

JUDGMENT SHEET

IN THE HIGH COURT OF BALOCHISTAN, QUETTA

Criminal (A.T.A) Appeal No.66 of 2023

(ID-100107600500)

Ibrahim alias Taig & others **VERSUS** The State

Criminal (A.T.A) Appeal No.71 of 2023

(ID-100107600549)

Bahawal Khan **VERSUS** The State

Under section 25, Anti-Terrorism Act, 1997

JUDGMENT

Date of hearing: 27.04.2023

Announced on: 03.05.2023

Appellants in Appeal No.66/2023 by: Mr. Amanullah Kanrani, Advocate

The appellant in Appeal No.71/2023 by: M/s Habib-ur-Rehman Baloch & Muhammad Rashid Ayub, Advocates

Respondent (State) by: Ms. Noor Jahan Kahoor, Additional P.G.

NAZEER AHMED LANGOVE, J.- This appeal is directed against the judgment dated 14th February 2023, passed by the learned Judge, Anti-Terrorism Court, Loralai, in A.T.C. case No.02/2022 (F.I.R. No.01/2022, P.S. CTD, Loralai). As a result, the appellants Bahawal Khan, son of Sawal, Ibrahim alias Taig, son of Allu Khan, Ali Gul alias Wapari son of Merhzai, and Mubarak alias Wadu, son of Akram, were convicted under section 7(ff) of the Anti-Terrorism Act, 1997 and sentenced to suffer rigorous imprisonment for fourteen (14) years each and forfeiture of their property in favour of the State; however, the benefit of section 382-B, Cr.P.C. was extended to them.

2. We have heard the learned counsel for the parties and have gone through the record with their assistance.

3. Facts of the case are that in pursuance of SI Muhammad Rafique's *murasla* (Ex: P/1-A), a criminal case, vide F.I.R. No.01/2022 (Ex: P/6-A), dated 17th January 2022, under sections 4 & 5 Explosive Substances Act 1908 read with sections 7(1,2) & 11-F Anti-Terrorism Act, 1997 was registered at P.S. CTD, Loralai, wherein he alleged that on receiving spy information, about the presence of banned organization B.R.A.'s terrorists in the area, they rushed to double road and found four persons (appellants) beneath Khaddi bridge; on seeing the Police, they tried to flee away but overpowered; on the personal search of appellants, 1500 grams explosives, five feet prima cord and a hand grenade was recovered from Bahawal Khan, 1400 grams explosives, four feet prima cord, one hand grenade from Ibrahim, 1300 grams explosives, four feet prima cord one hand grenade from Ali Gul and, 1200 grams explosives, one hand grenade and four feet prima cord were recovered from Mubarak; hence, this case.

4. The trial commenced on completing the investigation and submitting the challan (Ex: P/6-I).

After framing the charge and denial by the accused (appellants), the prosecution produced and examined as many as six witnesses.

The trial court examined the accused (appellants) under section 342, Cr. P.C., they disputed the prosecution's case and pleaded their innocence, recorded their statements on Oath, provided under section 340(2), Cr. P.C and produced DW-1 Sawal Khan (appellant Bahawal Khan's father) appeared and placed a copy of a report (Ex:

D/1) regarding the abduction of his three sons by the security personnel from his house; DW-2 Wasu Khan (cousin of appellants Ali Gul, Ibrahim & Mubarak) and DW-3 Ghaffar Shah, deposed that on the fateful day of the incident, they were on their way in between Lehri and Sibi, the security personnel arrived and abducted the appellants without any rhyme or reason.

5. After hearing the arguments and evaluating the evidence, the learned trial court (Judge, Anti-Terrorism Court, Loralai) found the appellants guilty, as such, convicted and sentenced them for the period mentioned above; hence, these appeals.

6. The appellants' learned counsel contended that it was a case of forced disappearance of the appellants at the hands of agencies; after detaining them in illegal detention for a considerable period, they were involved in a case of explosive substance and handed over to the Police to save their skins from the consequences of illegal detention of the appellants.

During the investigation, no proof had come on record showing that the appellants had any nexus or connection with a banned organization or any previous criminal history.

Conversely, the learned Additional Prosecutor General opposed the appeals and supported the judgment impugned passed by the learned trial court.

