



3. At this juncture, learned counsel for the appellants contends that appellant is young boy and as per jail roll by the Jail Superintendent through letter dated 20.12.2018 he has served 03 year, 04 months and 05 days including remission, he is sole bread earner for his family. Learned counsel for the appellant agreed for reduction of sentence to the one already undergone in view of case reported in 2018 P.Cr.L.J. 959 (Suneil vs. the State), which has not been refuted by the learned Addl. P.G Sindh in view of the fact that a substantial portion of sentence awarded to the appellant has already been served out by him.

9. *Quantum of punishment* is not only discretion of the Court, which has to be exercised while considering the circumstances of the case, but also is an independent aspect of Criminal Administration of Justice which, too, requires to be done keeping the concept of *punishment* in view.

10. At this juncture, it would be conducive to refer paragraphs 6 and 7 of aforesaid judgment, which are that:-

“6. As per prosecution case, the Appellant was arrested in the night time with the allegation that he was possessing pistol and rifle grenade but it was never proved by prosecution that such allegedly recovered *articles* were either used prior to alleged date of offence nor it is established that Appellant was intending to use the same at subsequent date. In short, the prosecution *though* established recover but never established that such recovery was *in fact* an act of ‘terrorism’ for which 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 Act. Reliance can safely be placed on the case of *Kashif Ali v. Judge, ATA Court No.II pld 2016 SC 951* wherein it is held as:-

“12. ... In order to determine whether an offence falls within the ambit of section 6 of the Act, it would be essential to have a glance over the allegations leveled in the FIR the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence. Whether a particular act is an act of terrorism or not, the motivation, object, design of purpose behind the said act has to be seen. The term “design”, which has given a wider scope to the jurisdiction of the Anti-terrorism Courts excludes the intent or motives of the accused. In other words, the motive and intent have lost their relevance in a case under Section 6(2) of the Act. What is essential to attract

the mischief of this section is the object for which the act is designed.”

Let us, be *specific* a little further. The Appellant has been convicted under Section 5 of Explosive Substances Act so also under 7 subsection (1)(ff) of Anti-Terrorism Act, 1997 i.e. second part of section 6(2)(ee) which reads as:

“6(2)(ee) involves use of explosives by any device including bomb blast (...)”

If one is convicted for one offence i.e. ‘merely possessing explosive’ twice i.e. one under Explosive Substances Act and under the Arms Act, it shall seriously prejudice the guarantee, provided by Article 13 of the Constitution, therefore, it would always be obligatory upon prosecution by *first* establish ‘object’ thereby bringing an act of ‘possessing explosive’ to be one within meaning of second part of section 6(2)(ee) of the Act as held in the case of *Kashif Ali* supra in absence whereof the punishment under Section 7(1)(ff) would not be legally justified particularly when accused is convicted independently for such act (offence) under Explosive Substance Act. In such circumstances, the conviction awarded against the Appellant under Section 7(i)(f) is hereby set aside.

11. Since, the offences wherein the appellants have been convicted fall within category of offences ‘**may extend upto**’ ; the appellants claim themselves to be sole bread earner; appellants are of young age; these are circumstances which justify reduction in sentence.

12. In view of above, it would be in the interest of justice to reduce the sentence awarded to appellant to already undergone. Accordingly, conviction is maintained but sentence is reduced to one already undergone by the appellant including fine. Appellant shall be released forthwith if not required in any other custody case.

12. The above appeal is disposed of in the above terms.

JUDGE

JUDGE

SAJID