

**JUDGMENT SHEET**  
IN THE HIGH COURT OF SINDH, KARACHI.

Present:

*Mr. Justice Muhammad Iqbal Kalhoro, J.*  
*Mr. Justice Khadim Hussain Shaikh, J.*

**Cr. Anti Terrorism Appeal No.274 of 2016**

Qasim Khan Masood	.....	Appellant.
	Versus	
The State	.....	Respondents.

Cr. No.198/2014 P.S. SIU/CIA  
U/s 23(i) (A) Sindh Arms Act, 2013.

**Cr. Anti Terrorism Appeal No.275 of 2016**

Qasim Khan Masood	.....	Appellant.
	Versus	
The State	.....	Respondents.

Cr. No.199/2014 P.S. SIU/CIA  
U/s 4/5 Explosive Act.

Mr. Shah Imroz Khan Advocate for the appellant.

Mr. Rashid Khan DDPP for the State.

25.09.2017

**J U D G M E N T**

**MUHAMMAD IQBAL KALHORO J:** These two appeals have been preferred against a common judgment dated 24.10.2016 passed by Anti-Terrorism Court No.IX, Karachi in above crimes and offences, whereby the appellant has been convicted u/s 7(ff) Anti-Terrorism Act, 1997 r/w section 4/5 Explosive Substance Act and sentenced to suffer RI for 14 years with forfeiture of his property; and U/s 23(1)(a) of Sindh Arms Act, 2013 to suffer RI for 07 years with fine of Rs.50,000/-, and in default to suffer RI for one year more. Benefit of section 382-B Cr.P.C has also been extended to the appellant.

2. Brief facts of the prosecution case are that on 16.07.2014 at 0045 hours, the appellant was arrested by SIP Muhammad Aslam Qureshi of P.S. SIU/CIA Karachi and from him one hand grenade and an unlicensed 9mm pistol alongwith ten live bullets were recovered. Consequently two separate FIRs were registered against the appellant.

3. In the trial, a Charge against the appellant was framed to which he pleaded not guilty and claimed trial, during which the prosecution

examined in all 04 witnesses. The statement of appellant u/s 342 Cr.P.C. was recorded at Ex.9 in which he has denied the allegations. At the conclusion of the trial, learned trial court convicted and sentenced the appellant vide impugned judgment in the terms as stated above and through the instant appeals, the appellant has challenged the same.

4. Mr. Shah Imroz Khan, learned counsel for the appellant after arguing the case at some length has not pressed these appeals on merits and prays for reduction of sentence awarded to the appellant on the grounds that the appellant is the first offender and he is continuously in jail since his arrest. He further states that this is a simple case of recovery and does not come within the purview of Anti-Terrorism Act, 1997 and in support of his said contention, he has referred to a judgment of this court passed in Cr. A.T.A No.282 and 283 of 2016 (Muhammad Amir Razzaq Vs. The State). Learned DPG has not opposed the modification and reduction in the sentences awarded to the appellant.

5. We have considered the submissions of the parties and have perused the material available on record. As per prosecution case on 17.07.2014 at 0045 hours on spy information, complainant SI Muhammad Aslam alongwith his staff arrested the appellant from Molvi Tameezuddin Khan Road near Shalimar Hotel, Sultanabad, Karachi and recovered an unlicensed 9mm pistol with 10 live bullets and a hand grenade. The pistol was sealed at the spot. The hand grenade after its inspection by Bomb Disposal Unit on the next date i.e. 18.07.2014 was sealed. In support of the case as stated above the prosecution has examined in all four witnesses, who have supported recovery of above stated incriminating articles from the appellant. And in view of such facts learned counsel has not pressed the merits and has prayed for modification and reduction in the sentences awarded to the appellant. His prayer has not been opposed by learned DDPP. In the case of Muhammad Amir Razzaq (supra), we have observed that as per item No.4(ii) of the third schedule to the ATA, 1997, a case becomes triable by the Anti-Terrorism Court, if use of firearms and explosive substance etc. in mosque, Imam Bargah, Church, Temple or any other place of worship is involved in the case; and has placed reliance in this regard on the case of *Amjad Ali and others Vs. The State* (PLD 2017 SC 661). In the present case the appellant is shown to have been arrested during odd hours of night at about 0045 hours and the memo of arrest and recovery as well as FIR do not indicate presence of public there. Therefore, we are of the view that this is a simple case of recovery without involving the

element of terrorism and the punishment awarded to the appellant U/s section 7(ff) of ATA, 1997 does not appear to be justifiable and is thus not maintainable. We have further observed in the aforesaid case that section 4 of Explosive Substances Act, 1908 provides for, inter alia, possession or control of explosive substance with intent to endanger life or property. The intention to endanger life or property is an essential ingredient of the said offence. The prosecution, therefore, has to either establish the same specifically or bring on record the facts from which an inference regarding presence of such intention could be reasonably drawn. And mere possession of explosive would not *ipso facto* bring the case within the mischief of said provision of law; and has placed reliance in this connection on the case of Muhammad Yasin Vs. The State (1984 SCMR 866). In the present case also we have noted that the prosecution has neither established the intention of the appellant to endanger life or property nor has brought on record such facts so as to draw reasonably an inference of such intention against the appellant. Therefore, the conviction of the appellant under section 4 of Explosive Substances Act, 1908 does not seem to be sustainable.

6. Consequent to above discussion, we dismiss both the appeals but alter the conviction of the appellant from section 4 Explosive Substances Act, 1908 r/w section 7(ff) ATA, 1997 to one U/s 5 Explosive Substances Act for keeping the hand grenade and reduce it to 05 years with fine of Rs.50,000/- in default of which, to suffer SI for two months more. Conviction and sentence awarded to the appellant for offence u/s 23(1) (a) of Sindh Arms Act, 2013 through impugned judgment is also altered and is reduced to RI for 05 years with fine of Rs.25,000/- in default of which, to suffer SI for two months more. Both the sentences shall run concurrently. Benefit of section 382-B Cr. P.C stands extended to the appellant.

The appeals in hand stand disposed of in the above terms.

JUDGE

JUDGE

A.K.