

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench

Mr. Justice Athar Minallah
Mr. Justice Naeem Akhtar Afghan
Mr. Justice Malik Shahzad Ahmad Khan

Criminal Appeal No.238 of 2021

(Against judgment dated 01.02.2016 of the
Lahore High Court, Rawalpindi Bench
passed in CrI.A. No.62/2011 and SCR
No.01-T/2011)

Hameedullah

...Appellant

Versus

The State

...Respondent

For the appellant: Mr. Zulfiqar Khalid Maluka, ASC

For the State: Mr. Sajjad Hussain, Deputy Prosecutor General,
Punjab

For the complainant: Nemo.

Date of hearing: 14.01.2025

ORDER

Athar Minallah, J.- The appellant, Hameedullah son of Abdullah, had challenged his conviction and confirmation of death sentence by the High Court through a jail petition and leave was granted by this Court *vide* order dated 15.09.2021,

2. Pursuant to the complaint (**Exh.PZ**), dated 21.08.2008, of Subedar Major Ghulam Rasool, (PW 31) (**'complainant'**), crime report No.556 dated 21.08.2008 was registered at the Police Station, Wah Cantt. District Rawalpindi. According to the reported facts recorded in the crime report, two persons had detonated explosive laden jackets worn by them at two distinct locations near the main gate and gate no. 1 of Pakistan Ordnance Factory, respectively. The first explosion took place when the suicide bomber detonated the explosives at the main gate and it was followed by another suicide bomber detonating the explosives at gate No.1 within a few seconds. According to the

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prosecution's story, seven young persons were witnessed by the complainant, Naib Subedar Muhammad Rafique (PW-18), Havaldar Muhammad Aslam (PW-17) and Subedar Munawwar Hussain, exiting a mosque within the gated premises. The complainant and Naib Subedar Muhammad Rafique (PW-18) went towards gate No.1 to perform their duties while Havaldar Muhammad Aslam (PW-17) and Subedar Muhammad Hussain proceeded towards the main gate. Four out of the seven young men were seen going towards the main gate while the remaining stayed back. It was about 2 pm and at this time the employees were coming out of the work premises because their duty hours had ended. One of the suicide bombers blew himself up at the main gate, followed by the other detonating his explosive laden jacket at gate No.1. The complainant and Subedar Muhammad Rafique (PW-18), who were performing their duties at gate No.1, managed to apprehend the appellant while the other two escaped from the crime scene. The two suicide attacks had led to the loss of life of sixty-nine innocent persons, besides causing grievous injuries to a large number of employees. The appellant was wearing a suicide jacket and was also in possession of a hand grenade. Some other personal items were also recovered from his possession before the police officials arrived. Abdul Sattar, Inspector (PW-30), who was then posted as the Incharge of Police Station, Wah Cantt. claimed to have reached the crime scene within five to ten minutes of the two explosions. The complainant handed over to him the apprehended appellant along with the suicide jacket, grenade and other personal items which were recovered during his personal search. Abdul Sattar, Inspector (PW-30) conducted the investigation and recovered various items from both the crime scenes. Fazal Ellahi (PW-32), from the bomb disposal squad, also reached the crime scene at about 3:30 p.m. Constable Amir Mahmood (PW-19) had delivered the sealed suicide jacket, two hand

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grenades and pellets at the office of the Bomb Disposal Squad, Rawalpindi ('**BDS**') on 27-08-2008. On the same day the items were returned along with the report prepared by the BDS. The evidence brought on record shows that information provided by the appellant had led to a raid on a house located in Akora Khattak in Khyber Pakhtunkhwa Province from where explosives were recovered. A separate case was registered at the Police Station, Akora Khattak. The investigation was transferred to Sadaqat Khan (PW-26), who had taken charge as Incharge police station Wah Cantt. The appellant was stated to have disclosed the identity of two other co-accused i.e. Maqsood Ahmed and Feroze Din. The co-accused could not be arrested and, therefore, on completion of proceedings they were declared as proclaimed offenders. After the framing of the charge against the appellant the prosecution produced 33 witnesses while the remaining were given up. The appellant had not pleaded guilty to the charge framed against him. He had opted not to be examined under oath and, therefore, his statement under Section 342 of the Cr. P.C. was recorded. After the conclusion of the trial, the appellant was convicted under sections 120-B, 302, 324, 435 and 436 of the Pakistan Penal Code, 1860 ('**PPC**'). Sentences handed down by the trial court included the capital punishment i.e. the sentence of death. The trial court sent a reference to the High Court under section 374 of the Code of Criminal Procedure, 1898 ('**Cr.P.C.**') for confirmation or otherwise of the death sentence. The convictions and sentences were also challenged by the appellant and the appeal was dismissed by the High Court while the death sentence was confirmed by answering the reference in the affirmative *vide the* impugned judgment, dated 1.2.2016. As already noted above, the jail petition filed by the appellant was converted into an appeal *vide* leave granting order dated 15.09.2021.

