

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Manzoor Ahmad Malik  
Mr. Justice Mazhar Alam Khan Miankhel  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Appeal No.154 of 2020**

(Against the judgment dated 26.01.2015 passed by the Peshawar High Court Peshawar in Cr. A. No.174-P of 2014)

**Afzul-ur-Rehman**

...Appellant(s)

**Versus**

**The State**

...Respondent(s)

For the Appellant(s): Mrs. Kausar Iqbal Bhatti, ASC

For the State: Mr. Rizwan Ibrahim Satti  
State counsel

Date of hearing: 26.10.2020.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.**- An explosive laden truck, with the appellant on the wheel, was intercepted by a police contingent within the precincts of Police Station Banda District Kark at 17:20 p.m. on 4.6.2013; he was accompanied by Niaz Muhammad, since acquitted. Cache, considerable in volume, was forensically confirmed as high intensity explosive; it also included detonators and an hand grenade, secured vide inventory of even date. As the investigation progressed, the appellant, purportedly desired to make his breast clean; he was brought before a Magistrate on 6.6.2013, who recorded his confessional statement, reproduced below:

میران شاہ میں ڈرون حملہ ہوا جس میں ولی رحمان کمانڈر اور کل چھ افراد فوت ہوئے۔ اس کے بعد دیگر لوگ بھی بانڈھ میں مارے گئے۔ میں گاڑی چلاتا تھا اور مجاہدین میں شامل نہ تھا۔ مجھے کاشف نے کہا کہ آپ ٹرک ڈرائیور ہیں۔ میرے ساتھ مبلغ دس ہزار ماہانہ مزدوری پر خوبانی کوہاٹ لے جاؤ گئے۔ میں نے کہا کہ یہ تو پاک اور صاف مزدوری ہے۔ پھر ٹرک لوڈ کر کے مجھے حوالہ ہوئی۔ پھر مجھے کہا گیا کہ میں جنت کا طوطی ہوں اور ولی الرحمن کی موت کا بدلہ لینے کے لیے کوہاٹ ٹٹل پر خود کش حملہ کرو گے۔ پھر وہاں سے روانہ ہو کر کرک ضلع کی حدود میں میرا ٹرک کا ایکسیڈنٹ ہوا پھر کاشف نے مجھے کہا کہ میں خود کش حملہ کے لیے تیار ہوں یا نہ ہوں۔ تو میں نے کہا کہ میرا ضمیر مطمئن نہ ہے مجھے تو زور اور زبردستی سے لایا گیا ہے۔ پھر کاشف چلا گیا اور ٹرک مجھے حوالے کیا۔ مجھے امیران نے فون کیا کہا کہ آپ نے پشتو میں کہا کہ کاشف بھاگ گیا ہے۔ اور گاڑی بنی مون/بادی گل ہوٹل میں کھڑا کیا ہے۔ مجھے فون پر کہا کہ پلٹنا نہیں دوسرا بندہ /کلینر بھیجتے ہیں۔ پھر سید محمد آیا۔ پھر میں وزیرستان بلایا گیا۔ پھر ہمیں جب وہاں زور دیا گیا اور کہا گیا کہ اپنی جانیں اڑاؤ۔ زندہ واپس نہ آئے۔ پھر واپس آکر رہبر آگئے اور ہم خود کش حملہ کے لیے ٹٹل روانہ ہوئے۔ اور جب وہ لاچی بازار میں رہبر کی گاڑی تباہ ہو گئے تو میں نے اور سید محمد نے آپس میں صلاح کی کہ ہمیں جج جو سزا دے ہمیں قبول ہے مگر خود کش دھماکہ نہیں کرتے۔ سید محمد نے مجھے کہا کہ آپ نے بڑی اچھی بات کی ہے۔ رہبر کوہاٹ کی جانب چلا گیا اور ہم ٹرک

