

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT, LAHORE.**

**JUDICIAL DEPARTMENT.**

**Criminal Appeal No.3873-ATA/2015.**

**Yasir Aurangzaib  
Versus  
The State, etc.**

<b>Date of Hearing</b>	<b>20.09.2021.</b>
<b>Appellant By</b>	<b>Rana Maqsood-ul-Haq and Ch. Salman Zahoor, Advocates.</b>
<b>Respondents By</b>	<b>Ch. Sarfraz Ahmad Khatana, Deputy Prosecutor General. Abid Baig, I/SHO and Kamran Ghulam Nabi, CPL/ASI, Police Station CTD, Lahore.</b>

**MUHAMMAD AMEER BHATTI, CJ**:- In a trial of case FIR No.09, dated 13.05.2015, registered under Sections 4 &5 of Explosive Substances Act, 1908, read with Section 7, Anti-Terrorism Act, 1997, at Police Station CTD, District Lahore, the present appellant Yasir Aurngzaib was found guilty of the said offences by the learned Judge, Anti-Terrorism Court-III, Lahore, who vide its judgment dated 23.11.2015 convicted and sentenced the appellant as under:-

- i) Under Section 4(b) of Explosive Substance Act, 1908, 07-years R.I.;
- ii) Under Section 7(ff) of Anti-Terrorism Act, 1997, 14-years R.I.;
- iii) Under Section 5 of Explosive Substance Act, 1908, 07-years R.I. and;

The property of the appellant stood forfeited to the Government, however, benefit of Section 382-B, Cr.P.C. and running of sentences concurrently were permitted.

2. Feeling aggrieved of his conviction and sentence, the appellant has filed the instant criminal appeal.

3. The facts narrated in the First Information Report (Exh.PB/1), are that on 13.05.2015 at 03:30 p.m., the complainant/respondent No.2 along with three other employees as well as driver, in a Government vehicle, duly armed with weapons were patrolling at Darbar Haider Saaen, when, on receiving secret information, they raided at Lorry Adda Bus-stand Lahore, where three persons were coming out of the Lorry Adda having parachute bags in their hands. It is further stated that on pointation of the informer the police succeeded to apprehend one of the three persons whereas two of them escaped. After arrest, the apprehended accused disclosed the names of his companions as Asad and Mubashir sons of Mehboob as commanders of 'Al-Qaida'. On search, one live hand-grenade, one detonator, prima cord red coloured about 09-feet, 05-k.g. explosive substance and three electric circuits were recovered from the accused. It is also stated that the officials of Bomb Disposal Squad arrived at the spot, analyzed the recovered articles and defused the hand-grenade immediately. For forensic science analysis, ten grams of explosive substance, small piece of prima cord and three grams substance from hand-grenade were separated and rest of the articles were taken in possession under seal, whereafter the complainant prepared a memo of recovery.

4. The accused-appellant on framing of formal charge pleaded not guilty and claimed trial and the prosecution to substantiate the charge examined as many as six witnesses. In the ultimate, he was convicted and sentenced, as stated supra.

5. Learned counsels for the appellant inter alia contend that the present case against the appellant was false inasmuch as from the concocted story of police, the malafide is established from record. The appellant had been picked-up by members of some agency regarding which FIR No.75 dated 01.05.2015 (mark 'B') was got registered by father of the appellant; it is also established from letter dated 07.05.2015 issued by the Commission of Inquiry on Enforced Disappearances, Directorate General Civil Defence, Islamabad, that regarding missing of appellant direction was issued for registration of case and JIT to be constituted for the purpose was directed to submit report before 20<sup>th</sup> May, 2015. In such constrained circumstances, the respondent police in order to avoid custody/presence of the appellant with them, involved him in a case showing as a terrorist, which could easily be falsified by these two documents, which have totally been ignored by the learned trial Court saying that the same were afterthought. Further contend that the respondent police did not offer or bring some independent witness at the time of appellant's alleged arrest reflecting from the FIR, shown from a thickly populated area, i.e. Bus Terminal. In support of these contentions, the learned counsels have placed reliance on "Intekhab

Ahmad Abbasi and others v. The State and others (2018 SCMR 495),

relevant portion whereof is as follows:-

*“Attending to the first part, the very arrest of the appellant/petitioners from the parking lot of Awan Service Station with explosive laden vehicles appears to be highly intriguing one. The heavy contingent of police raided the premises, surrounded it from all four corners and during the arrest, recovery and seizure proceedings not a single public witness was associated. Even the owner, caretaker/manager and particularly the watchman, who was deputed for the look-after and care of the parked vehicles to ensure that no vehicle parked inside is taken away by unauthorized person, was not available or could not be procured. The large contingent of police remained on the crime scene for many hours but out of all these persons, none was available. This mysterious circumstance by itself would bespeak about the proceedings conducted behind the blind curtain out of the sight of such persons.”*

It is lastly contended that the appellant has nothing to do with the commission of offence and the learned trial Court convicted and sentenced the appellant erroneously; hence, the conviction and sentence are liable to be set-aside.

