

*Judgment Sheet*

**IN THE PESHAWAR HIGH COURT,**  
**ABBOTTABAD BENCH**  
**JUDICIAL DEPARTMENT**

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

*Cr.A No.20-A/2014*  
*Date of hearing...01.04.2015*

**Farooq Vs The State.**

*Appellant(s) by.....*

*Respondent(s) by.....*

**ABDUL LATIF KHAN, J:-** Through this single judgment, we intend to dispose of instant Criminal Appeal filed by appellant/convict Farooq Ali and connected *Cr.A No.21-A/2014 titled, "Muhammad Ashraf Vs The State"* as both the appeals have been filed against one and same judgment dated 15.2.2014, whereby the learned trial Court convicted and sentenced the appellants Farooq Ali & Muhammad Ashraf, involved in case FIR No.848 dated 29.9.2013 u/s 324/353/186 PPC/ 13 A.O/ 7 ATA, P.S. Mir Pur, District Abbottabad..

**2.** As per prosecution case, the local police present on the spot signaled a motorcycle on which

two persons were riding, coming from Qalandar Abad side who started firing at the police party with their respective 30 bore pistols however the police party escaped unhurt. The person sitting on rear seat of motorcycle threw away a sack and both the accused ran towards the Jungle. The local police took into possession the motorcycle bearing registration No.KDZ-7531 which was left by the accused. On search of said sack a Rocket Launcher was recovered. A helmet and mobile phone Nokia containing SIM No.0311-2549907 left by the accused were also taken into possession by the local police through recovery memo in presence of marginal witnesses. Consequently initially FIR was registered against unknown accused.

**3.** Lateron during investigation, the house of appellant/convict Farooq Ali was raided on the basis of CDR data who was arrested with 30 bore pistol. He disclosed the name of his other companion to be Qari Saqib (absconding accused). During interrogation he also disclosed about hiding of explosive materials in the house of appellant Muhammad Ashraf so the house of appellant

Muhammad Ashraf was also raided wherefrom huge quantity of explosive material and arms & ammunitions (fully mentioned in the recovery memo Ex.PW.14/3) were recovered with the help of B.D.S, personnel. Hence, appellant Muhammad Ashraf was also arrested in the instant case.

4. After completion of investigation complete challan against accused was submitted in the trial Court where proceedings u/s 512 Cr.PC were initiated against absconding accused Qari Saqib. After framing of formal charge against the appellants/convicts, the prosecution in order to prove its case examined 15 PWs. At conclusion of trial, the learned trial Court convicted the appellant/convict Farooq Ali and sentenced as follows:

**U/S 7(b) of Anti Terrorism Act 1997 r/w Sections 324/34 PPC to undergo imprisonment for 10 years R.I alongwith a fine of Rs.100,000/- or in default thereof to suffer further simple imprisonment for Six months.**

**u/s 7(h) ATA, 1997 r/w 353/186/34 PPC to undergo 5 years R.I. alongwith fine of Rs.50,000/- or in default thereof to suffer SI for two months,**

**u/s 7(i) ATA 1997 r/w 13 A.O, to undergo 5 years R.I. alongwith fine of Rs.50,000/- or in default thereof to suffer SI for two months. It was also directed that all the sentences shall run concurrently with extension of benefit of Section 382-B Cr.PC, in favour of accused.**

5. Similarly vide same impugned judgment, the learned trial Court also convicted the appellant Muhammad Ashraf **u/s 7(i) ATA 1997 r/w 13 A.O and sentenced him to undergo 5 years R.I alongwith a fine of Rs.50,000/- or in default thereof to suffer SI for two months however he as acquitted of the charges u/s 7(b), 7(h) ATA, 1997 r/w Sections 353/186/324 PPC.** Hence both the appellants preferred separate appeals before this Court for their acquittal.

Arguments heard and record perused.

6. Perusal of record reveals that two persons coming on motorcycle were signaled to stop by the police party present on the spot, but they started firing at police party who escaped unhurt and the accused after throwing a sack and leaving the motorcycle, decamped from the spot by running

towards a Jungle. It is very strange to observe that no such '*Jungle*' has been mentioned in the site plan by the I.O, nor the police party tried to chase the accused who were decamping from the spot on foot leaving the motorcycle at the mercy of police party which is not appealable to a prudent mind as to why the police party consists of 5/5 police officials duly armed did not chase two culprits running from the spot on foot nor any firing was made by the local police in self defence at the accused which creates doubt in the prosecution case.

