

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa, CJ
Mr. Justice Gulzar Ahmed
Mr. Justice Sh. Azmat Saeed

Criminal Appeal No. 103 of 2019

(Against the judgment dated 10.03.2015 passed by the Lahore High Court, Lahore in Criminal Appeal No. 302 of 2009)

Nadeem Hussain

...Appellant

versus

The State

...Respondent

For the appellant: Ms. Aisha Tasneem, ASC

For the State: Mr. Muhammad Jaffar, Deputy
Prosecutor-General, Punjab

Date of hearing: 11.07.2019

JUDGMENT

Asif Saeed Khan Khosa, CJ.: Nadeem Hussain appellant and some others were allegedly involved in two suicide bombings at the gate of and inside the premises of the Pakistan Naval War College, Mall Road, Lahore on 04.03.2008 at 12.50 P.M. in which incident three persons had died and 18 others, including some officers and officials, were injured. In respect of the said incident FIR No. 149 was registered at Police Station Race Course, Lahore on the same day and after a regular trial the appellant was convicted by the trial court on three counts of an offence under section 302(b), PPC read with section 109, PPC and was sentenced to imprisonment for life and to pay compensation on each of such counts besides having been convicted and sentenced for offences under section 7(a) read with section 21-I of the Anti-Terrorism Act, 1997, section 3 of the Explosive Substances Act, 1908 read with section 109, PPC, section 324, PPC read with section 109, PPC,

section 427, PPC read with section 109, PPC and section 353, PPC read with section 109, PPC. The appellant challenged his convictions and sentences before the High Court through an appeal which was dismissed and all his convictions and sentences recorded by the trial court were upheld and maintained. Hence, the present appeal by leave of this Court granted on 08.02.2019.

2. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

3. It is admitted at all hands that the appellant had not been nominated in the FIR in any capacity whatsoever and it was at some subsequent stage that he was implicated in this case as an accomplice of his co-accused. During the trial the prosecution had produced some pieces of circumstantial evidence only as there was no direct evidence available against the appellant. The first piece of evidence produced by the prosecution *vis-à-vis* the present appellant was the statement made by Muhammad Iqbal Younis (PW43) who had claimed that the appellant and some others were introduced to him by Abdul Hameed *alias* Watto co-accused during an assemblage at Raiwand but admittedly no specific utterance on that occasion was attributed to the appellant by the said witness. The second piece of evidence produced against the appellant was again through the statement made by the above mentioned Muhammad Iqbal Younis (PW43) who had claimed that on the date of the present occurrence the said witness had visited a computer shop of the appellant whereat he had seen Abdul Hameed *alias* Watto and Imran Mota co-accused and two unknown persons who had given some jackets to the said two unknown persons and then Abdul Hameed *alias* Watto and Imran Mota co-accused had taken those two unknown persons with them for the purpose of causing blasts at the Pakistan Naval War College, Lahore. We have gone through the statement made by Muhammad Iqbal Younis (PW43) before the trial court and have found that he had never stated that at the time of his seeing the co-accused at the computer shop the

appellant was also present on that occasion or that he was involved in providing jackets to the unknown culprits and taking them to the scene of the crime. We have also observed that it had nowhere been established by the prosecution that the shop in issue actually belonged to the appellant or was in his possession in any other capacity. The third piece of evidence produced by the prosecution against the appellant was that he was arrested from a shop and from that shop some explosive substance, etc. had been recovered. In that respect we have found that no Memorandum of Recovery *vis-à-vis* recovery of the explosive substance, etc. had been brought on the record of the case and it had never been proved by the prosecution that the appellant had any connection with the said shop. The next piece of evidence produced by the prosecution against the appellant was that the Registration Book relevant to one of the motorcycles used in the main incident was recovered from the appellant's possession but after going through the record of this case from cover to cover we have found that no Memorandum of Recovery regarding Registration Book having been recovered from the appellant was brought on the record of the case throughout the trial. The last piece of evidence relied upon by the prosecution against the appellant was the statement of Babar Bakht, S.P. (PW37) who had claimed that on 25.04.2008 the appellant, while in custody, had made a confession which was recorded under section 21-H of the Anti-Terrorism Act, 1997. We have straightway noticed that the said confessional statement attributed to the appellant was not signed or thumb-marked by the appellant. A confession before the police is inadmissible in evidence in normal cases but in cases of terrorism section 21-H of the Anti-Terrorism Act, 1997 has made such a confession before the police conditionally admissible. The condition placed by the said section upon admissibility of such a confession before the police is that there must be some other evidence, including circumstantial evidence, which must reasonably connect the accused person with the alleged offence before a confession made by the accused person before the police is accepted by a court worthy of any consideration. Such conditional admissibility of a

confession before the police is contingent upon availability of some other evidence connecting the accused person with the alleged offence but in the present case, as we have already discussed above, all the other pieces of evidence relied upon by the prosecution against the appellant had utterly failed to connect the appellant with the alleged offences. In this view of the matter the case in hand was not a fit case wherein the trial court could even consider the confession before the police attributed to the appellant. As if this were not enough, the record of the case shows that Muhammad Hanif, Inspector (PW41), one of the investigating officers, had stated before the trial court in black and white that during the investigation no connection between the appellant and his co-accused had been established and this statement of the said investigating officer had been fortified by the statement made by another investigating officer namely Muhammad Yaqoob Awan, Inspector (PW39) who had conceded before the trial court that during the investigation nothing had been recovered from the appellant's possession.

4. For what has been discussed above a conclusion is inescapable and unavoidable that the prosecution had failed to prove its case against the appellant beyond reasonable doubt. This appeal is, therefore, allowed, the convictions and sentences of the appellant recorded and upheld by the courts below are set aside and he is acquitted of the charge by extending the benefit of doubt to him. He shall be released from the jail forthwith if not required to be detained in connection with any other case.

Chief Justice

Judge

Judge

Islamabad
11.07.2019

Approved for reporting.

Arif