

IN THE HIGH COURT OF SINDH, KARACHI

Present:

***Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain***

Spl. Cr. A.T.A No. 186 of 2022

along with

Spl. Cr. A.T.A No. 187 of 2022

Spl. Cr. A.T.A No. 188 of 2022

Spl. Cr. A.T.A No. 189 of 2022

Appellant

**Furqan alias Farooq alias Azam
alias Abdullah son of Abdul
Majeed through Mr. Hashmat
Khalid, Advocate.**

Respondent

**The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General Sindh.**

Date of hearing

24.05.2023.

Date of order

24.05.2023.

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Furqan alias Farooq alias Azam alias Abdullah son of Abdul Majeed was tried in the Court of Special Judge, Anti-Terrorism Court No.V, Judicial Complex at Central Prison, Karachi in Special Case No.196 of 2019 arising out of F.I.R. No.50 of 2019 U/s. 4/5 Expl. Sub. Act read with Section 7 of ATA, 1997 registered at P.S. Malir City, Karachi, Special Case No.196-A of 2019 arising out of F.I.R. No.51 of 2019 U/s. 23(i)(a) Sindh Arms Act, 2013 registered at P.S. Malir City, Karachi, Special Case No.196-B of 2019 arising out of F.I.R. No.52 of 2019 U/s. 23(i)(a) Sindh Arms Act, 2013 registered at P.S. Malir City, Karachi and Special Case No.196-B of 2019 arising out of F.I.R. No.53 of 2019 U/s. 23(i)(a) Sindh Arms Act, 2013 registered at P.S. Malir City, Karachi and vide Judgment dated 29.10.2022 appellant was convicted and sentenced as under;_

- a. Accused Furqan @ Azam @ Farooq @ Abdullah s/o Abdul Majeed was convicted u/s 5 Explosive Substance Act, 1908, r/w Section 6(2)(ee) and Section 27-A of ATA, 1997 and sentence

him u/s 7(i)(ff) and sentenced him R.I. for 14 years with fine Rs.1 lac, in case of default of non-payment of fine, he shall suffer S.I. for 06 months more.

- b. The accused was also convicted in crime No.51/2019 u/s 23(i)A Sindh Arms Act, 2013 and sentenced him R.I. seven years with fine of Rs.50,000/-, in case of default of non-payment of fine, he shall suffer S.I. for three months more.
- c. The accused was also convicted in crime No.5/2019 u/s 23(i)A Sindh Arms Act, 2013 and sentenced him R.I. seven years with fine of Rs.50,000/-, in case of default of non-payment of fine, he shall suffer S.I. for three months more.
- d. The accused was also convicted in crime No.53/2019 u/s 23(i)A Sindh Arms Act, 2013 and sentenced him R.I. seven years with fine of Rs.50,000/-, in case of default of non-payment of fine, he shall suffer S.I. for three months more.
- e. The moveable and immovable property of the accused stands forfeited to the Government as provided under Section 5-A of Explosive Substance Act, 1908. The above all sentences awarded to the accused were ordered to run concurrently. However, the benefit of section 382(b) Cr.P.C. was extended to the accused.

2. Brief facts of the prosecution case in nutshell are that complainant Inspector Abdul Wasay Jokhio lodged above mentioned FIRs on 04.03.2019 at about 0245 hours contending therein that complainant conducted interrogation of crime No.45/2019 U/s 4/5 Explosive Substance Act and crime No.46/2019 U/s 23(i)/A S.A.A. of PS Gaddap City registered against accused Furqan @ Azam @ Farooq @ Abdullah s/o Abdul Majeed, who is already arrested in above mentioned crimes. During interrogation accused disclosed that he has buried illicit arms and ammunition and hand grenade in one journey bag of black colour in the earth inside Malir Nadi Jahari Dar Forest under the bridge of Malir, thereafter, accused voluntarily led the police party headed by Inspector Abdul Wasay Jokhio, and on pointation of accused, after digging the earth accused produced one journey bag of black colour containing one rifle rubbed number alongwith magazine containing three rubbed, one 30 bore pistol rubbed number of black colour alongwith magazine loaded with 04 live bullets, one 30 bore pistol rubbed number of

