

THE HIGH COURT OF SINDH AT KARACHI

Spl. Crl. Anti-Terrorism Jail Appeal No.179 of 2017.

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Muhammad Saleem Jessor

Appellant: Dhani Bux son of Imam Bux through
Mr. Abdul Razzak, Advocate.

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

Date of hearing: 10.02.2020

Date of Announcement 12.02.2020.

J U D G M E N T

Mohammad Karim Khan Agha, J: - Accused Dhani Bux son of Imam Bux was tried by learned Judge, Anti-Terrorism Court No.V, Karachi in Special Cases No. 385/2016 arising out of Crime No.41/2016 u/s. 4/5 Expl. Sub. Act r/w Section 7 of ATA, 1997 and Special Case No.384/2016 arising out of Crime No.42 of 2016, u/s.23(i) A of SAA, 2013 both registered at PS Rizvia Society, Karachi. After trial vide judgment dated 21.07.2017 the appellant Dhani Bux was convicted and sentenced under Section 7(i)(ff) of ATA 1997 and under Section 23(i)(a) SAA, 2013 as follows:-

- i) He is convicted in crime No.41/2016 u/s.7(i)(ff) Anti-Terrorism Act, 1997 and sentenced to undergo R.I. 14 years and also forfeiture of his property u/s. 7(2) Anti-Terrorism Act, 1997.
- ii) He is convicted and sentenced in Crime No.42/2016 u/s. 23(i) A SAA, 2013 and sentenced to undergo 07 years RI and also to pay a fine of Rs.30,000/- in case of non-payment of fine he shall further undergo six months S.I.

The benefit of Section 382-B Cr.P.C was however, extended to the accused.

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2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.V, Karachi, the aforesaid appeal has been preferred by the accused.

3. The brief facts according to prosecution case are that on 02.02.2016 a police party of Rizvia Society Police Station proceeded on patrolling vide entry No.64 headed by ASI Imdad Ali at 7:55 am. During patrolling the said mobile officer Imdad received spy information that there was an incident of robbery at Mujahid Park, Peela School, Rizvia Society. On that information the police party reached there and on the pointation of spy informer apprehended the present accused who was holding one bag and one pistol with magazine 03 rounds was in his right side pant belt. He disclosed his name as Dhani Bux, the pistol was without license, his bag contained 25 phones, one grenade, 03 wrist watches, prize bonds, 05 purses, two ladies purse containing cash Rs.2100/- and Rs.30,500, some artificial ornaments, 02 rings of gold, 02 nose nails and foreign currency. He then arrested the accused under mashirnama. He brought the accused and recovered property to the Police Station and registered two FIRs bearing Nos.41/2016 and 42/2016. The investigation was assigned to Investigating Officer who recorded his statement. On 04.02.2016 ASI BDU examined the grenade and issued clearance certificate. He sent the pistol to FSL, obtained its report and also obtained Sanction for Prosecution and challaned the accused in two separate crimes as aforesaid.

4. The said two cases were ordered to be tried jointly as the incident was same against the same accused and charge was framed against the accused to which he pleaded not guilty and claimed trial of the case.

5. To prove its case the prosecution examined 04 prosecution witnesses and thereafter the side of the prosecution was closed. The statement of the accused was recorded u/s 342 Cr.P.C. The appellant/accused claimed false implication in the present case. Accused/Appellant neither examined himself on oath nor examined any witness in his defense.

6. Learned Judge Anti-Terrorism Court No.V, Karachi after hearing the counsel for the parties and assessment of evidence available

on record, vide the impugned judgment dated 21.07.2017, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 21.07.2017 passed by the 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 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 reduction of the appellant's sentences to lesser ones based on the mitigating circumstances that the appellant (a) was the sole bread winner of a large family and (b) he was a first time offender and was capable of reformation.

9. Learned DPG conceded that a reduction in sentence was justified based on the particular facts and circumstances of the case and the mitigating factors raised by the appellant and had no objection to a reduction in sentence to some reasonable extent. When asked by the court whether based on the particular facts and circumstances of this case it fell within the purview of the ATA he was of the view that it did not based on the recent pronouncements of the Supreme Court on cases under the ATA.

10. Having gone through the evidence on record we are of the view that the prosecution has proved its case against the appellant beyond a reasonable doubt through the arrest of the appellant on the spot, the recovery of the pistol on the spot along grenade and 25 mobile phones and other stolen articles which could not have been foisted, positive FSL on the pistol, BDU inspection report, the police PW's evidence and that of the BDU expert which corroborated each other in all material respects and who had no ill will or enmity towards the appellant and as such had no reason to implicate him in a false case.

11. Based on the mitigating factors raised by the appellant and the no objection to the reduction in sentence to some reasonable extent by the DPG we in exercise of our powers under S.423 Cr.PC deem this to be a fit case which warrants a reduction in sentences as handed down to the appellant

12. Having gone through the evidence we are also of the view that the offenses committed by the appellant do not fall under the purview of the ATA.

13. Thus, for the reasons mentioned above we hereby uphold the convictions of the appellant **except** in respect of offenses under the ATA but modify his sentences as under:

(a) He is convicted in crime No.41/2016 u/s.4/5 Explosive Substances Act 1908 and sentenced to undergo 5 years RI and also to pay a fine of Rs.30,000/- in case of non-payment of fine he shall further undergo six months S.I.

(b) He is convicted and sentenced in Crime No.42/2016 u/s. 23(i) A SAA, 2013 and sentenced to undergo 05 years RI and also to pay a fine of Rs.30,000/- in case of non-payment of fine he shall further undergo six months S.I.

The appellant shall have the benefit of S.382-B Cr.PC and the sentences shall run concurrently.

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