

## **IN THE HIGH COURT OF SINDH AT KARACHI**

### **PRESENT:**

***Mr. Justice Mohammad Karim Khan Agha***

***Mr. Justice Irshad Ali Shah***

### **Spl. Criminal Anti-Terrorism Jail Appeal No.177 of 2020**

Appellant	:	Ateeq Ur Rehman S/o Muhammad Akram Through Mr. Moula Bux Bhutto Advocate
Respondent	:	The State through Mr. Zafar Ahmed Khan, Additional Prosecutor General, Sindh.
Date of Hearing	:	27.08.2021
Date of Order	:	27.08.2021

### **J U D G M E N T**

The Appellant Ateeq Ur Rehman was convicted by the Anti-Terrorism Court No-IV, Karachi Division in Special Case No.27 of 2020 in FIR No.29 of 2020 under Sections 4/5 Explosive Sub-Stance Act, registered at PS Chakiwara, Karachi vide Judgment dated 20.08.2020 and was sentenced to imprisonment for 03 years. However, he was given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that on 28.01.2020, the police were on patrol when they received spy information that there was a member of Liyari Gang at Mirza Adam Khan Road near old KESC office, Liyari. The police party proceeded to the pointed place where at 1800 hours they apprehended the appellant and from his personal search, recovered one hand grenade being No.85-3492 on its liver from his side pocket of pant and also recovered one G-5 simple mobile phone and cash of Rs.600/- thereafter, the appellant was arrested on spot and memo of arrest and recovery was prepared. BDU team was also informed about the recovery of hand grenade. However, after completion of legal formalities, the instant FIR was lodged.

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3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined five PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent. He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.

6. After reading out the evidence, learned counsel for the appellant, under instructions, stated that he did not press this case on merit if the sentence may be converted into already undergone as the sentence awarded by the learned trial court is only for three years and the appellant has already served out more than one and half years in jail. Learned counsel further stated that the appellant belongs to a poor family and being a sole breadwinner, the family members are badly suffering due to his confinement in jail. When this proposal was put to learned Addl. PG, he had no objection to convert the sentence into already undergone.

7. We have gone through the evidence and we find the evidence of five PWs to be reliable, trustworthy and confidence inspiring who arrested the appellant on spot with hand grenade from his possession which was sent to BDU expert which report suggested that the hand grenade can be used to destroy the law and order situation, as such, we find that the prosecution has proved its case against the appellant beyond a reasonable doubt.

8. In this case, we find numerous mitigating factors which can justify conversion of sentence into already undergone which are as follows:

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- i) That no resistance was shown by the appellant at the time of arrest despite having hand grenade with detonator.
- ii) That the appellant is a young man aged about 24 and belongs to a poor family and due to his confinement, the family members are badly suffering.
- iii) That the appellant is the sole breadwinner of his family, who relies on his income.
- iv) That the appellant has fully accepted his guilt and as such has shown genuine remorse.

9. Based on these mitigating factors and the no objection of learned Addl. PG and perusal of the Jail Roll dated 30.04.2021, which reflects that the appellant has served out the sentence of one year four months and twenty days including remissions up to 30.05.2021 and by now the appellant has remained a further period of two and half months in custody, which shows that he has served out a major portion of his sentence, we hereby uphold the appellant's conviction but reduce the sentence of three years imprisonment handed down by the trial Court to the period which he has already undergone. It is noted that the appellant was not convicted under any section of ATA.

10. The instant Spl. Criminal Anti-Terrorism Jail Appeal is dismissed except as modified in terms of sentence as mentioned above. Appellant shall be released forthwith unless required in any other <sup>custody</sup> case.

11. The appeal is disposed of in the above terms.