

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Criminal A.T. Jail Appeal No.167 of 2019

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

Appellant: Rashid @ Raju son of Abdul Kareem Bux
through Mr. Muhammad Farooq, Advocate

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

Date of hearing: 19.12.2019

Date of announcement 24.12.2019

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- Appellant Rashid @ Raju son of Abdul Kareem Bux has preferred this appeal against the impugned judgment dated 06.05.2019 passed by the learned Judge Anti-Terrorism Court No.XX, Karachi in Special Case No.53 of 2019, FIR No.02/2019 registered at PS Chakiwara, Karachi under Section 4/5 Explosive Substance Act, r/w Section 7 of ATA, 1997. After full-dressed trial, learned trial court came to the conclusion that the appellant/accused committed the offence as described under Section 6(2)(ee) of ATA, 1997 punishable under Section 7(1)(ff) of ATA, 1997 and accordingly accused was convicted and sentenced to undergo Rigorous Imprisonment for 14 years. The benefit of section 382-B Cr.P.C was also extended to him.

2. The brief facts of case as per FIR No.02/2019 are that on 01.01.2019 complainant ASI Bashir Ahmed Khan was busy in patrolling duty around the area along with his subordinates staff namely HC Bashir, PC Javed and D/PC Zulfiqar Ali in official police mobile bearing Reg.No.SPE-092. During patrolling a police spy informed him that one suspicious person having explosive material is available at Chakiwara road, Meera Naka Chowk, Karachi. After receiving such information the police party proceeded to the pointed place at about 1330 hours, where they saw one suspicious person and on the pointation of the spy the police party apprehended the accused who disclosed his name to be Rashid @ Raju son of Abdul Karim Bux. Thereafter, complainant ASI Bashir Ahmed Khan,

due to non-availability of private/independent witnesses and in the presence of official witnesses conducted his personal search and recovered one silver color Avan Gola/Rifle grenade, having words V.G.M. recovered from right side pocket of his trouser. Upon his further personal search complainant also secured a NIC of the accused and Rs.200/-. Therefore, police arrested accused in above crime and brought him at the police station, where the present FIR was registered against him.

3. After usual investigation of the case report u/s. 173 Cr.P.C was submitted by the Investigating Officer before the learned trial court. Thereafter a charge was framed against the accused to which he pleaded not guilty and claimed trial in the case.

4. The prosecution to prove the charge examined 05 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under section 342 Cr.PC as well as on Oath u/s. 340(2) Cr.P.C but did not call any witnesses in support of his defense case.

5. Learned Judge Anti-Terrorism Court No.XX, Karachi Division after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 06.05.2019, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. After the reading out of the evidence and the impugned judgment learned counsel for the appellant initially tried to argue the appellant's case on merits however in the face of the overwhelming evidence against the appellant on record he decided not to press the appeal on merits but instead prayed for a reduction in sentence and the removal of the convictions under the ATA as these convictions were not justified based on the particular facts and circumstances of the case in respect of the appellant based on the following mitigating circumstances (a) that the

appellant was the sole bread winner of a large family which since his incarceration was facing financial difficulties (b) that the appellant was a young man capable of reformation as he was a first time offender with no CRO and the (c) grenade could not have been used without a launcher which was not recovered from the accused.

8. Learned DPG contended that based on the evidence on record the prosecution had proved its case against the appellant beyond a reasonable doubt and as such the impugned judgment did not require interference. He also conceded that the ATA was not attracted in the instant case and that the appellant ought to have been convicted u/s 5 of the Explosive Substances Act only and that the mitigating circumstances raised by the appellant as a matter of law did justify a reduction in sentence to some reasonable extent.

9. Having gone through the evidence on record we have no doubt that the prosecution has been able to prove its case against the appellant beyond a reasonable doubt for the offense under S.5 of the Explosive Substances Act 1908 and that the provisions of the ATA are not applicable based on the particular facts and circumstances of this case as there was no object, design or intent to create terror. The prosecution has been able to prove its case against the appellant under S.5 of the Explosive Substances Act 1908 beyond a reasonable doubt for the reasons that, the appellant was caught red handed on the spot by the police with the grenade in day time, a positive BDU report, that there was no enmity between the accused and the police and thus the police had no reason to falsely implicate him in this case and that the evidence of the PW's was corroborative in all material respects whose evidence we found to be reliable, trustworthy and confidence inspiring which is corroborated by the recovery of the grenade from the appellant when he was arrested on the spot. The only issue before us is the offense for which the appellant should be convicted and whether sufficient mitigating circumstances have been shown to justify a reduction in sentence to some reasonable extent as prayed for by the appellant from the higher range to a lower range.

10. We are of the view that the mitigating circumstances mentioned above by the learned counsel for the appellant which have been accepted

by the DPG as amounting to mitigating circumstances do justify a lesser sentence. As such based on the mitigating circumstances mentioned by the appellant and exercising our judicial discretion under S.423 Cr.PC we therefore set-aside the conviction and sentence awarded by the trial court under section 6(2)(ee) of ATA punishable u/s. 7 (1)(ff) of ATA 1997 and convict the appellant under S.5 of the Explosive Substances Act 1908 and sentence him to suffer R.I. for 05 years. The appellant shall have the benefit of S.382 B Cr.PC. A part from the above modification in offence and sentence the appeal stands dismissed.

11. The appeal stands disposed of in the above terms.

MAK/PS