

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.
Mr. Justice Shamsuddin Abbasi, J.

Spl. Cr. A.T. Jail Appeals No.197 & 198 of 2018

Appellants: Muhammad Salman & Mohsin Ali Khan through Mr. Salahuddin Khan Gandapur Advocate.

Respondent: The State through Mr. Abrar Ali Khichi Addl. P.G

05.10.2020.

JUDGMENT

Muhammad Iqbal Kalhoro, J. On a tip-off given by Rangers officials regarding presence of terrorists at City Railway Colony, near Railway Lines, Ganda Nala on 09.02.2018, a police party arrived there and apprehended the appellants and recovered one hand grenade having explosive substance and an unlicensed 30 bore pistol with six live bullets from each of them. Accordingly, they were booked in Crime No.38/2018, 39/2018 U/s 4/5 Explosive Substance Act, 1908 (the Act,1908) r/w section 7 Anti-Terrorism Act, 1997(the Act, 1997) and FIRs No.40/2018 and 41/2018 U/s 23(i) a of Sindh Arms Act, 2013(the Act, 2013).

2. Appellants were tried against the said allegations and have been convicted U/s 23(i) A, Sindh Arms Act, 2013 to suffer R.I. for 07 years with fine of Rs.500/- each, in default to suffer S.I. for 03 months more and U/s 7(ff) ATA, 1997 sentenced to suffer R.I. for 14 years. Both the sentences have been ordered to run concurrently. Benefit under section 382-B Cr.P.C has been extended to him. By means of these appeals, the appellants have challenged their conviction and sentence as stated above.

3. Learned defence counsel at the very outset submits that the appellants are not previous convict and are continuously in jail since the date of their arrest i.e. 09.02.2018, therefore, their sentence may be reduced to the period already undergone by them. He further submits that there are certain discrepancies in the prosecution case, which are sufficient to justify reduction of sentence.

4. Learned Additional Prosecutor General has not opposed reduction of sentence of the appellant.

5. We have heard learned counsel for the parties and perused the material available on record. In the trial, the prosecution has examined four witnesses, who have supported the prosecution case qua arrest of the appellants from place of incident and recovery of an unlicensed pistol and one hand grenade from each of them. However, the clearance certificate issued by Bomb Disposal Unit reflects that the hand grenades were without detonators.

6. Further the case against the appellant is of recovery of Hand grenades etc. and not of use of explosive to attract section 6(2) (ee) of ATA, 1997 and justify punishment u/s 7(i) (ff), ATA, 1997. Simple recovery of hand grenades which as per definition u/s 2 of the Act, 1908 are explosive substance, without any evidence of preparation on the part of appellants to create an explosion therefrom, would be an offence u/s 5 of the Act, 1908, which is punishable for a term which may extend to 14 years. Therefore, the conviction and sentence awarded to the appellants u/s 7(1) (ff) ATA, 1997 is not sustainable. This legal position has not been disputed by learned Addl. P.G. The jail roll dated 05.10.2020 reflects that the appellants have served sentence of 03 years 01 month and 20 days including remission. Their counsel has submitted that they are first offenders and remorseful of their misdeeds. In view of such facts coupled with no objection extended by learned Addl. P.G, we see no impediment legal or otherwise in accepting request of reduction of sentence, when appellants have already served out sentence of more than 03 years.

7. Accordingly, these appeals are dismissed, but conviction of the appellants for offence u/s 7(ff) ATA, 1997 is set-aside, whereas their conviction u/s 5 of Explosive Substance Act and u/s 23(i)(a) of Sindh Arms Act, 2013 is maintained. However, their sentences on both counts are reduced to one already undergone by them with fine of Rs.500/- in each offence, in default whereof to suffer 15 days more.

The appeals in the terms as stated above stand disposed of alongwith pending application(s).

Judge

Judge

A.K.