



UNODC
United Nations Office on Drugs and Crime

Pakistan's Action to Counter Terrorism (PACT)

COMPENDIUM OF CASE STUDIES

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* This project is supported by the European Union.

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CASE STUDY 1

A. Facts

On 14.1.2012 Abdul Ghafoor DSP reported that he and DPO along with other officers and officials were present in office on duty when at 13.30 hours four suicide bombers attacked and made firing upon police officers and officials present in DPO Office and threw hand grenades. In retaliation police returned fire with the result that the terrorists exploded themselves. During the incident, Constable Muhammad Ismail got killed and five constables and two police civilian employees got injured. In addition to police employees, three members of the public got killed and one was injured in the incident. Out of the four attackers one terrorist was found dead whereas the pieces of the remaining three terrorists were lying in scattered position. FIR No 60/12 was registered at PS Cantt Dera Ismail Khan under section 302/324/353/427/120B/336/ 337 A(iii), 337F(i)/336/148/149 PPC, 3/4/5 ESA, 13A.O, 21(I)/21J, ATA, 1997. Police submitted challan against Ahmad Nawaz alias Dhallu for abetment of offences by the dead accused Imran Gandapur, Azizullah, Bilal, Ikramullah and Tariq Commander along with Qari Abdul Zahir alias Qari Zahir (absconding), Fazel Rehmand (absconding) and Muhammad Iqbal (absconding).

The prosecution case was based on the following evidence: PW 8 Ghulam Dastgir, Incharge investigation PS, Cantt Dera, stated that he took into possession blood stained earth, 20 empties, 1 empty broken hand grenade, 31 pellets, 7 spend bullets, Kalashnikov along with 2 empty magazines, 1 piece of paper having mobile numbers, 1 gatta piece having mobile numbers, 1 card having two mobile numbers and 38 empties of 7.62 bore. He also took into possession body parts for DNA analysis. On 1.2.2012 Ghulam Haider Shah, CO investigation, took into possession one mobile set having a memory card and two SIMs Telenor in FIR No 87/12 PS Cantt DI Khan in which some video clips were found showing the path to the court and DPO Office. The said CD showed some terrorists namely Imran Gandapur, Fazel Rehmand and Qari Abdul Zahir. Medico-legal reports showed deaths by firing and blast injuries.

PW Ikramullah deposed that he is a tailor and works at village Lachra, and the dead accused, Imran Gandapur, lived near his house and was friendly with him. He said he shifted shop to Wana where Imran Gandapur met him in Bazaar. When he came back to village Lachra, accused Nawaz who was working in Sher Shah Suri Town near his house asked him to take him along when he goes to Wana. They went to Wana four months before this occurrence and stayed with Imran Gandapur where Imran and Nawaz handed over mobile numbers to each other. He thereafter came back to DI Khan. PW Saif ur Rahman, SHO PS Dera Town, deposed that Ghulam Haider Shah, CO Investigation, summoned all SHOs and showed them CD through computer wherein some terrorists were shown at a place preparing meals and staying there. He saved the same portion into his mobile set. Thereafter CO asked them to trace out the said place. He further said that he came to know from informer that the said place is located in Village Bucha within the limits of PS Dera Town and the place belongs to the accused, Nawaz, facing trial who belongs to Sipah-i-Sahaba. PW Abdullah Khan ASI deposed that in his presence the accused facing trial was shown photographs of terrorists in the office available in the memory card of the mobile of Imran Gandapur. He said that the accused correctly identified said clips and disclosed the names of the accused which are mentioned in an identification memo. In the said clips five terrorists along with suicide bombers were identified and in the second clip the accused facing trial identified his house, courtyard and baithak. The accused who made the said video was facing trial.

The accused, Nawaz, was found guilty and convicted of planning, facilitation, harboring, aiding and abetting the accused which caused numerous deaths and injuries. He was convicted amongst others of criminal conspiracy, section 302/149 PPC read with section 7(a) 21-I/21-J, ATA, 1997.

B. Questions

- i. The statement of PW Ikramullah is cryptic. It appears that he knew of the crime. What is his actual status?
- ii. Are the statements made to PW Abdullah ASI admissible?
- iii. Can the refusal to give statement on oath be taken against the accused? What are the rules in this regard?

C. Answers

- i. PW Ikramullah is admitting participation in the crime. This requires that he be charged. When he will be charged, his statement will be that of an accomplice unless he is made an approver.
- ii. Confessions made to police officers are inadmissible. However, if the names of the accused persons are considered to be recovery from the CD then it might be admissible.
- iii. The accused is required to take oath under section 340(2). However, he has also got a right to refuse to take oath and answer questions of an incriminating nature. A judge can draw an inference from refusal to take oath which the judge did in this case.

CASE STUDY 2

A. Facts

On 5.11.2012 Iqbal Ahmad while present in the casualty department of Saidu Sharif Hospital told the police that his brother Abdur Rashid a Chowkidar at Swat College of Science and Technology was shot at and killed by unknown persons at 7.30 am when he was on duty. He said they had no enmity with anyone.

FIR No 170/12 was registered at PS Bannr District Swat against unknown persons under section 302/148/149 PPC read with 13 A.O and 7 ATA, 1997. Police presented challan against Zafar Iqbal, Suliman, Israr ur Rahman, Izharullah (juvenile), Ikramullah (juvenile), Zafar Ali (juvenile), Uzman (juvenile), Hazrat Bilal (juvenile), Adnan Ali (juvenile), Shaukat Ali (juvenile), Maulana Fazlullah, Abdullah alias Abu Bakr and Habib Khan alias Masinda (absconders).

Evidence in the case was as follows: PW Sher Muhammad SI collected blood stained earth, blood stained garments and empty of 9mm pistol. PW Nisar Ahmad (son of deceased) deposed that he was satisfied that Zafar Ali and Izharullah on the instigation of and in consultation with other militants killed his father. Zafar Iqbal, Israr ur Rahman and Suliman made confession before the Illaqa Magistrate. PW Sohrab Khan recovered 30 bore pistols on the pointation of the accused Izharullah and Zafar Ali. He also presented a DVD recording of interrogation of the accused. The IO submitted that a 9mm pistol was recovered from Izharullah. He also presented report of FSL wherein the empty matched with the 9mm pistol. The Judge acquitted Zafar Iqbal, Suliman and Israr ur Rahman since PW Nisar Ahmad did not accuse them, recovery was not made from them, no position was attributed to them at the scene of crime and because the alleged confession was not properly recorded.

B. Questions

- i. Does the statement of PW Nisar Ahmad carry any value?
- ii. Was the failure to mention position of Accused at the crime scene fatal?

