Shahid Ghaffar 742/CRP (PW-4) twenty (20) parcels for depositing the same in the office of the Bomb Disposal Squad (BDS) and Punjab Forensic Science Agency (PFSA). He further stated that only five (05) parcels (instead of fifteen (15) parcels as stated by PW-4) were returned to him as the office time

of the Bomb Disposal Squad (BDS), was over and he kept the same in the *mall-khana* and on 23.09.2015, he again handed over five (05) sealed parcels to the above-mentioned Zahid Ghaffar 742/CRP (PW-4), for depositing the same in the office of the Bomb Disposal Squad (BDS). It is, therefore, evident that there is glaring conflict between the evidence of Shahid Ghaffar 742/CRP (PW-4) and Saddam Hussain 224/CRP (PW-7) because according to the evidence of Shahid Ghaffar 742/CRP (PW-4), he could not deposit fifteen (15) sealed parcels on 22.09.2015, in the office of the Punjab Forensic Science Agency (PFSA), whereas according to the statement of Saddam Hussain 224/CRP (PW-7), only five (05) parcels could not be deposited on 22.09.2015, and the said parcels could not be deposited in the office of the Bomb Disposal Squad (BDS). Perusal of the statement of Saddam Hussain 224/CRP (PW-7), shows that fifteen (15) parcels were deposited in the office of the Punjab Forensic Science Agency (PFSA), on 22.09.2015, whereas statement of Shahid Ghaffar 742/CRP (PW-4), shows that only five (05) parcels were deposited in the office of the Bomb Disposal Squad (BDS), on 22.09.2015 and no parcel was deposited in the office of PFSA on the said day and fifteen (15) parcels were deposited in the office of the Punjab Forensic Science Agency (PFSA), on 23.09.2015. Perusal of the report of the Punjab Forensic Science Agency (Ex.PN), shows that fifteen (15) parcels were received in the abovementioned office on 22.09.2015 and the said report contradicts the evidence of Shahid Ghaffar 742/CRP (PW-4), who deposed that he deposited the said fifteen (15) sealed parcels in the office of the Punjab Forensic Science Agency (PFSA), on 23.09.2015. It is, therefore, evident that there are glaring

contradictions in the statements of the prosecution witnesses, who kept the parcels of explosive substance/case property of this case in the *mall-khana* of the police station and who transported/transmitted the said parcels to the office of the Bomb Disposal Squad (BDS) and Punjab Forensic Science Agency (PFSA).

Their statements are also in-conflict with the documentary evidence of the prosecution i.e., report of the Punjab Forensic Science Agency (PFSA), according to which the above-mentioned fifteen (15) parcels of explosive material etc were deposited in the office of PFSA on 22.09.2015, whereas according to the statement of Shahid Ghaffar 742/CRP (PW-4), the said parcels were deposited in the abovementioned office on 23.09.2015.

6. We have further noted that the prosecution has also relied upon the evidence of Riaz Ahmad Shah (PW-3), who was Commander of Bomb Disposal Squad of District Pakpattan. He inspected the explosive substance and hand-grenades after defusing the hand-grenades allegedly recovered in this case from the possession of the petitioners but in his cross-examination he has conceded that his qualification was metric. There is nothing on the record to show that the said witness had any diploma/qualification regarding explosive substance, therefore, it is not safe to rely upon the evidence of the abovementioned witness.

7. It is also noteworthy that on the recovery memos of explosive substance recovered in this case, the name of Athar Saleem SI has been mentioned, who was also the complainant of this case but while appearing in the witness box as (PW-1), the complainant stated his name as Athar Saeed. It is difficult to comprehend that

the man, who effected recoveries from the possession of the petitioners would not know his own real name at the time of preparation of recovery memos. Perusal of the recovery memos show that the same were prepared by a person other than the complainant and that is why he did not know the actual/correct name of the complainant and thus his incorrect name (Ather Saleem instead of Ather Saeed) was mentioned in the recovery memos (Ex.PA to Ex.PE). These documents also support the claim of learned counsel for the petitioners that fake recovery proceedings were carried out in this case by the prosecution.

Although it has been argued by the learned DPG that the name of the complainant as mentioned in the Court record of this case as Athar Saeed appears to be result of typing mistake but at the same time he has also conceded that no application till today has been moved by the prosecution for correction of the abovementioned alleged typing mistake. It is, therefore, evident that the prosecution has admitted to be correct that the name of the complainant was Athar Saeed but as mentioned earlier the name of the complainant on the recovery memo of the case property has been mentioned as Athar Saleem, which has created further serious dent in the prosecution story.