6. On the other hand, supporting the impugned conviction, the learned Deputy Prosecutor General submitted that the trial Court passed the judgment strictly according to the prosecution evidence through which it succeeded to prove the case against the appellant without any shadow of doubt. Regarding the documents he contended that both these documents have been rightly discarded by the learned trial Court saying the same afterthought.

7. We have heard the arguments, examined the record with the assistance of learned counsels for the appellant as well as the learned Deputy Prosecutor General.

8. The prosecution case revolves around the statements of PW-1 and PW-2, who furnished the ocular account as the other official witnesses were given-up. These witnesses do not seem to agree on the time, distance and defusing of hand-grenade, allegedly recovered from the appellant inasmuch as PW-1-complainant/Inspector in his complaint (Ex.P-B/1) stated that he received spy information at 3.30 p.m. whereas in his cross-examination he has given the evidence contrary to it saying that,

*“I had consulted with D.S.P CTD through my mobile telephone set on his official land line telephone number after receipt of spy information. This call was made by me at about 01.45-03.00 pm.”*

Aforesaid PW further stated in his cross-examination that, *“the distance between us and the accused was about 100-150 feet when we saw the accused. In between us and the accused there were two busy roads where buses and trucks ply usually.”* PW-2 Hafiz Al-Mozaam Ali has deposed in his cross-examination that, *“when spy pointed out towards the accused, the distance between us and the accused was about 15-20 feet.”*

Both these witnesses are unanimous on the fact that they did not encircle the Bus. PW-1 admitted in his cross-examination that the accused facing trial did not try to run away and none of them tried to chase two accused (since POs) who fled from there.

These two important witnesses are also unanimous on the fact that the recovered articles were examined by the officials of PFSA and BDS, who immediately defused the hand-grenade at the spot but report of the

Bomb Disposal Commander, Ex.P-C, opined the hand-grenade with detonating assembly alive and filled with explosive which could cause damage to human life/property if used/blasted.

The above-noted contradictions in statements of two important prosecution witnesses on material aspects make the prosecution story full of doubts.

9. Another aspect of the matter is that bare reading of the FIR gives rise to a lot of questions in the mind of a man of ordinary prudence, e.g.

- i) When the raiding party was consisting of five well-armed persons, how they could not arrest the other two suspected persons when they were not alleged to have any ammunition/weapon;
- ii) Raiding party after receiving the spy information reached at Bus Terminal with full preparation knowing that three suspects were coming and further all the three were carrying parachute bags full of explosive substance and they travelled from Rawalpindi to Lahore and none of them was noticed/checked by any other agency when they boarded or alighted from Bus. Out of these three, two fled away and the police could not make any effort to arrest those two persons although it was alleged that all the three were carrying bags full of explosive substance. Such narration in the FIR itself is enough to cause a serious dent in the prosecution story.
- iv) It is obvious that maker of FIR failed to give description or even number of grenade, thus the manner of recovery is doubtful.

- v) The most depressed feature of the case is that the police never remained worried about the other bolting suspects who were carrying parachute bags full of explosive substance as per FIR as the investigation file/record is silent in this regard after passing of order dated 11.06.2015 by the learned trial Court on request of I.O., whereby proclamations u/s 87, Cr.P.C. were issued against appellant's co-accused namely Asad Mehboob and Mubashar Mehboob sons of Mehboob Ali.

10. We are also of the view that significance/effect of the specific documents, i.e. FIR No.75, dated 01.05.2015 and letter dated 07.05.2015 issued by the Commission of Inquiry on Enforced Disappearances, Directorate General Civil Defence stipulating the disappearance of the appellant much before registration of FIR dated 13.05.2015 in which the appellant has been convicted, cannot be ignored. Since the Commission of Inquiry on Enforced Disappearances has issued specific direction for registration of case about disappearance of the appellant and JIT was also entrusted inquiry and submission of report before 20.05.2015, no option was left with the police/agencies except to plant a false case against the appellant to continue the custody; so much so, the story of carrying of explosive substance introduced in the FIR also does not inspire confidence.

