

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**Criminal Appeal No.93/2013**

The State  
*versus*  
Qari Inayat-ur-Rehman

State by: Mr. Sadaqat Ali Jahangir, State Counsel.  
Muhammad Riasat, ASI, P.S. Aabpara.

Respondents by: Ch. Zafar Ali Warraich, Advocate.

Date of Decision: 28.06.2021.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:** Through the instant criminal appeal, the State has called in question judgment of the learned Additional Sessions Judge (West), Islamabad, dated 24.06.2013, whereby respondents Qari Inayat-ur-Rehman and Sardar Ali Khattak have been acquitted of the charges in case FIR No.332, dated 26.08.2011, under Section 3/4 of Explosive Act & Sections 13 & 20 of Arms Ordinance, 1965, P.S. Aabpara, Islamabad.

2. Succinctly, based on spy information, on 26.08.2011, a raiding party comprising of Muhammad Yousaf/S.I., Asif Khan/ASI, Iftikhar Ahmad/ASI, Incharge Commando Staff ATS and Akhtar Zaib/Constable, headed by Abdul Rehman/Inspector, raided the house belonging to Sardar Ali Khattak (respondent No.2) i.e. House No.74, Street No.78, Sector G-6/1, Islamabad at about 04:30 p.m. On seeing the raiding party, respondent No.2 and his brother Sher Ali Khattak along with four accused persons managed to flee away from the house. During the search of a room, one suicide jacket and .30 bore pistol along with 06 live bullets were

recovered from a flour basket, whereafter Bomb Disposal Squad was immediately called, who diffused the suicide jacket. After the arrest and disclosure of Respondent No.2, his accomplice, Qari Inayat-ur-Rehman (respondent No.1) was arrested. The respondents after going through the trial have been acquitted of the charges by the learned trial Court, vide impugned judgment dated 24.06.2013. Hence, instant criminal appeal.

3. Learned State Counsel contends that the learned trial Court has failed to consider the gravity of the offence respondents wanted to commit; that the learned trial Court has acquitted the respondents of the charges in a slipshod and hasty manner; that incriminating evidence is available on record to connect the respondents with the commission of offence; that the reasons recorded by the learned trial Court for acquittal of the respondents are unjust and not sustainable in the eyes of law, therefore, impugned judgment dated 24.06.2013 is liable to be set-aside.

4. Conversely, learned counsel for respondents stressed that the case as established by the prosecution is fraught with doubts as there are material contradictions in the statements recorded by prosecution witnesses; that the alleged recovery of explosive substance having been effected in absence of respondents carries no weight to rely on for the purpose of conviction, even otherwise, no witness from public has been associated in the recovery proceedings, as such, the learned trial Court has rightly appreciated the doubts available in the prosecution case and acquitted the respondents in accordance with law.

5. Arguments heard, record perused.

6. Perusal of record reveals that Qari Inayat-ur-Rehman (respondent No.1) and Sardar Ali Khattak (respondent No.2) were put to trial in case FIR No.332, dated 26.08.2011, under Sections 3/4 of Explosives Act read with Sections 13 & 20 of Arms Ordinance, 1965, P.S. Aabpara, Islamabad, for being in possession of a suicide vest (Exh.P7), .30 bore pistol along with six (06) live bullets (Exh.P2- 6) and magazine (Exh.P1), recovered vide memo Exh.PB, on 26.08.2011, from House No.74, Street No.78, Sector G-6/1, Islamabad i.e. the house belonging to Respondent No.2. The complaint (Exh.PE/1) was lodged by PW-6 Abdul Rehman, Additional S.H.O., P.S. Aabpara, Islamabad, which has been converted into FIR No.332/2011 (Exh.PA).

7. As per prosecution case, the police on the basis of spy information that some explosive substances are dumped in House No.74, Street No.78, Sector G-6/1, Islamabad constituted a raiding party composed of Muhammad Yousaf/S.I., Asif Khan/ASI, Iftikhar Ahmad/ASI, Incharge Commando Staff ATS and Akhtar Zaib/Constable, headed by Abdul Rehman/Inspector, who raided the house at about 4:30 p.m., but respondent No.2 and his brother Sher Ali Khattak along with four unknown persons fled away from the house. During the search, a suicide jacket and .30 bore pistol along with six (06) live bullets were recovered from a flour basket kept in one of the rooms, per se, Bomb Disposal Squad (BDS) was immediately called, who diffused the jacket. That apart, Gul Hamid/Constable, who was on patrolling duty, informed that respondent No.2, Sher Ali Khattak and Qari Inayat-ur-Rehman (respondent No.1) and

three others persons were fleeing away from the house. The Investigating Officer obtained the BDS Report (Exh.PD/1-4), vide recovery memo Exh.PC. He also prepared site plan Exh.PG and has also obtained allotment letter of subject house vide recovery memo Exh.PH, which was in the name of respondent No.2. On 09.10.2011, Respondent No.1 was arrested, who disclosed the place where suicide jacket and pistol were kept, whereafter pointation memo was prepared vide Exh.PK.

8. The above mentioned case rests upon the recovery of suicide vest and pistol along with six (06) live bullets (Exh.P1 to 7), recovery memo Exh.PB thereof was attested by PW-9 Iftikhar Ahmad and PW-2 Asif Khan/ASI. While going through testimonies of the said two PWs, including of the Investigating Officer, it appears that all three of them have not seen the accused persons i.e. respondents of this case while decamping from the place of recovery and, as such, there is no direct evidence against the respondent to fix them in this case. PW-2 Asif Khan/ASI categorically stated that the raided party reached to the house at about 8/9 p.m., which is in material contradiction with the statement of PW-6 Abdul Rehman/Inspector, who maintained that they visited the house at about 4:30 p.m., as such, PW-9 Iftikhar Ahmad also supported the stance of PW-6 Abdul Rehman/Inspector with respective raiding time, hence there is material contradiction amongst the prosecution witnesses regarding the time when they conducted raid at the house of respondent No.2.

