

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

MR. JUSTICE MUHAMMAD ALI MAZHAR

**JAIL PETITION NO. 169 OF 2021**

(On appeal against the judgment dated  
16.03.2021 passed by the Lahore High Court,  
Lahore in Criminal Appeal No. 76554/2017)

Nazir Ahmed

...Petitioner(s)

**VERSUS**

The State

...Respondent(s)

For the Petitioner(s):

Mr. Sikandar Zulqarnain Saleem, ASC  
(Via video link from Lahore)

For the State:

Mirza Abid Majeed, DPG  
Mr. Haseeb Ashraf, D.O. CTD

Date of Hearing:

01.06.2023

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Petitioner was tried by the learned Special Judge, Anti Terrorism Court, Sargodha pursuant to a case registered vide FIR No. 43 dated 29.06.2016 under Sections 4/5 of Explosive Substances Act, 1908 read with Section 7 of the Anti Terrorism Act, 1997 at Police Station CTD, Faisalabad as explosive material weighing 1150 grams along with four detonators and two safety fuses were recovered from his possession. The learned Trial Court vide its judgment dated 14.09.2017 convicted the petitioner as under:-

- i) **Under Section 5 of the Explosive Substances Act, 1908**  
To undergo fourteen years RI and his whole property was forfeited to the government.
- ii) **Under Section 7(ff) of the Anti Terrorism Act, 1997**  
To undergo fourteen years RI with forfeiture of his property.

2. In appeal the learned High Court maintained the conviction and sentences recorded by the learned Trial Court. The prosecution story as given in the judgment of the learned High Court reads as under:-

"2. Brief facts of the case are that on 29.06.2016 the Complainant, Noor Muhammad/SI (PW-1), was patrolling with other police officials on Watta Khel Chowk, Mianwali, when he received a source information that Nazir Ahmad (the "Appellant") was waiting for someone at Hassan Chowk with a red and white cloth bag containing explosives and that he could be apprehended if an immediate action was taken. On this tip-off, the Complainant and his contingent reached that place and nabbed the Appellant on the pointing out of the informer. He checked his bag and found explosive substance weighing 1150 grams, one match box, four detonators and two safety fuses. On his personal search he recovered Rs.570/- from his pocket. The Complainant drew 20 grams from the recovered explosive substance and prepared a sampled parcel for chemical analysis. Then he secured the entire case property vide Recovery Memo Exh. PA, drafted the complaint Ex.PC and sent it to the Police Station CTD, Faisalabad, through Hammad Qadeer 791/CP on the basis of which Muhammad Shahid Anwar 720/CP (PW-3) registered FIR No.43/2016 Exh. PC/1 at 03:10 p.m."

3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced eight witnesses. In his statement recorded under Section 342 Cr.P.C, the petitioner pleaded his innocence and refuted all the allegations leveled against him. He did not make statement on oath as provided under Section 340(2) Cr.P.C in disproof of the allegations leveled against him. However, he produced some defence witnesses and documentary proof.

4. At the very outset, learned counsel for the petitioner contended that the petitioner has been falsely implicated in this case and the Police has planted the explosive material upon him. Contends that there are glaring contradictions and dishonest improvements in the statements of the prosecution witnesses, which have escaped the notice of the learned courts below. Contends that the learned courts below did not take into consideration the defence plea of the petitioner that he was kidnapped by the law enforcing agencies and was falsely framed in the picture with ulterior motives. Contends that none from the public was associated in the case and only official witnesses deposed against the

petitioner. Lastly contends that the reasons given by the learned High Court to sustain conviction of the petitioner are speculative and artificial in nature, therefore, the impugned judgment may be set at naught.

5. On the other hand, learned Law Officer has supported the impugned judgment. He contended that the petitioner was caught red handed while in possession of a huge quantity of explosive material and the Police officials had no enmity to falsely involve him in the present case. Contends that the prosecution has proved its case against the petitioner beyond shadow of doubt and mere technicalities cannot absolve the petitioner of his criminal liability.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.