C. Answers

- i. The statement of PW Nisar Ahmad does not carry any value. It is hearsay evidence at best.
- ii. Failure to mention position of Accused at the crime scene is not fatal since the prosecution never presented any witness who saw the crime scene. In a situation where they did not make fire their position could not have been deduced.

CASE STUDY 3

A. Facts

On 9.10.2012 Mst Shazia reported to the police that she is a student of class 8 in Khushal Public School, Landikas, Mingora. On that day, she along with students was proceeding in the school vehicle when at 12 hours they reached at main road at Malak Colony Gulkada. At that point two young boys were standing in the middle of the road. Out of the two boys one was having pistol in his hand and he signaled the vehicle to stop. Driver Usman Ali stopped the vehicle. The boy having pistol in his hand asked who is Malala Yousafzai. They pointed out Malala. The said boy started firing as a result of which she and Malala Yousafzai received injuries. Other students might also have been injured. She said Driver Usman Ali and other students were witnesses of the incident. She said that they had no enmity with anyone. In line with her statement, FIR No 565 dated 9.10.2012 was registered at PS Saidu Sharif, District Swat, under section 324/109/148/149 PPC, 13 A.O, 11(v) and 7, ATA, 1997.

The police after investigation submitted challan against Izharullah, Ikramullah, Zafar Ali, Usman, Hazrat Bilal, Adnan Ali, Shaukat Ali (juveniles), Zafar Iqbal, Suliman, Israr ur Rahman, Abdullah alias Abu Bakar (absconder), Habib Khan alias Masinda (absconder), Maulana Fazalullah (absconder) and Sirajuddin (absconder). Challan against juvenile accused was presented separately. The case of the prosecution was based on the testimony of 22 witnesses.

PW 10 Riaz Ahmad stated that on 9.10.2012 his daughter Kainat was injured by the firing of two persons while she was travelling with Mst Shazia and Mst Malala Yousafzai. He said he is fully satisfied that accused Izharullah and Israr ur Rahman fired upon them with the intention to kill them with the conspiracy, intention and abetment of Ikramullah, Shaukat Ali, Zafar Ali, Uzman, Hazrat Bilal, Adnan Ali, Suliman, Zafar Iqbal and absconding accused namely Maulana Fazalullah, Abdullah alias Abu Bakr and Habib Khan alias Masinda committed the offence.

PW 11 Usman Ali, the driver, stated that on the day of occurrence he was driving the vehicle of Khushal Public School Swat wherein students Kainat, Shazia and Malala Yousafzai along with 18/19 students, school staff and teachers were boarded. At the place of occurrence, two young boys armed with pistol signaled to stop and when he stopped the vehicle, both of them started firing as a result of which Malala, Shazia Ramzan and Kainat got hit. He said he was fully satisfied that Izharullah and Israr ur Rehman had made firing. He said he identified both the accused during identification parade in Sub Jail Paithom.

PW 12 complainant Shazia Ramzan stated that on the day of occurrence after attending school she along with her other school friends Malala and Kainat boarded the school vehicle. When they reached Malak Colony, two young boys signaled the vehicle to stop. When the vehicle stopped, one of them started firing on Malala. In the meantime, his other companion also started firing due to which she, Kainat and Malala got injured and were taken to hospital. PW 13 Kainat made a similar statement.

PW Malala's statement was recorded through video link. She said that she does not remember the whole incident expect that it was about 12 pm (noon) when they reached the place of occurrence. Thereafter she does not remember what happened. When she opened her eyes, she found herself in Birmingham Hospital. She was told the details of the incident by her friends Shazia and Kainat later on.

PW Ziauddin, the father of Malala, said that he was informed by someone about the incident and he rushed to the hospital where he found Malala in injured condition. He came to know the details of the incident later.

PW Hamid Khan, Illaqa Magistrate, said he recorded the confessional statement of the accused facing trial and conducted identification parade of accused Israr ur Rehman through PW Usman Ali in Sub Jail Paithom. The statement of accused was recorded under s 342. They did not wish to be examined on oath or produce evidence. The Judge convicted Israr ur Rehman and acquitted Suliman and Zafar Iqbal.

B. Questions

- i. Can evidence be taken through a video link?
- ii. Shouldn't the identification be conducted by Shazia or Kainat?

C. Answers

- i. Evidence can be recorded through a video link - see section 21 of the Anti-Terrorism Act 1997 and PLD 2006 Karachi 629.
- ii. Ideally, the identification of the accused should have been conducted by Shazia or Kainat.

CASE STUDY 4

A. Facts

FIR No 7/15 dated 1.5.2015 was registered at PS CTD Hazara Division against Said Bilal, Qari Masood and Qari Ihsan. The police put up a complete challan. Charge was framed to which accused pleaded guilty and claimed trial. The case was fixed for evidence when the Court passed the following order:

‘Accused Said Bilal, Qari Masood Ahmed and Qari Ehsanullah present in custody. Prosecutor for the state and counsel for the accused also present. The prosecution moved the court that they are ready and willing to drop charges of section 7(ff) and section 11(f) ATA, 1997. This is a result of the plea bargain which while alien to our judicial culture is not prohibited. The counsel for the accused has moved an application stating that the accused pleads guilty of possession of explosive substance as well as the possession of pistols hence the accused are hereby charged only under section 5ESA and section 15 AA KPK i.e. on the first and third count of the already recorded charge. They have been made to understand by this court by addressing them in person that a. he has the right to plead not guilty; b. the right to a trial; c. the right to be represented by a counsel - and if necessary, have the court appoint a counsel at trial and at every other stage of the proceedings; d. the right at trial to confront and cross examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses; e. the accused waiver of these trial rights if the accused accepts a plea of guilty; f. the nature of each charge to which the accused is pleading guilty; g. any maximum possible penalty including imprisonment and fine; h. any minimum mandatory penalty; i. any applicable forfeiture; and j. the courts authority to order compensation to the victim or the victim’s heirs. This has been done to ensure that the plea is voluntary and not a result of any force or threats, promises or coercion except the promises that are part of the proposed conviction by voluntary guilty pleas. The statement of fact is that the application made to this Court today and the accused have voluntarily thumb impressed the same in the presence of the court. They have admitted to the possession of explosive materials, pistols and rounds stating that they had come to this area for labour on crush machines and the material of explosive was handed over to them by an unknown person to keep in their safe custody and handed over to someone on demand. The pistols were for their own protection. They have shown remorse and have left themselves at the mercy of the Court. In such circumstances the voluntary guilty plea is accepted and the court takes a lenient view of the matter and convicts the accused u/s 15-AA KPK and 5 explosives Act and sentences them to two years R.I on each count. Benefit of section 382-B is hereby extended to them. Both the sentences shall run concurrently and the period already spent in jail shall be counted in the sentences.’

