

**IN THE HIGH COURT OF SINDH AT KARACHI****PRESENT:**

***Mr. Justice Mohammad Karim Khan Agha***  
***Mr. Justice Irshad Ali Shah***

**Spl. Criminal AT A No.201 of 2020**

Appellant : Majid S/o. Khan Muhammad Through Mr. Muhammad Munir Ahmed, Advocate.

Respondent : The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

**Spl. Criminal AT A No.202 of 2020****Spl. Criminal AT A No.203 of 2020**

Appellant : Abdul Aziz S/o. Junaid Through Mr. Ahsan Mehmood, Advocate.

Respondent : The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

**Spl. Criminal ATJA No.42 of 2021**

Appellant : Sohail alias Sunny S/o. Muhammad Yousuf Through Mr. Habib-ur-Rehman, Jiskani, Advocate.

Respondent : The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

Date of Hearing : 04.10.2021

Date of Order : 07.10.2021

**J U D G M E N T**

**Mohammad Karim Khan Agha-J:** The Appellants Majid, Abdul Aziz and Sohail @ Sunny were convicted by the Judge of Anti-Terrorism Court No.VIII, Karachi in Special Cases No.57/2020 u/s. 4/5

Explosive Substance Act, 1908 in Crime No.101/2019, Special Case No. 57-A/2020 u/s 23(i)(A) Sindh Arms Act, 2013 in Crime No.102/2019, Special Case No. 57-B/2020, u/s 23(i)(A) Sindh Arms Act, 2013 in Crime No.103/2019 and Special Case No.57-C/2020 u/s. 4/5 Explosive Substance Act, 1908 in Crime No.104/2019, registered at Police Station Baghdadi vide Judgment dated 28.11.2020 and were sentenced to R.I. for 05 years each and to pay fine of Rs.50,000/-each and in default of payment, the appellants were to undergo a further period of 06 months. However, they were also given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that on 15.03.2019, complainant ASI Ghulam Mustafa Lashari posted at P.S. Baghdadi along with subordinates PC Akhtiar Ali, PC Abdul Rasool, Driver PC Abdul Ghafoor in police mobile registration No.SP-3189 were busy in patrol duty in the area against prevention of crimes. During patrolling, the complainant received spy information that three persons of Sheeraz Zikree Group having hand grenade etc. with intention to commit crime are available inside ruined building situated at Street No.02, Block-A, Eidhoo Lane, Baghdadi, Lyari, Karachi. On such information, ASI Ghulam Mustafa Lashari along with subordinates and spy informer went to the above pointed place at about 1100 hours, there on pointation of the spy informer, ASI Ghulam Mustafa Lashari along with his subordinates, circled the building and entered in, and found three persons in a room and apprehended them. On inquiry they disclosed their names to be Abdul Aziz S/o. Junaid, Sohail alias Sunny S/o. Muhammad Yousuf and Majid Khan S/o. Khan Muhammad. Due to non-availability of private witnesses, SIP Rajab Ali conducted search of accused persons in presence of subordinates PC Akhtiar Ali and PC Abdul Rasool. Police recovered from accused Abdul Aziz one hand grenade green color (mehndi) in white polythene bag, on its lever "386-80-81" and on its body "386-125-81-T" were mentioned and one 9mm pistol bearing number SA-01646 along with magazine containing 05 live rounds from his right side of fold of his trouser. From his further personal search, one black and brown wallet, in which his CNIC and other documents, one touch screen mobile phone of which screen was broken and one small mobile of Nokia in white



color recovered. From accused Sohail alias Sunny, police recovered one Kalashnikov close butt along with magazine containing (10) live rounds and on body cover of recovered Kalashnikov numbers "350569" was mentioned and on its handle (dasta) number "3106" were mentioned. From his further personal search, one small old used mobile in black color made in china along with color copy CNIC recovered. From accused Majid Khan, police recovered from his left hand one Avan Gun bearing No.121 and on its trigger 043 was mentioned and two Avan Golas (rifle grenades) from his left side pocket and two Avan Golas (rifle grenades) in right pocket of his kameez. Three Avan (rifle grenades) were without number while on one VMG-5-0633 was mentioned on its bottom. From his further personal search, touch mobile phone maker Samsun white color and his CNIC were recovered. The property was seized and taken into custody by the police. The accused persons failed to produce license/justification for retaining the arms ammunition and explosive material in their possession. Thereafter, the accused persons were arrested and the recovered arms and ammunitions and explosive material were sealed, while recovered hand grenade, Avan Gun (rifle launcher) and Avan Golay (rifle grenades) were kept in safe custody by the police for examination from BDU and the BD Team was informed. Afterwards, the accused persons and the case property were brought to the PS where the separate FIRs were lodged against the present accused persons.

3. After usual investigation the matter was challaned and the appellants were sent up to face trial. They pleaded not guilty and claimed trial. All FIR's were amalgamated and heard at the same trial and decided by the common impugned judgment.

4. In order to prove its case, the prosecution examined 04 PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. whereby they claimed that they are innocent. They did not give evidence on oath or call any witness in support of their defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellants as set out earlier and hence, the appellants have filed these appeals against their convictions and sentences.

6. After reading out the evidence, learned counsel for the appellants under instructions stated that they did not press these appeals on merit and that the appellants would accept their guilt provided that the sentences handed down to the appellants were reduced. When this proposal was put to learned APG, he had no objection to the reduction of sentence.

7. We have gone through the evidence and we find the evidence of 04 PWs to be reliable, trustworthy and confidence inspiring who arrested the appellants on spot red-handed with weapons, snatched mobile phones and Wallets which led to a positive BDU report after being kept in safe custody and as such we find that the prosecution has proved its case against the appellants beyond a reasonable doubt.

8. However, in this case, we find numerous mitigating factors which can justify a reduction in sentence which are as follows:

- i) That the appellants are first time offenders.
- ii) That the appellants are relatively young men and are capable of reformation.
- iii) That the appellants belong to poor families and due to their confinement, their families are suffering badly as the appellants are the main breadwinners of their family.
- iv) That the appellants have fully accepted their guilt and as such have shown genuine remorse.

9. Based on these mitigating factors and the no objection of learned APG, we hereby maintain the convictions of the appellants. However, we hereby reduce the sentences of all the appellant's to that



of already under gone in custody including the fines imposed on each of them. As such all appellants shall be released in said cases unless they are wanted to be detained in any other custody case.

10. The instant Special Criminal Anti-Terrorism Appeals and Jail appeal are dismissed except as modified in terms of sentencing as mentioned above.