

IN THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi

Special Criminal Anti-Terrorism Appeals No.362 & 363 of 2018

Appellant : Muhammad Usman S/o Muhammad Rafiq,
Through Ms. Safia Khan, Advocate

Respondent : The State
Through Mr. Muhammad Iqbal Awan
Deputy Prosecutor General, Sindh

Date of Hearing : 05-11-2019

Date of Judgment : 13-11-2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., Appellant filed instant Criminal Appeals on being aggrieved and dissatisfied with the judgment dated 28.11.2018 passed by learned Judge, Anti-Terrorism Court No.IV, Karachi in (1) Special Case No.906/2018 under FIR No. 209/2018 for the offence under Section 4/5 Explosive Substance Act R/w Section 7 ATA 1997 registered at P.S Chakiwara, Karachi and (2) Special Case No.907/2018 under FIR No.210/2018 for the offence under Section 23(1) (A) of Sindh Arms Act, 2013 registered at PS Chakiwara, Karachi; whereby the appellant was convicted and sentenced as under:-

- a) *Convicted u/s 5 of Explosive Substance Act and sentenced to suffer R.I. for (05) years and fine of Rs.5,000/-. In case of default of payment, he shall further suffer R.I. for (02) months.*
- b) *Convicted u/s 23(1) (A) of Sindh Arms Act, 2013 and sentenced to suffer R.I. for (05) years and fine of Rs.5,000/-.In case of default of payment, he shall further suffer R.I. for (02) months.*

All the sentences were ordered to run concurrently. The benefit of section 382(B) Cr.P.C. was also extended to the appellant.

2. Brief facts of the prosecution case are that on 14.07.2018, Complainant S.I Muhammad Bachal of P.S Chakiwara, Karachi alongwith his subordinate staff was on patrolling duty in the area. At about 09:30 hours he received spy information about the presence of armed person at Marwari Muhallah Khandrat, Rangiwara, Liayri, Karachi. On such information, police party reached at the pointed place and on the pointation of spy informant, he (SIP Muhammad Bachal) with the help of his subordinates apprehended the appellant, who disclosed his name as Muhammad Usman son of Muhammad Rafiq. Due to non-availability of private witnesses, the complainant conducted his personal search in presence of the police officials and from the right side pocket of his Kameez one hand grenade having dark brown colour and on its body English words "ARGES Hd Gr 69" were engraved and was recovered. On his further search, police party also recovered from the right side fold of his Shalwar one unlicensed pistol of 32 bore, rubbed number, loaded with magazine containing 03 live bullets. On demand of permission/valid license of arms and ammunitions, he failed to produce the same. Therefore, they arrested the accused and after completion of legal formalities FIRs bearing Nos. 209/2018 under Section 4/5 Explosive Substance Act, R/W Section 7 ATA 1997 and FIR No. 210/2018 under Section 23(1) (A) of Sindh Arms Act, 2013, were registered against the accused.

3. After completion of investigation, I.O. submitted two separate challans on 09.08.2018 before Hon'ble Administrative Judge of ATC, Karachi.

4. These cases were amalgamated under section 21-M of ATA, 1997 being connected matters vide order dated 29.08.2018 and Special Case No.906 of 2018, FIR No.209/2018 u/s 4/5 Explosive Substance Act, R/w section 7 ATA 1997 has been declared as leading case.

5. After completion of the formal proceedings, joint charge was framed on 29.09.2018 against accused to which he pleaded not guilty and claimed trial.

6. In order to prove its cases, prosecution examined (PW-1) SIP Muhammad Bachal at Ex.5, who produced roznamcha Entry No.2 at Ex.5/A, memo of arrest, recovery and seizure at Ex.5/B, FIRs bearing No.209/2018 and No.210/2018 at Ex.5/C & Ex.5/D, roznamcha entries No.13 & 14 at Ex.5/E and Ex.5/F, memo of site inspection at Ex.5/G. (PW-2) PC Mukhtiar Ali at Ex.6. (PW-3) Inspector Ghulam Mustafa Arain of BDU at Ex.7, who produced roznamcha entries No.49 & 53 containing one page as Ex.7/A, clearance certificate as Ex.7/B, letter of Inspector Malik Muhammad Riaz for issuance of final inspection report at Ex.7/C and final inspection report as Ex.7/D. (PW-4) Inspector Malik Muhammad Riaz at Ex.8, who produced roznamcha entry No.18 at Ex.8/A, sketch of the place of incident at Ex.8/B, letter addressed to Incharge CRO alongwith CRO report at Ex.8/C and Ex.8/D, letter for FSL and report of FSL at Ex.8/E & Ex.8/F, letter addressed to Home Department, Government of Sindh through SSP for permission of trial at Ex.8/G, permission of trial u/s 7 of Explosive Substance Act at Ex.8/H and letter addressed to Incharge BDU for issuance of inspection report at Ex.8/I. Lastly, learned APG for the State closed the side of prosecution evidence.