B. Questions

- i. When the court amends charge, should it be framed again?
- ii. Can the prosecution move the court to drop charges?
- iii. Does the offer of the prosecutor amount to an inducement under section 163 of the Code?

C. Answers

- i. The court may alter or add to any charge before judgment is pronounced. Every such alteration must be read and explained to the accused.



- ii. Prosecution can request the court to drop some or all charges. This request can take the shape of a withdrawal application with regard to those charges.
- iii. The offer of the prosecutor may amount to an inducement under section 163(1) of the Code. However, this matter has not received the attention of the courts and definitive case law on the subject is not present.

CASE STUDY 5

A. Facts

Complainant Pakeeza Bibi stated that on 12.5.2014 after appearing in Chemistry paper in Sky International Public School she was on her way home with her friend Anum Saleem when they reached Abbaseen College where a black Corolla motor car bearing No AG 477 was already parked. Mst Anum Saleem told complainant to sit in the car. On her refusal Mst Anum Saleem insisted and made her sit there. Mst Anum Saleem also boarded the car. Two persons whose names were later disclosed to be Qari Naseer and Hussain were sitting in the car. On boarding they locked the car and Qari Naseer drove the car to Balakot Road. On seeing Traffic Police, he turned back. In the meanwhile, their third companion who was later disclosed to be Muhammad Faizan alias Faizi appeared from the diggi of the motor car and sat with Anum Saleem on the rear seat. On reaching near Ghazikot township, Qari Naseer handed over the driving seat to his companion Hussain and came to the rear seat while Accused Faizan went to the front seat. Qari Naseer committed forcible sexual intercourse with Mst Pakeeza Bibi. The motor car was then driven towards APS Abbottabad and on return therefrom Qari Naseer took the driving seat and Faizan alias Faizi committed rape and then they returned to Mansehra. At Ghaziabad Township, Complainant and Mst Anum Saleem were deboarded after the male accused took the mobile phone of Mst Anum Saleem.

On reaching home, Mst Pakeeza went with her maternal uncle to Police Station City Mansehra where FIR was lodged. Police took into possession blood and semen stained uniform of Mst Pakeeza Bibi and vaginal swabs. Police also took vaginal swabs of Mst Anum Saleem. Blood samples of all accused were also taken. On completion of investigation, trial commenced against Naseer and Faizan for commission of offence and against Hussain and Anum for facilitation of offence. Forensic reports found semen in vaginal swabs of Mst Pakeeza which matched with accused Naseer and Faizan. Semen was also recovered from the car which was taken into possession. The recovered car had registration number AG 447 as against AG 477 stated in FIR. Mst Anum Saleem stated in her statement that Mst Pakeeza Bibi had prior relations with the accused and they both were taken in the car but she was not raped as she was menstruating. Medical evidence showed prior history of sex by Anum and that that she was menstruating. Vaginal tear and bruise on neck was found on Pakeeza Bibi. The Judge found that there was no evidence of forceful boarding of car and that both girls willingly boarded the vehicle but without knowing the consequences. He found Qari Naseer and Faizan guilty of rape and Hussain guilty of facilitation of offence. The Judge acquitted Mst Anum from all charges.

B. Questions

- i. Is there enough evidence to show lack of consent by Pakeeza Bibi?
- ii. What acts were done by Hussain accused for facilitation of offence which Anum accused did not do?
- iii. Can consent be presumed where injuries are not present on an adult conscious victim?

C. Answers

- i. While lack of injuries on body are often presented as evidence of consent, it might not be so. A woman may not give consent and at the same time may not actively act to ward off the attack.



- ii. The role of Hussain appears to be based on driving of vehicle. However, where the victim Pakeeza Bibi did not take overt acts to ward off the attack, a presumption could be raised that he was unaware of the fact that the act of intercourse was non-consensual.
- iii. Consent is an ingredient of the offence of rape. Where consent is present the appropriate offence is section 496B PPC.

CASE STUDY 6

A. Facts

FIR No 71/13 dated 25.4.2013 was registered u/s 302/324/353/148/149 PPC/13 A.O/3/4 ESA/s 7, ATA at P.S Terri District Karak. The brief facts of the case are that on receiving spy information a police party rushed to the spot where six persons started firing on them as a result of which Murshad Khan, ASI and PC 38 Ashraf Zahid got hit and died on the spot and PC 49 Mustafa Khan was injured. Two terrorists Raqibullah and Sakhi ur Rehman who got injured due to police firing were arrested. From possession of Raqibullah one Kalashnikov with 15 rounds and 1 hand grenade was recovered. From possession of Sakhi ur Rehman one Kalashnikov with 13 rounds of 7.62 bore was recovered. On summary, interrogation both the appellants disclosed presence of their other four companions. So further search was started by the police party during which they were fired upon due to which Sar Muhammad HC, Qasim Khan ASI, sustained injuries whereas from firing of police party Farid Khan and Bilal were killed from whose possession one Kalashnikov each was recovered. The other two terrorists Maawiya and Sultan were also killed and from whose possession one Kalashnikov and two hand grenades were recovered. During search of room from where the police party was initially fired upon, five buckets containing 10/10 kg explosive each was recovered. The FIR was registered on the basis of marsala. The Judge on trial found that recoveries were genuine and injured police witnesses were present on the spot. The Court convicted the two accused to sentence for 25 years for causing death of Murshad Khan ASI and Ashraf Zahid PC and for 14 years for causing injuries to Mustapha Khan PC. The sentences were to run consecutively. The High Court on appeal modified the imprisonments to run concurrently on the ground that this was required by section 35.

B. Questions

- i. Are police witnesses' good witnesses in this case?
- ii. Can the sentences run consecutively?

C. Answers

- i. The requirement of independent witnesses is not applicable to recoveries under the ATA, 1997.
- ii. Section 35 says that sentences awarded in one trial will run one after the expiration of the other unless the courts directs that such punishments shall run concurrently.