7. It is the prosecution case that the petitioner was caught red handed while he was carrying a cloth bag, which contained explosive substance weighing 1150 grams wrapped in a polythene bag, four detonators wrapped in blue polythene, a match box and two safety fuses. Twenty grams explosive material was separated and was sent to Punjab Forensic Science Agency for chemical analysis. To bring home the guilt of the petitioner, the prosecution mainly relied upon the statements of Noor Muhammad, SI/complainant (PW-1), Ahmed Nawaz, SI (PW-2) and Khaliq Dad Khan, Bomb Disposal Commander (PW-5). Noor Muhammad (PW-1) and Ahmed Nawaz (PW-2) appeared to prove the factum of recovery whereas Khalid Dad Khan (PW-5) gave its report to the effect that the detonators and safety fuses were alive. These witnesses have narrated the prosecution story in a natural manner and remained consistent throughout and their testimony could not be shattered. These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the petitioner or adverse to the prosecution could be produced on record. Therefore, it can safely be concluded that the testimonies of these PWs are reliable, straightforward and confidence inspiring. The said witnesses had no enmity with the petitioner to falsely

implicate him in the present case. This Court in a number of cases has held that testimony of official witnesses is as good as any other private witness unless it is proved that they have animus against the accused. However, no such thing could be brought on record by the petitioner in this case. This Court has time and again held that reluctance of general public to become witness in such like cases has become judicially recognized fact and there is no way out to consider statements of official witnesses, as no legal bar or restriction has been imposed in this regard. Police/official witnesses are as good witnesses and could be relied upon, if their testimonies remain un-shattered during cross-examination. The parcel containing sample of recovered explosive substance was sent to the office of Punjab Forensic Science Laboratory and according to the report of the Agency the sample contained explosive material. During the course of proceedings, the learned counsel contended that there are material discrepancies and contradictions in the statements of the eye-witnesses but on our specific query he could not point out any major contradiction, which could shatter the case of the prosecution. It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored. The petitioner had taken a defence plea that he was arrested by CTD due to his relation with one Mukhtar, who was his cousin and belonged to TTB and was falsely framed in the picture with ulterior motives. It is worth mentioning that during the course of proceedings before the Trial Court, the petitioner did not opt to appear on oath in terms of Section 340(2) Cr.P.C. However, he produced defence

witnesses. When the person who is himself seized with first hand information does not appear on oath and only produces witnesses, this move lowers the sanctity of defence version simply for the reason that the accused was a best witness to depose entire detail as to when and who abducted him, what was the reason behind this, where he was kept, who brought him to the place of occurrence, why he was falsely involved in the case etc. When the petitioner took a specific plea and he was a best witness for the same then his non-appearance is to be taken as withholding of the best evidence. The learned High Court in paragraph 15 of the impugned judgment has dealt with this issue and has rightly held as under:-

“To prove this plea, he examined DW-1 to DW-4 and produced the documents mentioned above. So far as the DWs are concerned, their evidence does not inspire confidence because they did not explain why they neither approached senior officers in police hierarchy nor a court of law to get the appellant released. Importantly, the appellant did not produce his brother Zahoor Ahmed, who was a material witness as DW-1 Zameer Haider stated that he had informed him about his arrest by the CIA staff. In our opinion, the documents are also of little help to the appellant. The application under Section 22-A Cr.P.C. did not specifically state that the CTD officials were involved in his alleged arrest.”

8. According to Article 119 of the Qanun-e-Shahadat Order, 1984, the burden to prove any particular fact lies on the person who wishes the court to believe its existence. There is no denial to this fact that the prosecution has to discharge the burden of proving the case beyond reasonable doubt. However, once the prosecution becomes successful in discharging the said burden, it is incumbent on the accused who had taken a specific defence plea to prove the same with certainty but we are of the view that the petitioner has failed to prove the same. The learned High Court has correctly appreciated the material aspects of the case and the conclusions drawn are in line with the guidelines enunciated by this Court on the subject. Learned counsel for the petitioner has not been able to point out any legal or factual error in the impugned judgment, which could be made basis to take a different view from that of the learned High Court.

9. For what has been discussed above, we do not find any merit in this petition, which is dismissed and leave to appeal is refused. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the  
1<sup>st</sup> of June, 2023  
Approved For Reporting  
Khurram