

IN THE HIGH COURT OF SINDH, KARACHI

Before:

**Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi**

Special Criminal Anti-Terrorism Appeals No.332 & 333 of 2018

Appellant : Waleed son of Abdur Rahim
Through Mr.Gul Hassan Baloch, Advocate

Respondent : The State
Through Mr.Muhammad Iqbal Awan,
Deputy Prosecutor General.

Date of Hearing : 29-11-2019

Date of Judgment : 12-12-2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., Appellant filed instant Criminal Appeals on being aggrieved and dissatisfied with the impugned judgment dated 31.10.2018 passed by learned Judge, Anti-Terrorism Court No.IV, Karachi in (i) Special Case No.908/2018 under FIR No.176/2018 for the offences under sections 4/5 Explosive Substances Act, r/w Section 7 ATA 1997 registered at PS Kalakot, Karachi and (ii) Special Case No.909/2018 under FIR No.177/2018 for the offences under sections 23(1) (a) of Sindh Arms Act 2013 registered at PS Kalakot, Karachi; whereby the appellant was convicted and sentenced as under:-

- a) *Convicted u/s 5 of Explosive Substance Act and sentenced to suffer R.I. for three (03) years and fine of Rs.5,000/-. In case of default of payment, he shall further suffer R.I. for one (01) month.*
- b) *Convicted u/s 23(1) (A) of Sindh Arms Act, 2013 and sentenced to suffer R.I. for three (03) years and fine of Rs.5,000/-.In case of default of payment, he shall further suffer R.I. for one (01) month.*

All the sentences were ordered to run concurrently. The benefit of section 382(B) Cr.P.C. was extended to the appellant.

2. Brief facts of the prosecution case are that on 16.07.2018, Complainant SI Mansoor Ahmed of P.S Kalakot, Karachi, alongwith his subordinate staff was busy in search and combing operation. At about 03:25 hours when he reached Street No.02, Shewick Lane, Ali Muhammad Nabidad Road, Kalakot, Lyari, Karachi one person was present there in suspicious condition. SIP Mansoor Ahmed with the help of his subordinates apprehended him, who disclosed his name as Waleed son of Abdul Raheem. Due to non-availability of private witnesses, in presence of official witnesses the complainant conducted his personal search and recovered from the right side pocket of his Kameez one Avan Gola. On his further personal search police party also recovered from the left side fold of his Shalwar one unlicensed pistol of 30 bore without number, loaded magazine containing 04 live bullets. On demand of permission/valid license of arms and ammunitions, he failed to produce the same. Therefore, they arrested the suspicious person and after completion of legal formalities separate FIRs bearing Nos. 176/2018 under Section 4/5 Explosive Substance Act, R/W Section 7 ATA 1997 and 177/2018 under Section 23 (1) (a) of Sindh Arms Act, 2013, were registered against above named accused for taking further legal action.

3. After completion of investigation, I.O. submitted two separate challans on 09.08.2018 before Hon'ble Administrative Judge of ATC, Karachi, wherein accused Waleed son of Abdul Raheem was shown in custody, and his name was mentioned in column No.3 of the challan.

4. After completion of the formal proceedings, joint charge was framed on 24.09.2018 against accused to which he pleaded not guilty and claimed trial.

5. In order to prove its cases, prosecution examined in all four (04) PWs who produced/ exhibited certain documents before the trial court in order to prove the case of prosecution.

6. Statement of accused u/s 342(1) Cr.P.C was recorded at Ex.10 in which he denied the allegations leveled against him. The accused in his statement claimed his innocence and prayed for Justice and in disproof of charges he examined himself on oath u/s 340(2) Cr.P.C as DW-1(Ex-11) and produced two witnesses in his defence, who recorded their statements before the trial Court as DW-2 Mehboob Umer Baloch at (Ex.12) and DW-3 Muhammad Aslam at (Ex.13), respectively.

7. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellant vide judgment dated 31.10.2018, which is impugned before this Court by way of filing the instant Appeals.

8. Learned counsel for the appellant mainly contended that appellant is innocent and has been involved by the police in false cases; that recovery was not affected from him and the same was foisted upon him by the police; that no private persons were made witness of the recovery. During arguments, the learned counsel, in the face of overwhelming evidence against him and under the instructions of his client/appellant has not pressed the instant appeals on merit but has requested for a reduction in sentence which appellants has already undergone on the ground that the

appellant is the only male member of a large family of which he is the main breadwinner and is not a previous convict and is capable of reformation.

9. Mr. Muhammad Iqbal Awan, learned DPG appearing for the State has no objection to a reduction in sentence to some reasonable extent taking into account the above mitigating circumstances.

10. We have heard the arguments of learned counsel for the parties and have perused the material available on record.

11. The record reflects that all the prosecution witnesses supported the case of prosecution, arrest of appellant at spot as well as recovery of one Avan Gola and pistol proved by the prosecution by providing oral and documentary evidence.

12. The Police officials are as good as private witnesses and their testimony could not be discarded merely for the reason that they were police officials, unless the defense would succeed in giving dent to the evidence of prosecution witnesses and prove their mala fide or ill-will against accused which the appellant has not been able to do. The appellant was arrested, recovery of Avan Gola and pistol was affected from him, no enmity was suggested against the witnesses, they were cross-examined at length but we do not find any major contradiction in their evidence which would lead us to believe that they are not trustworthy as such we are satisfied that the prosecution has proved its case against the appellant beyond a reasonable doubt.

13. In view of the mitigating circumstances raised by the appellant and no objection extended by learned Deputy Prosecutor General, we have carefully gone through the relevant law under which the appellant was convicted and also the impugned judgment and have noticed that the trial court has not convicted the appellant in any of provisions under the ATA, 1997.

14. Consequently, the conviction awarded by the trial court to the appellant is maintained, however, the sentences awarded to the appellant through the impugned judgment are reduced to one which he already undergone and fine against him is also remitted, with the above modifications in the sentences, these appeals are dismissed, and the appellant shall be released forthwith, unless he is required in any other custody case.

15. The instant appeals are disposed of in the above terms.

JUDGE

JUDGE