

HCJDA-38  
**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT**  
**MULTAN BENCH MULTAN**  
**JUDICIAL DEPARTMENT**

**(Criminal Appeal No. 907 of 2017)**

*Muhammad Hamza and another*

**Versus**

*The State and another*

**Date of Hearing:** 14.04.2022

**Appellants by:** Mr. Muhammad Ajmal Kanjoo Advocate.

**State by:** Mr. Ashfaq Ahmad Malik Deputy Prosecutor  
General

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

**Sohail Nasir J:** This criminal appeal filed by Muhammad Hamza and Muhammad Rizwan (*appellants*) is directed against judgment dated 17<sup>th</sup> of June, 2017 passed by the learned Judge Anti Terrorism Court-I, Multan<sup>1</sup> (*trial court*) on the basis whereof both the appellants were convicted and sentenced as under: -

- i. Under Section 4 of the Explosive Substances Act, 1908 to imprisonment for life each.*
- ii. Under Section 7(B) of the Anti Terrorism Act, 1997 to imprisonment for life each and fine of Rs. 200000/- (two lacs) each. In default of payment of fine, they were ordered to further undergo six months SI<sup>2</sup> each.*
- iii. Under Section 13(2)(c) of the Arms Ordinance, 1965 to undergo 14 years RI each and fine of Rs. 200000/- (two lacs) each. In default of payment of fine they were ordered to further undergo six months SI each.*

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<sup>1</sup> Multan is the 7<sup>th</sup> largest city (Division) of the Province of Punjab, Pakistan and situated on the bank of the Chenab River. It is also called "City of Saints"

<sup>2</sup> Simple Imprisonment (Under Section 60 PPC sentence can be simple or rigorous)

2. All the sentences of appellants were ordered to run concurrently<sup>3</sup> and benefit of Section 382-B<sup>4</sup>, Cr.P.C<sup>5</sup> was also extended to them.

3. Facts of the case are that on 16<sup>th</sup> of February, 2016 police party comprised of Nadeem HC<sup>6</sup>, Muzaffar Hussain HC (Pw-3)<sup>7</sup>, Ghulam Abbas HC, Muhammad Arshad Constable and Zafar Iqbal Constable (Pw-2) headed by Maqbool Hussain SI<sup>8</sup> (Pw-6) was present on duty at 'Bahadur Garh, Mor Shah Pur Road' where a secret information was received that Bilal Ahmad son of Ahmad Baksh alias Natthu caste 'Phol', Muhammad Rizwan (appellant) son of Riaz alias Kala caste 'Phol' and Muhammad Hamza (appellant) son of Muhammad Tariq caste 'Phol' all residents of 'Shahpur Phol' on a dark blue colour jeep No. 1687-BC-Karachi having the dangerous weapons were coming towards 'Kehror Pacca' from 'Shah Pur'; on this information Nakabandi<sup>9</sup> was made; after a short while the above referred jeep arrived and was intercepted; Bilal Ahmed was on driving seat whereas Rizwan (appellant) was occupying the front seat; both while coming down from the jeep ran away and despite chase by police could not be apprehended, however, Muhammad Hamza (appellant) was arrested at crime scene; on personal search of Muhammad Hamza a pistol 30 bore (P1) having six live bullets (P-2/I-6) were recovered and taken into possession vide a memo (PB); on the foot place of front seat, there was lying a Kalashnikov<sup>10</sup> (P3), a bag of clothe having four magazines containing 80

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<sup>3</sup> If in on one trial accused is sentenced for two or more offences, the court may direct that his/her all sentences shall run concurrently (S.35 Cr.P.C)

<sup>4</sup> On sentencing of imprisonment court shall take into consideration the period, if any, during which such accused was detained in custody for such offence

<sup>5</sup> Code of Criminal Procedure (Act V of 1898)

<sup>6</sup> Head Constable

<sup>7</sup> Prosecution witness

<sup>8</sup> Sub Inspector

<sup>9</sup> Blockade

<sup>10</sup> Normally called AK47

bullets besides 70 open bullets (*total 150*) were recovered; from another bag available there two hand grenades were also found; all were taken into possession vide independent inventories (*PA & PC*).

