

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-06 of 2012

PRESENT:

Mr. Justice Naimatullah Phulpoto,
Mr. Justice Aftab Ahmed Gorar,

Appellant : Dadoo alias Waddan Shaikh, through Mr. Shahbaz Ali M. Brohi, Advocate.

Respondent : The State, through Mr. Khadim Hussain Khooharo, Deputy Prosecutor General.

Date of hearing: 28-01-2015.

Date of Judgment: 28.01.2015.

J U D G M E N T.

AFTAB AHMED GORAR, J.-

Appellant/accused Dadoo alias Waddan

son of Ghous Bux, by caste Shaikh, through the instant appeal has challenged the judgment dated 30.01.2012 passed by the learned Judge, Anti-Terrorism Court, Jacobabad in Special Case No.01/2010, re State v. Rab Nawaz alias Sudheer alias Basham Shaikh & others, arising out of Crime No.264/2009, registered at Police Station New Foujdari, Shikarpur, for offences under Sections 365-A, 148, 149, PPC and Section 7 of the Anti-Terrorism Act, 1997.

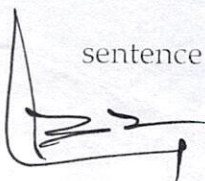
2. According to the case of prosecution, on 24.12.2009 complainant Rahib Luhur lodged F.I.R at P.S New Foujdari, Shikarpur, stating therein that he was driver of the government vehicle of Government Girls College, Shikarpur, whereas his son Riaz Ahmed, aged about 19/20 years, used to ply Qingqi Rickshaw in Shikarpur town. On 22.12.2009, his son Riaz Ahmed took Dr. Javed Soomro from Village Mureed Sethar on his Qingqi Rickshaw for Shikarpur town and on way complainant Rahib Luhur, his cousin Asghar and Abdullah met him at the bridge of Sindh Wah and they also boarded in the rickshaw. At about 7.30

p.m., near Andhi Phata on the link road leading to Rustam, they were intercepted by accused persons, who were seen and identified on the headlight of Qingqi Rickshaw to be 1. Attoo alias Atta Muhammad, 2. Ali Nawaz, both armed with K.Ks, 3. Dadoo alias Waddan s/o Ghous Bux, armed with gun, all three by caste Shaikh, 4. Rab Nawaz, Shaikh, armed with K.K., 5. Dado son of Beero, 6. Lahooti, 7. Khan Muhammad, all three by caste Jagirani, armed with guns, and two unidentified persons, armed with guns. The accused persons abducted Dr. Javed Ahmed Soomro and Riaz Ahmed. The complainant and P.Ws went to their village and then tracked the footprints of the accused, which they lost near the house of accused Lahooti Jagirani in Village Karo Kalar.

3. After usual investigation, case was challaned, wherein appellant Dadoo alias Waddan Shaikh and co-accused Ali Nawaz Shaikh, Dado son of Beero alias Gul Bahar Jagirani and Lahooti Jagirani were shown as absconders. The N.B.Ws issued against the appellant and above-named co-accused by the trial Court returned unexecuted, therefore, case against them was ordered to proceed under Section 512, Cr.P.C. Proceedings under Sections 87 and 88, Cr.P.C were concluded and they were then declared proclaimed offenders.

4. On conclusion of trial, the learned trial Court acquitted all the accused persons including appellant Dadoo alias Waddan Shaikh of the charge for offences under Sections 365-A, 148, 149, PPC and Section 7 of the Anti-Terrorism Act, 1997, however, the learned trial Court convicted appellant Dadoo alias Waddan Shaikh under Section 21-L of the Anti-Terrorism Act, 1997 on account of his absconsion and sentenced him to 05 years imprisonment, his movable and immovable properties were forfeited.

5. Appellant Dadoo alias Waddan Shaikh thereafter surrendered before this Court by filing the aforesaid appeal against his conviction and sentence recorded in his absentia, as stated above.



6. Mr. Shahbaz Ali M. Brohi, learned Counsel for the appellant, has argued that conviction of the appellant under Section 21-L of the Anti-Terrorism Act, in his absentia, is violative of Article 9 of the Constitution of Islamic Republic of Pakistan, 1973. Relying upon the precedents of *Muhammad Arif versus The State*, reported in 2008 SCMR 829 and *Mir Ikhlaz Ahmed versus The State*, reported in 2008 SCMR 951, the learned Counsel for the appellant contended that the Hon'ble Supreme Court has held that trial in absentia is repugnant to Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973.

7. Mr. Khadim Hussain Khooharo, learned Deputy Prosecutor General, conceded the above legal position and did not support the impugned judgment passed by trial Court in respect of conviction and sentence awarded to the appellant for an offence under Section 21-L of the Act, 1997.

8. We have heard the learned Counsel for the parties and have carefully perused the record.

9. Record reflects that proceedings under Sections 87 and 88, Cr.P.C were initiated for declaring the accused Dadoo alias Waddan Shaikh as proclaimed offender for the purpose of proceeding with the case in his absentia. Thereafter, charge was framed against present accused and others for offences under Sections 365-A, PPC and Section 7 of the Anti-Terrorism Act, 1997. Record further reveals that no charge was framed against the appellant under Section 21-L of the Act, 1997. Record also shows that no evidence was recorded to prove the ingredients of Section 21-L of the Anti-Terrorism Act. Trial Court also failed to formulate a point for determination regarding the offence under Section 21-L of the Act, 1997 in the impugned judgment. There was absolutely no evidence to show that absconsion of the appellant was intentional and no finding has been recorded by the trial Court to the effect that appellant was fugitive from the law.

However, in the cursory manner learned trial Judge has convicted and sentenced the appellant for the aforesaid offence. As such, procedure adopted by the learned trial Judge in convicting and sentencing the appellant under Section 21-L of the Anti-Terrorism Act, 1997 appears to be absolutely illegal.

10. We have gone through Section 21-L of the Anti-Terrorism Act, 1997, which reads as under :-

"21-L. Punishment for an Absconder. —Whoever being accused of an offence under this Act, absconds and avoids arrest or evades appearance before any inquiry, investigation or Court proceedings or conceals himself, and obstructs the course of justice, shall be liable to imprisonment for a term not less than [five years] and not more than [ten years] or with fine or with both.

11. The appellant without filing an application 19(12) of the Anti-Terrorism Act, 1997 before the trial Court directly approached this Court through the instant appeal. In this regard, it may be suffice to say that under Section 25 of the Anti-Terrorism Act, 1997, there is no bar that a person convicted and sentenced in absentia cannot file appeal without first making application under Section 19(12) of the Anti-Terrorism Act, 1997.


12. In the present case, appellant was acquitted for offences under Section 365-A, PPC and Section 7 of the Anti-Terrorism Act, 1997. There is no evidence on record to prove the offence under Section 21-L of the Anti-Terrorism Act, 1997 against the appellant. Learned Deputy Prosecutor General also did not support the impugned judgment.

13. In view of above discussion, we are of the firm view that conviction of the appellant Dadoo alias Waddan Shaikh for offence under Section 21-L of the Anti-Terrorism Act, 1997, recorded by the learned Judge, Anti-Terrorism Court, Jacobabad, is violative of Articles 9 and 10A of the Constitution of Islamic Republic of Pakistan, 1973.

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14. For the above-stated reasons, the appeal is allowed, conviction and sentence awarded to the appellant by the trial Court for offence under Section 21-L of the Anti-Terrorism Act, 1997, by judgment dated 30.01.2012, are set aside and the appellant is acquitted.

15. Above are the detailed reasons for our short order passed in Court on 28.1.2015.


JUDGE
JUDGE