7. Admittedly none of the riders of the motorcycles including appellant Farooq Ali, were arrested on the spot nor the alleged recovery of sack containing Rocket Launcher was recovered from immediate possession of the appellant. The mobile allegedly recovered from the spot is also not proved to be ownership of appellant as SIM in the same was not found registered in the name of appellant. The CDR data collected by prosecution also does not establish guilt of the appellant as no data of phone call of appellant disclosing his name/identity has been brought on record which could connect him with

the commission of offence. Though one Zafaryab (PW.4) being neighbor of appellant Farooq Ali was examined by the prosecution who deposed that he contacted the appellant on the SIM number recovered from the spot but he did not respond so he sent SMS to him for obtaining his motorcycle. His this assertion is misplaced as no data of SMS has been collected by the I.O, confirming his stance as to whether any message has been sent by the said PW to the appellant regarding obtaining motorcycle from him or not. His stance was also belied from his conduct as during his examination before Magistrate as well as trial Court, he did not disclose his identity to be police official rather it was defence counsel who put question regarding his identity/profession who replied that he is serving in police department which shows malafide on his part and creating doubt in the authenticity of his statement.

**8.** The motorcycle recovered from the spot has also not been established to be the ownership of appellant Farooq Ali as its registration documents are not in the name of appellant nor it was recovered from his immediate possession. Though one Adeel

(PW.3) was examined by the prosecution during trial who disclosed that the said motorcycle was his ownership which was sold by him to the appellant Farooq Ali but he failed to produce any stamp paper/deed, receipt or transfer letter in the name of appellant, on which transaction of sale purchase of motorcycle has been made, showing ownership of the appellant so mere statement of said witness without any cogent evidence is not sufficient to establish link of the appellant with the motorcycle in question.

9. So far as recovery of pistol 30 bore from possession of appellant Farooq Ali is concerned, the same is also of no help to the prosecution as no elder of the locality or independent witness has been associated by the police party at the time of raid on the house of appellant. Even the lady constable has not been associated by police party during raid on the house of the appellant though other inmates of the house including females were also residing in the said house which is clear violation of provisions of Section 103 Cr.PC. Besides, two empties recovered from the spot and pistol 30 bore allegedly recovered

from appellant Farooq Ali were sent to the FSL for comparison and according to FSL report both the recovered empties were fired from the said pistol which also creates doubt in prosecution case as according to FIR, both the accused riding on motorcycle started firing at the police party. So when the recovered empties were fired by appellant then where the empties fired by co-accused have gone which were not recovered by local police from the spot. The number of fire shots has also not been mentioned by the prosecution witnesses as to how many shots were fired by each accused, creating doubt in the authenticity of mode and manner of the occurrence described by the prosecution witnesses.

**10.** So far as appellant Muhammad Ashraf is concerned, admittedly his ownership regarding place/house from which allegedly huge quantity of arms and ammunitions as well as explosive materials were recovered is not proved by prosecution because according to PW.3 Muhammad Riaz Patwari Halqa, he has not visited the spot with the I.O, for demarcation of the place/house from which recovery was effected rather he deposed that appellant is



owner to the extent of 3 Kanal 1 Marla 33 point in Khasra No.679/2 out of which 15 Marlas consists of house of appellant so it is not clear as to from whose house the alleged recovery has been effected as other houses are also situated in the said Khasra number and PW.3 has not been associated by the I.O, to the house of appellant for ascertaining the fact as to whether the said recovery was effected from the house of appellant or otherwise. It is also pertinent to mention that the I.O, has not been mentioned the point of arrest of appellant in the site plan as to from which place he was arrested though the points of recovered articles have been mentioned but the site plan is silent about place of arrest of the appellant as well as presence of other inmates of the house which creates doubt in the prosecution case. Besides, the appellant is an aged person of 70 years (though 62/63 years mentioned in his statement u/s 342 Cr.PC) who is also a crippled person and cannot move without wheel chair, also using clutches which is duly admitted by the I.O (PW.14) in his cross examination that the appellant is lamb and used clutches. The recovery has also not been effected

from his immediate possession or at his instance and pointation which creates doubt in the recovery allegedly effected by local police from the house of appellant.

**11.** No independent witness has been associated by the local police during raid on the houses of both the accused. Both the appellants remained in police custody but none of them has made confession before the competent Court. The prosecution has also failed to bring on record any evidence regarding previous involvement or conviction of both the appellants in such like activities. Mere charging the appellants without strong and cogent evidence is not sufficient for establish their guilt and conviction. The prosecution case is full of loop holes and doubt the benefit of which must go to the appellants. Many circumstances are not sufficient for extending benefit of doubt to an accused rather a single doubt is sufficient for extending benefit to the accused though there are many circumstances/doubt in the instant case so the benefit of which must go to the appellant therefore, the learned trial Court has not properly appreciated

the evidence produced by the prosecution while convicting the appellants which needs to be interfered by this Court.

**12.** In view of what has been observed above, we allow the instant Criminal appeal (Cr.A No.20-A/14) alongwith connected Cr.A No.21-A/2014) and set aside the conviction and sentence awarded to the appellants Farooq Ali (Farooq) and Muhammad Ashraf by trial Court through impugned judgment. Both the appellants are acquitted of the charges levelled against them. They are in custody, be released forthwith if not wanted in any other case.

Announced.  
Dt.01.04.2015.

**J U D G E**

**J U D G E**

*“A.Qayum”*