

Encounter

(1)

IN THE HIGH COURT OF SINDH AT KARACHI

Special Anti-Terrorism Appeal No: /2019

Mohammad Saeed
S/o Mohammad Ibrahim
Muslim Adult R/o Now
Confined in Central Jail.
At Karachi.

Appellant / Accused

VERSUS

The State Respondent

FIR: No 98/2018
U/S: 23(1)-a SINDH ARM Act, 2013
P.S: Baghdadi, Karachi

**APPEAL AGAINST CONVICTION UNDER SECTION 25-D OF
THE ANTI TERRORISM ACT -1997**

Being aggrieved and dissatisfied with common impugned judgments passed by the learned Judge of Anti-Terrorism Court No. IV at Karachi, dated 11-09-2019 in Special Case No. 603/2018 vide F.I.R No. 98 2018 of P.S Baghdadi, whereby learned judge convicted the accused above named in the offence punishable under section 23 (1) (a) of Sindh Arms Act and sentenced to undergo with the benefit of under section 382-b Cr.P.C R.I 23 (1) Sindh arms Act and sentenced to suffer imprisonment for 03 yrs. with fine of Rs 10000/= in default in payment of such fine shall suffer further R.I for "06" months both the sentences run concurrently, the appellant / accused above named prefers appeal with the R&P of above said special cases to set aside judgment dated 11 09 2019 passed by the learned court judge

THE HIGH COURT OF SINDH AT KARACHI

Spl. Crl. Anti-Terrorism Appeal No.252 of 2019.
 Spl. Crl. Anti-Terrorism Appeal No.253 of 2019.
 Spl. Crl. Anti-Terrorism Appeal No.254 of 2019.
 Spl. Crl. Anti-Terrorism Appeal No.255 of 2019.
 Spl. Crl. Anti-Terrorism Appeal No.256 of 2019.
 Spl. Crl. Anti-Terrorism Appeal No.262 of 2019.
 Spl. Crl. Anti-Terrorism Appeal No.263 of 2019.
 Spl. Crl. Anti-Terrorism Appeal No.264 of 2019.
 Spl. Crl. Anti-Terrorism Appeal No.265 of 2019.
 Spl. Crl. Anti-Terrorism Appeal No.266 of 2019.
 Spl. Crl. Anti-Terrorism Jail Appeal No.336 of 2019.

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Muhammad Saleem Jessar.

Appellants:

1. Muhammad Saeed S/o. Muhammad Ibrahim.
2. Muhammad Imran S/o. Muhammad Ismail.
Through Mr. Ghulam Fareed Baloch, Advocate.
3. Anil S/o. Kishan.
4. Sunil S/o. Beram through Mr. Javaid Ahmed
Rajput, Advocate.
5. Shankar S/o. Mohan Lal through Mr. Iftikhar
Ahmed Shah, Advocate.

For State:

Through Mr. Muhammad Iqbal Awan, Deputy
Prosecutor General.
Mr. Mushtaq Ahmed Jehangiri, Special Prosecutor
Pakistan Rangers.

Date of hearing:

14.02.2020.

Date of Judgment:

24.02.2020.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- Accused Muhammad Saeed S/o. Muhammad Ibrahim, Muhammad Imran S/o. Muhammad Ismail, Anil S/o. Kishan, Sunil S/o. Beram and Shankar S/o. Mohan were tried by learned Judge, Anti-Terrorism Court No.IV, Karachi in Special Cases No. 594/2018 arising out of Crime No.89/2018 U/s. 353/324/186/34 PPC, r/w section 7 of ATA, 1997, Special Case No.595/2018 arising out of Crime No.90/2018 U/s. 23(1)(a) of Sindh Arms Act, Special Case No.596/2018 arising out of Crime No.91/2018 U/s. 4/5 Explosive Substances Act r/w section 7 of ATA, 1997, Special Case No.597/2018 arising out of Crime No.92/2018 U/s. 23(1)(a) of Sindh

Arms Act, Special Case No.598/2018 arising out of Crime No.93/2018 U/s. 4/5 Explosive Substances Act r/w section 7 of ATA, 1997, Special Case No.599/2018 arising out of Crime No.94/2018 U/s. 23(1)(a) of Sindh Arms Act, Special Case No.600/2018 arising out of Crime No.95/2018 U/s. 4/5 Explosive Substances Act r/w section 7 of ATA, 1997, Special Case No.601/2018 arising out of Crime No.96/2018 U/s. 23(1)(a) of Sindh Arms Act, Special Case No.602/2018 arising out of Crime No.97/2018 U/s. 4/5 Explosive Substances Act r/w section 7 of ATA, 1997, Special Case No.603/2018 arising out of Crime No.98/2018 U/s. 23(1)(a) of Sindh Arms Act and Special Case No.604/2018 arising out of Crime No.99/2018 U/s. 4/5 Explosive Substances Act r/w section 7 of ATA, 1997, at P.S. Baghdadi, Karachi South vide judgment dated 11.09.2019 the appellants were convicted and sentenced as under:-