7. Critical analysis of the evidence and its deep appreciation shows that the prosecution has failed to bring home the charge against the appellants beyond reasonable doubt for the reasons that, despite prior information, mandatory provisions of section 103 Cr. P.C. has

not complied with, nor any explanation has been advanced on this behalf. Apart from this, nothing has come on record showing that the accused were involved in terrorist activities, or they are previous convicts or hardened criminals; they did not resist the raid of Police nor made any disclosure following recovery or discovery of new facts permissible under Article-40 of the Qanun-e-Shahadat Order, 1984, nor made any confession.

The instant F.I.R. was registered on 17th January 2022; however, the appellant Bahawal's father, Sawal Khan (DW-1), made a complaint to the concerned Levies on 1st November 2020 that his three sons, Bahawal Khan (appellant), Shah Nawaz and Khair Nawaz were present at home, the security personnel came and abducted them on gunpoint; however, the levies did not register any F.I.R.

8. It is relevant to note that out of the legal rights, the right to liberty is placed on a higher pedestal, which is to be respected by all and sundry. This is because courts are the guardians of the liberties of the citizens; even the worst criminal in society is entitled to legal safeguards, and his legal rights cannot be taken away with one pretext or the other.

Article 4 of the Constitution also safeguards the rights of individuals to be dealt with following the law and enjoy the protection of the law with the further explanation that no action detrimental to the life, liberty, body, reputation, or property of any person shall be taken except in accordance with the law.

Article 14 of the Constitution inter alia safeguards the dignity of man and preserves the privacy of home and place of work;

in this context, a guarantee has been provided that no person shall be subjected to torture or humiliation to extract evidence or compel him to make a disclosure or confession. Man's dignity is a valued and serene condition in a person's social and individual life when he is publically and privately subjected to abusive and degrading treatment. He was exposed to ill will, ridicule, disesteem, or contempt. Dignity in humans involved the earning or the expectation of personal respect or esteem, and it was something that was inherently a person's God-given inalienable right had deserved to be protected and promoted by the Government and its functionaries; it is the cornerstone of society from the very beginning of the society and civilization, the cause and end on all social institutions, therefore, all social institutions, Governments, States, Law, human rights and respect for persons originated from the concept of dignity of a man or his person-hood. Therefore, any attempt to undermine the dignity of the human being also undermines the dignity of humans and the support to which an ordinary society is structured.

It has been observed with pain that, in several cases, law enforcement agencies cause the disappearance of citizens and subsequently involve them in baseless cases of explosive material or drugs. Such a trend must be noticed and curtailed.

9. A conviction can be awarded to an accused only after reliable, trustworthy, and unimpeachable evidence containing no discrepancy casting some cloud over the veracity of the prosecution story brought on record.

After keeping both versions, i.e., the prosecution and defence, in juxtaposition, the plea raised by the defence seem more convincing and nearer to real facts making the appellants entitled to be acquitted of the charge.

10. Needless to add here that no conviction can be recorded based on mere assumptions and presumptions unless it is established purely following the law, which in our considered viewpoint is lacking in the matter in hand, for which the appellants are entitled to benefit because it is a well-settled principle of law that the accused is a favourite and blue-eyed child of law and benefit of even the slightest doubt should be extended to him, provided the doubt should be reasonable.

11. The nutshell of the whole discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as a matter of right and not of grace. It has repeatedly been observed by the courts of this Country that there doesn't need to be many circumstances creating doubts for giving the benefit of the doubt. However, if a possibility created reasonable doubt about the accused's guilt in a prudent mind, the accused would be entitled to the benefit of the doubt not as a matter of grace and concession but as a right.

12. The trial court has misread the evidence by holding that the prosecution has been able to prove its case against the accused (appellants); thus, the conclusion arrived at is not sustainable under the law and is liable to be reversed.

13. Because of the above, the appellants' appeals are allowed; the impugned judgment dated 14th February 2023, passed by the learned Judge, Anti-Terrorism Court, Loralai, is set aside. As a result, the appellants Bahawal Khan, son of Sawal, Ibrahim alias Taig, son of Allu Khan, Ali Gul alias Wapari son of Merhzai, and Mubarak alias Wadu son of Akram, are acquitted of the charge in F.I.R. No.01/2022, P.S. CTD, Loralai, by extending the benefit of doubt in their favour; they are in custody, directed to be released forthwith, if not required in any other case.

Order accordingly.

JUDGE

Quetta,
Announced today on:
03.05.2023

JUDGE