

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

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

SPL. CRIMINAL A .T. APPEAL NO.154 OF 2020

Appellant	:	Alam @ Umer @ Jan Alam s/o Usman Ghani Through Syed Nadeem ul Haque, Advocate.
Respondent	:	The State through Mr. Ali Haider Saleem, Additional Prosecutor General, Sindh.
Date of Hearing	:	01.11.2021
Date of Announcement	:	05.11.2021

J U D G M E N T

The Appellant Alam @ Umar @ Jan Alam son of Usman Ghani was charged to face trial u/s. 7 of Anti-Terrorism Act, 1997, r/w Section 4/5 of Explosive Substance Act, 1908 in crime No.68 of 2020 registered at PS CTD, Karachi and vide Judgment dated 10.10.2020 was convicted and sentenced to suffer R.I. for 05 years with fine of Rs.50,000/- in respect of an offence under S.5 of the Explosive Substances Act and in case of default of payment, the appellant was to undergo a further period of 06 months S.I. However, he was also given the benefit of Section 382-B Cr.P.C. He was not convicted of any offence under the ATA.

2. The brief facts of the prosecution case as narrated in the FIR are that on 04.06.2020, SI Syed Safdar Ali Shah along with his subordinates in police van were busy in patrolling in their area against prevention of crime and to search for absconding accused. During patrolling, SI Syed Safdar Ali Shah, received spy information through mobile phone by spy informer that a person associated with Tahreek-e-Taliban (Swat Mulla Fazalullah Group), involved in killings of police, sectarian target killing and bomb blasts so also in other heinous crimes is available at Siemens Chowrangi Corner, Moin Akhtar Road, SITE Area, District West, Karachi. On such information, SI Syed Safdar Ali Shah along with police

officials in police van, proceeded to the pointed place at about 1520 hours and on pointation of the spy informer, SI Syed Safdar Ali Shah with the help of his subordinates, apprehended the suspected person who disclosed his name to be Alam @ Umar @ Jan-e-Alam s/o Usman Ghani. Due to non-availability of private witnesses, in presence of subordinates, SI Syed Safdar Ali Shah conducted search of accused and recovered one hand grenade in green color on which AGRES was carved, From his personal search, police recovered cash of Rs.360/-. This act of accused falls u/s 4/5 Explosive Substance Act, R/ w section 7 of ATA, therefore, the accused was arrested vide memo of arrest and recovery. Case property was taken into safe custody by the police and thereafter, the accused and the case property was brought to PS CTD Civil Lines, where the FIR was lodged against the present accused.

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

4. In order to prove its case, the prosecution examined 04 PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed his innocence and that he had been falsely implicated in this case by the police. He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.

6. After reading out the evidence and the impugned judgment, learned counsel for the appellant did not press the appeal on merits, but instead under instructions from the appellant prayed for reduction of the sentence handed down to him to some reasonable extent. Learned Additional Prosecutor General Sindh based on the particular facts and circumstances of the case under instructions has raised no objection to such proposition.

7. We find that the prosecution has proved its case beyond a reasonable doubt through reliable, trustworthy and confidence inspiring police evidence who had no ill will or enmity with the appellant to falsely implicate him in this case, that the appellant was arrested on the spot by the police and the hand

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grenade was recovered from him on the spot which lead to a positive BDU report and thus uphold the appellant's conviction.

8. With regard to sentencing in mitigation, learned counsel for the appellant has submitted that (a) the appellant is of a young age and is capable of reformation, (b) that the appellant is married and his family is suffering due to his continued incarceration, (c) that the appellant is the sole bread earner of his family (d) that the appellant is a first time offender and (e) that the appellant has shown genuine remorse for his conduct by accepting his guilt. In light of the above mitigating factors and keeping in view the no objection given by the learned Additional Prosecutor General Sindh for reduction in sentence, we hereby uphold the conviction of the appellant but reduce his sentence to that of the time which he has already under gone in custody which shall also include the fine and as such the appellant shall be released from jail unless wanted in any other custody case.

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