CASE STUDY 7

A. Facts

FIR No 271/13 dated 25.3.2013 was registered at PS Khan Raziq Shaheed, Peshawar for the murder of a lady whose body was found with a knife in her throat and in partly burnt condition in an abandoned room of Lady Reading Hospital Peshawar. The police recovered one Pepsi bottle of 2.25 liters and one tube of Legnogan Gyl BP from the crime scene. The police also lifted finger prints from door handles, handle of water tap and from the Pepsi bottle. The police also took her clothes and burnt hair in possession. The FSL found semen stains of human origin on the shalwar. The woman was later discovered to be one Noor Bibi, wife of Aurangzeb and daughter of Maqbal. She had been missing from her house since 23.3.2013. The heirs of the deceased informed the police that Mst Noor Bibi had two SIMs in her use: 0313 7678497 and 0313 9427047. These SIMs were in the name of Alamzeb, a brother of Aurangzeb (husband of deceased), and Lal Zada, the father of Aurangzeb. It was found that they were often in contact with phone No 0313 8877695 which was in the name of one Sultan Muhammad. On further inquiry, it was found that the phone was in the use of his brother Jamshed. Accused Jamshed was arrested on 2.4.2013. On his pointation police recovered blood stained clothes from his room in his house. The police got the blood examined and it had the same blood group as the deceased. He also pointed out the place of murder of Noor Bibi. He also pointed out one jeweler shop where he sold the golden rings of the deceased for Rs 11,000. He also disclosed that he stayed along with the deceased at New Star Afridi Hotel at Namak Mandi, Peshawar. The accused also disclosed that he used Suzuki pickup bearing registration No W 2169 Peshawar. The accused also made a judicial confession. An extract from the record of the Hotel was obtained which showed the stay of accused along with one lady from 6 pm to 10.50 pm on 23.3.2013 in room no 304.

The information provided by the accused was corroborated by PW Khawaja Muhammad, the owner of the jewelry shop, who said that on 25.3.2013 a young boy along with a lady in white clad burqa visited the shop and sold two gold rings of 3 masa weight for Rs 11,000. PW Farhad working in PSO Petrol pump deposed that the accused had bought petrol from him on 25.3.2013 for Rs 50. PW Liaquat Ali, who works as a cushion maker, said that the accused works for him for Rs 300 daily and that on 23.3.2013 at Digar vailla the accused contacted him on phone asking for a room as he had a girl with him. However, he showed his inability. PW Sadiq Khan, the driver of W 2169 Peshawar, deposed that the pickup belongs to one Riaz and that he was contacted by Jamshed, who is known to him as they belong to one area, who said that his women folk wanted to go to Peshawar and he should come to his house. When he reached the house of the accused, Jamshed along with a lady boarded his vehicle. When they reached the shop of Ahmed Mechanic, the accused deboarded, went into the shop and came back and paid him Rs 200. Then he went to his village.

The accused was charged under section 302 and section 7 ATA. On conclusion of prosecution evidence, he was asked whether he would like to present defense evidence. He chose to lead defense evidence and also appeared as his own witness. During cross examination, he admitted that all questions put to him before the confessional statement were answered by him correctly and with his free consent. He also admitted the fact of conversation with his friend Sadiq, the driver, but denied having talked to Liaquat Ali.

B. Questions

- i. Is it sufficient evidence that the blood on the clothes recovered from the house of the accused were of the same blood group as the deceased?

- ii. Please write a brief judgment in the case analyzing the shortcomings in evidence as narrated above (i.e. what additional things should have been done).

C. Answers

- i. This is very weak evidence. A large part of the population may have the same blood group and this is insufficient for identification. The proper procedure should have been to obtain DNA identification of the blood stain on the recovered clothes.
- ii. The case has sufficient circumstantial evidence to sustain a verdict of guilt. However, blood on the clothes recovered on the pointation of the deceased should have been tested for DNA. The finger print record on the Pepsi bottle and the semen stain on the shalwar of the deceased should have been analyzed.

CASE STUDY 8

A. Facts

On 21.12.2007 Aftab Ahmed Khan Sherpao, Ex Interior Minister, and his two sons were present in the Eidgah of Village Sherpao when there was a huge explosion as a result of which many people were injured and killed. An FIR regarding the incident - FIR No 593/2007 dated 21.12.2007- was registered at PS Umerzai, District Charsadda u/s 302/324/353/296/109/429 PPC, 3/4 ESA, 120-B & 7 ATA. The Prosecution's case was that one Zakir and Lal Mir committed the offence. No evidence was produced showing their role in the offence. Zakir accused nominated Samiullah in his statement under section 161. Two other accused Muslim and Muhammad Arif were discharged because the prosecution conceded that there was no evidence against them. The trial court acquitted Zakir, Lal Pir and Samiullah.

B. Questions

- i. Is it proper for the prosecution to send up cases of no evidence or weak evidence for trial?
- ii. What should the Prosecution do in such cases?

C. Answers

- i. The prosecution is under an obligation to send the challan to the court. However, the prosecutor must state whether there is insufficient or no evidence in the case. In case of no evidence, he should ask for discharge of the case against the accused under section 4(1)(c)(ii) of the KPPS Act.
- ii. The Prosecutor should apply the evidential test and request the court for discharge of the accused under section 4(1)(c)(ii) of the KPPS Act. Where the court does not agree with the request of the Prosecutor he may challenge the order of the court or in the alternative file an application for withdrawal.

CASE STUDY 9

A. Facts

Brief facts of the prosecution case are that the complainant lodged a report that he received a threatening letter at Ideal Punjab Bakery situated at Madyan Road Mingora written by unknown persons wherein Rs 300,000 was demanded and in the alternative, he was given threats of dire consequences. The complainant also said that he received threats from mobile number 0301 3040527. Police registered FIR no 7/12 under sections 387/506 PPC -7 ATA, PS CTD Malakand Region Swat. On the basis of spy information Salah uh din s/o Dewana was summoned to police station on 28.4.2014 and on his arrival his mobile was checked and SIM No 0301 3040527 was found in the mobile. He was arrested on the spot. Complete challan was submitted and the accused was formally charged. He pleaded not guilty to the charge and claimed trial.

PW I Abid Ali PC CTD stated that the accused facing trial while in police custody led the police to the place where he drafted the threatening letters and from where he sent SMS. He also pointed out various places i.e. houses of Aslam, Salim and Iftikhar where he has thrown/sent threatening letters. The IO took into his possession his writing specimens. PW Constable Farid stated that he was witness to the recovery of threatening letters produced by the said Aslam, and Iftikhar. The accused got recorded his confessional statement to a magistrate. PW Aslam, Iftikhar and Salim also got recorded their statements under section 164. The FSL gave a positive report regarding the writing. The accused denied that he committed the offence. He also did not wish to be examined or produce defence evidence. The defence stated that the SIM was not in the name of the accused and was rather in the name of PW Sardar Ali, who did not lodge a complaint regarding its loss. The defence further said that the threatening letter was only a photocopy and the same is inadmissible in evidence. The defence also said that the confession was not admissible since it was recorded after sufficient delay and the certificate is not according to rule and law. The Court convicted the accused and sentenced him to two years RI under section 506 PPC and for five years under section 387 and section 7(h) ATA, 1997.

