

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ASIF SAEED KHAN KHOSA
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

Criminal Appeal No.218 of 2015
And Jail Petitions No.249 & 454 of 2015

(On appeal from the judgment dated 27.1.2015
passed by the Lahore High Court, Rawalpindi Bench
in Crl.Appeal No.706-T of 2010 and Crl.Appeal
No.707-T/2010)

Intekhab Ahmad Abbasi (in Crl.A.No.218/15)
Zafar Ali (in JP 249/15)

And

- (i) Muhammad Kabeer
- (ii) Muhammad Ishaq @ Kamran
- (iii) Qamar Zaman
- (iv) Abid Khan

(in JP 454/15)

...Appellant/Petitioners

VERSUS

The State etc.

... Respondent(s)

For the appellant(s): Mr. Basharatullah Khan, ASC
Syed Rifaqat Hussain Shah, AOR
(in Crl.A. 218/15)

For the Petitioners: Nemo in both

For the State: Mr. Muhammad Jaffar, DPG, Pb.

Date of hearing: 30.11.2017

JUDGMENT

Dost Muhammad Khan, J.—

Jail Petitions No.249 and 454 of 2015 are barred by 259 days, however, vide Crl.M.A No.1573/15 condonation of delay has been sought on valid reasons, therefore, delay in filing of these jail petitions is condoned. Crl.M.A. is disposed of.

2. At a trial, held by the learned presiding Judge, Anti-Terrorism Court Rawalpindi/Islamabad, appellant Intikhab Ahmad

Abbasi (in Crl.Appeal No.218/2015), petitioner Zafar Ali (in JP 249/15) and petitioners of Jail Petition No.454/2015 namely, (i) Muhammad Kabeer (ii) Muhammad Ishaq @ Kamran (iii) Qamar Zaman and (iv) Abid Khan were convicted and were sentenced to life imprisonment u/s 120-B PPC read with section 7 ATA with fine of Rs.2,00,000/- or in default thereof six months S.I.. They were further sentenced to life imprisonment u/Ss.4 & 5 of the Explosive Substances Act, each on each count. They were sentenced to seven years R.I. u/s 420 PPC with fine of Rs.50,000/- or in default thereof to suffer three months S.I., excluding petitioner No.2 in JP No.454/15. U/s 468 read with S.471 PPC, each one was sentenced to seven years R.I. with fine of Rs.50,000/- each or in default three months S.I. each, except petitioner No.2. While their co-accused namely, (i) Muhammad Sajjad (ii) Muhammad Zameer (iii) Farhan Mehmood (iv) Abdul Sattar and (v) Noor Muhammad @ Ustad Jee were acquitted on the basis of benefit of doubt. The sentences awarded to the convicts were directed to run concurrently with benefit of S.382-B Cr.P.C.

3. This single judgment shall also decide connected Jail Petitions No.249 and 454 of 2015 being the outcome of the same judgment and because evidence and questions of law involved are identical.

Prosecution Story:

4. The initial story set up in FIR No.291/08 is that on a source report of intelligence network that, some explosive laden vehicles have entered Rawalpindi and the terrorists are likely to explode the same at important public places to cause massive destruction, both of property and human life, all law enforcing agencies/police were put on alert.

