

IN THE HIGH COURT OF SINDH, KARACHI*Present;**Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Arshad Hussain Khan.*SPL. CRL. A.T.A. NO. 82 OF 2022.
SPL. CRL. A.T.A. NO. 83 OF 2022.

Appellant	Muhammad Aliyan S/o. Amanullah through M/s. Shahzad Qamar Abbas and Shamshad, Advocates.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

SPL. CRL. A.T.A. NO. 102 OF 2022.
SPL. CRL. A.T.A. NO. 103 OF 2022.

Appellant	Muhammad Zubair S/o. Muhammad Ashraf through Syed Naimatullah Shah, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

SPL. CRL. A.T.A. NO. 105 OF 2022.
SPL. CRL. A.T.A. NO. 106 OF 2022.

Appellant	Zaheer Alam @ Zahid Bangali S/o. Noor Alam through Mr. Liaquat Ali Awan, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

SPL. CRL. A.T.A. NO. 107 OF 2022.
SPL. CRL. A.T.A. NO. 108 OF 2022.

Appellant	Muhammad Faisal S/o Usman Ghani through Mr. Liaquat Ali Awan, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

Date of Judgment	08.12.2022.
------------------	-------------

}

JUDGMENT

Mohammad Karim Khan Agla, Jr.:- The appellants Muhammad Zubair S/o. Muhammad Ashraf, Zaheer Alam @ Zahid Bengali S/o. Noor Alam, Muhammad Faial S/o. Usman Ghani and Muhammad Aliyan @ Adnan @ Khana @ Danish S/o. Amanullah were proceeded against in the Anti-Terrorism Court No.I, Karachi Division in Special Cases No.403/2021, 403-A/2021, 404/2021, 404-A/2021, 405/2021, 405-A/2021 and 406/2021, 406-A/2021 pursuant to FIRs No.213/2021 to 220/2021 U/s. 4/5 Explosive Substance Act r/w section 7 of ATA, 1997 and U/s. 23(1)(a) of Sindh Arms Act, 2013 registered at P.S. Pak Colony, Karachi and vide impugned judgment dated 30.03.2022 all accused persons namely Muhammad Zubair, Zaheer Alam @ Zahid Bengali, Muhammad Faisal and Muhammad Aliyan @ Adnan @ Khana @ Danish were convicted u/s 265-H(2) CrP.C and sentenced to suffer R.I for five years each for the offence punishable u/s 5 of Explosive Substance Act, 1908. Appellants/accused were also convicted and sentenced to suffer RI for (14) fourteen years each for the offence punishable under section 7(ff) of Anti-Terrorism Act, 1997. They were also convicted and sentenced to suffer RI for five years each with fine of Rs.20,000/(Rupees Twenty Thousand) each for the offence punishable under section 23(1)(a) of Sindh Arms Act, 2013, in case of non-payment of fine, they shall suffer SI for three months more. All the sentences were ordered to run concurrently. The benefit of section 382-B CrP.C was also extended to all the accused.

2. Brief facts of the prosecution case are that on 11.07.2021 the complainant SIP Muhammad Sharif Niazi registered above FIRs at PS Pak Colony, Karachi, wherein it is alleged that he along with subordinates was on patrolling duty in police mobile bearing registration No.SPN-105. During patrolling he received spy information about availability of four suspects having hand grenades, Kalashnikovs and pistols. Accused Aliyan has committed murder of one Altaf on 26.06.2021 within the jurisdiction of PS Pak Colony with his pistol, who were present inside the Meva Shah Graveyard, near Niyazi Mohallah, Dhobi Ghat, Pak Colony, Karachi. On receiving such information, complainant along with subordinate staff reached at pointed place in police mobile and at about 2030 hours on the pointation of spy complainant apprehended all the four accused persons. On inquiry, they disclosed their names as Muhammad Zubair son of

Muhammad Ashraf, Zaheer Alam @ Zahid Bengali son of Noor Alam, Muhammad Faisal son of Muhammad Usman and Aliyan @ Adnan @ Khana @ Danish son of Amanullah. On their personal search, one Kalashnikov with 10 live bullets and one hand grenade wrapped in white colour plastic shopper recovered from accused Muhammad Zubair, one Kalashnikov with 10 live bullets and one hand grenade wrapped in white colour plastic shopper recovered from accused Zaheer Alam @ Zahid Bengali, one Kalashnikov with 10 live bullets and one hand grenade wrapped in white colour plastic shopper recovered from accused Muhammad Faisal and one 9-mm pistol with five live bullets and one hand grenade wrapped in white colour plastic shopper recovered from accused Muhammad Aliyan. On their further search Rs.180/- were recovered from accused Muhammad Zubair, Rs.200/- were recovered from accused Zaheer Alam, Rs.150/- were recovered from accused Muhammad Faisal and Rs.140/- were recovered from accused Aliyan. Accused failed to produce licenses of their respective weapons, as such, they were arrested on the spot under memo of arrest and recovery after sealing the case property except hand grenades. Accused and case property were brought at police station, hence, present FIRs were registered.

3. After usual investigation, the challan was submitted against all the appellants who claimed trial and pleaded not guilty.

4. The prosecution in order to prove its case examined 05 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which they claimed false implication however, they did not give evidence on oath but each produced 1 DW in support of their defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellants as set out earlier in this judgment; hence, the appellants have filed these appeals against their convictions.

6. At the very outset, learned counsels for the appellants under instructions of the appellants did not contest the case on merits and admitted their guilt and only sought reduction in sentence of the appellants for the

offences they had been convicted and sentenced to some reasonable extent based on the following mitigating circumstances:-

- a) That all the appellants are first time offenders and are capable of reformation.
- b) That all the appellants are married and had families to support.
- c) That by admitting their guilt they have shown genuine remorse and saved the time of this Court.

7. Based on these mitigating circumstances mentioned by the appellants, learned Additional Prosecutor General had no objection to the reduction in sentences to some reasonable extent.

8. We have gone through the evidence on record and find that the appellants were all arrested on the spot with hand grenades and fire arms with safe custody having been proven and both produced positive FSL reports. No enmity or ill will has been suggested against any of the police witnesses and as such we have no reason to disbelieve their evidence which we find to be reliable, trustworthy and confidence inspiring and as such we believe the same and uphold the convictions of all the appellants except in respect of ATA offences.

9. We find that these cases do not fall within the purview of the ATA as the appellants were simply arrested with hand grenades and fire arms and there was no evidence to suggest that they had any intent, object or design to create terror. In this respect reliance is place on the case of Ghulam Hussain v. The state (2020 PLD SC 61), as such all the appellant are acquitted of the offences under ATA.

10. Based on the mitigating circumstances raised by the appellants and no objection given by learned Additional Prosecutor General Sindh for reduction in sentence and keeping in view that the recovered hand grenades were without detonators and no fire was made on the police we find the sentences handed down to the appellants to be excessive in nature, as such we hereby reduce the sentences of all the appellants under section 5 of the Explosive Substances Act to the time already spent in Jail and waive off their fine. We reduce the appellants sentences under section 23(1)(a) of Sindh

Arms Act, 2013 to the time already spent in Jail and waive off their fine. We have already acquitted the appellants of any offence under the ATA and as such the appellants shall be released unless they are wanted in any other custody case. It is made clear that this judgment shall not have any influence on any proceedings pending against the appellant Muhammad Aliyan which shall be decided by the learned trial court on merits based on the evidence on record.

11. All the appeals stand disposed of in the above terms.

M. Arif