

**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. 47 of 2022

Appellant	Ahmed Khan son of Sher Dil through Ms. Zainab Bibi, Adv.
Respondent	The State through Mr. Ali Haider Saleem, Addl. Prosecutor General Sindh.
Date of hearing	25.05.2023.
Date of judgment	25.05.2023.

**JUDGMENT**

Mohammad Karim Khan Agha, J:- The appellant Ahmed Khan son of Sher Dil was tried in the Court of Special Judge, Anti-Terrorism Court No.II, Karachi in Special Case No.33 of 2021 arising out of F.I.R. No.572 of 2020 U/s. 4/5 Expl. Sub. Act read with Section 7 of ATA, 1997 registered at P.S. Peerabad, Karachi and vide Judgment dated 12.01.2022 appellant was convicted and sentenced under Section 4/5 of Explosive Substance Act to imprisonment for 5 years and fine of Rs.5,000/- and in case of nonpayment of fine, to suffer simple imprisonment of 7 days. He was also convicted and sentenced under Section 7(1) Clause (ff) ATA to imprisonment of 14 years. The sentences were directed to run concurrently and the accused was given benefit of Section 382-B Cr.P.C.

2. The brief facts of the case as per FIR are that the complainant Sub Inspector Talib Hussain lodged the FIR and stated that vide entry No. 22 at about 1520 hours he left P.S on 11.12.2020 for patrolling alongwith PC Zahid, PC Touqeer and Driver/PC Akhtar Ali in Govt. Mobile for prevention of crimes. During patrolling while at about 1600 hours they reached at Paracha Graveyard near Zahooria Baba Mazar, they saw one person was standing in graveyard, in suspicious condition, to whom they apprehended, who disclosed his name as Ahmed Khan s/o Sher Dil. Due to non-availability of private witnesses SIP carried out his search and got secured a white shopper from his right hand containing Awam Bomb No. (33)17-W-40MM-HEAR-25



and one UBBRL Launcher No. 4402. On his further personal search recovered one mobile "Realme", one CNIC in the name of accused Ahmed Khan s/o Sher Dil, petty cash wherein four notes of Rupees one thousand and two notes of Rupees one hundred total amount of Rs.4200/-, which were sealed on the spot, he arrested the accused under memo of arrest and recovery, sealed the recovered articles and kept in secure custody Awam bomb and Launcher, he called BDU team for inspection of Rifle Grenade and launcher and so also informed to SPP Orangi through Operator Danish of the recovery of Explosive. SIP prepared such memo of arrest and recovery at spot and brought the accused and the case property at Police Station where he lodged FIR No. 572 of 2020 u/s 4/5 Explosive Substance Act, 1908 R/w Section 7 ATA at Peerabad against the accused Ahmed Khan s/o Sher Dil.

3. The investigation was entrusted to I.O/Inspector Rana Ghulam Jabbar of PS Peerabad, who visited place of incident alongwith complainant SIP Talib Hussain, PC Zahid, PC Touqeer and prepared memo of inspection of place of incident and recorded statements 161 Cr.P.C of the witnesses. SIP Abid Farooq of BDU came at PS, got inspected the Awam Bomb and Launcher and he usually issued clearance certificate as well as letter to Bomb Disposal Incharge for final report. He has also taken CRO of the accused and issued letter for obtaining permission from Home Department for trial of the case under Explosive Substances Act. After completeing the investigation of the case, he submitted challan before the competent Court of law.

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

5. The prosecution in order to prove its case examined 04 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.

6. 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.

7. 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.

8. 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.
- c) That by accepting his guilt the appellant has shown genuine remorse and saved the time of this Court.

9. Based on above mitigating circumstances, learned Additional Prosecutor General Sindh had no objection to the reduction in sentence to some reasonable extent.

10. We have gone through the evidence on record and found that the appellant was arrested on the spot by the police officer and one Awam Bomb and UBBRL Launcher were recovered from his possession. No enmity or ill-will has been suggested against any of the prosecution witnesses and as such, we find that the evidence to be reliable, trustworthy and confidence inspiring and believe the same in respect of arrest and recovery made from the appellant and recovered Awan Bomb produced a positive BDU report. Thus we find that the prosecution has proved its case against the appellant beyond any reasonable doubt against the appellant and therefore maintain his conviction under section 4/5 of Explosive Substance Act. With regard to the appellant's conviction under Section 7 (1) (ff) Clause 2 of the ATA, we find that the appellant has no intention, purpose or design to create terror and as such the appellant is acquitted of the offences under section 7(1)(ff) of ATA. In this respect, reliance is placed on the cases of (i) Ghulam Hussain Versus The State (PLD 2020 SC 61) and (ii) Afzul-ur-Rehman Versus The State (2021 SCMR 359).


11. With regard to sentence for the offences under Section 4/5 of Explosive Substance Act, taking into account the mitigating factors raised by learned counsel for the appellant and the no objection given by learned

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Addl. P.G, Sindh, we hereby reduce the sentence of the appellant to imprisonment of four (4) years, without fine. He shall have benefit of section 382(b) Cr.P.C and any other remissions applicable under the law now that he has been acquitted of the ATA offence.

12. The appeal is disposed of in the above terms.

  
JUDGE

  
JUDGE  
25/05/23