7. Statement of accused u/s 342(1) Cr.P.C. was recorded at Ex.10 in which he denied the allegations levelled against him and prayed for justice. However, in disproof of the charges, neither he examined himself on oath nor produced any witness in his defence.

8. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellant vide judgment dated 28.11.2018, which is impugned before this Court by way of filing the instant Appeals.

9. Learned counsel for the appellant mainly contended that appellant is innocent and has been involved by the police in false cases; that recovery was not effected from him and the same was foisted upon him by the police; that no private persons were made witness of the recovery. During arguments, the learned counsel, however, has advanced a proposal under the instructions of his client/appellant that he would not press the instant appeals, if this Court may reduce the sentences handed down to him on the ground that appellant is aged about 27 years and the only male member of a large family of which he is the main bread winner and is capable of reformation.

10. Mr. Muhammad Iqbal Awan, learned DPG appearing for the State has conceded the proposal taking into account the above grounds.

11. We have heard the arguments of learned counsel for the parties and have perused the material available on record.

12. The record reflects that all the prosecution witnesses supported the case of prosecution as well as recovery of hand

grenade and pistol were proved by the prosecution by providing oral and documentary evidence including reports of FSL and BDU and we are satisfied that the prosecution has proved its case against the appellant beyond a reasonable doubt.

13. We have noticed that appellant was convicted only for the offence u/s 5 of Explosive Substance Act and u/s 23(I)(A) of Sindh Arms Act, 2013 whereas trial Court did not convict him under Anti-Terrorism Act, 1997 and in Para No. 48 of the impugned judgment gives the following findings:-

“The prosecution has proved its cases that hand grenade and 32 bore pistol were recovered from the possession of accused Muhammad Usman. But prosecution has failed to establish that act of accused Muhammad Usman created sense of fear and terror in the area. The fact of possession as well as the circumstances, reasonable suspicion required by the provision of section 5 of Explosive Substances Act and section 23(1)(a) of Sindh Arms Act, 2013, were duly proved. I am of the view that element of terrorism was missing in these cases.”

14. In view of the proposal of learned counsel for appellant and no objection extended by learned Deputy Prosecutor General, we have carefully gone through the relevant law for which appellant was convicted, the punishment provided under Section 5 of Explosive Substances Act, 1908 is produced as under:-

“5. Punishment for making or possessing explosives under suspicious circumstances.

Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with imprisonment for a term which may extend to [fourteen years].

15. Punishment provided under Section 23(i)(a) of Sindh Arms Act, 2013 is produced as under:-

23. Punishment for certain offences. – (1)

Whoever –

(a) acquires, possesses, carries or control any firearm or ammunition in infringement of section 3, shall be punishable with imprisonment for a term which may extend to fourteen years and with fine;

16. The above provisions of law provide the words “may extend to fourteen years” and thus do not restrain the Court from awarding lesser sentence in its discretion keeping in view Section 423 Cr.P.C. Since the appellant is aged about 27 years old and is the sole bread winner of a large family and in our view is capable of reformation under such circumstances, we hereby dismiss the instant appeals of the appellant on merits but reduce the sentences of appellant as under:-

a) Convicted u/s 5 of Explosive Substance Act and sentenced to suffer R.I. for 03 years and fine of Rs.5000/-. In case of default of payment, he shall further suffer R.I. for 02 months.

b) Convicted u/s 23(I)(A) of Sindh Arms Act, 2013 and sentenced to suffer R.I. for 03 years and fine of Rs.5000/-. In case of default of payment, he shall further suffer R.I. for 02 months.

17. All the sentences shall run concurrently and the appellant shall also have the benefit of Section 382(B) Cr.P.C.

18. The instant appeals are disposed of in the above terms.

JUDGE

JUDGE