B. Questions

- i. Are photocopies admissible in evidence and if so, under what circumstances?
- ii. Is hand writing evidence conclusive evidence of authorship?

C. Answers

- i. Photocopies are admissible in evidence if it is proved that the original has been destroyed or is not available.
- ii. Hand writing evidence is not conclusive evidence of authorship. It is, however, a solid piece of evidence which carries substantial weight.

CASE STUDY 10

A. Facts

SHO PS City DI Khan Inspector Sanaullah Khan reported to the police that on 25.11.2012 he was present with other police officials on duty during Ahsura procession. When the procession comprising of thousands of people reached Commissioner bazaar DI Khan, there was an explosion in which 5 people died and 80/85 people including 3 sepoy of Frontier Constabulary got injured. An FIR was accordingly registered at PS City DI Khan bearing no 778/12 dated 25.11.2012 under sections 302/324/120B/353/148/149 PPC, 3/4 ESA, 7 ATA, 1997.

The prosecution submitted its case against Waleed Akbar and Ikramullah (under arrest) and Qamar Zaman, Asif Numan, Sohail Ayaz and Imran alias Khitab (absconders). Charge was framed against the accused who pleaded not guilty and claimed trial. The Prosecution presented 141 PWs. Medico-legal evidence showed that all deceased died due to blast injuries. The prosecution also presented the confession of accused Waleed Akbar who was arrested in some other case before the DPO. PW 50 Ghulam Bashir SI stated that on 3.2.2013 in presence of witnesses Waleed Akbar disclosed that he could point out house where the bomb and remote control were delivered to Hafiz Qamar Zaman. He then took the police to under construction house of Asif Numan where the bomb and remote control was delivered to Qamar Zaman. He further offered to point out place where Imran alia Khitab handed over the bomb and remote control. He them took them to a house near University Town. On the same day, accused Ikramullah separately pointed out under construction house in University Town where accused Imran alias Khitab handed over the bomb to Waleed Akbar. Accused Waleed Akbar further disclosed that on 6/7 Muharram the bomb and remote control was handed over to him by Imran alias Khitab, Ikramullah and one other person. He handed over the bomb to Hafiz Qamar Zaman at back of Dar Petrol House belonging to one Asif Nauman. He said that the explosion was caused by Hafiz Qamar Zaman and one other person. The defense said that the pointation memo is meaningless and that DPO was never produced in the court. Defense further argued that no private PW ever stated that they saw the accused on the spot. The Judge acquitted the accused.

B. Questions

- i. Are confessions before District Police Officers admissible?
- ii. Is it necessary to summon the DPO in court?

C. Answers

- i. Confession before the District Superintendent of Police is admissible under section 21H of the ATA, 1997.
- ii. It is very difficult to accept confession unless the person who recorded it deposes in court.

CASE STUDY 11

A. Facts

Case was registered after an application u/s 22-A was made by the complainant. In the said application Mst Balqisam Jana contended that she was having enmity with respondents Gul Marjan, Sardar Ali Khan s/o Ghazi Marjan, Nazar Khan and Kareem, all residents of Takht-i-Nusrati Karak. That one month prior to the lodging of complaint the respondents accompanied by police raided her house and picked up from her house one 7 mm rifle with 25 cartridges, 4 packets of 12 cartridges, 3 blankets and 5 tola gold ornaments. That on the same day and time they also picked up her daughter Uzma Ayub who has not been traced alive or dead. That the respondents have abducted her daughter for the purpose of commission of Zina. On acceptance of petition, FIR No 363/10 was registered on 9.10.2010 u/s 496-A in which sections 342/365/452/458 PPC were added later on.

After registration of case, police went to the spot and prepared a site plan on the pointation of the complainant in which she showed the location of the removed items, herself, the respondents and her daughter. The police conducted search of the house of Gul Marjan, Sardar Ali Khan, Nazar Khan and Kareem but did not find any incriminating articles. Meanwhile, the High Court on a writ petition filed by the complainant directed the inclusion of Naseebullah s/o Nazar Khan as the principal accused serving in Pakistan Army at Quetta with the further direction that he should be arrested and the minor girl recovered. Investigation was taken up by the Investigation branch. On 21.10.2011 the statement of one Rab Nawaz was recorded before the judicial magistrate who stated that at 9 o' clock he was sitting in his PCO when one girl came for calling somebody. Since his telephone sets were out of order, he handed over his mobile bearing number 0332 9069990 to her. The girl did not disclose her identity and spoke to someone. She said that she was present in Danish PCO New Bus Stand Bannu and had just arrived from Rawalpindi. She asked the person on the other side of the phone to come and receive her. He said after 5 minutes a Rickshaw came in which a man and woman were sitting and she left with them. The case was then transferred to CPO Peshawar for investigation on the orders of the High Court.

Inspector Falak Nawaz Investigation wing Peshawar vide his report dated 15.10.2011 traced the history of the case. He said that the complainant and his son Alamzaib were required by the local police in six criminal cases. He also brought on record FIR No 266/10 dated 30/7/10 u/s 13 A.O against Jamal Anwar who pleaded guilty of the offence. The Investigating Officer further stated that Alamzaib recorded statement on 31.5.2011 that the abductee was resented in the house of Naseebullah. The police raided the house of all accused including Naseebullah but failed to recover abductee. On 19.9.2011, the statement of abductee Uzma Ayub was recorded by JM Takht-i- Nusrati soon after her alleged release at Link Road Chowk Bannu in the presence of her brother Alamzaib in which she stated that police raided their house to arrest Alamzaib and picked her up and late handed her to Gul Marjan, Sardar Ali Khan, Nazar Khan and Qamar Ali. She was then shifted to another house where Naseebullah, brother of Qamar, forced her to marry him and had intercourse with her. She stated, 'In that house Qamar Ali Khan, Kareem and Alam also had sexual intercourse with me. Two police officers one of whom was Hakeem also had intercourse with me. In that house, I was injected by Dr. Iqbal and I was rendered unconscious. Then I found myself in another house with completely different people. On my inquiry, I was told that I had been sold to them. One day these people were talking me to DI Khan when I got opportunity to escape at Link Chowk Bannu.' Medical examination report stated that rape was committed; there was violation of abrasion present; she is pregnant of 5 months; there was no mark of injection. The medical board opined that she was between 16 and 19 years of age. Her samples were sent to Lahore. Samples were also taken from Qamar Ali, Mohsin Shah, Amir Khan, SI and Hakeem Khan, SI. Samples were taken from PW Jamal Anwar and a number

of others. A girl was born to Uzma in January 2012 whose sample was also taken. No sample matched. The alleged place of release was found to be 45 paces from the PCO of Rab Nawaz. The distance from Link Chowk Bannu to Takht-i-Nusrati was found to be 50/55 km. Rab Nawaz and Uzma improved their first statements subsequently.

