

## **Judgment Sheet**

IN THE PESHAWAR HIGH COURT,  
PESHAWAR.

**JUDICIAL DEPARTMENT**

**Cr.A No. 88-P of 2017.**

### **JUDGMENT**

Date of hearing.....11.10.2017.....

Appellant/State: By Mr. Muhammad Riaz Painsa Khel, AAG.....

Respondent: (Sarfraz Khan).. (In Motion).....

.



**QALANDAR ALI KHAN, J:-** The State through Advocate General, Khyber Pakhtunkhwa, Peshawar, preferred this appeal under section 25 ATA against the judgment/order dated 11.01.2017 of the learned Judge, Anti Terrorism Court-II, Peshawar, whereby, the accused/respondent, Sarfara Khan, was acquitted of the charges under sections 5 Explosive Substances Act/15

AA/7 ATA levelled against him vide FIR NO.24 dated 29.01.2016 registered in Police Station CTD, Peshawar.

2. According to FIR in the case, acting on a prior information about transportation of explosive material from tribal territory to settled area for using the same in terrorist activities, the complainant/SHO Police Station C.T.D, Peshawar, Sardar Hussain, laid a barricade on the main Jamrud road near Police Post, Jamrud, and on the pointation of the informer a person sitting on a seat near the rear door of Mazda bus was found carrying a black colour shopping bag in his lap which was checked and two hand grenades and a pistol (Makrob) were recovered from the said shopping bag, and the person disclosing his name as Sarfaraz Khan son of Ravail Khan resident of Tauheed Abad, Wazir Bagh, presently Madina Town, PP Mumraiz, Nowshera, was arrested and case was registered against him, leading to investigation; and on completion of

investigation, complete challan was submitted to the learned trial Court/Judge ATC, Peshawar, where the accused/respondent was formally charged under sections 7 (ff) ATA, 5 Explosive Substances Act and 15 AA, to which he pleaded not guilty and claimed trial.

3. During trial, the prosecution examined as many as seven PWs, before statement of the accused/respondent was recorded under section 342 Cr.P.C, wherein, he refuted allegations of the prosecution against him, and also produced defence evidence comprising Nazir Ahmed, Bailiff Sessions Court, Peshawar (DW-1) and Waqar Ali, record keeper, Human Rights Cell, Peshawar High Court, Peshawar (DW-2), besides recording his own statement on oath under section 340 (2) Cr.P.C. Having heard learned counsel for the accused/respondent and learned DPP, the learned trial Court/Judge, Anti Terrorism Court-II, Peshawar, rendered the impugned judgment dated 11.01.2017,

thereby acquitting the accused/respondent; hence the instant appeal by the State through the Advocate General, Khyber Pakhtunkhwa, Peshawar.

4. The learned trial Court/Judge, Anti Terrorism Court-II, Peshawar, acquitted the accused/respondent, mainly, on the grounds that there were contradictions on material aspects of the case in the statements of PWs comprising officials of Police/CTD, Peshawar, which, when placed in juxtaposition with statement on oath of the respondent/accused and defence evidence proved the fact that the alleged recovery was not made in the mode and manner as alleged in the case by the prosecution. Moreover, the non production of AIG, BDU, Special Branch, damaged the otherwise weak case of the prosecution beyond repair. Besides, the alleged recovery was shown from the bus, but neither the driver or conductor of the bus nor passengers travelling in the bus were examined by the prosecution to lend credence to the alleged recovery.

5. The perusal of the record would show that the complainant SHO/Inspector Sardar Hussain, (PW-4) and marginal witness Wajid Constable No.1494 (PW-6) contradicted each other with regard to the time of their departure from the Police Station, as the former mentioned the time as 05:30 AM, while according to the latter it was 06:30 AM when they left the Police Station; and their statements were also not consistent with respect to presence of the informer; because, according to the complainant/Inspector, the informer accompanied the police party from the Police Station, while the marginal witness mentioned this fact that the spy informer came to the spot after *Nakabandi* and that only the police contingent under the supervision of complainant/Inspector left the P.S for the spot situated on main Jamrud road; which, however, could not be exactly recalled by the marginal witness (PW-6).

6. The learned trial Court/Judge, Anti Terrorism Court-II, Peshawar, was of the view,

and rightly so, that the opinion/report of the AIG, BDU, Special Branch, with respect to the explosive material was not admissible unless the BDU expert was examined in the Court and subjected to cross examination; therefore, the non production of AIG, BDU, Special Branch, Peshawar, had made case of the prosecution bereft of incriminating evidence. Besides the case was rendered further weak by not citing and, as such, not producing any independent witness from the general public or driver/conductor of the Bus wherefrom the alleged recovery was made, especially when evidence of the prosecution was comprising statements of the Police/CTD officials, who were not only highly interested, but also could not inspire confidence in view of material contradictions in their statements before the Court.

7. Besides, though not bound to prove his innocence, yet through his own statement on oath and also production of evidence comprising a witness from the Human Rights

Cell of the High Court and bailiff of the Sessions Court, the respondent/accused brought material on record indicating his arrest by the Police/CTD staff prior to the alleged recovery from his possession.

8. There was, as such, nothing on record to warrant conviction of the respondent/accused, hence making the impugned Judgment of the learned trial Court/Judge, Anti Terrorism Court-II, Peshawar, unexceptionable. The appeal is, therefore, dismissed in *limine*.

**Announced.**  
**11.10.2017.**

**J U D G E**

**J U D G E**

*\*M.Iqbal\**

(D.B) *Hon'ble Mr. Justice Lal Jan Khattak.*  
*Hon'ble Mr. Justice Qalandar Ali Khan.*