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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-49 of 2018

PRESENT:

Mr. Justice Zafar Ahmed Rajput,  
Mr. Justice Irshad Ali Shah,

Appellant : Asif Brohi, through Messrs Shahbaz Ali Brohi and  
Habibullah G. Ghouri, Advocates.

Respondent : The State, through Mr. Sharafuddin Kanhar, Assistant  
Prosecutor General.

Date of hearing: 07-08-2018.

Date of Judgment: 07.08.2018.

J U D G M E N T.

ZAFAR AHMED RAJPUT, J.- Appellant/accused Asif son of Baz Mohammad Brohi through the instant appeal has challenged the judgment dated 08.06.2012, passed by the learned Judge, Anti-Terrorism Court, Jacobabad, in Special Case No54/2010 (Re: State v. Kouro Brohi & others) arisen out of Crime No.51/2010, registered at Police Station Gaheja, District Shikarpur, for offence under Sections 148/149, 365-A, 344, PPC read with Sections 6 & 7 of the Anti-Terrorism Act, 1997.

2. According to the case of prosecution, on 22.10.2010, at 1730 hours complainant SIP/SHO Ghulam Nabi Korai lodged FIR on behalf of state, stating therein that he in company of his subordinate staff proceeded in police uniforms duly armed with service arms and ammunition from police station for patrolling by government vehicle No.SP-5841 driven by driver HC Meer Mohammad under roznamcha entry No.8, at 1530 hours. After patrolling different places, when they reached near Shaheed Illahi Bux Picket, where he received information that on 27.9.2010 Altaf Abro, Azhar Tunio and Abdul Sattar Khokhar were abducted for ransom by the bandits, namely, 1. Kouro, Attoo, 3. Shamoan and others,

including the appellant, and they had kept the said abductees at different places and due to pressure of police the above-named accused persons released the said abductees on 18.10.2010. The complainant approached the said abductees for lodging FIR, but neither they met the complainant nor lodged the FIR. The complainant then registered FIR on behalf of the State.

3. After usual investigation, case was challaned, wherein appellant Asif Brohi and others were shown as absconders, who were subsequently declared proclaimed offenders.

4. On conclusion of trial, the learned trial Court acquitted all the accused persons present before it including the present appellant/accused of the charge for the main offences, however, the appellant and co-accused, namely, Attoo, Shamoon and others, who were declared proclaimed offenders, were convicted under Section 21-L of the Anti-Terrorism Act, 1997 on account of their absconsion and were sentenced to five (05) years imprisonment.

5. The appellant on his arrest was produced before the trial Court and he was remanded to jail. He has challenged the impugned judgment before this Court by filing aforesaid appeal against his conviction and sentence recorded in his absentia, as stated above.

6. Learned Counsel for the appellant contended that conviction of the appellant under Section 21-L of the Anti-Terrorism Act, in his absentia, is violative of Article 9 of the Constitution of Islamic Republic of Pakistan, 1973. Relying upon the precedents of *Muhammad Arif versus The State*, reported in 2008 SCMR 829 and *Mir Ikhlq Ahmed versus The State*, reported in 2008 SCMR 951, the learned Counsel for the appellant contended that the Hon'ble Supreme Court has held that trial in absentia is repugnant to Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973.

7. Learned Assistant Prosecutor General, conceded to the above legal position and has not supported the impugned judgment passed by trial Court in respect of conviction and sentence awarded to the appellant for an offence under Section 21-L of the Act, 1997.

8. We have heard the learned Counsel for the parties and carefully perused the record.

9. For the sake of convenience, Section 21-L of the Anti-Terrorism Act, 1997 is reproduced as under:

*"21-L. Punishment for an Absconder. — Whoever being accused of an offence under this Act, absconds and avoids arrest or evades appearance before any inquiry, investigation or Court proceedings or conceals himself, and obstructs the course of justice, shall be liable to imprisonment for a term not less than [five years] and not more than [ten years] or with fine or with both.*

10. In present case, appellant was acquitted for offences under sections 365-A, 344, PPC and section 7 of the Anti-Terrorism Act, 1997. Record reflects that no evidence was recorded to prove the ingredients of Section 21-L of the Anti-Terrorism Act. Trial Court also failed to formulate a point for determination regarding the offence under Section 21-L of the Act, 1997 in the impugned judgment. There was absolutely no evidence to show that absconion of the appellant was intentional and no finding has been recorded by the trial Court to the effect that appellant was fugitive from the law. However, in the cursory manner learned trial Judge has convicted and sentenced the appellant for the aforesaid offence. As such, procedure adopted by the learned trial Judge in convicting and sentencing the appellant under Section 21-L of the Anti-Terrorism Act, 1997 appears to be absolutely illegal.

11. In view of above discussion, we are of the firm view that conviction of the appellant Asif Brohi for offence under Section 21-L of the Anti-Terrorism Act, 1997, recorded by the learned Judge, Anti-Terrorism Court, Jacobabad, is