The accused police officers case was that it was a concocted story because Alamzaib was a member of a criminal gang. At trial, it was found that Gul Marjan was 78 years of age, Nazar Khan 70 years of age and Sardar Ali 85 years of age. They said they had been falsely implicated because of the stealing of a mobile phone by Alamzaib and thereafter firing incident resulting in firearm injury to Qamar Ali who registered FIR against Alamzaib and later on raid was conducted by police for his arrest which was given the shape of present concocted case. Other accused also narrated instances of prior enmity and issues with Alamzaib and his family. PW Uzma Ayub admitted that Alamzaib was arrested by the accused on the date of occurrence. PW Jamal stated that Alamzaib was not arrested in his presence, but when he was brought after arrest he was present in the mobile. The Judge observed that the facts pertaining to arrest of Alamzaib and Jamal Anwar were not stated in the complaint. The Judge also found that Uzma did not explain how she got to Takht-i-Nusrati from Bannu. He also observed that in natural course of events a young lady who has escaped from the clutches of abductors shall go to her family rather than recording of statement before JM, he concluded that she had not been abducted. He also found that she had not been raped by the accused since DNA tests did not prove it. The Judge acquitted all the accused persons.

B. Questions

- i. Should the prosecutor consider the defense version before forwarding case for trial?
- ii. Is lack of DNA proof that sexual intercourse did not take place?
- iii. Should Uzma be prosecuted for fornication with an unknown person?
- iv. Is there enough evidence for acquittal?

C. Answers

- i. The prosecutor should consider the defense version if available on record. If not available on record he should consider the likely defence version.
- ii. Lack of DNA may or may not be proof of sexual intercourse. If the girl alleges that rape took place within a period of time in which semen or ejaculate ought to be present and sample was taken properly and without urination, then lack of DNA can be considered proof of innocence.
- iii. Uzma can be prosecuted for offence under section 496-B although the prosecution should avoid charging prosecutrix in such cases.
- iv. Enough evidence is not required for acquittal. The burden of proof is on the prosecution which did not prove the case beyond reasonable doubt in this case. In this case, there was not enough evidence to file a prosecution in court.

CASE STUDY 12

A. Facts

Dr. Rizwanullah reported to the police that on 10.2.2015 at about 12.35 pm when he along with his nephews were present in the house, they heard a loud explosion. When he came out, he saw a white color motor car standing. A man sitting on the rear seat of the said car threw a hand grenade which did not explode. From the earlier explosion, the walls of his house and a car of a guest were damaged. He further reported that a few days earlier pamphlets from the Tehrik-i-Taliban and a demand of one crore was also made regarding which he has already made a report. FIR No 21/15 u/s 387 PPC, 3/4 ESA and 7 ATA was registered on the basis of the said report at PS CTD Peshawar.

The complainant made statement under section 161 wherein he charged Daniyal ur Rehman, Waleed and Abdullah (facing trial) and Bilal accused absconding for throwing hand grenade at his house and for extending threatening calls through mobile numbers 0347 1001774, 0345 9491502, 0346 9896382 and 0335 5712456. The police traced the accused on the basis of CDR and as per report these numbers were found to be linked with the mobile SIM number of the complainant. Accused pointed out the place of occurrence and indicated their respective places at the time of occurrence on the spot. Dr. Rizwanullah stuck to his statement but added that he had pardoned the accused facing trial on the request of a Jirga and he does not want to charge the accused as he has conducted Jirga. PW Ziaullah Khan stated that at the time of the occurrence he was posted as SHO Tatar Peshawar and on receipt of information he rushed to the spot. He also heard the sound of an explosion, and when he reached at the place of occurrence he found that one explosion had taken place inside the house while an unexploded hand grenade was lying outside.

The Bomb Disposal Squad was informed and the CTD staff also reached. The BDS officials defused the hand grenade. The defendants denied involvement. Defense counsel said the pointation was immaterial as no recovery took place in consequence thereof. Pointation of position was no recovery in the eyes of law and these were merely inadmissible statements. He further argued that none of the mobile SIMs from which calls were allegedly made were recovered from the accused. It was also argued that in cross of Ziaullah Khan he admitted that CCTV camera was installed in the house of the complainant but no CCTV footage was taken into custody. Public Prosecutor argued that when the complainant is admitting that he pardoned the accused on the basis of the Jirga it means that he the accused have admitted their guilt. The court acquitted the accused on the basis of the rule that in cases of circumstantial evidence, evidence on record must not leave any reasonable doubt that the act in question could only have been committed by the accused and that such evidence was not present in the case.

B. Questions

- i. Is the pointation of location on the crime scene admissible in evidence in view of Article 40 of the QSO?
- ii. Can the court presume that the accused committed the crime since they sought Jirga and forgiveness?

C. Answers

- i. Article 40 allows the prosecution to prove discovery of facts on the basis of information received from a person accused of an offence. Thus, there is nothing in Article 40 which precludes the discovery of the presence of the offender at a particular point from being proved.



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- ii. Ideally the Prosecution must prove its case on its own evidence and not through indirect admissions of the accused. However, such evidence could be taken into consideration as part of the overall evidence in the case.

CASE STUDY 13

A. Facts

Brief facts of the case are that Mushtaq Khan SI and Ijaz Khan ASI were present on Nakabandi near Police Post Saifan when they saw one young person placing a tin of ghee near the wall of PP Saifan. They overpowered him. On inquiry, he disclosed his name to be Shoaib alias Afsar. On cursory investigation, he disclosed that the said Ghee Tin contained explosives provided to him by commanders of Lashkar-i-Islam namely Tor Javed, Daud, Abdullah alias Imran, Salahuddin, Mian Javed and Zar Shed for the explosion of PP Saifan. BDS staff was summoned who defused the bomb on the spot and recovered 7 kg explosive, 12 feet prima cord, 6 numbers safety fuse and one electric detonator which was handed over to the police. FIR NO 372/14 was registered at PS Badaber Peshawar against above said accused u/s 5 ESA r/w 7 ATA.

The accused recorded confession before the Magistrate. Challan was submitted against Shoaib (under arrest) and absconding accused u/s 512. Trial was held through video link on the application of the accused that he was facing severe threats from unknown persons. The prosecution case was as aforesaid. The defence case was that nothing was recovered from the accused, there were no independent witnesses of the recovery and the confession was made under coercion. The Court found the prosecution case compelling and convicted the accused to 14 years R.I and, confiscation of property.