black colour alongwith magazine containing 03 live bullets and its butt was broken and one hand grenade alongwith pln green colour and on its upper ARGES and P/4 were ascribed, whereas, on its bottom ARGES HdGI-69 ascribed. On demand license of arms and ammunitions, accused failed to produce the same, then recovered arms and ammunitions were sealed on spot separately, thereafter, memo of arrest and recovery was prepared in presence of PW SIP Mir Khan and ASI Mazhar-ul-Haq, whereas, hand grenade was taken into safe custody and intimated to BDU team through phone for its defusing. Thereafter, accused and recovered property were brought at PS, where above said FIRs were registered against present accused.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. The appellant pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 06 P.Ws and exhibited various documents and other items. The appellant in his section 342 Cr.P.C. statement denied the allegations against him. However, he did not give evidence on oath and did not call any D.W. in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellant as set out earlier in this judgment; hence, the appellant has filed this appeal 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 passed by the trial court and there is no need to repeat the same in order to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions of the appellant stated that the appellant did not contest the case on merits and accepted his guilt and prayed only for reduction in sentence based on the following mitigating circumstances:-

- a) That the appellant was first time offender and was capable of reformation.
- b) That the appellant is of young age and had a large family to support.

5

- c) That by accepting his guilt the appellant has shown genuine remorse and saved the time of this Court.
- d) That the appellant had served out a large portion of his sentence.

8. Based on these mitigating circumstances mentioned by the appellant, learned Additional Prosecutor General Sindh had no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and found that the appellant was arrested on the spot in possession of a hand grenade and unlicensed weapon. He then led the police party at his pointation to other weapons which were hidden in a place which the police did not know about. These weapons were found to be without license. No enmity or ill-will has been suggested against any of the prosecution witnesses including police officers who made his arrest and the mashirs of recovery and as such, we find that the evidence to be reliable, trustworthy and confidence inspiring and believe the same coupled with the recoveries made from the appellant at the time of his arrest and later leading the police party to other unlicensed weapons in a hidden place which only he could know about which led to positive FSL and BDU report. Thus we find that the prosecution has proved its case against the appellant beyond any reasonable doubt and therefore maintained his conviction under all offences under PPC, SAA and Explosive Substance Act. We find however that there was no intention, purpose or design to create terror and as such the appellant is acquitted of all the offences under ATA. In this respect, reliance is placed on the cases of (i) Ghulam Hussain Versus The State (PLD 2020 SC 61), (ii) Afzul-ur-Rehman Versus The State (2021 SCMR 359) and (iii) Rizwan Hussain Versus The State (2021 MLD 157).

10. With regard to sentencing based on the mitigating factors raised by learned counsel for the appellant and no objection given by learned Addl. P.G, Sindh, the appellant's sentence is modified as follows;

1. For offence under Section 5 Explosive Substance Act, 1908, the appellant is sentenced to 5 years R.I, without fine.
2. In Crime No.51/2019 under Section 23(i)(a) Sindh Arms Act, 2013, the appellant is sentenced to 5 years R.I, without fine.

650

3. In Crime No.52/2019 under Section 23(i)(a) Sindh Arms Act, 2013, the appellant is sentenced to 5 years R.I, without fine.
4. In Crime No.53/2019 under Section 23(i)(a) Sindh Arms Act, 2013, the appellant is sentenced to 5 years R.I, without fine.
11. The appellant shall have benefit of Section 382-B Cr.P.C and any remissions applicable to him under the law now that he has been acquitted of the offences under the ATA.
12. The appeals are dismissed subject to modification in sentences as mentioned above.

Zulfiqar/P.A