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BEFORE THE PESHAWAR HIGH COURT, BENCH
MINGORA/DAR-UL-QAZA SWAT

Criminal Appeal No 97-M of 2015 with Cr. M 88/015
Ghulam Murtaza S/o Ghulam Ahmad R/o Ayun, District
Chitral, Presently at District Jail at
Chitral.....Appellant

VERSUS

1. State through Additional Advocate General
2. Gec Gil / Lim Administration Manager SAMBO
Company Golean Goal Project
Chitral.....Respondents

Case FIR No: 19, Dated 15-02-2012,

Under Sections: 380,406,411,109 PPC & 5 & 6 Exp Sub Act
1908 & 5 of Exp Act 1884

Police Station: Koghozi, District Chitral

Appeal under section 420 Cr.P.C/ read with Paragraph
10 (8) of NAR 2009 against order / judgment dated
10/04/2015 of conviction passed by the Additional
Sessions Judge / Izafi Zilla Qazi Chitral which the
learned Trial Court convicted and sentenced the
Appellant under section 6 of Exp: Sub: Act 1908 and
5Exp: Act 1884 five (5) years RI and also pay R.S 5,000/-
as a fine in default in the payment of fine shall
undergo 01 month SI.

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15.5.15
Additional Registrar

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Criminal Appeal No. 97-M/2015

JUDGMENT

Date of hearing: **30.11.2015**

Appellant: (Ghulam Murtaza) by
Mr. Rahimullah Advocate

Respondents: (State etc) by
Mr. Sabir Shah, A.A.G.

HAIDER ALI KHAN, J.- This single judgment is intended to dispose of the instant appeal bearing Cr.A No.97-M/2015 as well as the connected Cr.A No. 101-M/2015 titled "Muhammad Din Vs. The State" and Cr.R No. 36-M/2015 titled "The State Vs. Ghulam Murtaza" as all the matters arise from one judgment dated 10.4.2015 delivered in case F.I.R No. 19 dated 15.2.2012 under sections 380/406/411/109 PPC, Sections 5 & 6 of the Explosive Substances Act, 1908 and section 5 of the Explosive Act, 1884, by the learned Additional Sessions Judge/Izafi Zilla Qazi, Chitral whereby the

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appellants Ghulam Murtaza and Muhammad Din have been convicted and sentenced as under:

Ghulam Murtaza

- (i) Five years R.I under section 6 of the Explosive substances Act, 1908.
- (ii) Fine of Rs.5000/- under section 5 of Explosive Act, 1884 or in default thereof the convict had to undergo one month S.I.

Muhammad Din

Five years R.I under Section 380 PPC with fine of Rs. 20,000/- or in default thereof the convict had to undergo six months S.I.

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2. Precise and relevant facts of the case are that Muhammad Sohail, Admin SAMBO Construction Company Koghozi, Chitral on 15.2.2012 at 18:00 hours, moved an application addressed by Jae Gi Lim, Administration/ Procurement Manager of the said Company, wherein the occurrence of theft regarding explosives containing 22 boxes, weighing 550 kilograms of Wabax Special worth Rs.700,821.5/- from Magazine located in Golen Gole Warehouse was reported. On the strength of this application/written report,

Mursila was drafted which later on culminated into F.I.R, Ex.PW-12/1.

3. During the course of investigation, the aid of sniffer dogs was availed and as a result thereof one Dil Muhammad, who was working as a foreman in the Company, was nominated in the case as an accused that was discharged on 25.2.2013 on application of the DPP. During onward investigation in the case, the present appellants/convicts alongwith their seven other co-accused were nominated in the case and challan was submitted in the Court for trial of the accused. Formal charge was framed against the accused to which they pleaded not guilty and opted to face the trial, hence, the prosecution evidence was called for. The prosecution produced and examined as many as 16 witnesses and closed its evidence. Thereafter, the trial Court recorded statements of the accused under section 342 Cr.P.C wherein they denied the allegations levelled by the prosecution, however,

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they did not opt either to be examined on oath in terms of section 340(2), Cr.P.C or to produce any evidence in their defense.

