

Undergone

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IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Amjad Ali Bohio

Spl. Cr A.T. Appeal No.26 of 2023

Spl. Cr A.T. Appeal No.29 of 2023

Appellant

Ali Akbar alias Haji s/o. Soomar Khan
through Mr. Hashmat Khalid, Advocate.

The State

Through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General, Sindh

Spl. Cr A.T. Appeal No.27 of 2023

Spl. Cr A.T. Appeal No.28 of 2023

Appellant

Furqan alias Azam alias Farooq alias
Abdullah s/o. Abdul Majeed through
Mr. Hashmat Khalid, Advocate.

The State

Through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General, Sindh

Date of Judgment

08.09.2023.

J U D G M E N T

Mohammad Karim Khan Agha, J:- Appellants Ali Akbar alias Haji and Furqan alias Azam alias Farooq alias Abdullah were tried by Anti-Terrorism Court No.V, Karachi in Special Cases No.195 of 2019 arising out of FIR No.45 of 2019 u/s. 4/5 Explosive Substance Act, 1908 r/w section 7 ATA 1997, Case No.195-A of 2019 arising out of FIR No.45 of 2019 u/s. 4/5 Explosive Substance Act, 1908 r/w section 7 ATA 1997, Case No.195-B of 2019 arising out of FIR No.46 of 2019 u/s. 23(1)(a) of Sindh Arms Act 2013 and Case No.195-C of 2019 arising out of FIR No.47 of 2019 u/s. 23(1)(a) of Sindh Arms Act 2013 all registered at P.S. Gadap City, Karachi and vide Judgment dated 16.02.2023 the appellants were convicted and sentenced as under:

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Accused Furqan @ Azam @ Farooq @ Abdullah s/o Abdul Majeed is convicted as under:-

- (1) Appellant was found guilty for the offence, convicted u/s. 5 Explosive Substance Act, 1908, r/w Section 6(2)(ee) and Section 27-A of ATA, 1997 and sentenced u/s. 7(i)(ff) R.I. for 14 years with fine of Rs.1-lac, in case of non-payment of fine accused was ordered to suffer S.I. for six (6) months more.
- (2) Appellant was also convicted in Crime No.46/2019 u/s. 23(1)(A) of Sind Arms Act, 2013 and sentenced R.I. for seven (07) years with fine of Rs.50,000/- and in case of non-payment of fine he was ordered to suffer R.I. for 03 months more.

Accused Ali Akbar @ Haji s/o Abdul Soomar Khan is convicted as under:-

- (1) Appellant was found guilty for the offence, convicted u/s. 5 Explosive Substance Act, 1908, r/w Section 6(2)(ee) and Section 27-A of ATA, 1997 and sentenced u/s. 7(i)(ff) R.I. for 14 years with fine of Rs.1-lac, in case of non-payment of fine accused was ordered to suffer S.I. for six (6) months more.
- (2) Appellant was also convicted in Crime No.47/2019 u/s. 23(1)(A) of Sind Arms Act, 2013 and sentenced R.I. for seven (07) years with fine of Rs.50,000/- and in case of non-payment of fine he was ordered to suffer R.I. for 03 months more.

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 persons was ordered to run concurrently. The benefit of Section 383-B Cr.P.C was also extended to the appellants. Fine, if recovered was also ordered to deposit in the Government Exchequer.

2. Brief facts of the prosecution case as per FIR are that statement u/s 154 Cr.P.C of complainant SIP Fida Hussain Laghari was received by ASI Mazhar-ul-Haq of PS Gadap City, then he incorporated the same in the FIR as per his verbatim, wherein complainant stated that when he was present at his PS meanwhile he received spy Information regarding presence of accused, who having firearm weapons at Gadap road for intention of committing offence. On receipt of such discloser, he alongwith his subordinate staff proceeded towards Gadap Road Yasrab Colony Mor Gadap Malir Karachi, it was 0135 hours they reached at pointed place on gesture of spy informer towards accused persons, who were standing on

