

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Spl Cr A.T. Appeal No.25/2016 & 26/2016

Date

Order with signature of Judge

22.11.2017

Syed Nadeemul-Haq advocate for appellant.
Mr. Abrar Ali Khichi, DPG.

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1. Captioned appeals are filed by appellant Moosa Khan against judgment dated 08.01.2015 passed by learned Anti-Terrorism Court No.VI at Karachi whereby appellant was convicted for offence u/s 4/5 Explosives Act 1908 r/w section 6(2)(ee); punishable u/s 7(I)(ff) of ATA, 1997 and sentenced to undergo R.I. for 14 years and forfeiture of his property; he was also convicted u/s 23(1)(A) S.A.A. of 2013 and sentenced to undergo R.I. for 7 years with fine of Rs.10,000/- in case of default whereof to suffer S.I. for four months more.

2. Briefly, facts of prosecution case are that police while on patrolling near Five Star Chowrangi received spy information regarding a suspect standing outside Gulshan-e-Islamia Building, on reaching the pointed place alongwith his subordinate staff the complainant saw the accused who had a black colour hanging bag on his shoulder and same was checked by ASI Muhammad Nadeem, from personal search of accused/appellant, one hand grenade was recovered from the bag, on further search one 30 bore pistol, magazine and five live bullets were also recovered. Accused disclosed his name Muhammad Moosa Khan, memo of arrest and recovery were prepared, accused brought to the police station and FIRs were registered.

3. Charge was framed against the appellant/accused by the trial Court, to which he pleaded not guilty and claimed to be tried. To substantiate the charge, prosecution examined five witnesses while appellant examined himself under Section 342 Cr.P.C.

4. We have heard learned counsel for appellant and learned DPG as well as perused the entire material available before us.

5. Learned counsel for has contended that case property was not sealed on the spot, there is no description of hand grenade in the contents of memo of arrest and recovery, appellant was taken in custody from his house, there is no stamp or seal of BDU on the jar containing hand grenade, there are contradictions in statement of PWs and the prosecution case is doubtful and benefit of doubt goes in favour of appellant. It is further argued that appellant is sole supporter of his family and also not a previous convict; therefore, keeping in view his submissions and the period of detention in jail, a lenient view may be taken against him.

6. In contra, learned DPG contends that the prosecution has successfully proved its case beyond any reasonable doubt and the learned trial Court has rightly awarded conviction and sentence and prays for dismissal of appeal.

7. We have considered the submissions made by learned counsel for appellant in view of the reply given by the learned DPG. Needless to mention here that concept of punishment can be reformative and learned trial Courts are bound to award sentence after considering all aspects, nature of crime; conduct as well as

previous criminal history of an accused. Discretionary powers are given to the trial Court entitling it to provide maximum punishment up to 25 years. The Court can award punishment to any quantum and that is the only reason that such language is inserted on that statute. In the case in hand, we had not seen that such an exercise has been undertaken by the trial Court, therefore, trial Courts shall always, in the cases where minimum and maximum sentences are awarded, are required to justify the quantum of their punishment in the judgments.

8. With regard to an act of terrorism; the object, design or purpose behind the said act (offence) is also to be established so as to justify a conviction under Section 7 of the Anti-Terrorism Act, 1997. In this context, reliance can be placed on the case of *Kashif Ali v Judge, ATA Court No.II* (PLD 2016 SC 951).

9. The appellant has been awarded sentence of 14 years under Section 7(1)(ff) of Anti-Terrorism Act, 1997 and for 7 years u/s 23(a)(A) S.A.A. 2013, out of which he has passed 3 years and 6 days in prison including remission. The appellant has pleaded himself to be a sole bread earner of his family and not previous convict, which is not disputed by the prosecution. The detention of only bread earner shall compel the families to step-out for survival least bread which if result in bringing a slightest spot towards such helpless family shall ruin their lives.

10. Keeping in view, the phrase “may extend upto” and the circumstances explained herein above coupled with the period of detention in prison; we find it appropriate to reduce the sentence of

14 years awarded u/s 7(1)(ff) ATA and sentence of 7 years awarded u/s 23(1)(A) of S.A.A. 2013 to the one already undergone including fine. Appellant shall be released forthwith if not required in any other custody case.

With the above observations, appeals are disposed of.
Office to place copy of this order in connected Appeal No.26/2016.

J U D G E

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Imran/PA