

HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Jail Appeal No.140 of 2016

Present

Mr. Justice Naimatullah Phulpoto

Mr. Justice Khadim Hussain Tunio

JUDGMENT

Date of Hearing : 15.09.2017
Date of Judgment : 21.09.2017
Appellant : Mohammad Gul @ Kashmiri produced in custody
Respondent : The State through Mr. Mohammad Iqbal Awan DPG.

NAIMATULLAH PHULPOTO, J.- Appellant Mohammad Gul @ Kashmiri was tried by learned Judge, Anti-Terrorism Court No. III, Karachi in Special Case No. 88(III)/2014 and Special Case No. 89(III)/2014. After full-dressed trial, Trial, by judgment dated 30.10.2015, appellant was convicted under Section 386 PPC read with Section 6(2)(k) of the Anti-Terrorism Act, 1997 and sentenced to 07 years R.I and to pay fine of Rs.5000/- and in case of default in payment of fine, he was ordered to suffer 03 months S.I more. Appellant was also convicted under Section 23(1)(a) of Sindh Arms Act, 2013 and sentenced to 07 years R.I and to pay fine of Rs.5000/- in case of default in payment of fine, he was ordered to suffer 03 months S.I more. Learned Trial Court also ordered for forfeiture of the moveable and immovable property of the appellant with the Government. Both the sentences were ordered to run concurrently. Benefit of Section 382-b Cr.P.C was also extended to the appellant.

2. The brief facts of the prosecution case are that FIR bearing Crime No.123/2014 was registered at P.S Baloch Colony by complainant Muneem Saeed, wherein it is alleged that prior to the lodging of the FIR, accused Mohammad Gul @ Kashmiri who is residing near to vicinity of complainant and usually visit Karkhana, demanded bhatta of Rs.200,000/-, in case of non-payment he issued threats of death. It is further alleged that on 26.02.2014, accused demanded bhatta from complainant. It is alleged that bhatta amount was settled but in installments. It is alleged that on 01.03.2014 at 1900 hours, accused Muhammad Gul @ Kashmiri went at Karkhana and received from complainant bhatta of Rs.10,000/- by showing firearm. In the meanwhile, police party headed by ASI Sagheer Ahmed of PS Baloch Colony arrived there and

apprehended accused. On enquiry, accused disclosed his name as Mohammad Gul @ Kashmiri. Police conducted personal search of the accused and recovered cash of Rs.10,000/-. Police also recovered one unlicensed pistol along with magazine loaded with 02 live bullets in presence of mashirs Muneem Saeed, PC Mohammad Aslam and PC Fayyaz Hussain. Pistol and bullets were sealed at the spot. Accused and case property were brought at police station Baloch Colony, where two separate FIRs bearing Crime No. 123/2014 for offences under Sections 386/387 PPC read with section 7 of Anti-Terrorism Act, 1997 and Crime No.124/2014 for offence u/s 23(1)(a) of Sindh Arms Act, 12013 were registered against the accused on behalf of state.

3. Investigation was entrusted to Inspector Ali Ahmed of the aforesaid crimes. Custody of the accused and case property were also handed over to him. I.O visited the place of wardat in presence of mashirs Muneeb Saeed and Zafar Hussain and prepared such mashirnama. I.O recorded 161 Cr.P.C statements of P.Ws, on 03.03.2014, I.O sent weapon and empties to the FSL and received positive report. After completion usual investigation, challan was submitted against the accused under the above referred Sections.

4. Accused could not engage defence counsel therefore, services of defence counsel on state expenses were provided to him by the Trial Court vide order dated 09.08.2014. Both the cases were amalgamated by the Trial Court in terms of Section 21-M of Anti-Terrorism Act, 1997 vide order dated 13.09.2014.

5. Trial Court framed charge against the accused at Ex.4 under the above referred sections. Accused pleaded not guilty and claimed trial.

6. At trial prosecution examined six witnesses. Thereafter, prosecution side was closed by learned DDPP vide statement at Ex.15.

7. Statement of accused was recorded under Section 342 Cr.P.C at Ex.16. Accused claimed false implication in the case and denied the prosecution allegations. Accused neither examined himself on oath in disproof of the prosecution allegations nor produced any witness in defence.

8. Learned Trial Court, after hearing the learned counsel for the parties and examination of the evidence available on record, convicted and sentenced the appellant as stated above, hence this appeal is filed.

9. The facts of these cases as well as evidence produced before the trial Court find an elaborate mention in the Judgment dated 09.05.2016 passed by the learned trial Court, therefore, the same may not be reproduced here so as to avoid unnecessary repetition.

