

Arms + Grenade Case - Reduction /
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IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi*

SPECIAL CRIMINAL A.T. JAIL APPEAL NO.92 OF 2021.

Appellant	Muhammad Yousuf alias Thelay Wala s/o Muhammad Ibrahim through Mr. Habib-ur-Rehman Jiskani, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Judgment	02.09.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Muhammad Yousuf alias Thelay Wala son of Muhammad Ibrahim was tried in the Court of VIII Anti-Terrorism Court, Karachi in New Special Case No.31/2021 (Special Old Case No.71 of 2019) under FIR No.360/2019 u/s 4/5 Explosive Substance Act, 1908 r/w section 7 ATA, 1997 registered at PS Soldier Bazar, Karachi and New Special Case No.31-A/2021 (Special Old Case No.71-A(XI) of 2019) under FIR No.361/2019 u/s 23(i)-A of SAA, 2013 registered at PS Soldier Bazar, Karachi vide judgment dated 26.01.2021 the appellant was convicted for an offence punishable u/s. 5 of Explosive Substance Act 1908 and sentenced to suffer R.I. for five years and fine of Rs.50000/- and in case of default he shall serve three months more. The appellant was also convicted for an offence punishable u/s. 23(1) of Sindh Arms Act 2103 and sentenced to suffer R.I. for five years and fine of Rs.50000/- in default he shall serve three months more. The above sentences awarded to the accused will run concurrently. Accused also extended benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per F.I.R. are that on 18.11.2019 SIP Aijaz Hussain along with police officials in police vehicle were on patrolling in their area at about 0330 hours inside Street Naseem Cloth Market, Muhallah Islam Gani Garden West, Karachi. Police spotted two dubious persons on a motorcycle bearing registration No.KHIF-2423

maker Super Star-70 Black Color and signaled them to stop but they tried to flee, on seeing the police mobile. Complainant with the help of police officials apprehended one suspected person while his companion succeeded to escape from there. Police inquired the name from apprehended accused, he disclosed his name to be Muhammad Yousuf alias Thelay Wala son of Muhammad Ibrahim while he disclosed name of his absconder co-accused to be Riaz-u-Deen alias Qabar Khodda son of Siraj-u-Deen. Police took his body search in presence of mushirs and recovered from his possession one pistol of 30 bore along with magazine containing 05 live rounds and one hand grenade of green color, in black polythene bag, on the top of hand grenade ARGES was written, on its body ARGES, HDGR was written. From further personal search of the accused police also recovered one RIVO mobile, in black color, original CNIC and amount of cash of Rs.520 / from his possession. Accused failed to produce licenses of the recovered arms, ammunitions and so also registration papers of motorcycle bearing registration No.KIIF-2423, engine NO.SAA-731978 and chassis No.SAA85265. The hand grenade was safely taken into custody by the police and sealed the pistol along with magazine and live bullets, arms and ammunition and so also the motorcycle was taken into custody by the police u/s.550 Cr.P.C The act of accused falls under-section 4/5 Explosive Substance Act, 1908 r/w Section 7 ATA and u/s.23(i)-A, 2013 hence accused was arrested and police prepared memo of arrest & recovery, accordingly, BD team was informed. The police brought the present accused along with case property to PS, there two FIRs were registered against the accused and investigation of the case was entrusted to SHO/PI Sultan Ahmed of PS Baloch Colony. After completing investigation, PI/SHO submitted final report u/s. 173 Cr.PC before the Court of Administrative Judge, ATCs, Karachi there from after approval, the case was approved and transferred to ATC for trial of the accused according to law.

3. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.
4. The prosecution in order to prove its case examined 04 Prosecution Witnesses .and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him and claimed false implication

by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 26.01.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions stated that he did not press the appeal on merit and stated that he would be satisfied if he is given some reasonable reduction in sentence based on following mitigating factors:-

- i) That the appellant was a first time offender and is capable of reformation.
- ii) The appellant had a large family to support.
- ii) That the appellant had admitted his guilt and shown genuine remorse.
- iv) That the appellant had served out a substantial portion of his sentence.

8. Based on the above mitigating factors, the learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellant.

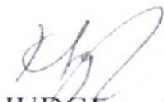
9. We have gone through the evidence and found that the appellant was arrested on the spot and recovered from his possession an unlicensed pistol and hand grenade. The arresting officers had no enmity with the appellant to falsely implicate him in this case and as such we find their evidence to be reliable trustworthy and confidence inspiring and we believe the same. The pistol was unlicensed which FSL report was positive and the appellant did not produce the license for the same. The hand grenade was sent to the BD experts who examined and reported that the same was with explosive substance but it did not have detonator. Based on the above discussion we find that the prosecution has proved its case

against the appellant beyond any reasonable doubt and maintain his conviction.

10. With regard to the sentence based on the mitigating factors raised by learned counsel for the appellant and the no objection of learned Addl. P.G. to a reduction in sentence based on such factors and the fact that the appellant has completed a substantial part of his sentence, we hereby reduce the appellant's sentence to the period already undergone in custody and waive off any fine payable by him. The appellant shall be released unless he is wanted in any other custody case.

11. The instant appeal stands disposed of in the above terms.


JUDGE
02/08/2022.


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