5. On 6.6.2008, SHO PS Sadiq Abad, Rawalpindi on a tip off that the vehicles were parked in Awan Service Station parking lot, situated in Dhoke Kala Khan and the terrorists were likely to make departure for the target therefore, he along with the police party of the PS and companies of Elite Force reached there immediately, cordoned off the area and found (i) Abdul Manan of Murree, district Rawalpindi (ii) Abid Khan, district Tank (iii) Muhammad Ishaq, Gulbahar Colony, Peshawar (iv) Muhammad Kabeer, Havelian, district Abbottabad (v) Qamar Zaman of district D.G. Khan and (vi) Zafar Ali of Darra Adam Khel (F.R Kohat), standing thereby, who on seeing the heavy contingent got into the three vehicles however, they were brought down. On search of the vehicles, from the corolla car four pressure cookers full of explosive and two tins of milk also full of explosive, nuts and bolts were recovered. From Land-cruiser, No. LXH 7860 five pressure cookers packed with explosive, three milk containers of the same nature, two plastic containers full of diesel fuel, while from land-cruiser No.JH-175 six pressure cookers and two milk containers full of explosive, two plastic cane full of diesel fuel, three small bags containing nuts and bolts were recovered. All of them were arrested, as the accused had planned to indulge in subversive activities, causing mass devastation, both of life and property. The "*Murasla*" report for crimes u/Ss. 7 ATA, 120-B PPC and sections 4 & 5 of the Explosive Substances Act was allegedly sent to the Police Station where the above FIR was registered at 8:40 am on the same day i.e.6.6.2008.

6. In view of the nature of the crime, the Ministry of Interior, Government of Pakistan, constituted JIT comprising officers of FIA and a Deputy Superintendent of Police. During interrogation Abdul Manan accused arrested on the spot, happened to be Intikhab Ahmad Abbasi,

appellant. During the course of investigation further recoveries were made at the instance of the petitioners from the other set of acquitted accused.

7. The JIT through self crafted design, gave another colour to the alleged crime, portraying that the accused were deputed and sent by the then terrorist commander Bait-Ullah Mehsud (dead) Qari Hussain and others to assassinate General(R) Pervez Musharraf, the then head of the State and Army. It was brought on record that at some occasion unsuccessful attempt was made on his life when the accused in the three explosive laden vehicles chased his cavalcade from Rawalpindi to Islamabad but due to mechanical fault caught by one vehicle, they could not execute the plan and returned unsuccessful. One Mansoor was shown as their handler at Rawalpindi who had hired room for accommodating the accused but that place is still untraced.

8. Thereafter, as the story goes they were directed to strike at the GHQ with explosive laden vehicles to assassinate General (R) Pervez Musharraf however, before executing the second plan they were apprehended by the police in the above manner.

9. Cases of such nature creating that much of sensation always receive wide publicity like in this case when the attention of print and electronic media both, national and international was attracted. Therefore, in the appraisal and re-appraisal of evidence courts are required to take extra degree of caution so that it might not be led to a wrong conclusion due to over-smarting design of the investigating agency.

10. Majority of the accused from whom large quantity of the same kind of explosive powder was recovered at the instance of the present accused, have been acquitted by both the Courts below, disbelieving the major portion of the prosecution case.

The Prosecution itself has divided its case into three separate parts, which are as follows: -

- “(i) The arrest of the petitioners/appellant along with explosive laden vehicles, which were connected with the batteries of the vehicles and push buttons on the front panel, to be detonated and cause explosions;*
- (ii) that, some of the accused had received the command and directions personally from the notorious commander Bait-Ullah Mehsood and two other commanders, referred to above, to carry out the suicidal attacks on General (R) Pervez Musharraf and for their safe stay, their handler namely Mansoor had hired room somewhere, where the accused were to take rest at night;*

and
- (iii) except Intikhab Ahmed Abbasi, appellant, the rest of the accused/petitioners confessed their guilt and the story of the Prosecution so set up received confirmation.”*

11. 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. Even the register maintained in the office of the service station showing the entries about the parked vehicles and its particulars was not taken into possession rather it was arranged after many days. The said register was containing loose sheets, blank pages and the rest were half filled besides that the most disturbing aspect of the matter is that all the three vehicles laden with explosive substance (potassium chloride) were not mentioned therein and they were shown one day earlier at one page. Who was the author of these entries and who among the three was maintaining the register, still remains a begging question yet to be answered, as on 14.6.2008 while taking the said register into custody, the owner of the premises, Raja Qaiser, his brother Faisal Shabbir and Caretaker Sajawal were present but none of them was examined to ascertain the authorship of the entries in the register. None of the three was cited as a witness in the calendar nor anyone of them was produced at the trial and once the learned courts below discarded this piece of primary evidence, the same had rendered the entire story about the arrest of the accused with explosive laden vehicles from the above premises has become unreliable. The noticeable contradictions amongst the prosecution witnesses interse apart, the two learned courts below have rightly discarded this primary piece of evidence and in the absence of that no reliance can be placed on the testimony of highly interested prosecution witnesses when the