لے کر کرک کی جانب روانہ ہو کر بنوں کو واپس کرنے لگے۔ اس کے بعد جب باندھ پہنچے اور چیک پوسٹ کے قریب ہوئے تو پولیس نے ہمیں ہاتھ دیا تو میں نے سید محمد سے کہا کہ نیچے اتر کر پولیس والوں سے کہو کہ کوئی فائر نہ کر دیں کہ ٹرک میں بارود ہے پھٹ نہ جائے۔ پھر پولیس نے ہلٹ کھینچی۔ میں نے اتر کر نیچے پانی میں چھلانگ لگا کر ہاتھ کھڑے کیے اور سید محمد نے موقع پر گرفتاری دی۔ میں نے خود گرفتاری دی اور خود کش بٹن نہیں دبایا کیونکہ میں اللہ سے ڈر گیا تھا اور خود کش سے انکار کیا میں معافی کا درخواستگار ہوں۔ سن کر درست تسلیم کیا۔

Upon indictment, however, the appellant claimed trial. The learned trial Judge vide judgment dated 20.3.2014 convicted and sentenced both the accused as under:

- (i) “U/s 5 of Exp Sub Act 1908 (Act OV of 1908) 14-years (R.I)
- (ii) U/s 7 ATA 1997 (Act No.XXVIII of 1997) 14-years (R.I)  
*Forfeiture of whole property to the Government as envisaged u/s 5-A of Exp Sub Act 1908 (Act IV of 1908) Sentences to run consecutively with benefit of section 382-B Cr.P.C.”*

A learned Division Bench of the Peshawar High Court acquitted Niaz Muhammad co-accused, however, maintained appellant’s conviction and sentences consequent thereupon vide impugned judgment dated 26.01.2015 *vires* whereof are being assailed through leave of the Court on the grounds that retracted confession notwithstanding, appellant’s voluntary surrender before the police, by his own volition and will, is manifestly established on the record which in retrospect confirms that he saved the neighbourhood from an impending calamity by taking the unsuspecting police contingent into confidence and in this backdrop his role was more accessory to the State than to the crime; he contends that confessional statement, attributed to the appellant, being exculpatory, is of no avail to the prosecution and that acquittal of identically placed co-accused by the High Court raised the entire edifice to the ground. Alternately it is prayed that in the peculiar facts and circumstances of the case, referred to above, reduction in the sentence would meet the ends of justice, as although the case was triable by a Special Court constituted under the Anti Terrorism Act, 1997, however, in view of the law declared in the case of Ghulam Hussain Vs. The State (PLD 2020 SC 61), appellant’s conviction under section 7 of the Act *ibid* was not called for, concluded the learned counsel. The learned Law Officer contrarily defended the judgment; he argued that interception of truck loaded with explosive of awful lethality being transported by the appellant conclusively established his guilt and in the face of overwhelming evidence, retraction from judicial confession is nothing more than a belated attempt to hoodwink the process of law.

3. Heard. Record perused.

4. Prosecution with various pieces of evidence has successfully established interception of a truck that carried huge cache of explosive with devastating destructive potential. Appellant's arrest is a factum above suspicion. Investigative details accompanied by forensic report clinched the charge. The appellant confessed his guilt before a Magistrate after he was already remitted into judicial custody. Contents of the confessional statement, purposely detailed in extenso, unmistakably suggest a change of mind whereunder the appellant appears to have deviated from the course, he was destined to charter; better sense that timely swayed the appellant not only saved him and his companion from being shattered beyond recognition; it also gave a new lease of life to a most valuable national communication link. The police contingent that intercepted the truck had no idea about the destructive capacity of the cargo that it carried; they also luckily remained unscathed. Appellant's abstinence, seemingly actuated by a variety of possible factors, though a most fortunate choice, nonetheless, in the totality of circumstances, does not cast away culpability of his undertaking so as to make out a case for an unqualified reprieve without a tag; it, however, certainly extenuates, in no small measures, enormity of the charge and in retrospect entitles him to the premium of a charitable treatment, permissible by law, therefore, while maintaining his conviction under section 5 of the Explosive Substances Act, 1908, a course inescapable in circumstance, his sentence is reduced to the lowest mandated period of seven years R.I, pre-trial period inclusive. Directions regarding forfeiture of appellant's property as well as case property, that obviously included the impounded truck, are kept intact, however, his conviction under section 7 of the Anti Terrorism Act, 1997 and sentence thereunder, are set aside. Criminal appeal is partly allowed.

**Judge**

**Judge**

**Judge**

Islamabad, the  
26 October, 2020  
Not approved for reporting  
Azmat/-