B. Questions

- i. What are the various procedures that need to be in place for live link?
- ii. Were independent witnesses necessary?
- iii. Is it compulsory to order forfeiture of property?

C. Answers

- i. The right to have proceedings conducted in open court and the right to confront witnesses are fair trial rights. They can only be curtailed where there is imminent danger and even there the accused must be able to see the witnesses against him unless the court has passed a separate order to screen them. However, the counsel of the accused and the court cannot be stopped from viewing the witnesses in any case.
- ii. Independent witnesses are not required for recoveries under the Anti-Terrorism Act (section 19-A, Anti-Terrorism Act, 1997). The use of explosives or firearms is also included in schedule III of the ATA, 1997.
- iii. Forfeiture is mandatory under section 5A of the Explosive Substances Act, 1908.

CASE STUDY 14

A. Facts

FIR No 172/14 dated 11.2.2014 was registered u/s 365-A/149 PPC at PS Chamkani, Peshawar on the complaint of Mumtaz. Complainant reported that his one son namely Sajad serving in Pakistan Army was martyred some 5/6 years ago and in recognition of his services he was allotted a plot of 5 marlas in Lahore. He was in connection with some people for selling the plot. On 8.2.2014 his son namely Khalid received a telephone call and the caller asked him to come for the transaction of the plot. Accordingly, his son in the company of PW Umair went to the place of rendezvous on motorbike. After an hour Umair came back and reported that five persons came in the car and started negotiations with Khalid. Soon there was exchange of hot words and the said persons forcibly put him in their care and one of the accused took the motorcycle.

Police started investigation and recovered abductee Khalid from the clutches of accused Ibrahim. Police submitted challan against Ibrahim alias Khateen, Hasan and Hayat Khan. Challan u/s 512 was submitted against Wajid, Amjid, Nabi Jan Rehmatullah, Ghafoor, Hasham, Afzal Kahn and Zaiwar. The prosecution case was based on the statement of eyewitness Umair, statement of abductee, statement of complainant, confessional statement of the accused facing trial and recovery of the abductee. PW Umair did not own his statement to the police and said that he knew nothing of the occurrence. PW 6 Khalid abductee stated in cross examination that throughout his confinement his eyes were covered and the accused he confronted during that period had muffled their faces. He further said that it is correct that he has also effected compromise with accused facing trial outside the court and all accused facing trial have satisfied him about their innocence. PW Inspector Abdur Rashid stated in his cross examination that it is correct that when confessional statements of accused had been recorded the accused were handed back to him. The Court acquitted the accused facing trial.

B. Questions

- i. How can the prosecution prove that the statement of the abductee is incorrect?
- ii. What is the status of composition in this case?

C. Answers

- i. The prosecution can easily show that the statement of Khalid is incorrect by pointing to the fact that on the one hand he says that his eyes were covered. On the other hand, he says the faces of all accused were muffled. If his eyes were covered how could he see that faces were muffled?
- ii. A compromise in a non-compoundable case has no effect. At best, it can be used for mitigation in sentence.

CASE STUDY 15

A. Facts

Complainant Syed Zafar Ali reported to the police in injured condition that he along with Syed Saqlain Haider and Muhammad Abbas came out of Imambargah Haji Malik Rehman at the end of Majlis and got seated in Toyota Corolla black color bearing registration no 2443 Peshawar. Syed Saqlain Haider was in the driving seat, Muhammad Abbas was in the front seat and he was in the back seat when in the meanwhile the accused, Zahir and Masood, armed with deadly weapons came and started indiscriminate firing resulting in spontaneous death of Syed Saqlain Haider and injuries to Muhammad Abbas and him. The occurrence was witnessed by Safdar Abbas brother of Muhammad Abbas and Wajid Hussain. He said they have no enmity, but they have been hit because they are shiah. FIR No 228/.10 dated 22.2.2010 was registered u/s 302/324/34/109/427 PPC, 7 ATA at PS Agha Mir Jani Shah.

Another FIR of the incident was registered on the complaint of Saif ur Rehman, SI Police Post Wazir Bagh, who stated that on mobile gasht he heard fire shots near Malik Rahman Imambargah. They rushed there where two unknown persons were firing on Motor Car number 2443 Peshawar. Watching the police party, the accused fled towards Waliabad where they fired on the police party. After firing and strenuous efforts, one Zahir was arrested with 9mm pistol which was taken into custody. His companion escaped whose names was disclosed by Zahir as Masood alia Tanveer. On return it was disclosed that from the firing of the accused, Syed Saqlain Haider got killed and two persons accompanying him got injured. Another FIR bearing No 229/10 was registered u/s 324/353/427/34 PPC, 13A.O and 7 ATA at the same PS. Two freshly fired empties of 30 bore and three empties of 9mm were recovered from the crime scene and sent to FSL. The crime empties were found to have been fired from the recovered weapon.

During evidence, it was found that Majlis started at 9.30 pm. The incidents of the two FIRs were 250 paces apart. No empties fired by the police were recovered from the scene. PW Wajid Hussain admitted that it was in his knowledge that the accused was arrested when the report was being lodged by PW Syed Zafar Ali. Medical examination was conducted at 10.30 pm while Murasila was drafted at 23.50 hours. The same motor car was not presented in court.

The defence argued that crime empties were received in FSL on 1.3.2010 without explanation of delay. It was further said that the residence of the accused was 7/8 minutes from the spot hence he was arrested from his home and not from the spot.

The Court acquitted the accused on the ground that it was not natural for the complainant and his witnesses to name the accused. Moreover, correct identification was difficult at the time of occurrence. The complainant did not narrate events to police official present at LRH where his brother was brought. The Court said that FIR was registered after deliberation and consultation.

B. Questions

- i. What is the impact of deliberation and consultation on the value of the FIR?
- ii. Is non-production of car involved in the incident fatal to the incident?

C. Answers

- i. Deliberation and consultation reduces the value of the statement in the FIR as it then ceases to be a natural and spontaneous account of events.
- ii. Non-production of car is a serious lacuna and may show concoction of some aspects of the incident.

CASE STUDY 16

A. Facts

Short facts of the case as disclosed in the FIR are to the effect that there was spy information that some terrorist will enter Kohat in Motor Car No FDZ 230 for terrorism, upon which the complainant, Sakhi Rehman Khan SHO PS Jerma, along with other police officials arranged Nakabandi. In the meanwhile, Motor Car No FDZ 230 was seen coming from Sar Gul side. On seeing the police, Nakabandi, the driver, changed direction and two persons deboarded from the car and fled, while one person sitting on the rear seat who disclosed his name as Rab Nawaz was apprehended. He disclosed the names of his co-accused as Sadim and Batur. The case was challenged by the Defence on the ground that BDS Kohat could not analyze the recoveries as this was only the power of BDS Peshawar and the alleged report was fake. It was further argued that the recoveries were planted since as per FIR time of occurrence was 1410 hours on 11.3.14, time of report was 15.55 hours, while FIR was chalked out at 16.45 hours. According to PW Zahoor ul Islam ASI, he examined the pistol along with fixed charger containing eight rounds of 30 bore at about 8.30 am on 11.3.2014. The Court found that the seals put on the parcels at the Circle Officer Investigation were intact meaning thereby they were not examined by the BDS.