fairness and honesty in the course of investigation from the very inception has become a fantasy and drastically eroded.

Even the report of NADRA about the forged identity cards allegedly recovered from the accused was not brought on record at the trial to prove the charge of forgery.

12. The Head of the J.I.T., Nasrullah Gondal, Assistant Director, FIA (PW-18), to whom the accused and the explosive laden vehicles were handed over by the SHO, Police Station, Sadiqabad, Rawalpindi, when was asked by the defence, could not trace out or refer any case diary showing the number of the vehicles and other articles entrusted to him on 7.6.2008. He also could not tell the trial court that the appellant/petitioners had made several complaints to the Judge, Anti-Terrorism Court, Director General, FIA and other authorities against the mode and manner of the investigation and to record their defence plea. It is a matter of record that all the accused were kept under tight security and during transit to the court or way back, the level of high security was further enhanced. It is absolutely unbelievable that this witness did not know about the nature of the complaints lodged by the accused when he was the Incharge/Head of the JIT all the times. The inference would that he has deliberately suppressed the truth from the court. He also admitted cuttings, over-writings and interpolation made in the recovery memos about the quantity of the explosive substance, recovered from the accused. The substituted entries were not initialed by him. He also admitted at the trial that no Prado Jeep was mentioned in the register of Awan Service parking Lot rather Pajero Jeep was mentioned and even the initial date of recovery was scored off and was substituted by 8.6.2008.

13. It is also a matter of record that the accused suffered many injuries during their custody, however, an unbelievable and amazing story was tailored that these injuries were suffered by the accused when they were taken to Wah Cantt/Taxila to point out the house of another accomplice but when they could not do so, while coming back the accused jumped at the metalled road, started rolling thereon and sustained the injuries. To muffle and burry deep the torture given to the accused, he got treated the injured accused from a private clinic instead of taking them to the government hospital. The legitimate inference would be that due to severe torture, when the accused got frustrated and had broken down and when they could not point out the house of the so called accomplice they were treated ruthlessly.

Another vital aspect of the case is that potassium chloride allegedly recovered from the accused, was described as explosive substance, however, the chemical formula of explosive substance is 'potassium nitrate/black powder, sulphur, phosphorus nitrate, powder aluminum or grain dust, potassium chlorate and many other chemicals if are mixed together, would constitute high intensity explosive substance to cause massive destruction/devastation through explosion, therefore, a question arises as to whether potassium chloride recovered in this case is a sole ingredient, which could be termed high intensity and of velocity explosive substance to destroy a well-fortified building/structure and cause destruction of both life and property. The report of the incharge BDS thus appears to be inconclusive and it cannot be categorized to be a right opinion on the subject.

14. According to the consistent stance, the conspiracy punishable u/s 120-B PPC was hatched in South Waziristan and Miran Shah, the headquarter of North Waziristan however, none of the accused was taken to those places to point out as the investigating agency could have easily undertaken that process with the permission of the Interior Ministry, thus, the offence u/s 120-B PPC remained un-established.

It is the prosecution case that the accused have not undergone any tough training to carry out the assigned task. The nation is victim of the terrorist activities which are carried out by highly trained and skilled terrorists and the militant commanders would never venture to send such raw hand and inexperienced persons for targeting the most high profile person and the place like GHQ. Even the accused were not taken to the place for pointing out where they first made unsuccessful attempt on the cavalcade of the then Chief of Army Staff and this part of the story is till a mystery. How the accused knew about the layout plan and about the location of the office of the Chief of Army Staff when no map or guideline materials were recovered from them, is another lacuna in the case.