1. (1) Sunil S/o. Beram, (2) Shankar S/o. Mohan, (3) Anil S/o. Kishan, (4) Muhammad Imran S/o. Muhammad Ismail and (5) Muhammad Saeed S/o. Muhammad Ibrahim found guilty of the charge of offence u/s. 324/353/34-PPC R/W Section 7(h) ATA 1997, they are convicted and sentenced to suffer imprisonment for five years each and fine of Rs.20,000/- (Rupees twenty thousand) each, in case of default they shall suffer imprisonment for six months more.
2. (1) Sunil S/o. Beram, (2) Shankar S/o. Mohan, (3) Anil S/o. Kishan, (4) Muhammad Imran S/o. Muhammad Ismail and (5) Muhammad Saeed S/o. Muhammad Ibrahim also found guilty of the charge of offence punishable u/s 23(1)(a) of Sindh Arms Act 2013 are convicted and sentenced to suffer imprisonment for three years each and fine of Rs.10,000/- (Rupees ten thousand) each, in case of default they shall suffer imprisonment for six months more.
3. (1) Sunil S/o. Beram, (2) Shankar S/o. Mohan, (3) Anil S/o. Kishan, (4) Muhammad Imran S/o. Muhammad Ismail and (5) Muhammad Saeed S/o. Muhammad Ibrahim also found guilty of the charge under section 5 of Explosive Substance Act and sentenced to suffer imprisonment for the term of three years each, and fine of Rs.5,000/- (Rupees five thousand) each. In case of default they shall suffer imprisonment for four months more.

All the sentences were ordered to be run concurrently. Benefit of Section 382-B Cr.P.C. was also extended to the appellants.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.IV, Karachi, the aforesaid appeals have been preferred by each of the appellants.

3. In a nutshell the brief facts of the prosecution case are that on 28.03.2018 Complainant Muhammad Saleem of 50 Wing Abdullah Shah Ghazi Rangers,

Peoples Stadium Liyari, Karachi along with his subordinates was busy in patrolling duty in search of terrorists and received spy information about the presence of five notorious criminals belonging to Liyari Gangwar Ghaffar Zikri Group equipped with sophisticated arms and ammunition for committing crime at corner Street of Nawab Eleven Football Club, Liyari, Karachi. When the complainant party reached the pointed place at about 02:00 hours on the pointation of spy informer the complainant party tried to apprehend five persons who were present there. On seeing Pakistan Rangers accused persons started firing upon them with intent to kill them. In reprisal Pakistan Rangers also started firing in their defence, as a result of which the culprits were encircled and apprehended. They disclosed their names as (1) Sunil S/o. Beram, (2) Shankar S/o. Mohan, (3) Anil S/o. Kishan (4) Muhammad Imran S/o. Muhammad Ismail and (5) Muhammad Saeed S/o. Muhammad Ibrahim. Due to non-availability of private witnesses body search of apprehended accused persons was taken in the presence of Rangers Officials and they recovered from the possession of accused (1) Sunil S/o. Beram one pistol of 9mm, number rubbed without number black colour loaded magazine with 02 live rounds and one live round in chamber, one stun grenade bearing No.F.23685 and on its body number "US.PAT.5.824.945" were engraved and his original CNIC. From the possession of accused (2) Shankar S/o. Mohan Lal one pistol of 9mm bearing No.H6114, silver colour, loaded magazine with one live round magazine loaded and one live round in chamber loaded, one stun grenade bearing No.F.13345 and on its body number "US PAT.5.824.945" were engraved, his original CNIC and one mobile of Nokia, recovered. From the possession of accused (3) Anil S/o. Kishan one pistol of 9mm bearing No.G-07000571 made in China having black colour loaded magazine with two live rounds and one live round in chamber, one stun grenade bearing No.F.21427 and on its body numbers "U.S.PAT.5.824.945" were engraved recovered. From the possession of accused (4) Muhammad Imran S/o. Ismail one pistol of 9mm bearing No.10620-0600872 on its body "made in Turkey" was engraved having black colour, loaded magazine with three live rounds and one live round in chamber loaded, one stun grenade bearing No.F.24815 and on its body numbers "US.PAT.5.824.945" were engraved recovered. From the possession of accused (5) Muhammad Saeed S/o. Muhammad Ibrahim one pistol of 9mm bearing No.100300 made in China, having black colour loaded magazine with two live rounds and one live round in chamber load, one stun grenade bearing No.F24768 and on its body numbers "U.S.PAT.5.824.945" were engraved and one Q-Mobile phone recovered. They

were asked about valid license/permission for such weapons but they could not produce the same. After completion of legal formalities separate FIRs against the accused persons were registered for taking further legal action.