4. Above mentioned complaint (*PA*) was sent to Police Station '*Kehror Pacca*' through Muhammad Arshad Constable on the basis whereof FIR<sup>11</sup> (*PA/I*) was recorded by Ikram Ullah HC (*Pw-1*) under Section 4 of the Explosive Substances Act, 1908 (*ESA*), read with Section 7 of the Anti Terrorism Act, 1997 (*Act*) and Section 13(2)(c) of the Arms Ordinance, 1965 (*Ordinance*).

5. The case was investigated by Nazar Muhammad Inspector (*Pw-7*) who on 28.02.2016 also arrested Muhammad Rizwan (*appellant*) and on conclusion thereof submitted the report under Section 173 Cr.P.C (*Challan*) in court showing Muhammad Bilal as a Proclaimed Offender.

6. A charge under Section 4 of *ESA* read with Section 13(2)(c) of the *Ordinance* and Section 7 of the *Act* framed against appellants, on 28.06.2016, was not pleaded guilty by them and they demanded the trial.

7. In support of its case, prosecution had produced Ikram Ullah HC/author of FIR and Moharrar<sup>12</sup> (*Pw-1*), Zafar Iqbal Constable/parcels depositor (*Pw-2*), Muzaffar Hussain HC/eyewitness (*Pw-3*), Muhammad Iqbal Pasha/Bomb Disposal Commander (*Pw-4*), Ameer Baksh Constable/a witness to recovery of explosive material from the hand grenades (*Pw-5*), Maqbool Hussain SI/complainant (*Pw-6*), Nazar Muhammad Inspector/Investigating Officer (*Pw-7*) and Zafar Ali Bomb

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<sup>11</sup> First Information Report (to be recorded under Section 154 Cr.P.C)

<sup>12</sup> An official of police whose duty is to maintain daily diary of police station and to ensure the safe custody in Malkhana (like a warehouse)

Disposal Commander who separated the explosive material from the hand grenades for sampling (Pw-8).

8. Muhammad Rasheed Constable was given up being unnecessary by the learned Deputy District Public Prosecutor who after producing the reports of PFSA<sup>13</sup> (PK & PR) had closed the prosecution's case.

9. Both the appellants were called for their examinations under Section 342 Cr.P.C and their common version was as under: -

*“Three years ago Muhammad Ajmal brother of Dost Muhammad was murdered and FIR was lodged against my uncle Mosa, in this way my cousin Manzoor Ahmed murdered the accused party, there were close relations with ruling group, due to the circumstances, I along with my family reside in Karachi. My grandmother died and I came here to attend the funeral ceremony of my grandmother. Maqbool SI with the connivance of rival group lodged the fake FIR. The alleged place of occurrence is in the populated area but no private person was associated in the investigation. All the witnesses are police officials, are subordinates to Maqbool SI complainant of the FIR”*

10. Both the appellants opted not to appear in terms of Section 340(2) Cr.PC in disproof of the allegations against them or to produce any defence evidence.

11. We have heard both the sides and with their valuable assistance we have also gone through the record of learned trial court.

12. For further clarification of the facts, it will not be out of context to refer here that on the same day of occurrence (16.02.2016) the hand grenades were defused by Muhammad Iqbal Pasha Bomb Disposal Commander/BDC (Pw-4) while

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<sup>13</sup> Punjab Forensic Science Agency

arriving at Police Station who also on 26.03.2016 after one month and ten days of the occurrence again visited the Police Station, placed the hand grenades in two small wooden boxes and made those into sealed parcels. It was then on 05.04.2016 after 8 days when Nazar Muhammad Inspector (*Pw-7*) had taken both the parcels to Zafar Ali/BDC (*Pw-8*) at Civil Defence Directorate, Lahore who collected 3 grams explosive material from each hand grenade as sample and those were taken into possession vide a recovery memo (*PD*).

13. We have observed that the prosecution's case is filled up with serious infirmities, contradictions and inherent defects but with no logical, plausible or convincing responses by the prosecution.

14. Although in cross-examination of Muzaffar Hussain HC (*Pw-3*), Maqbool Hussain SI (*Pw-6*) and Nazar Muhammad Inspector (*Pw-7*), one can gather the time of occurrence around 10:00 am but the careful perusal of complaint (*PA*) shows that it is deficient that at what time the police party was present at crime scene? When they arrived there? What was the time when the secret information was received? And at what time the jeep arrived at place of occurrence? Even at the end of complaint against the word بوقت no time has been recorded. The FIR (*PA/1*) too does not speak that what the time of occurrence was where against the words تاریخ و وقت وقوعہ it was simply written as امروز. Even in the examination in chief of the earlier referred witnesses these details are completely missing.

