

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.D-200 of 2012

Present: **Mr. Justice Abdul Maalik Gaddi**
Mr. Justice Arshad Hussain Khan

Appellant: Haris Khan s/o Zulfiqar Ali Khan through
Mr. Shamsuddin Khushk, Advocate.

Respondent : The State through Syed Meeral Shah
A.P.G.

Date of Hearing : 25.01.2018

Date of Judgment : 25.01.2018.

J U D G M E N T

ABDUL MAALIK GADDI, J – Appellant Haris Khan was tried by learned Judge Anti-Terrorism Hyderabad in ATC Case No.76/2011. By judgment dated 15.6.2012 the appellant was convicted under section 7(h) of Anti-Terrorism Act, 1997, and sentenced to undergo R.I for five (5) years and to pay a fine of Rs.50,000/- and in case of default of payment of fine, he was ordered to undergo six months S.I. Benefit of section 382-B Cr.P.C was extended to the accused.

2. Facts of the case need not be reiterated here as the same have been stated in the impugned judgment as well as memo of appeal.

3. Learned trial court framed the charge against the accused to which accused pleaded not guilty and claimed trial.

4. At the trial, the prosecution in order to substantiate the charge examined P.W-1 complainant Farrukh Ahmed, who produced his F.I.R. Ex.6/A, extract copy and CD Ex.6/B, P.W-2 Muhammad Shahid Abbasi SIP of P.S B. Section Latifabad, he produced copy of station diary dated 8.11.2011 Ex.8/A, memo of arrest and recovery Ex.8-B, P.W-3 PC Shahid Ali mashir of arrest and recovery, P.W-4 Iftikhar Ahmed friend of the complainant and mashir of inspection of places Ex.10/A to 10/C, P.W-5 Zulfiqar Ali Balouch Inspector CIA and I.O has produced copy of DD dated 9.11.2011 and 11.11.2011 Ex.11/A and Ex.11/B. He also produced copy sent to Incharge DIC Ex.11/C and record of the

School Children of complainant Ex.11/D. Vide Ex.12 the learned SPP closed side of evidence of the prosecution.

5. Statement of accused was recorded under section 342 Cr.P.C denied the allegation and contended that the voice available in the CD was not of the accused and that he was arrested on 3.11.2011 from Unit No.7 Latifabad where he had gone to purchase goats for slaughtering and articles have been foisted upon him. He has stated that P.Ws have deposed against him at the instigation of the complainant. He also stated that he was tenant in the house of the complainant where love affairs between him and daughter of the complainant Aroba arose whereupon his family was ejected from house and they shifted to Karachi, despite he contacted to Aroba and complainant involved him with the collaboration of the S.H.O. He had written apology during confinement but the S.H.O demanded bribe from him and when he did not pay he has been challaned in this false case. Neither he examined himself on oath nor examined any witness in his defense.

6. Trial Court after hearing the learned counsel for the parties, by judgment dated 15.06.2012 convicted and sentenced the appellant under section 7(h) of Anti-Terrorism Act, 1997, as stated above.

7. Appellant filed instant appeal against the impugned judgment, it was admitted to regular hearing vide orders dated 28.06.2012. During pendency of appeal, application for suspension of sentence was preferred on behalf of the appellant and sentence of the appellant was suspended vide order dated 17.10.2012, subject to furnishing a solvent surety in the sum of Rs.50,000/- and P.R Bond in the like amount to the satisfaction of Additional Registrar of this Court. It appears that surety was furnished on 19.10.2012 and thereafter appellant was released. After release, the appellant remained absent. NBWs were repeatedly issued against the appellant and notice issued to surety, but the N.BW returned unexecuted with the endorsement that appellant has shifted to some unknown place and his whereabouts are not known. We have perused the report dated 28.12.2017 and last report dated 18.01.2018 of S.H.O Shahra-e-Faisal P.S Karachi, which are available on record, wherein said S.H.O has stated that the appellant was not found at his given address and shifted to some unknown place and his whereabouts are not known.

8. Mr. Shamsuddin Khushk learned Counsel for the appellant submits that he is not in contact with appellant since long and appropriate orders may be passed.

9. Learned Deputy Prosecutor Generals Sindh submit that after suspension of sentence, the appellant has absconded away and is deliberately concealing himself at some unknown place.

10. We have heard the learned Counsel for the appellant as well as learned A.P.G and scanned the record. It is proved that the appellant is concealing himself deliberately after suspension of sentence and he has become fugitive from the law. The law is settled by now that a fugitive from law and Courts loses some of normal rights granted by procedural as well as substantive law. The Honourable Supreme Court in the case of *IKRAMULLAH AND OTHERS V/S. THE STATE (2015 SCMR 1002)* has observed as under:-

“9. A report dated 11.12.2014 has been received from the Superintendent, Central Prison, Bannu informing that Adil Nawab appellant had escaped from the said jail during the night between 14/15.04.2012 and he has become a fugitive from law ever since. The law is settled by now that a fugitive from law loses his right of audience before a Court. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court for seeking resurrection of this appeal.”

11. In view of the reports of S.H.O Shahra-e-Faisal P.S Karachi it is clear that the appellant has become a fugitive from the law, as since appellant loses some of normal rights granted by procedural as well as substantive law. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this Court seeking resurrection of this appeal. Since notice under section 514, Cr.P.C issued against the surety has not returned either served or unserved, let the same be repeated. Separate proceedings against surety shall be continued. Adjourned to a date in office for proceedings against surety.

JUDGE

JUDGE

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