15. Within no time after the arrest of the accused '*Murasla Report*' was sent for registration of the case and Section 120-B PPC was also inserted therein, when by then, the accused were neither interrogated nor they had disclosed about the place, time where they hatched the conspiracy and that too in FATA areas. This fact by itself would suggest that the investigating agency from the very beginning virtually acted under the influence of self-crafted theory of labeling the case of a high profile. Till the close of the investigation they could not wriggle out of that influence and did not act with fairness and application of

independent mind. To the contrary, every effort was made albeit fallaciously to score points in the subject case after it had got extraordinary publicity and to earn undue fame at the cost of life of the accused.

16. It is not denied that before the present occurrence two unsuccessful attempts at the life of former Chief of Army Staff were made. In the first one, a time/remote control device was detonated under the bridge when the cavalcade of the then General had hardly passed through the same. The second one was the most dreadful suicidal attack which was made on his cavalcade on 25th December, 2003 near 'Jhanda Cheechi', Rawalpindi when explosive laden vehicle was blasted near his car and he narrowly escaped. It is a hard fact that after the second attack it was decided firmly to trace out the mastermind and all suspects involved in such attacks/terrorist activities. A massive hunt was launched by all the law enforcing agencies and many suspects were arrested and many were released after tough interrogation. Judged from this angle, the plea of the appellant/petitioners gets support that they were arrested earlier by some agency personnels and after long detention were then handed over to the local police.

17. Considering the case in the above background, it would be fair to draw an inference that the accused were coerced and pressurized to make confession after remaining in the custody of the J.I.T. for many weeks blindfoldedly at unknown places.

18. It is an admitted fact that the petitioners (i) Abid (ii) Ishaq (iii) Qamar were produced before the area Judicial Magistrate on 24.6.2008 but they refused to make confessions thus, they were

remanded to judicial custody (prison). It is highly shocking and no prudent mind would believe the false story that when these accused were brought out of the court, at that point of time they disclosed to make confessions when by then they were to be out of the clutches and reach of the investigating agency. Here, intrigues were pressed into service and instead of complying with the order of judicial remand of the accused, the investigating agency disregarding the same, applied to the District & Sessions Judge, Rawalpindi to depute Special Magistrate for recording their confessions. The confessions thus procured with the courtesy of the Special Magistrate besides being irregular, have lost judicial efficacy and legal worth. Out of the two Special Magistrates who recorded the confessions of two sets of the accused, one was subsequently appointed on a high post in the Directorate of Anti-Corruption probably as a reward for towing his judicial authority with the wish and will of the investigating agency.

The two special Magistrates have acted the police way, knowing well that the accused had remained for weeks in the custody of high profile investigating agency but all of them were given half an hour time to re-think and re-compose about the making of confession. During half an hour time accused were made to sit in the retiring rooms of the two Special Magistrates.

19. Another ludicrous mode adopted by the Magistrates was that on each confessional statement of each accused, the signatures of the Head of the J.I.T. were obtained. When confronted at the trial with this novel procedure they adopted, an artificial explanation was given to the effect that it was for the identification of the accused for making confession before them. Every human being invariably has some identification mark on his face, hands and trunk of the body which is

always considered sufficient in this regard. The legitimate inference would be that this abnormal course was adopted for the satisfaction of the in-charge of the investigation. It is a classic example of violating the most sacred judicial obligation and breach of duty.

20. Admittedly some of the accused were illiterate or under-metric while some were speaking Pashto. Both the Magistrates could not understand the words spoken by them but no translator/interpreter was appointed within the meaning of Section 543 of Code of Criminal Procedure to record their statements in the words exactly spoken by them. It is also strange enough that the investigating officer recorded the statements of both the Magistrates u/s 161 Cr.P.C. about the proceedings of the confession recorded by them, a phenomenon absolutely alien to the judicial realm.

