

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cri. Appeal No D-51 of 2017

PRESENT

Mr Justice Zafar Ahmed Rajput

Mr Justice Mohammad Saleem Jessar

Appellant : Riaz alias Jackal Kalhoro, through Mr. Ashique Ali Jatoi, Advocate.

Respondent : The State, through Mr. Sardar Ali Shah, Deputy Prosecutor General.

Date of hearing: 09-11-2017.

Date of Judgment: 09.11.2017.

J U D G M E N T

ZAFAR AHMED RAJPUT, J.- Appellant/accused Riaz alias Jackal Kalhoro through the instant appeal has challenged the judgment dated 13.12.2013, passed by the learned Judge, Anti-Terrorism Court, Larkana, in Special Case No.30/2012 (Re: State v. Prem Chandio & others) arisen out of Crime No.42/2012, registered at Police Station Warah, District Kamber-Shahdadkot, for offence under Sections 324, 353, 435, 427, 148, 149, PPC read with Section 7(b), (d) of the Anti-Terrorism Act, 1997, whereby he was convicted in absentia alongwith other proclaimed offenders and sentenced as under -

- (a) Under Section 324 read with section to suffer R.I for ten years and to pay the fine of Rs 20,000/- each and in case of default to suffer further S.I for six months more.
- (b) Under Section 353 read with section 149, PPC to suffer R.I for two years and to pay fine of Rs 5000/- each and in case of default to suffer S.I for three months more.
- (c) Under Section 435 read with Section 149, PPC to suffer R.I. for seven years and to pay the fine of Rs 5000/- each and in case of default to suffer S I for three months more.
- (d) Under Section 427 read with Section 149, PPC to suffer R I for two years and to pay the fine of Rs 5000/- each and in case of default to suffer SI for three months more.

- (e) Under Section 7(b) of Anti-Terrorism Act, 1997 to suffer R.I for ten years and to pay the fine of Rs.20,000/- each and in case of default to suffer R.I for one year more.
- (f) Under Section 7(d) of Anti-Terrorism Act 1997 to suffer R.I for ten years and to pay the fine of Rs.20,000/- each and in case of default to suffer R.I for one year more."

2. Mr. Ashique Ali Jatui, learned Counsel for the appellant, at very outset, contends that the appellant has been convicted by the learned trial Court in absentia, which is violative of Articles 9 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973, therefore, the matter may be remanded to the trial Court for trial afresh by setting aside the impugned judgment.

3. Mr. Sardar Ali Shah, learned Deputy Prosecutor General, conceded the above contention of learned Counsel for the appellant and did not support the impugned judgment passed by trial Court in respect of conviction and sentences awarded to the appellant in absentia.

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

5. From the perusal of record, it appears that the appellant was admittedly tried in absentia by the learned Judge, Anti-Terrorism Court, Larkana. The learned trial Court has held the appellant guilty, and has convicted and sentenced him as mentioned in para 1 (supra) in his absence. The conviction of the appellant recorded by the learned Judge, Anti-Terrorism Court, Larkana, is violative of Articles 9 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973 as well as Section 10(11-A) of the Anti-Terrorism Act, 1997. The Hon'ble Supreme Court while considering the same point in the case of *Ikhlaq Ahmad v State* (2008 SCMR 951) has recorded following observations:

*"14. In view of the above, we feel that the trial of the appellants, in absentia, undertaken by the Special Judge, Anti-Terrorism Court, was violative of Articles 9 and 10(1) of the Constitution and section 10(11-A) of the Anti-Terrorism Act, 1997, thus, cannot be allowed to sustain. Furthermore, the appellants were not afforded any opportunity of hearing and thus, they were condemned unheard which is contrary to the principle of natural justice. We are convinced that the judgments, convictions and sentences rendered and awarded by both the Courts, in the*

absence of the appellants, to their extent are not sustainable under the law and violative of the Constitution and law, which has necessitated the retrial of the case."

6. Record also shows that the appellant without filing an application under Section 19(12) of the Anti-Terrorism Act, 1997 before the trial Court has directly approached this Court through the instant appeal. However, it is relevant to say that Section 25 of the Anti-Terrorism Act, 1997 does not provide any bar that a person convicted and sentenced in absentia cannot file appeal without first making application under Section 19(12) of the Anti-Terrorism Act, 1997.

7. In view of above discussion, the appeal is allowed, the impugned judgment is set aside and the case is remanded to the trial Court for *de novo* trial and decision afresh in accordance with law.

Qazi Tahir\*