

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Criminal Appeal. No. 533-P of 2020.

Date of hearing: 25.03.2021.

M/s Syed Abdul Fayyaz & A Hashim,
advocates for the appellant.

Mr. Mujahid Ali Khan AAG for the State.

JUDGMENT

LAL JAN KHATTAK, J.- This criminal appeal is directed against the judgment dated 20.07.2020 of the learned Judge Anti-terrorism Court-I Peshawar, delivered in case FIR No.98 dated 02.12.2019, whereby the appellant has been convicted and sentenced to fourteen years RI u/s 5 & 6 of the Khyber Pakhtunkhwa, Explosive Substances Act, 2013 with forfeiture of her property to the State. She has also been convicted u/s 7 (ff) of the Anti Terrorism Act, 1997 and sentenced to suffer fourteen years RI. Both the sentences have been ordered to run concurrently with benefit under section 382-B Cr.PC.

Gain

2. Brief facts of the case are that on 02.12.2019, Sardar Hussain Khan, SHO of police station CTD, Peshawar (PW-11) had an information that explosive substance will be taken to Punjab for sabotage activity in

order to weaken the country. To foil the attempt, he alerted his staff at Haji camp bus stop where the spy pointed towards a woman and two men. No sooner the complainant tried to lay hands on the male persons they decamped from the scene whereas the lady with a small tin box containing therein 5 Kg explosive substance was overpowered, who disclosed her name as Jehan Pasa. She also disclosed the names of her aides as Shahid alias Malang and Muhammad Rehman both Afghan nationals. In order to destroy the explosive materials, the complainant called BDS which defused the same. On the basis of ibid recovery of substance case FIR was registered against the appellant and the two absconding accused.



3. After completion of investigation, the case was put in court which indicted the accused for commission of the offence to which she pleaded not guilty and claimed trial. Prosecution in order to substantiate its case produced and examined 13 witnesses in all, whereafter statement of the accused was recorded wherein she professed her innocence. The learned trial court, after conclusion of the trial, found her guilty of the

charge and while recording conviction sentenced her as mentioned above.

4. Arguments heard and record gone through.

5. The prosecution case against the appellant mainly rests on the direct recovery of explosive substance (Ex.PW-11/10) which the complainant had recovered from her at the bus stop. Though after the 6th day of her arrest, the appellant had recorded her statement under section 164 Cr.PC wherein she admitted the recovery of explosive material by the police from her but her such confession was not believed by the learned trial Court for its being an attempt on her part to shift the consequences towards the absconding co-accused.

Gain

6. To prove the direct recovery of the explosive substance from the appellant complainant of the case Sardar Hussain appeared before the Court as PW-11 and deposed that on the day of occurrence he had received an information that someone would bring explosive material for terrorist activities on which he alongwith other police personnel came to Haji camp bus stop where the informer pointed out two men and a lady. According to PW-11, the two male fled away from the scene on seeing the

police whereas the lady was overpowered from whose possession a tin box was recovered containing therein explosive substances and other related material which was defused with the help of BDU staff.

7. Assuming for the sake of arguments that the explosive substance was recovered from the appellant but the question then would arise whether she was having any knowledge that the tin box recovered from her contained therein the explosive substance and if not then whether she could be punished for possessing the same. Ordinarily mere recovery of some utensil, a box or container from someone having some illegal material therein has never been considered enough to hold him responsible for possessing the banned item unless and until it is proved through reliable evidence that the carrier or possessor was aware of the existence of the illegal and banned material in the utensil, box or container recovered from him. It is a fundamental principle of criminal law that before an accompanier of the principal accused is held responsible for the illegal act, the prosecution must prove through reliable evidence that the former had accompanied his master with full knowledge that the latter