On conclusion of the trial, the present appellants/convicts alongwith co-accused Ihsanullah and Tanvir Ahmad were found guilty of the charge vide the impugned judgment dated 10.4.2015. Being aggrieved of their conviction mentioned in Para No.1, the appellant/convict Ghulam Murtaza has filed the instant appeal and the appellant/convict Muhammad Din has challenged his conviction through the connected Cr.A No. 101-M/2015 whereas the State is seeking enhancement of sentence awarded to appellant/convict Ghulam Murtaza through Cr.R No. 36-M/2015, which are being disposed of through this single judgment.

4. Learned counsel for the appellants contended that the impugned judgment of the learned trial Court is against the law and facts available on the record; that the trial Court has based

conviction of the appellants on weak and irrelevant circumstantial evidence which is not legally sustainable; that the learned trial Court has misinterpreted the prosecution evidence and did not analyze the same in its true perspective, hence, the conclusion arrived at by the trial Court is erroneous; that the prosecution evidence is suffering from glaring contradictions on material points which have not been considered by the trial Court while recording conviction of the appellants/convicts besides, the fact that there is no eye witness to the occurrence, has also been ignored by the trial Court.

The learned counsel lastly contended that two co-accused namely Ihsanullah and Tanvir Ahmad have been acquitted by this Court, hence, the present appellants are also entitled to their outright acquittal.

5. On the contrary, learned A.A.G appearing on behalf of the State contended that the prosecution has proved its case against the appellants/convicts through convincing evidence,

hence, the impugned judgment of the trial Court is legally correct and warrants no interference by this Court. He maintained that the prosecution had discharged its onus and the material available on the record especially the confessional statements of the appellants/convicts are sufficient for their conviction. He concluded that the trial Court has passed the impugned judgment after proper appraisal of the evidence available on the record, therefore, the appellants/convicts deserve to undergo the sentence awarded to them through the impugned judgment.

6. Arguments heard and record perused.

7. In light of arguments, perusal of the record would reveal that the appellant/convict Ghulam Murtaza had been charged for purchase of the stolen explosives and retaining its possession for onward sale thereof whereas the appellant/convict Muhammad Din had been charged for stealing the explosives from SAMBU Construction Company.

It is a noticeable fact that nothing on the record is available to show that the appellant/convict Ghulam Murtaza had the knowledge or reason to believe that the explosives were stolen. Record shows that a part of the explosives have been recovered from the ammunition store of Chitral Scouts allegedly sold to it by appellant/convict Ghulam Murtaza and co-accused Maghfirat Shah, however, the same recovery has not been produced before the Court for exhibition. Even the FSL report in this regard has not been exhibited during the trial which is a glaring irregularity committed by the trial Court.

8. Record also shows that the occurrence took place on 15.2.2012 whereas the appellants were arrested on 15.1.2013 i.e after one year of the occurrence. Moreso, there is no eye witness to the occurrence and no recovery of the explosives has been effected from the direct possession of the appellants/convicts.

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9. No doubt, the appellants/convicts have recorded their confessional statements before the Court but later on they retracted the same while recording their statements under section 342, Cr.P.C. It is true that conviction of an accused can be based even on retracted confession made by him provided the same is duly corroborated by the remaining evidence on the record but on the other hand nomination of the appellants/convicts in the present case at a belated stage, the fact that the occurrence is unseen, recovery of the explosives not from the possession of the appellants/convicts and non production of the explosives before the Court coupled with non-exhibition of the FSL report are the factors which have created a dent in the prosecution case. Thus, it is held that the confessional statements are not duly corroborated by other circumstantial evidence and conviction on the basis thereof is not correct.

10. In view of the above discussion, the instant appeal as well as the connected Cr.A No. 101-M/2015 are allowed, the impugned judgment dated 10.4.2015 of the trial Court is set aside and the appellants are acquitted of the charge levelled against them. The appellants are on bail, hence, their sureties are absolved from the liability of bail bonds. The connected Cr.R No.36-M/2015, being devoid of merits, stands dismissed.

Announced.
Dt: 30.11.2015

[Signature]
30/11/16

officer
2/11/16