

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-83 of 2019

PRESENT:

Mr. Justice Zafar Ahmed Rajput,
Mr. Justice Shamsuddin Abbasi,

Appellant : Bashir Choliyani (Chandio), through Mr. Mumtaz Ali Brohi, Advocate.

Respondent : The State, through Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Date of hearing : 10-03-2020.

Date of Judgment : 10.03.2020.

J U D G M E N T.

ZAFAR AHMED RAJPUT, J.- Appellant/accused Bashir son of Qaisar

Khan Choliyani (Chandio) through the instant appeal has challenged the judgment dated 14.11.2019, passed by the learned Judge, Anti-Terrorism Court, Larkana/Camp held inside Central Prison, Larkana, in Special Case No.14/2007 (Re: The State v. Khadim Hussain & others) arisen out of Crime No.104/2007, registered at Police Station Naseerabad, District Kamber-Shahdadkot, for offence under Sections 365-A, 395, 148, 149, PPC read with Section 7(e) of the Anti-Terrorism Act, 1997, whereby he was convicted in absentia alongwith other proclaimed offenders and sentenced as under:-

- (a) Under Section 365-A PPC to suffer R.I for life and their movable and immovable property stands forfeited.
- (b) Under Section 7(e) of Anti-Terrorism Act 1997 to suffer R.I. for life and to pay fine of Rs.100,000/- (one lac) each, in default thereof to suffer S.I. for two months more.
- (c) Under Section 148, PPC to suffer R.I. for two years.

2. Mr. Mumtaz Ali Brohi, 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, by setting aside the impugned judgment the matter may be remanded to the trial Court for trial afresh.

3. Mr. Ali Anwar Kandhro, learned Additional Prosecutor General, concedes to the above contention of learned Counsel for the appellant and does 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 for the charge of main offence, 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 dealing with the same point in the case of *Ikhtlaq Ahmad v. The State* (2008 SCMR 951) was pleased to record 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 PA/