

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Appeal No. D-09 of 2019

Present :

Mr. Justice Muhammad Saleem Jessar,
Mr. Justice Adnan Iqbal Chaudhry,

Appellant:

Sher Muhammad @ Muhammad s/o Muhammad Ibrahim
By caste Jatoi through Mr. Sabir Ali Shaikh, Advocate.

Respondent:

The State through Mr. Muhammad Noonari, D.P.G.

Date of Hearing : 12.03.2019

Date of Decision: 12.03.2019

JUDGMENT

Muhammad Saleem Jessar, J.- Appellant Sher Muhammad alias Muhammad Jatoi was convicted in his absentia by learned Judge, Anti Terrorism Court, Larkana vide judgment dated 31.10.2011 as under:-

(a) For an offence punishable under section 324, 34, PPC read with Section 7 of Anti-Terrorism Act, 1997 and sentence him to suffer R.I for ten years and to pay compensation to the victim/injured person to the tune of Rs.30,000/-. In case of default of payment of amount, the accused shall further suffer R.I for six months.

(b) For an offence punishable under section 353, PPC and sentence him to suffer R.I for two years.

2. Succinctly, the brief facts of the case are that the appellant along with his companions, namely, Muhammad Nawaz Jatoi and Dr Muhammad Jatoi, allegedly assembled adjacent to village Hamzo Jatoi with intention to commit dacoity resultantly deterred the police party of Police Station Aqil, led by SIP Ameer Ali Shah, from discharging their lawful duty by making fires at them to commit their murder. As a result thereof PW/ASI Bashir Ahmed Shah sustained firearm injury and the appellant along with his companions made good of his escape by making aerial firing to create harassment by leaving

behind their associate Ghulam Ali, who died at the spot after sustaining fire shot injuries. Such case was registered on behalf of the State. After investigation, the challan was submitted by police before the learned trial Court, wherein the appellant was shown to be absconder. The appellant was tried in his absentia and was convicted by learned trial Court, as stated above. On arrest, the appellant has impugned the judgment of trial Court dated 31.01.2011 by way of instant appeal.

3. Mr. Sabir Ali Shaikh, learned counsel for the appellant contended that the appellant being innocent was involved in this case by the police, otherwise he has nothing to do with the alleged incident. The trial of the appellant held in his absentia was in violation of fundamental rights and natural justice. In the circumstances, learned counsel prayed for remand of the case to the trial Court for fresh trial of the appellant in accordance with law.

4. Learned D.P.G has recorded no objection for remand of the case to learned trial Court for fresh trial of the appellant in accordance with law.

5. We have considered the above arguments and perused the record.

6. Admittedly, the appellant was shown to be absconder in the challan-sheet by the police, he after usual observance of the formalities was declared to be proclaimed offender, no charge was framed against him and he was tried in his absentia by learned trial Court. In such a situation the conviction which is recorded against the appellant as is detailed above, by learned trial Court could not be sustained as it is violative of principles of natural justice. In this respect reliance can be had to the case of **Mir Akhlaq Ahmed and others v.**

The State (2008 SCMR 951), wherein it was held by the apex Court as under:-

"Validity--- Trial of accused persons in absentia, undertaken by Trial Court was violative of Arts.9 ad 10(1) Of the Constitution and S.10(11-A) of Anti-Terrorism Act, 1997, could not be allowed to sustain".

8. In view of the facts and reasons discussed above and while relying upon the case law which is discussed above, the conviction recorded against the appellant by learned trial Court could not be sustained, it is set aside. Consequently, the case is remanded to learned trial Court for fresh trial of the appellant in accordance with law.
9. That instant appeal is disposed of in above terms.


Judge


Judge