road and they apprehended them. On inquiry accused disclosed their names to be Furqan Bengalzai @ Azam @ Abdullah s/o Abdul Majeed and Ali Akber @ Haji s/o Somaar Khan Siyal. On personal search of accused Furqan Bengalzai @ Azam @ Abdullah complainant found that one bag hanging on his right shoulder containing one hand grenade of grey colour on which ARGES was ascribed with pin and hand clip, one 9mm pistol without number on its body 36TRABON, ZIGANA Made in Turkey was ascribed alongwith magazine loaded with 06 live bullets and one was in chamber and two pair of shalwar kameez cloths from said bag. On further search of accused complainant secured cash Rs.1900/- from his possession. Whereas, On personal search of co-accused Ali Akber @ Haji complainant secured one bag from his right and found one hand grenade of grey colour on which ARGES was ascribed with pin and hand clip, one 9mm pistol bearing No.0815719 of black colour made in China alongwith magazine loaded with 07 live bullets and one was in chamber and three pair of shalwar kameez cloths from said bag, On further search of accused, complainant secured cash Rs.2750/- from his possession. On demand of license, accused failed to produce the same. Then complainant sealed the property at spot and prepared mashirnama of arrest and recovery in presence of mushirs. Then complainant intimated to BDU team for defusing the recovered hand grenades. Thereafter, complainant took the hand grenades in his custody. Thereafter, accused and recovered all case property were brought at PS, where the subject FIRs were lodged.

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

4. The prosecution in order to prove its case examined 06 Prosecution Witnesses and exhibited various documents and other items. The appellants in their section 342 Cr.P.C. statements denied the allegations against them and claimed false implication. However, they did not give evidence on oath and did not call any D.W. in support of their defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellants as set out earlier in

this judgment; hence, the appellants have filed these appeals against their convictions.

6. The facts and evidence in respect of the case have been well set-out in the impugned judgment and as such there is no need to discuss the same herein in order to avoid unnecessary repetition and duplication.

7. At the very outset, learned counsel for the appellants under instructions stated that the appellants did not contest the case on merits and accepted their guilt in respect of all the offences except the offences under ATA, 1997 and prayed only for reasonable reduction in sentence based on the following mitigating circumstances:-

- a) That the appellants are first time offenders and are capable of reformation.
- b) That the appellants are young men and have a large family to support.
- c) That by accepting their guilt the appellants have shown genuine remorse and saved the precious time of this Court.
- d) That this was not the case which falls within the purview of Anti-Terrorism Act and they had already undergone the substantial part of their sentences.

8. Based on these mitigating circumstances mentioned by the appellants learned Addl. Prosecution General Sindh had no objection to the reduction in sentence to the appellants to some reasonable extent. When confronted by this court learned Addl. P.G. also conceded that this case does not fall within the purview of Anti-Terrorism Act as the appellants were arrested on the spot each with an unlicensed pistol and hand grenade and as such no intention, purpose or design to create terror was made out.

9. We have gone through the evidence on record and find that SIP Fida Hussain Laghari received spy information about two suspicious persons who were standing at Gadap Road with fire arms with intention to commit offence. According to the evidence, on receipt of such information complainant proceeded to the pointed place and apprehended the appellants on the pointation of spy who were acting in a

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suspicious manner. During search of the appellants, he found hand grenade and unlicensed pistol in their possession which were recovered and taken into his possession. His evidence fully corroborated by Mashir/arresting officer ASI Mazharul Haq. We have considered the evidence of the arresting officer and mashir and find that there is no enmity or ill will towards the appellants and they had no reason to implicate them falsely in this case and their evidence corroborated each other in all material aspects and as such we have no reason to disbelieve their evidence which we find trustworthy, reliable and confidence inspiring and rely on. In addition appellant Furqan confessed his guilt before the Judicial Magistrate. The unlicensed pistols from each of them lead to a positive FSL report as well as hand grenade with detonator also lead to positive BDU report. Thus we find that based on the above evidence prosecution has proved its case against beyond any shadow of doubt against the appellants in respect of offences committed u/s. 5 of Explosive Substance Act, 1908 and u/s.23(i)(A) of SAA, 2013 and up hold their convictions in respect of these offences. However, we do not find that this case falls within the purview of ATA, 1997 as there was no intention, purpose or design to create terror. In this respect reliance is placed on the case of **Ghulam Hussain v the State** (2020 PLD SC 61) and **Afzul-ur-Rehman v The State** (2021 SCMR 359). As such the appellants are acquitted of the offences under ATA, 1997.

11. With regard to the sentencing taking into account the fact that this case no longer falls within the purview of ATA and the mitigating circumstances mentioned above and in particular no objection given by the learned Additional Prosecutor General Sindh, we hereby modify the sentences of the appellants as under:-

- (a) For offence u/s. 5 of Explosive Substantial Act, 1908 to the time already served in jail;
- (b) For offence u/s. 353 PPC to the time already served in jail;
- (c) For offence u/s. 23(i)(a) of Sindh Arms Act to the time already served in jail.

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12. Appellants Ali Akbar @ Haji s/o Soomar Khan and Furqan @ Azam @ Farooq @ Abdullah s/o Abdul Majeed shall be released unless they are wanted in any other custody case.

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