

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

**Cr. Appeal No. 04/2015
in
Cr. PLA No. 30/2014.**

Suhail Kamal & others

Petitioners.

Versus

The State

Respondent.

PRESENT:-

1. Mr. Amjad Hussain Advocate for the petitioner.
2. The Advocate General alongwith Mr. alongwith Mr. Ali Nazar Khan Advocate-on-Record on behalf of the respondent.

DATE OF HEARING: - 08.05.2017

DATE OF DETAIL JUDGMENT:-31.01.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition for leave to appeal has arisen out of the impugned judgment dated 13.11.2013 in Criminal Appeal No. 18/2013 passed by the learned Chief Court whereby the Criminal Appeal filed by the petitioners was allowed by upholding the conviction/sentences of the petitioners awarded by the learned Trial Court vide judgment dated 29.06.2013 in TC. No. 28/2009. The learned Chief Court, however, directed that the period of sentence of the petitioners so far undergone be treated as sentence period and the petitioners be released immediately if not required in any other case. The petitioners being aggrieved by and dissatisfied with filed this

petition for leave to appeal. This court vide order dated 17.09.2015 granted leave to appeal. Consequently, notice was issued to the State and the case was heard on 08.05.2017.

2. Briefly, the background of the prosecution story is that Mr. Hafiz-ur-Rehman IP, the then SHO Police Station City Gilgit registered an FIR No. 268/2009 at about 1530 hours on 26.09.2009 under Sections 324/34/341/147/148/149/427 PPC read with Section 21-L and 6/7 of Anti-Terrorism Act, 1997. The gist of the said FIR is that the said SHO stated that “today on 26.09.2009” he received information about a quarrel between Ahl-e-Tashi and Ahl-e-Sunnat in Naseem Cinema Chowk, and on receiving the same information he went to the scene of occurrence alongwith HC Ahmed Ali, SGC Jahanzaib and FC Muhammad Raza. When he reached near Ramazan Hotel through NLI gate, he saw the rioters belonging to Majini Muhallah. The said rioters were causing damage to properties of Sunni Sect. The police personnel opened aerial fires to disperse the rioters. In the meanwhile, about 70/80 armed rioters came from Ittehad Chowk side and joined the rioters. In the meantime, there was firing from a street and to stop the same time, police personnel again opened aerial fire and used tear gas. The rioters damaged and looted the properties of the people of Sunni Sect. To disburse the rioters police personnel have opened aerial firing. At that time random firings were opened from the street of AO Mohsin and to stop it, the police personnel again opened aerial firing and used tear gas. The rioters damaged and

looted the properties of the people belonging to Sunni Sect. The case is registered against the unknown rioters and terrorists under Section 147, 148, 149, 427, 341, 324 PPC and 6/7 Anti-Terrorism Act, 1997.

3. After completion of the investigation, incomplete challan No. 161/2009 was submitted before the learned Trial Court on 31.10.2009 against the accused Abdar Hussain son of Sher Dil, Noman Abbas, Zafar Aman residents of Majini Muhallah Gilgit and proclaimed offenders accused nadeem Kamal, Suhail Kamal sons of Master Kamal, Abid son of Abdullah Shah residents of Majini Muhallah, Iqtidar Hussain son of Muhammad Yaqub residents of Naikoi, Adnan son of Iqbal residents of Bairy Muhallah, Syed Israr Hussain son of Shah Ji Jawad resident of Amphary, Ibrar son of Muhammad Ishaq resident of Hassan Jan Muhallah, Azmat son of Ghulam Ali resident of Aga Muhallah, Hamid son of Sadiq Ali resident of Amphary and Mohtashim son of Muhammad Ali Shah resident of Amphary, who were shown in column No.2 of the challan. Proclaimed offender accused Abid surrendered on 18-11-2009 before the learned Trial Court. The charged was framed on 26.12.2009 against accused Abdar Hussain, Noman Abbas and Abid who pleaded not guilty and claimed trial. The charge of proclaimed offenders accused namely Nadeem Kamal, Suhail Kamal, Iqtidar, Adnan, Syed Israr Hussain, Ibrar Azmat, Hamid and Mohtashim was also framed on the same date in their absentia after fulfill the legal requirements and presumed that the proclaimed