It is also astonished to notice that the raiding party did not have any information regarding names of the three alleged accused coming through a Bus from Rawalpindi to Lahore but at the time of recording FIR, after apprehending the present appellant out of those three unknown

persons, the names of other two persons have specifically been mentioned along with their paternity and their address and despite these details neither any effort was made by the investigating agency either to collect any evidence regarding whereabouts or recovery of alleged explosive substance from those suspected accused to make it part of the record; this fact forced us to infer that not only the appellant but the two other persons were also in custody of the police or any other agency investigating the matter. These documents are enough to hold that the appellant was in custody of the police or any agency and on account of registration of case of his disappearance and direction to JIT for submission of record constrained the police or any other agency to involve the petitioner in the explosive substance case to maintain his custody in a legal manner. In the case-law 2018 SCMR 495, referred to supra by the learned counsel for the appellant, the honourable Supreme Court being cognizant of such situation and circumstances, laid down as under:-

*“21. We are constrained to re-emphasize that this sacred judicial obligation must be performed in a strict judicial manner observing all safeguards and precautions as laid down in the High Court Rules and Orders. Printed proforma containing questionnaire is not to be used because it amounts to filling the blanks and is not in accord with the requirements of law and rules. In view of the changing trend of investigation, particularly in sensitive cases and keeping in view the phenomenon of forced disappearance of people and because in some cases the accused are not kept in the lock up of the notified police station therefore, the following additional questions may be put to accused person, when a situation of this nature arises, which is as follows:-*



- (i) *When and by whom you were arrested and from which place?*
- (ii) *Where you were kept during custody by the police/investigating agency?*
- (iii) *Whether previously you were produced before any other Magistrate for recording confession and you had refused to confess?*

In such eventuality, this Court concludes that while ignoring these important documentary evidence, the learned trial Court has committed material illegality and irregularity.

11. Therefore, we are of the view that case FIR No.9 dated 13.05.2015 is false and in an effort to involve the appellant who was otherwise illegally and unlawfully abducted and his custody was concealed from his family and to legalize their act, this false case was got registered. It is not out of place to mention here that, as per police record, the appellant has no previous record nor he was ever convicted in any criminal case.

12. Even otherwise, the appellant denied all the prosecution allegations and piece of evidence while making his statement under Section 342, Cr.P.C., in particular, when asked why this case was made against him, he stated as under:-

*“This false and fabricated case was registered against me to show efficiency to the high ups of the police. Actually on 08.12.2014 at 06.30 am I was arrested by a number of police officials wearing uniform and some without uniform. To save the skin from illegal detention, this case was registered against me. I alongwith my relatives Khurram Shahzad and Mehboob Hussain were arrested on the same day. About my abduction case FIR No.75/15 dated:01.05.2015 u/s 365 PPC had been registered at P.S Jatily District Rawalpindi. My father Aurangzaib submitted an application on 07.05.2015 before commission of inquiry against forced disappearances.”*

When on the basis of evidence produced, the prosecution has failed to establish guilt against the appellant, his above statement would be accepted in its entirety without requiring the proof under Article 121, Qanun-e-Shahadat, 1984. Reliance is placed on “Ali Ahmad and another v. The State and others (PLD 2020 Supreme Court 201).

13. It is well settled principle in administration of criminal justice that prosecution remains under heavy burden to prove the charge against the accused beyond reasonable doubt, whereas in the instant case it has failed to do so. For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubt. Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit as a matter of right and not grace as held in the case of “Tariq Pervez v. The State” (1995 SCMR 1345), “Muhammad Akram VS The State” (2009 SCMR 230), “Nadeem Hussain v. The State” (2019 SCMR 1290) and “Muhammad Mansha v. The State” (2018 SCMR 772). Relevant portion from the later pronouncement is as follows:-

*“Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted.”*

Resultantly, this appeal is accepted, the conviction and sentences awarded through impugned judgment dated 23.11.2015 are set-aside and

the appellant-Yasir Aurangzaib is acquitted of the charge. He is directed to be released forthwith, if not required in any other case.

**(TARIQ SALEEM SHEIKH)**  
JUDGE

**(MUHAMMAD AMEER BHATTI)**  
CHIEF JUSTICE

**Approved for reporting.**

CHIEF JUSTICE

*Gull\**