3. We have heard the learned counsel for the appellant and the learned Deputy Prosecutor General, Punjab.

4. The terrorists had struck at two distinct locations inside high security premises. Two suicide bombers had detonated explosive laden jackets at gate no 1 and the main gate of the premises, which had led to the loss of the lives of sixty-nine innocent citizens and many others had sustained serious injuries. There could not have been a more heinous and atrocious crime than what had happened in this case. The appellant, as claimed by the prosecution, was apprehended from the crime scene. He was wearing an explosive laden jacket and was in possession of a hand grenade.

5. It is settled law and a fundamental principle of criminal jurisprudence that it is the obligation of the prosecution to prove its case against an accused beyond any reasonable doubt. In case the prosecution fails to do so then the accused is entitled to the benefit of doubt as of right¹. The conviction can only be based on unimpeachable, trustworthy and confidence inspiring evidence brought on record by the prosecution. It is also a well settled principle that for extending the right of benefit of doubt it is not necessary that there should be many circumstances creating uncertainty. Even if a single circumstance creates a reasonable doubt in a prudent mind about the guilt of an accused, then the latter is entitled to such benefit 'not as a matter of grace and concession but as of right'².

6. We have carefully gone through the evidence brought on record by the prosecution in the case before us. Was the prosecution successful in proving the guilt of the appellant beyond a reasonable

¹ Ayub Masih v. The State (PLD 2002 SC 1948)

² Muhammad Nawaz and another v. The State and others (2024 SCMR 1731), Khial Muhammad v. The State (2024 SCMR 1490), Tariq Pervez v. The State (1995 SCMR 1345), Abdul Qadeer v. The State (2024 SCMR 1146), Muhammad Zaman v. The State (2014 SCMR 749)

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doubt through unimpeachable, trustworthy and confidence inspiring evidence? The prosecution's story claims that the appellant was present at the crime scene and he was apprehended while attempting to escape immediately after one of the terrorists had detonated the explosives laden in the jacket which he was wearing. The appellant was apprehended by Subedar Major Ghulam Rasool (PW-31) and Subedar Mohammad Rafiq (PW-18) as was deposed by them. Both have testified that when the appellant was apprehended, he was wearing an explosive laden jacket and was holding a hand grenade. Subedar Mohammad Rafiq (PW-18) had stated that when the appellant was apprehended, he did not make any attempt to detonate the explosive laden jacket, while Subedar Major Ghulam Rasool (PW-31) had deposed that the appellant had struggled to free himself and had also tried to detonate the explosives. The latter had deposed that he was not familiar with how a jacket laden with explosives operates. It is not disputed that the appellant was handed over to Inspector Abdul Sattar (PW-30) when he arrived after five to ten minutes after the explosions. The suicide jacket laden with explosives and the hand grenade were also handed over to him separately. The jacket and the hand grenade were defused by Fazal Ellahi (PW-32) as was testified by him. Inspector Abdul Sattar (PW-30) had also stated that when the jacket laden with explosives was handed over to him its wires were disconnected. As already noted, Subedar Major Ghulam Rasool (PW-31) had explicitly stated that he was not familiar how such a jacket operated. No other witness had deposed having been trained in managing a jacket laden with explosives and worn by a human. After apprehending the appellant, Abdul Sattar (PW-30) had arrived at the crime scene within five to ten minutes after the explosion and the explosive laden jacket was handed over to him which was later defused by Fazal Ellahi (PW-32). The jacket was worn by the appellant when he