8. It is also noted that seal with the abbreviation of 'MA' was affixed on the parcels of the case property and samples. Usually the seal with the abbreviation of the name of the complainant is affixed on the parcels of the case property and samples and as such the abovementioned seal with the abbreviation 'MA' does not match with the name of the complainant Athar Saleem/Athar

Saeed and this fact also supports the claim of learned counsel for the petitioners regarding fake recovery proceedings of this case.

9. We have further noted that according to the statement of Athar Saeed complainant (PW-1), the case property was weighed through simple scale and bots but according to the statement of Rizwan Mudassar Carporal (PW-2), the case property was weighed through weighing scale machine. This fact further shows that nothing was recovered from the possession of the petitioners and fake proceedings in this case were carried out at the police station as claimed by learned counsel for the petitioner.

10. We have next noted that the defence evidence produced by the petitioners in the shape of Ex.D1 to D12, could not be properly appreciated at the time of the pronouncement of the judgment under review. Perusal of the abovementioned evidence shows that writ petitions regarding illegal detention of Muhammad Asad and Fahad Sadiq petitioners were filed by Muhammad Sadiq (paternal uncle of Muhammad Asad petitioner and father of Fahad Sadiq petitioner), before the Lahore High Court, Rawalpindi Bench and the Islamabad High Court, respectively, whereas a writ petition was filed regarding illegal detention of Muhammad Musawar Rafiq petitioner by his sister namely Mst. Tahira Jabeen before the Lahore High Court, Rawalpindi Bench. The abovementioned writ petitions were filed on 08.04.2015, 02.05.2015 and 07.04.2015, respectively, whereas the FIR in this case was lodged on 08.09.2015, therefore, it is evident that the abovementioned writ petitions regarding illegal detentions of Muhammad Asad, Fahad Sadiq and Muhammad Musawar Rafiq petitioners were filed far earlier to the registration of present FIR.
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It is also noteworthy that FIRs regarding abduction of Muhammad Asad, Muhammad Muneeb, Fahad Sadiq, and Muhammad Musawar Rafiq petitioners were produced in defence evidence as Ex.D2, Ex.D5, Ex.D6 and Ex.D12, respectively.

Perusal of the said documents shows that the said FIRs were lodged on 03.09.2015, 03.09.2015, 22.05.2015 and 14.04.2015, respectively, which supports the contention of learned counsel for the petitioners that petitioners were already kept in illegal confinement by the security agencies and later on they were implicated in this case by falsely planting explosive material/hand-grenades etc against them.

Furthermore, it does not appeal to a prudent mind that all the petitioners would first manage the filing of writ petitions regarding their illegal detentions and registration of FIRs about their abductions and after coming to the limelight of security agencies they would be arrested while carrying explosives and hand-grenades etc without causing damage to any person or property. If the petitioners had any intention to commit any act of terrorism then there was no need for them for the abovementioned exercise of filing writ petitions and lodging FIRs.

11. There is nothing on the record to show that the petitioners ever belonged to any proscribed/terrorist organization. None of the prosecution witness stated that the petitioners were members of any proscribed/terrorist organization. Athar Saeed SI complainant (PW-1), categorically conceded during his cross-examination that he cannot produce any proof that the accused/petitioners belonged to a banned organization. Relevant part of his statement in this respect made during cross-examination reads as under:-

'.....I cannot produce any proof that accused belongs to a banned organization.....'

12. It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story. Reference in this context may be made to the judgments reported as "Tariq Pervez Vs The State" (1995 SCMR 1345) and "Muhammad Akram Vs The State" (2009 SCMR 230).

13. Keeping in view all the aforementioned facts and the evidence available on the record, it is evident that the material facts/evidence were over-looked and could not be properly appreciated at the time of pronouncement of the judgment under review, which resulted into grave miscarriage of justice to the petitioners. Under the law this Court can review its judgment for any sufficient reason. We are of the view that there are many sufficient reasons to review the judgment in question. The said reasons have already been discussed in the preceding paragraphs of this judgment, therefore, it will be in the best interest of justice to review our judgment. In the light of above, these review petitions are allowed. The judgment of this Court dated 19.01.2023, is recalled. Consequently criminal Petition Nos.76, 125 & 150 of 2019, are restored to their original numbers, converted into appeals and allowed. Resultantly the impugned judgment dated 28.11.2018, is set aside. The petitioners are acquitted of all the charges while giving them the benefit of doubt. They shall be ✓

released from the jail forthwith unless required to be detained in any other case.

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JUDGE
JUDGE

Shahzad Murtaza
JUDGE

Islamabad, the
24th of March, 2025
Not Approved For Reporting
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