9. The other important element comes into limelight is the recovery of suicide vest (Exh.P6) and .30 bore pistol along with bullets (Exh.P1-6) from

the flour basket as per stance taken by PW-2 Asif Khan/ASI, which has been referred in Exh.PB i.e. recovery memo as:

گھر کے آخری کونے والے کمرے میں آٹے کی مٹی سے برآمد ہوا ہے۔

As such, the same has been referred as flour basket by PW-6 Abdul Rehman/Inspector, but surprisingly no such flour basket was produced in the court, per se, PW-6 Abdul Rehman/Inspector maintained that the flour basket was empty and no flour was present on suicide jacket or the pistol. Contrarily, PW-9 Iftikhar Ahmad/ASI categorically stated that:

*"On coming down from the rooftop we start searching the house and from one of the room from flour basket beneath the clothes the suicide jacket and a pistol 30 bore were duly recovered. The clothes were of women and children used."*

This aspect of recovery from flour basket has been put in juxtaposition with the stance taken by PW-2 Asif Khan/ASI being recovery witness, who just stated that suicide jacket and .30 bore pistol were recovered from flour basket in one of the room but, he has not mentioned that both these were underneath the clothes of women and children, therefore, the entire recovery seems to be doubtful. Likewise, PW-4 Ijaz Ali/Constable, who took the complaint from PW-6 Abdul Rehman to P.S. Aabpara for registration of FIR, acknowledged that while searching the rooms, a suicide jacket and pistol along with rounds were recovered. He further stated that suicide jacket was lying in *Mati Ka Garah*, self stated that *Mati Ka Garah* means flour basket. This further casts doubt in the entire recovery proceedings.

10. This Court has also observed another important aspect from the statement of PW-6 Abdul Rehman that he called BDS on spot to diffuse the suicide vest, but during the course of cross-examination he acknowledged that:

*"The BDS reached the spot within 15/20 minutes of my call. BDS were consists of three members. One of the BDS member was Major Tabassum and do not know the names of the other two members. The suicide jacket was defused by Major Tabassum inside the same room."*

11. Contrarily, PW-9 Iftikhar Ahmad/ASI acknowledged that *"Major Tabassum of BDS has diffused the suicide jacket. The recovered articles were not sealed on spot"*. This aspect also leans in favour of the respondents as the articles were not sealed at spot, therefore, its evidentiary value has no worth to rely on.

12. Besides the above technical defect in the recovery proceedings, PW-10 Major (R) Tabassum Zaheer prepared the technical inspection report of suicide jacket, referred as Exh.PD/1-4) and claims that he successfully diffused the suicide jacket, which contained two packs of high explosive (potassium chlorate), detonating cord approximately 15 meters, shrapnel (stainless steel ball bearings), electric detonators and firing switch. However, during the course of cross-examination, PW-10 Major (R) Tabassum Zaheer acknowledged that some police officials of P.S. Aabpara brought the suicide jacket to him in his office and he diffused the same in his office, whereafter the suicide jacket was returned to the same police officials. The diffusing of said jacket in his office was conducted on 28.08.2011, at about 11/12 in the noon. If this aspect is compared with the

stance taken by PW-6 Abdul Rehman (I.O.)/complainant and PW-9 Iftikhar Ahmad being the recovery witness, who took the stance that BDS was called on spot at the place of recovery on same day i.e. 26.08.2011, it becomes apparent that the prosecution witnesses are at variance, the effect thereof crumbles down the entire edifice constructed by the prosecution with respect to recovery of explosive substances from the respondents.

13. With this prologue to the controversy, this Court has gone through the statements of respondents recorded under Section 342 Cr.P.C. and observed that the prosecution has not tendered the explosive report (Exh.PD/1-4), prepared by PW-10 Major (R) Tabassum Zaheer, to the respondents, as such, it is settled law that incriminating articles not confronted to the accused persons in statement under Section 342 Cr.P.C. could not be used for the purpose of conviction. Reliance is placed upon 2016 SCMR 267 (Muhammad Nawaz, etc. vs. The State, etc.), 2018 SCMR 344 (Imtiaz alias Taj vs. The State, etc.), 2018 SCMR 71 (Muhammad Saddique vs. The State), 2018 SCMR 153 (Nadeem alias Kala vs. The State), 2017 SCMR 1710 (Mst. Anwar Begum v. Akhtar Hussain alias Kaka) and 2017 SCMR 148 (Qaddan, etc. vs. The State). It is also settled law that presence of a single doubt is enough to dispel the entire case of the prosecution, whereas in this case, the evidence produced by star witnesses suffers from material discrepancies and differences qua the time, place of recovery and diffusal of suicide vest, even the suicide vest was diffused in the office of BDS after two days of recovery, per se, the recovery was not sealed at spot, hence the entire prosecution case is fraught with doubts and could not be made basis for conviction.

14. Despite minute scrutiny of the record, this Court has also gone through the judgment under appeal and observed that the learned Trial Court has rightly acquitted the respondents of the charges and no illegality has been observed in the impugned judgment of the learned Trial Court, which is within four corners of law, hence, the captioned criminal appeal is not made out on merits and same is hereby DISMISSED.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Khalid Z.