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?

22. The Government and all the State institutions charged with such duty are required to chisel out the blunt tools i.e. the investigating agencies and the prosecution to come to the expectations of the people in the changed scenario. This requires allocation of sufficient funds for the purpose to impart high skill and knowledge to these agencies including training through foreign experts. At the same time modern digital forensic labs/center of excellences in the provinces and Federal Capital be established on urgent basis with highly qualified staff on the subject of forensic science so that the real culprits involved in such ruthless and detestable crimes are timely punished for the crimes they commit. Even mobile, digital forensic laboratory be provided as a back-up force to reach any place well in time to collect forensic evidence from the crime scene and the surroundings. Simply and exclusively relying on the armed forces and semi armed forces killing the terrorists in encounter is not a complete solution to the elimination of the monster evil of terrorism. The most effective tool is the prevention of such crime. Effective and skillful investigation of the same and efficient prosecution of the terrorist in judicial process before the Anti-Terrorism Courts would suppress and eliminate this menace of high magnitude, provided further that Anti-Terrorism Courts are equipped with modern gadgets and all facilities provided and full protection is given to the Presiding Judges of such courts, the Prosecutors, Investigators and the Prosecution Witnesses. This would

provide enough safeguards in recording of convictions in view of the newly emerging situation in the country.

23. To prevent the occurrence of such crimes, the combined network of all intelligence agencies shall be put into correct channel to timely share the intelligence so collected. If the intelligence network is properly organized and combined together it would effectively plug the funding and secret financial sources now falling into the hands of the terrorist organizations. It is also essential that security/guards deployed on important installations, sensitive public places and State institutions shall be provided modern arms & ammunitions with protection gadgets so that they may be able to protect such places/institutions, at random targeted by the terrorists. The amount to be spent on such useful objectives would certainly minimize the needed military operations going-on in the country at the heavy cost from the public exchequer. The impossible would become possible if the outreach of the agencies/law enforcing authorities is made formidable and extraordinarily effective. The present system suffers from many loopholes and deficiencies in many ways to counter the menace of terrorism. All these suggestions and recommendations may be forwarded to the concerned Divisions/Ministries and the departments of the Provinces and those authorities who are assigned the task to counter the terrorism and terrorist activities. If peace and tranquility is fully restored it would definitely attract heavy investment in the country.

After careful reappraisal of the evidence discussed above, we are entertaining no amount of doubt that the prosecution has failed to bring home guilt to the accused as the evidence furnished at the trial is full of factual, legal defects and is bereft of legal worth/judicial

efficacy, therefore, no reliance can be placed on the same. In view of the above discussion, Jail Petitions No.249 and 454 of 2015 are converted into appeals. All these three appeals including Crl. Appeal No.218 of 2015 are allowed by extending benefit of doubt to all the appellants and they are acquitted of all the charges leveled against them.

These are the detailed reasons for our short order of even date, which is reproduced below: -

"For reasons to be recorded later, Crl.Appeal No.218/15, filed by Intekhab Ahmad Abbasi is allowed and for similar reasons, Jail Petition No.249/15 filed by Zafar Ali and Jail Petition No.454/15 filed by Muhammad Kabeer, Muhammad Ishaq, Qamar Zaman and Abid Khan in case FIR No.291 dated 6.6.2018, registered by Police Station Sadiq Abad, District Rawalpindi for crimes u/Ss.420, 468, 120-B/471 PPC read with Ss.4 & 5 of the Explosive Substances Act and section 7 of the ATA, are converted into appeals and accordingly allowed. All the appellants are acquitted of all the charges leveled against them and all the above named appellants be set free forthwith if not required in any other case."

Judge

Judge

Judge

Islamabad, the
30th November, 2017
Nisar /-

"Approved For Reporting"