15. This is the case of prosecution that secret information was received about three persons with their complete details as Bilal Ahmed son of Ahmad Baksh alias Natthu caste Phol, Muhammad Rizwan son of Riaz alias Kala caste Phol and

Muhammad Hamza son of Tariq caste Phol and all residents of 'Shah Pur Phol'. According to the witnesses this information they had received 10 minutes earlier to arrival of the jeep. It is not the case of Muzaffar Hussain HC (Pw-3) or Maqbool Hussain SI (Pw-6) or Nazar Muhammad Inspector (Pw-7) that after apprehending Muhammad Hamza at spot he was the one who disclosed about his companions/associates named Muhammad Bilal and Muhammad Rizwan. In these circumstances, it was the fundamental duty of the prosecution to establish that how the witnesses came to know that the persons escaped from crime scene were Muhammad Bilal and Muhammad Rizwan? In absence of any material in this context, prosecution's case on the face of it has become doubtful.

**16.** Muhammad Rizwan (*appellant*) was arrested on 28.02.2016 by Nazar Muhammad Inspector (Pw-7) and he/Nazar Muhammad too never stated that he came to know about Muhammad Rizwan on the disclosure of Muhammad Hamza.

**17.** The police party was comprised of seven members with official weapons and vehicle also. The crime scene, as evident from cross examination of the witnesses and the rough site plan, was surrounded by almost open area so in presence of police force escape of two assailants who while running were not in possession of any weapon is a highly unnatural story and cannot be accepted by a prudent and wise mind.

**18.** Muhammad Iqbal Pasha/BDC (Pw-4) in his examination in chief stated that on 16.02.2016 he was summoned at Police Station by SHO<sup>14</sup> city 'Karor Pacca' for defusing the hand grenades where he arrived and performed the obligations on

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<sup>14</sup> Station House Officer

his part. In cross examination, he replied that he met Moharrar of the Police Station who handed over to him the hand grenades for defusing and that he did not meet any other police officer there. When the statement of Ikram Ullah HC/Moharrar is perused, he was completely silent about the visit of Muhammad Iqbal Pasha/BDC (Pw-4) in the Police Station on 16.02.2016.

**19.** Muhammad Iqbal Pasha/BDC (Pw-4) in his examination in chief further maintained that on 26.03.2016 he was again summoned in the Police Station where he reached and prepared parcels of hand grenades in two small wooden boxes for onward transmission to the office of PFSA. Even in this respect, Ikram Ullah HC/Moharrar was silent as he did not say a single word on the basis whereof even it may be presumed that on 26.03.2016 Muhammad Iqbal Pasha came to Police Station for this assignment. In this view of the matter, statement of Nazar Muhammad Inspector (Pw-7) that on 26.03.2016 at his request Muhammad Iqbal Pasha/BDC made the sealed parcels of hand grenades is of no worth for the prosecution.

**20.** It is not understandable that if on 16.02.2016 Muhammad Iqbal Pasha/BDC had defused the hand grenades while coming to Police Station, why on the same day he did not make those into sealed parcels and why this exercise was deferred till 26.03.2016?

**21.** Muhammad Nazar Inspector in his examination in chief claimed that on 05.04.2016, he received the parcels of hand grenades from Moharrar of Police station which he had taken to Civil Defence Office, Lahore where Zafar Ali/BDC (Pw-8) separated the explosive material from each hand grenade for expert opinion. Again the statement of Ikram Ullah

HC/Moharrar (*Pw-1*) is short of any evidence that on 05.04.2016 he handed over the parcels of hand grenades to Nazar Muhammad Inspector.

**22.** Nazar Muhammad Inspector (*Pw-7*) in his examination in chief further added that after the collection of explosive material through sealed parcels, he handed over the same to Ameer Baksh Constable (*Pw-5*) who deposited the same in the office of PFSA, Lahore. The report of PFSA (*PL*) has negated his version as according to this document he was not Ameer Baksh Constable but Nazar Muhammad Inspector who had submitted the parcels in that office on 05.04.2016. It will not be irrelevant to add here that Ameer Baksh Constable (*Pw-5*) in his examination in chief never maintained about receiving of any parcel of sample of explosive material on 05.04.2016 and deposited thereof in the office of PFSA. His statement was only to the extent that in his presence explosive material was taken into possession *vides* a recovery memo (*PD*).