10. Appellant is produced in custody and submitted an application that he does not want to contest the appeal on merits and prayed for reduction of the sentence on the ground that he is supporter of a large family and he is not previous convict.

11. Mr. Mohammad Iqbal Awan learned DPG argued that since appellant does not press the appeal on merits, he recorded no objection in case sentence is reduced to some reasonable extent.

12. We have carefully heard appellant in person and learned DPG and perused the evidence. It appears that appellant has been convicted under Section 386 PPC read with Section 6(2)(k) of the Anti-Terrorism Act, 1997 and sentenced to 07 years R.I and to pay fine of Rs.5000/- and in case of default in payment of fine, he was ordered to suffer 03 months S.I more. Appellant was also convicted under Section 23(1)(a) of Sindh Arms Act, 2013 and sentenced to 07 years R.I and to pay fine of Rs.5000/- in case of default in payment of fine, he was ordered to suffer 03 months S.I more by judgment dated 30.10.2015. Jail Roll dated 17.08.2017 reflects that accused is in custody since 08.03.2014 and he has served including remission 03 years, 10 months and 13 days. Unexpired portion of sentence is shown as 03 years, 07 months and 17 days. Offence u/s 386 PPC is punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. Punishment under Section 7(h) of the Anti-Terrorism Act 1997 is provided that *"the act of terrorism committed falls under clauses (h) to (n) of sub-section (2) of section 6, shall be punishable on conviction, to imprisonment of not less than [five year] and not more than [but may extend to imprisonment for life] and with fine*, whereas, Section 23(1)(a) of Sindh Arms Act, 2013 provides punishment of imprisonment, which may extend to fourteen years and with fine. Appellant has submitted that he is supporter of a large family and he is not previous convict of offence of such nature, learned DPG concedes that the appellant is not previous convict and he has recorded no objection for taking lenient view in the sentence. Previous non-convict and no other instance of appellant's involvement in such cases are the circumstances for reducing the sentence, as held in the case of **Niazuddin v. The State (2007 SCMR 206)**, whereby Honourable Supreme Court of Pakistan

reduced the sentence in the following terms contained in Paras 6 and 7 of the Judgment:

6. However, coming to the question of sentence we note that it has been conceded by learned A.A.G that petitioner is a previous non-convict and there is no other instance of petitioner's involvement in drug trafficking. It has also been brought in evidence that at the time of this arrest he met custodial violence and on that account he received injuries. Perhaps those who arrested him wanted to extract confession for his alleged involvement with some other narcotic dealer. In these circumstances petitioner needs to be given a chance in his life to rehabilitate himself.

7. Accordingly while dismissing the appeal we are persuaded to reduce the sentence of imprisonment of petitioner from 10 years to six years. Order accordingly.

13. In the recent judgment of Honourable Supreme Court reported as **State through the Deputy Director (Law), Regional Directorate, Anti-Narcotics Force versus Mujahid Nasim Lodhi (PLD 2017 SC 671)**, it was observed as follows:-

"We note that in paragraph No. 10 of the judgment handed down by the Lahore High Court, Lahore in the above mentioned case it had been observed that "in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure."

14. Undisputedly, the offences, with which the appellant is charged, are not of capital punishment i.e 'death penalty' and the appellant is seeking leniency letting him a chance of reformation, which fact also tilts the case of appellant. Once, a person involved in a criminal case placed himself at the mercy of Court and seeks a chance of reformation, in that eventuality the Court normally takes lenient view in respect of sentences. Extent of such leniency in awarding sentence should not be such so as to frustrate the ends of justice. Such leniency should be based on judicious scale, keeping in view the maximum and minimum sentence of offence and the submissions of appellant, convictions under section 386 PPC read with Section 6(2)(k) of Anti-Terrorism Act, 1997 and under Section 23(1)(a) of Sindh Arms Act, 2013 are maintained. However, the sentence from 07 years R.I is reduced to 5 years R.I for offences u/s 386 PPC read with Section 6(2)(k) of Anti-Terrorism Act, 1997 and under Section 23(1)(a) of Sindh Arms Act, 2013. However, sentence of the fine and forfeiture of moveable and immovable property of the appellant awarded by the learned Trial Court are maintained. Sentences shall run concurrently. Appellant would be entitled to the benefit of section 382-b Cr.P.C.

15. With the above modification in sentences, the impugned judgment is maintained. Consequently, the appeal is without merit and same is dismissed.

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