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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1728-1730 OF 2011

MOHD. HANIF @ PAKITWALA ABDUL RAZAK SHEIKH ETC. Appellant(s)
VERSUS

STATE OF GUJARAT Respondent(s)
WITH

CRIMINAL APPEAL NOS. 1731-1733 OF 2011

KALIM AHMED @ KALIM MULLA MD. HABIB KARIMI ETC. Appellant(s)
VERSUS

STATE OF GUJARAT Respondent(s)

O R D E R

CRIMINAL APPEAL NOS. 1728-1730 OF 2011:

We have heard Mr. K.T.S. Tulsi, learned Senior Counsel, Mr. Ms. Kamini Jaiswal and Gaurav Agarwal, learned Counsel appearing for the appellants and Mr. V. Giri, learned Senior Counsel appearing for the respondent - State of Gujarat at considerable length.

After hearing the contentions of learned counsel appearing for the parties and carefully perusing the records of the case and after going through the judgments of the Special Court (POTA) as well as the High Court, it appears to us that the High Court, after examining the evidence led before it, without appropriately analyzing the evidence of P.W. 4 and P.W.7, convicted the appellants and sentenced them to imprisonment for life.

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We have been taken through the evidence of P.W.4 by learned Senior Counsel appearing for the appellants. From the evidence put forward by him, we have been able to find out that the said witness is a witness on behalf of the prosecution, and it appears from his evidence that he could not even recognize Mohd. Hanif @ Pakitwala, and furthermore, taking into consideration the retraction which has been made by him in POTA Case No. 12/2003, we do not find that any case has been made out against the appellants.

Further, we have examined the evidence of P.W.7, who is the panch witness. From his evidence, we found that the prosecution could not prove the case against the appellants as he himself admitted that he is the panch witness in three other cases.

Thus, the said evidence of P.W.4 and P.W.7 cannot be construed as legal evidence against the accused persons and conviction solely on this evidence is highly improbable and against the settled principles of law.

Therefore, in our considered opinion, the judgment passed by the High Court is not sustainable in the eyes of law since the evidence adduced by the prosecution in support its case cannot be said to be reliable at all.

Thus, we allow the appeals accordingly by setting aside the conviction and sentence passed by the High Court. Accordingly, we acquit the appellants (Mohd. Hanif @ Pakitwala Abdul Razak Sheikh - Accused No.17 and Mohd. Habib Mohd. Shafi Hawa - Accused No.4) in the present appeals, of all the charges framed against them.

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The appellants who are in custody shall be set at liberty forthwith, if they are not required in any other case.

CRIMINAL APPEAL NOS. 1731-1733 OF 2011:

After hearing the contentions of learned counsel appearing for the parties and carefully perusing the records of the case and after going through the judgments of the Special Court (POTA) as well as the High Court and the evidence adduced, it appears to us that the evidence on record insofar as Kalim Ahmed @ Kalim Mulla Mohd. Habib Karimi - Accused No.19 and Anas Abdul Rashid Machiswala - Accused No.21 are concerned does lead to their guilt.

Accordingly, considering the material available on record, we uphold the conviction passed by the High Court.

Since the appellants have already undergone a sentence of thirteen and a half years, as informed by the learned senior counsel appearing for the appellants, they shall be set at liberty forthwith, if they are not required in any other case. The appeals are partly allowed on the above terms.

.....J

(PINAKI CHANDRA GHOSE)

.....J

NEW DELHI; (ROHINTON FALI NARIMAN)

February 02, 2017.

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ITEM NO.101 COURT NO.6 SECTION IIB
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 1728-1730/2011
MOHD. HANIF @ PAKITWALA A.B.SHEIKH ETC. Appellant(s)
VERSUS

STATE OF GUJARAT Respondent(s)

(With appln. (s) for permission to file addl. Documents, bail, exemption from filing O.T., application for bail on behalf of Mohd. Hanif @ Pakitwala Abdul Razak Sheikh (sole appellant in Crl. Appeal No. 1728/2011 and appellant No.1 in Crl. Appeal No. 1730/2011, appln. For bail on behalf of Mohd. Habib Mohd. Shafi Hawa (sole appellant in Crl. Appeal No. 1729/2011 and appellant No.2 in criminal appeal No. 1730/2011 and office report)

WITH

Crl.A. No. 1731-1733/2011

(With appln.(s) for bail and exemption from filing O.T. and permission to file additional documents and Office Report)

Date : 02/02/2017 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. K.T.S. Tulsi, Sr. Adv.

Ms. Kamini Jaiswal, Adv.

Mr. Gaurav Agarwal, Adv.

Ms. Shumaila Altaf, Adv.

Mr. Jatinderpal Singh, Adv.

Mr. Ejaz Maqbool, AOR

Mr. Khalid Sheikh, Adv.

Mr. C. George Thomas, Adv.

Ms. Qurratulain, Adv.

Mr. Faraz Khan, Adv.

Mrs. Priyanka Agarwal, Adv.

Ms. Mandakini Singh, Adv.

Mr. K.T.S. Tulsi, Sr. Adv.

Mr. Khalid Sheikh, Adv.

Mr. Anurag Rawat, Adv.

Mr. Sudhir Kumar, Adv.

Mr. Tariq Ahmad, Adv.

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Mr. Tarun Diwan, Adv.

Mr. Irshad Ahmad, AOR

For Respondent(s) Mr. V. Giri, Sr. Adv.

Ms. Hemantika Wahi, AOR

Ms. Pinky Behera, Adv.

Ms. Svadha Shankar, Adv.

UPON hearing the counsel the Court made the following

O R D E R

CRIMINAL APPEAL NOS. 1728-1730 OF 2011:

The appeals are allowed and the conviction and sentence passed by the High Court are set aside. Accordingly, the appellants (Mohd. Hanif @ Pakitwala Abdul Razak Sheikh - Accused No.17 and

Mohd. Habib Mohd. Shafi Hawa - Accused No.4) are acquitted in the present appeals, of all the charges framed against them. The appellants who are in custody shall be set at liberty forthwith, if they are not required in any other case in terms of the signed order.

CRIMINAL APPEAL NOS. 1731-1733 OF 2011:

The conviction passed by the High Court is upheld.

Since the appellants have already undergone a sentence of thirteen and a half years, as informed by the learned senior counsel appearing for the appellants, they shall be set at liberty forthwith, if they are not required in any other case.

The appeals are partly allowed in terms of the signed order.

Pending applications filed in these matters stand disposed of.

(R. NATARAJAN) (SNEH LATA SHARMA)

Court Master Court Master

(Common Signed order is placed on the file)