4. After completion of formal Investigation the I.O. submitted charge sheet No.125/2004 before the Court on 05.05.2018. Thereafter joint charge was framed against the accused/appellants to which they pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution examined 05 witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. Statements U/s. 342 Cr.P.C. of the accused persons were recorded in which they claimed false implication. None of the appellants gave evidence under oath and only accused Anil produced his father as witness in his defence as DW-01 and accused Imran produced his mother as DW-02 in support of his defense of false implication.

6. Learned Judge, Anti-Terrorism Court No.IV, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 11.09.2019, convicted and sentenced the appellants as stated above, hence these appeals have been filed by the appellants against their conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 11.09.2019 passed by the concerned trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. After the reading out of the evidence and the impugned judgment learned counsel for the appellants in the face of the overwhelming evidence against them under S.23 (1) (a) of the Sindh Arms Act and S.5 Explosive substances Act did not press the appellants case on merit in respect of these two offenses but rather sought a reduction in sentence based on the following mitigating circumstances (a) that the appellants all had large families for whom they were the primary breadwinners (b) that all the appellants were first time offenders with no CRO and (c) all the appellants were of a young age and were capable of reformation. With regard to the offenses under S.324/353/34 PPC the appellants submitted

2

that the prosecution had not been able to prove these offenses against them beyond a reasonable doubt and as such they be acquitted in respect of the same.

9. Learned DPG and special prosecutor rangers submitted that although based on the evidence on record the prosecution had proved its case against each of the appellants beyond a reasonable doubt in respect of each offense charged based on the above mitigating circumstances they agreed that this was a fit case for a reduction in sentence in respect of the offenses under S.23 (i) (a) of the Sindh Arms Act and S.5 of the Explosive Substances 1908 and had no objection to a reduction in the sentences to some reasonable extent in respect of these offenses but that the offenses under S.353 and 342 PPC should be maintained. When the learned DPG and special prosecutor rangers were confronted by the court whether the offenses for which the appellants had been convicted fell within the purview of the ATA they candidly conceded that based on the latest Supreme Court authorities on this matter they did not.

10. Having gone through the evidence on record we are of the view that the prosecution has proved its case against the appellants beyond a reasonable doubt through the evidence of the PW's especially as no enmity or ill will existed between them and the appellants, the appellants were arrested on the spot when the pistols, ammunition and stun grenades were recovered from them and that there was a positive FSL in respect of the offenses under S.23 (i) (a) of the SSA and S.5 of the Explosive substances Act.

11. We are of the view that this case does not fall within the purview of the ATA since according to the evidence there was no design, object or intent to cause terror and thus the provisions of the ATA will not apply.

12. After our reassessment of the evidence for the offenses under S.324 read with S.353 PPC we find that the prosecution has not proved its case against the appellants for these offenses beyond a reasonable doubt and that the appellants are entitled to the benefit of the doubt in respect of these offenses. This is because despite a fierce fire fight between the complainant party and the rangers for a period of 10 to 15 minutes when numerous sophisticated weapons were being

discharged by numerous persons for both parties none of the rangers personal received any scratch let alone firearm injury, the rangers mobile was not hit by any bullet or sustained any damage and there is no evidence of any bullet markings on the surrounding walls. Like wise none from the appellant's side received any scratch let alone firearm injury and as such the above scenario creates doubts in the prosecution case in respect of these offenses and as such by extending the benefit of the doubt the appellants are acquitted of these offenses.

13. With regard to the convictions for the offenses under S.23 (i) (a) of the SAA and the Explosive Substances Act these are maintained but based on the mitigating circumstances raised by the appellants and the no objection to the reduction in sentences to some reasonable extent by the DPG and special prosecutor rangers in respect of these offense we in exercise of our powers under S.423 Cr.PC deem this to be a fit case which warrants a reduction in sentences handed down to the appellants for these offenses and as such in terms of imprisonment the appellants are sentenced in respect of each offense under S.23 (i) (a) SAA 2013 and S.5 Explosive Substances Act 1908 to the time already served for these offenses however all the appellants are still liable to pay the fines as set out in the impugned judgment for offenses under S.23(i) (a) SAA and S.5 Explosives Substances Act and in the event that they fail to do so they will have to each under go SI for a period of 6 months which sentences will run concurrently if the fines are not paid.

14. The appeals stand partly allowed and partly dismissed as set out above.