Join

was set to commit a crime which element is missing in the instant case. It is worth to mention that the appellant in her confessional statement, though discarded by the learned trial Court, and in statement recorded under section 342 Cr.PC has disclosed that on the day of occurrence she was going to Akora Khattak for her spiritual treatment with her son in law and granddaughter and at the bus stop she was held up by the local police and was booked in the case. Her such stance cannot be brushed aside easily as the investigating agency has not collected any material to show that while possessing the tin box at the relevant time she had conscious knowledge that same had contained therein explosive substance and that the absconding accused were taking it through her to Punjab or somewhere else for any terrorist activity. Therefore, on the basis of mere recovery of the box from her containing the explosive substance, the appellant cannot be punished as it is a century old principle of criminal law that sans any conscious knowledge qua the crime the accompanier cannot be held responsible.

Again

8. Thorough and careful examination of the case record would show that the learned

trial Court has not appreciated the case evidence in its true perspective qua conscious knowledge of the appellant and has erred in law by recording her conviction for which the impugned judgment cannot be upheld.

9. For what has been discussed above, we accept the appeal in hand, set aside the impugned judgment dated 02.12.2019 and consequently acquit the appellant namely Jehan Pasa of the charge leveled against her. She be set free forthwith if not required in any other case.

10. These are the reasons of our short order of even date.


JUDGE


JUDGE

Announced.
25.03.2021.

(DB) Hon'ble Mr. Justice Lal Jan Khattak & Hon'ble Mr. Justice Muhammad Nasir
Mahfooz, HJ.

Tariq Jan, PS



The
PESHAWAR HIGH COURT
Peshawar

Ph: No. 091-9210149-58

No. 34785 (1)/456/2021/DEC

Dated. 26-March-2021

From

Additional Registrar (J),
Peshawar High Court,
Peshawar.

To

The Judge Anti-Terrorism Court-I, Peshawar.

Subject: Criminal Appeals:(Short Sen.) Cr.A 533/2020 Title: Mst Jehan Pasa VS State (FIR No.98 Dated 02-Dec-19 U/S 5 ESA r/w 7(ff) ATA PS. CTD Peshawar)

RELEASE ORDER.

Accused/appellant **Mst. Jehan Pasa** Wife of **Abdul Akbar** r/o Afghanistan presently Arbab Road, District Peshawar.

Date of hearing on 25.03.2021.

DB Mr. Justice Lal Jan Khattak & Mr. Justice Muhammad Nasir Mehfooz.

Previous History of the Case.

Convicted & sentenced (1) u/s 5 Expl: Sub: Act of KPK 2013 to suffer 14 years RI. U/s 6 of the Act ibid her whoel property shall stand forfeited to the State. (2) 7 (ff) ATA, 1997 to suffer 14 years RI. All the sentences shall run concurrently. Benefit of Section 382- B Cr.P.C was extended to the accused, by **Mr. Fazal Sattar**, Judge Anti Terrorism Court-I, Peshawar, vide order dated 20.07.2020.

High Court Oder: (Operative Part only).

For the reasons to be recorded later, this criminal appeal is allowed. Conviction and sentence recorded by the learned Judge Anti Terrorism Court-I, Peshawar, vide judgment dated 20.07.2020 is set-aside. Appellant **Mst. Jehan Pasa** is acquitted of the charges leveled against her. She be set free forthwith if not required in any other case.

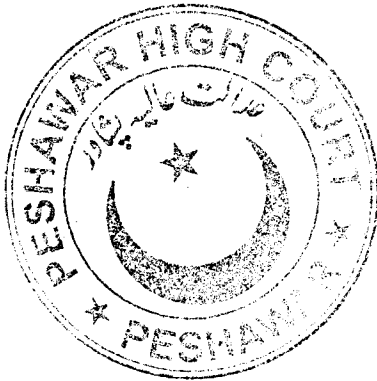
Copy of order is attached herewith.

Direction. **As per order mentioned above**

Additional Registrar
Peshawar High Court
Peshawar.

Additional Registrar (J).

(J).



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She be set free forthwith if not required in
any other case.


JUDGE


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Announced.
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