**23.** Zafar Iqbal Constable No. 220 (*Pw-2*) in his examination in chief stated about receiving of parcels of Kalashnikov and bullets which he had deposited in the office of PFSA on 29.02.2016. He is the same official who has also been shown as an eyewitness and present at the time of occurrence on 16.02.2016 but in his examination in chief he did not bring out from his mouth even a single word in this regard which has finally smashed the prosecution's case.

**24.** The principles of '*safe custody*' and '*chain of safe custody*' do not confine to any specific case or situation but in every case where prosecution demands conviction against an offender on the basis of any material that constitutes an offence like hand grenade as in the case in hand, bombs, explosive materials, narcotics, arms and ammunitions etc.



these principles shall be strictly adhered to and cannot be compromised under any circumstance. There is a difference between 'safe custody' and 'chain safe custody'. '*Safe custody*' means, if the case property is with any official/individual that has to be in accordance and under an authority of law or at a secured place like '*Malkhana*' where access has to be under a specified procedure and law. Whereas '*chain of safe custody*' means that if case property is transferred or transmitted from one place to other place or from one official to other official, such transmission has also to be under a recognized method. Therefore, prosecution has to establish and prove both '*safe custody*' and '*chain of safe custody*' side by side and if any of the links of chain is broken the conviction cannot be recorded or if recorded cannot ordered to be sustained.

**25.** The discussions made earlier therefore have made it clear that in the case in hand '*safe custody*' and '*chain of safe custody*' both are under heavy clouds of doubts which are the ultimate adverse blows for the prosecution.

**26.** We have gone through the impugned judgment and we have noticed that the learned trial court blindly followed the prosecution's story without making proper appreciation of evidence which is the soul of a good judgment. While deciding the criminal case finally it is the primary duty of the court that judgment must contain the point or points for determination, the decision thereon and the reasons for the decision. Appreciation of evidence which may be direct or circumstantial is a delicate exercise that involves weighing the credibility and reliability of the incriminating material presented in a case and on conclusion thereof it must present a good picture that has to be accurate on all counts, with good

composition, exposure, focus, light, and timing. In a criminal case as the question of life and liberty of an accused is at stake therefore under the settled principles of law a strict standard of proof is required so as to prove the guilt which cannot base on preponderance of probabilities but it must be proved beyond reasonable doubt. The words '**beyond reasonable doubt**' mean that the prosecution must convince the court that there is no other reasonable outcome of the evidence produced in trial except the conviction of accused.

27. The prosecution case presented in the court must be true. There is also a difference between the words '**may be true**' and '**must be true**' and between these two phrases there is a long distance that has to be covered by legal, reliable and unimpeachable evidence. So for seeking the conviction against an accused prosecution evidence '**must be true**'.

28. The golden principles to hold the accused responsible for a crime can be formulated as under: -

- i. *Conviction cannot be based merely on the high probabilities that may be inferred from evidence in a given case.*
- ii. *Finding of the guilt should rest surely and firmly on the evidence produced by the prosecution.*
- iii. *Mere conjectures and probabilities cannot take the place of legal proof otherwise the golden rule of benefit of doubt will be reduced to naught.*
- iv. *Accused is only to create doubt in prosecution's case.*
- v. *It is the duty of prosecution to prove its case beyond reasonable doubt.*
- vi. *Benefit of every reasonable doubt must go to the accused.*
- vii. *Benefit of doubt however slight must go to the accused.*
- viii. *Single infirmity in prosecution's case will entitle the accused to benefit of doubt.*
- ix. *Court is not supposed to thumb mark blindly what the prosecution has desired.*

- x. *Rule of law is the supreme consideration and nothing is top to it. A Judge is only to be impressed when “burden of persuasion” is successfully discharged which means to convince the court that qualitative evidence is there.*

29. In the light of what has been discussed, deliberated and analyzed above, the ultimate declaration of this Court is that prosecution had badly failed to prove its case beyond reasonable doubt against Muhammad Rizwan and Muhammad Hamza (*appellants*) hence this criminal appeal is **allowed**. Impugned judgment is **set aside**. Both the appellants are **acquitted** from the case. They are in custody and shall be released forthwith if not required in any other case. The case property shall be dealt with in the same manners as directed by the learned trial court.

(Shakil Ahmad)  
Judge

(Sohail Nasir)  
Judge

**Approved for Reporting**

(Judge)