offenders/absconders accused did not pleaded guilty and claimed trial. After arrest of proclaimed offenders accused Azmat on 12.03.2010 and Syed Israr Hussain on 26.01.2010, the Investigation Officer (I.O) has submitted incomplete challan on 25.03.2010. They also did not plead guilty and claimed trial. On 06.03.2011, proclaimed offenders accused Sohail Kamal was arrested and the Investigation Officer (I.O) has submitted incomplete challan No. 28/2011 on 25.03.2011 against the said accused before the learned Trial Court who was also formally charged on 06.04.2011. He did plead guilty and claimed trial. On 11.05.2011, proclaimed offender accused Syed Mohtashim Ali Shah also surrendered before the learned Trial Court and the Investigation Officer (I.O) has submitted incomplete challan No. 91/2011 on 16.05.2011 against the said accused before the learned Trial Court who was formally charged on 24-05-2011. He pleaded not guilty and claimed trial. On 11.09.2011 another proclaimed offender accused Adnan Raza was arrested and the Investigation Officer (I.O) submitted incomplete challan No. 143/2011 on 20.09.2011 against the said accused before the learned Trial Court who was formally charges on 29-09-2011. He did not plead guilty and claimed trial. On 16.11.2011 proclaimed offender accused Iqtidar Hussain was arrested and the Investigation Officer (I.O) has submitted incomplete challan No. 194/2011 on 26.11.2011 against the said accused before the learned Trial Court who was charged on 10-12-2011. He did not plead guilty and claimed trial. Three

accused Nadeem Kamal, Ibrar and Hamid as proclaimed offenders were tried in absentia.

4. The prosecution to prove their case against the accused produced and examined as many as 21 PWs. After closing of prosecution evidence the statements of accused were recorded under Section 342 Cr. PC. The accused did not opt to record their statements under Section 340(2) Cr. PC in disprove of the charge leveled against them. The accused also did not opt to produce any defence witnesses. The accused Azmat has produced a copy of attendance register and accused Suhail Kamal produced a copy of College Identity Card.

5. The learned Trial Court after appraising the evidence, hearing the learned Public Prosecutor and the learned Defence counsel, on proven guilty convicted the accused vide judgment dated 29.06.2013. The relevant part of the said judgment is reproduced as under:-

“Quote”

Hence, I convict accused Azmat Ali, accused Suhail Kamal and accused Iqtidar Hussain under Section 147 PPC read with 149 PPC read with Section 7(g) of the Anti-Terrorism Act, 1997 and sentence them to undergo rigorous imprisonment for two years. The above named accused are also hereby convicted under Section 341 PPC read with Section 7(h) of the Anti-Terrorism Act, 1997 and sentence them to undergo for one year. The above named accused are also hereby convicted under Section 427 PPC and sentence them to undergo imprisonment for two years. Accuse Azmat Ali, accused Suhail Kamal and accused Iqtidar Hussain are hereby convicted under Section 21-L of the Anti-Terrorism Act, 1997 and sentence them to undergo imprisonment for 3 years. All the sentences shall run concurrently.

I, convict the proclaimed offenders/absconder accused Nadeem Kamal, Ibrar and Hamid under Section 21-L of the Anti-Terrorism Act, 1997 and sentence them to undergo imprisonment for 10(ten) years. Perpetual warrants of arrest be issued against them.

Benefit of Section 382(B) Cr. PC be given to convicts accused. All

Warrant of commitment be sent to Superintendent District Jail Gilgit for execution of sentences of convicts/accused.

