

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Date Order with signature of Judge

Spl. CrI. A.T. Appeal No. 15 of 2015

1. For hearing of case.
2. For hearing of M.A. No. 6849/16.
3. For hearing of M.A. No. 1089/15.
4. For hearing of M.A. No. 11154/16.

Spl. CrI. A.T. Appeal No. 16 of 2015

1. For hearing of office objecitn.
2. For hearing of main case.
3. For hearing of M.A. No. 1094/16.
4. For hearing of M.A. No. 11156/16.

Spl. CrI. A.T. Appeal No. 17 of 2015

For hearing of main case.

Spl. CrI. A.T. Appeal No. 18 of 2015

For hearing of main case.

01-06-2017

Shaikh Muhammad Suleman Advocate for Appellant
Mr. Muhammad Iqbal Awan, APG.

-x-x-x-x-

At the outset, learned counsel for the appellants contends that the appellant Shahbaz Mughal was booked in Crime No.38/2014 under Sections 385/386/34 PPC read with Section 7 ATA 1997 of P.S. Gulshan-e-Maymar, Karachi and in Crime No.40/2014 registered under Section 23(i) (a), Sindh Arms Act, 2013 at PS Gulshan-e-Maymar. Counsel further contends that appellant Muhammad Wasif alias Wadoh was booked in Crime No.39/2014 registered under Sections 23(i) (a), Sindh Arms Act, 2013 at PS Gulshan-e-Maymar and in Crime No.38/2014 registered under Sections 384/386/34 PPC read with Section 7 ATA, 1997 at PS Gulshan-e-Maymar, Karachi.

He further contends that this is not a case of terrorism. Ingredients of Section 6 of ATA 1997 are not applicable in this case yet they were convicted under Section 7(h) ATA 1997. Besides, he

contends that appellant Shahbaz Mughal has served sentence of 3 years 11 months 28 days including remissions whereas Muhammad Wasif has served sentence of 3 years 7 months 27 days including remissions and it would be in the interest of justice to reduce the sentence of the appellants, converting the same under Section 384 PPC.

In contra, learned APG reluctantly opposed this proposal.

We have heard learned counsel for the respective parties and have examined the material available on record.

Perusal of impugned judgment shows that allegation of extortion are alleged against the appellants; they were convicted under Section 7(h) ATA 1997 which provides minimum sentence i.e. 5 years whereas section 384 PPC provides 3 years punishment. Admittedly, the appellants are not habitual offenders as per record of the prosecution *itself*. The plea of learned counsel for the appellants regarding misapplication of Section 7(h) of ATA 1997 by the trial Court appears to be carrying substance because the prosecution is *always* required to bring complete material before the trial Court thereby justifying an *offence* to be an act of *terrorism* too. Suffice to say that merely alleging that one person has committed an act of terrorism is *never* sufficient but since the law provides an *independent* punishment for an act of *terrorism* hence the prosecution must satisfy the conscious of the court that complained offence, being punishable in law, is also an act of *terrorism*. The *prime* ingredient is *object* for which act is designed, as held in case of Kashif Ali (PLD 2016 SC 951). In the instant prosecution brought nothing on record to substantiate this. Accordingly, the sentence awarded for offence u/s 7(1)(h) of Anti-Terrorism Act, 1997 is set-aside.

Since, the counsel for the appellants has not pointed any other legal defect in conclusion of trial court in convicting the

appellants for offence which in absence of section u/s 7(1)(h) of Anti-Terrorism Act, 1997 will fall under Section 384 PPC. Accordingly, we dispose of this appeal by converting sentence under Section 384 PPC. Since, the learned trial court *itself* categorically held the appellants entitled for leniency hence sentence for said offence is reduced 3 years that is already completed. Accordingly the appellants are released and surety stand canceled and bail bonds stand discharged.

JUDGE

JUDGE

saleem