was apprehended by the two witnesses. They were not familiar with how it operated. When it was handed over to the Investigating Officer on his arrival its wires were disconnected. There is nothing brought on the record to explain how and by whom the jacket was unwired and removed in the five or ten minutes during which the appellant was apprehended and the Investigating Officer had arrived. There is also no explanation as to how the jacket was removed and its wires disconnected by persons who had acknowledged that they were not familiar with its management or operation. Who had disconnected the wires in the jacket and had taken it off from the body of the appellant? Why did the appellant not detonate it and what happened in the five to ten minutes during which the appellant was apprehended followed by the arrival of Inspector Abdul Sattar (PW-30)? Moreover, the latter, in his cross examination, contradicts his own statement recorded in the examination in chief and also that of the complainant regarding the complaint i.e whether it was given in writing or the crime report was registered pursuant to an oral statement. The crime report is silent regarding the hand grenade recovered from the appellant at the time when he was apprehended and his search was carried out by the complainant. Inspector Abdul Sattar (PW-30) had deposed that the two grenades were sent to the Bomb Disposal Squad on 27-08-2008 so that they could be defused while his statement was contradicted by Fazal Ellahi (PW-32). All these are not minor contradictions, rather, they raise serious questions regarding the reliability of the testimonies of the witnesses regarding apprehending the appellant while wearing a jacket laden with explosives and the recovery of a hand grenade before the arrival of the Investigating Officer i.e PW-30.

7. There is another crucial aspect of this case which raises questions regarding the presence of the witnesses at the crime scene

when the explosives were detonated. The star witness, Subedar Ghulam Rasool (PW-31), stated that there were no instruments to communicate with each other while Subedar Munawar Hussain (PW-17), who was performing his duties at the main gate, deposed that after the suicide bomber had detonated the explosives there, he had immediately informed the complainant on the other gate. Though this witness was not present when the appellant was claimed to have been arrested yet he had deposed that the latter did not attempt to detonate the explosives laden in his jacket. Most interestingly, the prosecution did not produce any document in evidence to establish that the witnesses were on duty on the day of occurrence from 2 pm. It is noted that the witnesses were on duty in sensitive premises. They were members of a disciplined force. During cross examination, Subedar Major Ghulam Rasool (PW-31) had deposed that no entry is made in a register regarding the duty performed by supervisors. He did, however, acknowledge that a record is maintained regarding the duties performed by the subordinate staff. Nonetheless, no duty roaster nor any other document was brought on record to establish that the witnesses were present and performing their duties when the dastardly incident had taken place. He had stated in his deposition that there were six other officials on duty with him when the occurrence took place but no record was tendered in evidence. He had further deposed that he was at a distance of 30 paces from the place when the explosives were detonated. According to his testimony the accused was also at the same distance. The suicide bomber, who had detonated the explosives, had also used pellets which had caused severe injuries to several innocent victims in a large radius. There is no explanation as to how the complainant, the six officials accompanying him, the accused and the two unidentified co accused remained unharmed. The presence of the witnesses at the crime scene has not been proved

through unimpeachable evidence, nor that the appellant was apprehended in the manner as was deposed by them. It does not appeal to a prudent mind that the appellant and the complainant, who were 30 paces from the suicide bomber when the explosion took place, would remain unscathed or, in that situation of extreme distress and commotion, someone would not only identify but apprehend another person wearing a jacket laden with explosives. It was an incident in which the impact and its harm was seen much further than thirty paces.

8. The prosecution was also required to establish that the jacket was laden with explosives and that the two grenades contained explosives. The prosecution did not send the jacket nor the grenades for analysis to a notified Forensic Laboratory. On 27-08-2008 the jacket, two grenades and pellets were sent to the District Civil Defence, Rawalpindi. The latter, on the same day, examined the items and sent a report. There is nothing on record to show that the explosives were sent to a notified recognized laboratory or that the District Civil Defence, Rawalpindi was an established expert having appropriate facilities to give a conclusive opinion. It would, therefore, not be safe to rely upon the report of the District Civil Defence, Rawalpindi, for the purposes of the conviction of the appellant. The prosecution did not bring on record any evidence to establish that the appellant was a member of a proscribed organization nor that he was motivated by or was working for a terrorist group. It would be appropriate for us not to make any observation regarding the alleged recovery of explosives from District Akora Khattak lest it may prejudice the trial pending before a competent court pursuant to registration of a separate criminal case. In our opinion, in this case the prosecution had failed to discharge its obligation of proving the guilt of the appellant beyond a reasonable

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doubt. The conviction and sentences handed down by the trial court and upheld by the High Court are therefore not sustainable. The appellant is thus acquitted from all the charges framed against him by extending the benefit of doubt as of right.

The above are the reasons for our short order dated 14.01.2025.

Islamabad the

14th January, 2025

'APPROVED FOR REPORETRING'

M. Azhar Malik/Rameen Moir, LC*