B. Questions

- i. Is there sufficient evidence in the case to justify conviction?
- ii. If you were the public prosecutor how would you explain the discrepancy in time?
- iii. If you were the defense counsel how would you show that the recovery was planted?

C. Answers

- i. There are serious inconsistencies in the prosecution case especially the fact of examination prior to recovery. This creates a doubt that the recovery and the case was pre-planned.
- ii. The only way to explain the early examination is to show erroneous mention of time by PW Zahoor ul Islam ASI.
- i. It is very easy to show that recovery was planted; first the evidence of PW Zahoor ul Islam, second the lack of examination by BDS.

CASE STUDY 17

A. Facts

On 7.6.2014 the complainant, Nasir Muhammad, reported to the local police that Mst Sher Bano, a daughter of Bismillah Jan, was married to his brother Gul Jamal. Out of this wedlock eight children were born of which five are alive. Two and half months prior to occurrence she was annoyed with her husband and went to the house of her parents and took away with her 7 ½ tola of gold and Rs 20 lacs. Three weeks prior to the occurrence she was missing and she was enticed by one Adnan with the help of three ladies namely Musarrat Bibi, Shafiq Bibi and Tabgina Bibi and five unknown persons. The accused sent SMS from mobile numbers 0336 6752257, 0335 5979067 and 0342 9770633 and demanded one crore rupees for her release and also to divorce her otherwise they will dishonor her and defame her by making a video of her and upload the same on the net. FIR No 229/14 dated 7.6.2014 was registered u/s 365-A, 7 ATA PS Tajori District Lakki.

Prosecution found the case unfit for trial and requested for discharge of the accused, Mst Sher Bano and Adnan. The Court disregarded the request for discharge since the accused were directly accused and initiated trial. Three Police officers who sketched the crime scene and presented jewelry receipts were examined. The only other PW was Bismillah Jan, the father of Mst Sher Bano, who fully supported the complainant. He additionally said Adnan, the accused, had developed illicit relations with his daughter. The complainant did not himself appear in the witness box in support of his complaint. The counsel for the accused argued that Mst Sher Bano was found dead in her house and complainants Nasir Muhammad and Gul Jamal were accused in the case. The Prosecutor supported the defense counsel. The Court acquitted the accused.

B. Questions

- i. What should the prosecutor do if the court charges an accused against its recommendations?
- ii. Is the prosecutor bound to prosecute the case on the courts directions?
- iii. Is the evidence of Bismillah Jan hearsay?
- iv. What was the ground of disagreement of the court with the recommendation of prosecution not to prosecute the accused? Does it hold ground?
- v. The court considered the argument of the defence that since the prosecution had decided not to prosecute the case, therefore, the case has no merits and should be dismissed. Is it appropriate and legal to give such consideration?

C. Answers

- i. The prosecutor should have challenged the order of the court or in the alternative it should have filed an application for withdrawal.
- ii. The prosecutor cannot be compelled to prosecute. He can only examine the witnesses in the case on the direction of the court. However, he cannot be compelled to argue in favour of the complainant's case.
- iii. Yes, the assertion that the accused made a phone call to demand ransom to Gul Jamal was not made by Gul Jamal in his deposition before the court but by Bismillah who came to know about it from Gul Jamal.



- iv. The accused were directly charged with the offence. It doesn't hold ground because the decision not to prosecute depends on whether or not there is sufficient evidence against an accused and not on whether or not he is directly charged.
- v. Where the court has not agreed with the recommendation of the prosecution to discharge the case, it may not be appropriate to give weight to the argument of the defence that the prosecution had made a submission to discharge the case on the basis of insufficient evidence. However, it would be inappropriate for a prosecutor to conduct an evidentiary weak case especially when he has made it clear to the court.

CASE STUDY 18

A. Facts

On 23.10.2015 Azmat Khan, Inspector CTD Kohat, on information that a person in suspicious condition was searching something in the hill tract of Nasrat Khel and perhaps he might be in search of a bomb already recovered by the local police on 8.9.2015. On seeing the police, he tried to flee away but was apprehended. On search a hand grenade was recovered from the side pocket of his shirt. On query, he disclosed his name as Irfanullah. On the basis of marasla FIR No 37/15 dated 23.10.2015 was registered against the accused under s 5 ESA read with 7 ATA. Writ was filed on the ground that mere possession of explosive without its use does not fall within the 3rd schedule of ATA, the Court found that the amendment making mere possession triable by the ATA was only applicable in Punjab. Case was ordered to be transferred to ordinary court for trial.

B. Questions

- i. What is the difference between acts of terrorism, offences under the ATA and scheduled offences?
- ii. Is the use of explosives included in the third schedule of the ATA, 1997?
- iii. Was it decided on point of law or fact or both?
- iv. Is the judgment of the honorable High Court appealable on legal grounds?

C. Answers

- i. An act of terrorism means an offence under section 7 of the ATA. All offences under the ATA including section 7 are offences under the ATA, 1997. Scheduled offences are offences mentioned in the third schedule. Scheduled offences can be tried by the AT court without the presence of a section under the ATA, 1997.
- ii. The use of explosives is mentioned at Item No 4(ii) and (iii) of the third schedule. The mere possession of explosive substances under the ESA is included at Item No 4 (v) of the third schedule but this item is only applicable in the province of Punjab. Thus, mere possession of explosive substances is not triable under the ATA, 1997 in KPK. As to whether section 7 is attracted or not is for the judge to decide.
- iii. Point of law
- iv. Yes. Since the alleged act amounted to an offence under section 6 (ee) ATA, which states that a person in possession of explosives with terrorist intent the accused was liable to be tried by the ATA court. The offence is punishable under section 7(ff). The trial court had convicted the accused under that offence. The court seems to have overlooked that provision in making the decision.



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Plot # 5-11, Diplomatic Enclave, G-5, Islamabad, Pakistan
Tel: +92 51 2601461-2 Fax: +92 51 2601469
Email: unodc-pakistanfieldoffice@un.org
Website: <http://www.unodc.org/pakistan>



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Website: eeas.europa.eu/delegations/pakistan
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