“Unquote”

6. The learned counsel for the petitioners submits that the accused have not been nominated or charged in the FIR. He also submits that no shopkeeper has deposed against the accused. Per learned counsel the Investigation Officer (I.O) has investigated the case on one sided and no accused from Sunni Sect has been arrested in the instant case. He submits that the Investigation officer (I.O) has failed to bring on record that on whose stone has hit the shop. He further submits that the concerned shopkeepers, whose shops were damaged have deposed in favour of the accused. PW-1 has seen the accused on the spot but he has not raised any hatred slogan or thrown any stone on the shops. He adds that Section 324 PPC is not attracted in this case because no one has been injured in the instant incident. He submits that PW-1 has not mentioned the name of Iqtidar Hussain in his statement as such the identification parade is doubtful. He contends that before conducting the identification parade of accused Suhail Kamal, police reached before the accused and shown the accused to PW. He reiterates that in proclamation notice issued under Section 19(10) of the Anti-Terrorism Act, 1997 the name of accused Azmat Ali was

shown as Azmat Hussain son of Ghulam Ali which was corrected after his arrest. He further submits that the prosecution has failed to establish its case against the accused that the accused Suhail Kamal and Azmat Ali who have not remained proclaimed offenders. He also submits that the accused Suhail Kamal was student of NWFP Board of Technical Education Peshawar. The accused Azmat Ali also produced daily attendance register for the month of September, 2009 of water & Power Division, Gilgit-Baltistan which remained unchallenged. He submits that accused Nadeem Kamal and Ibrar were also not proclaimed offenders whereas no person exists in the name of Hamid son of Sadiq Ali resident of Amphary. He prays that the impugned judgment dated 13-11-2013 in Criminal Appeal No. 18/2013 passed by the learned Chief Court may graciously be set aside.

7. On the other hand, the learned Advocate General supports the impugned judgment. He contends that the case was registered by the then SHO of City Gilgit on 26.09.2009 against the unknown culprits for damaging the shops and blocking the main road from Itihad Chowk to Naseem Chowk Gilgit in reaction of grenade blast incident took place at Al-Murtaza book center near Naseem Chowk Gilgit. He also contends that soon after the occurrence, a Joint Investigation Team (JIT) was constituted for investigation of the case. During the course of investigation, the accused were arrested on various dates. He further contends that PW-1 is the eye witness of the occurrence who identified the

accused/petitioners namely Abdar, Nauman, Abid, Hamid, Azmat, Ibrar, Israr, Suhail Kamal, Nadeem Kamal and Mohtashim present at the place of occurrence. Per learned Advocate General, PW-02 is also an eye witness of the occurrence who corroborated with the statement of PW-0. He has seen the accused while breaking the shops whereafter and run away from the place of occurrence. The defence counsel failed to shatter the said PW during the cross-examination. He contends that the PW-03 is a shopkeeper and statement of said PW is very relevant who has stated that the rioters have broken his shop and taken away 04 TVs. The learned Advocate General further contends that all the PWs have fully supported the prosecution case. The accused Iqtidar Hussain has confessed his guilt in his confessional statement recorded under Section 21-H of Anti-Terrorism Act, 1997. The eye witness PW Jahanzaib SGC indentified the accused Iqtidar Hussain in identification parade. The accused Suhail Kamal has identified by PW-19 during identification parade. He submits that the prosecution has successfully proved its case against the accused/petitioners beyond any shadow of doubt. The learned Chief Court has rightly upheld the conviction and sentences awarded to the convicts/appellants while passing the impugned judgment. The learned Advocate General submits that the said impugned judgment is well reasoned and well founded and the same may graciously be maintained.

8. We have heard the learned counsels for the respective parties at length, perused the material on record and gone through the impugned judgment as well as the judgment dated 29.06.2013 passed by the learned Trial Gilgit. Admittedly, No PW attributed any specific role in commission of the alleged offence. No material is available on record against the accused except the confessional statements of the accused recorded under Section 21-H of Anti-Terrorism Act, 1997 which is not admissible unless corroborated by independent witness(s) or supported by strong circumstantial evidence. In our considered view, both the Courts below failed to consider the aforementioned facts and judgments so delivered were the result of misreading, non-reading and mis-appreciation of the evidence on record. The prosecution has miserably failed to prove the case against the appellants beyond the shadow of doubt.

9. In view of the above discussions, this appeal was allowed and the appellant were acquitted by giving them the benefits of doubt vide our short order dated 08.05.2017. Consequently, the impugned judgment dated 13.11.2013 in Criminal Appeal No. 18/2013 passed by the learned Chief Court and the judgment dated 29.06.2013 in TC. No. 28/2009 passed by the learned Trial Court were set aside. These were the reasons of said short order.

10. The appeal is allowed in above terms.

Chief Judge.

Judge.