

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

**Cr. Appeal. No. 12/2015
in
Cr. PLA No. 04/2015.**

The State

Petitioner.

Versus

Sher Gayas

Respondent.

PRESENT:-

1. The Advocate General Gilgit-Baltistan alongwith Mr. Saeed Iqbal, Deputy Advocate General Gilgit-Baltistan and Mr. Ali Nazar Khan Advocate-on-Record for the petitioner.
2. Mr. Jahanzaib Khan Advocate on behalf of the respondent.

DATE OF HEARING: - 07.09.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal appeal has arisen out of the impugned judgment dated 22.09.2017 passed by the learned Chief Court whereby the Criminal Appeal No. 01/2013 filed by the respondent was allowed by setting aside the judgment of the learned Trial Court. The murder reference was answered in negative accordingly. The petitioner/State being aggrieved by filed petition for leave to appeal. This court vide order dated 19.10.2015 granted leave to appeal. The case is heard today.

2. Briefly, the facts of the case are that SIP Sher Khan SHO Police Station Gilgit on the written application of the complainant namely Sheikh Abbas Ali son of Shaban Ali resident of Amphary

Gilgit has registered an FIR No. 317/2011 under Section 3/4 Explosive Substances Act, 1908 read with Section 6/7 and 21-L of the Anti-Terrorism Act, 1997 and Section 337-A&F and 427 PPC. The complainant stated in his written application that on 14.11.2011 at about 06:15 PM near Imamia Mosque, in front of Noble Book Center, three (03) terrorists boarded in a white car while coming from Punial Road, threw a hand grenade which exploded at a distance of some feet from the same shop. Resultantly, three persons namely Shabbir Hussain son of Ghulam Mehdi, Hussain Malik son of Noor Malik and Ibrahim alyas got injured. Similarly, two vehicles bearing Nos. AAK-430 and NCP-GLT-01-0034 which were parked at the place of occurrence have been badly damaged. Due to the said explosion, the nearest shops were also damaged. These terrorists have made a plan to disturb the peace and tranquility of the area. Mr. Mushtaq Hussain son of Fida Hussain resident of Sakwar, Zafar Hussain son of Akhtar Hussain resident of Dak Pura and Fida Hussain son of Muhammad Ibrahim resident of Maherban Pura are the eye witnesses of the occurrence. After completion of investigation challan against the accused was submitted before the learned Trial Court on 06.01.2012. The respondent/accused was formally charged on 21.02.2012 wherein he pleaded not guilty and claimed for trial.

3. The prosecution in order to prove its case against the respondent, examined 24 PWs and produced Explosive Expert Report etc. After closing the prosecution evidence, the accused was

examined under Section 342 Cr. PC. The accused denied to record his statement on oath under Section 340 (2) Cr. PC and he also did not produced any defence witnesses.

4. The learned Trial Court after appraising the prosecution evidence and other material on record and upon hearing both the learned counsels for the respective parties and on proven guilty convicted and sentenced him under Section 3, 5-A of Explosive Substance Act, 1908, under Section 337-D PPC read with Section 6/7 of Anti-Terrorism Act, 1997 vide judgment dated 31.12.202. The operative part of the said judgment is reproduced as under:-

“Quote”

120. Hence, I convict accused Sher Ghayas under Section 3 of the Explosive Substances Act, 1908 and sentence him to death. He be hanged by his neck till he be dead. Whole of the property of the accused Sher Ghayas is hereby forfeited in favour of the Government as provided under Section 5-A of the Explosive Substances Act, 1908. Accused Sher Ghayas is also hereby convicted under Section 337-D PPC read with Section 7 (C) of the Anti-Terrorism Act, 1997 and sentence him to undergo rigorous imprisonment for life and to pay fine of Rs, 300,000/- (Rupees three hundred thousand only). In default thereof the convict accused to suffer imprisonment for six months. The amount of fine, if recovered shall be paid to the injured, Hussain Malik, Shabbir Hussain, Ibrahim, Saqlain Akbar and Zafar Hussain. Accused Sher Ghayas is also hereby convicted under Section 427 PPC and sentence him to undergo imprisonment for two years.

121. Benefit of Section 382 (b) Cr. PC be given to the convict-accused.

“Unquote”

5. The respondent/accused being aggrieved by and dissatisfied with the judgment of the learned Trial Court filed Criminal Appeal No. 01/2013 in the learned Chief Court which upon hearing was allowed the appeal by majority decision.

6. The learned Advocate General submits that it was a promptly lodged FIR against the respondent/accused. The allegations leveled against the respondent have been substantiated by the Prosecution through direct evidence, extra judicial confession, confessional statement of the accused, circumstantial evidence and explosive expert report. Per learned Advocate General, the respondent confessed the crime during recording of his statement. The site plan of the place of occurrence has been prepared on the pointation of the respondent/accused in presence of the Magistrate. He submits that the prosecution has proved its case against the respondent beyond reasonable doubts which was rightly been appreciated by the learned Trial Court which was reversed by the learned Chief Court. Per learned Advocate General, the learned Chief Court failed to appreciate the prosecution evidence and other material on record while passing the impugned judgment which is not sustainable.

7. On the other hand, the learned counsel for the respondent supports the impugned judgment passed by the learned Chief Court. He contends that no eye witness supported the prosecution case. Admittedly, it was dark at the place of occurrence. The eye witnesses have not seen anybody throwing

explosive substance from car being complete dark. Similarly, there is not an iota of evidence against the respondent which connect him with the commission of crime. Per learned counsel, the case against the respondent is false and fabricated one. The prosecution relied upon the confessional statement of the respondent recorded under Section 21-H of Anti-Terrorism Act, 1997. In presence of eye witnesses who have not seen and identified the respondent while committing the offence such confession loses its credibility. He contends that the co-accused namely Asif Khan and Zahid Hussain who have been attributed the same role were acquitted by the learned Trial Court. Per learned counsel, the respondent has also entitled for acquittal on the “Principle of Consistency”. Further, the State did not file any acquittal appeal against them in the learned Chief Court. Likewise, another co-accused i.e. Samiullah who as per prosecution supplied the grenade to another absconder accused namely Arif-ud-Din was acquitted by the learned trial court in absentia. He submits that the prosecution has miserably failed to prove its case against the respondent beyond any shadow of doubt. The judgment of the learned Trial Court was passed contrary to the facts and law which was not sustainable which was rightly been set aside by the learned Chief Court.

8. We have heard the learned counsels for the respective parties at length, appraised the prosecution evidence, perused the other material on record of the case file and gone through the impugned judgment as well as judgment passed by the learned

Trial Court. Admittedly, no eye witness supported the prosecution case. The prosecution miserably failed to prove the case against the respondent beyond reasonable doubt. In our considered view, the impugned judgment is well reasoned and well founded and no interference is warranted into it. The learned Advocate General also could not point out any infirmity and mis-appreciation of evidence in the impugned judgment.

9. In view of the above discussions, we dismiss this appeal. Consequently, the impugned judgment dated 22.09.2017 passed by the learned Chief Court is maintained.

10. The appeal is dismissed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?