

IN THE HIGH COURT OF SINDH, KARACHI
Special Criminal Anti-Terrorism Appeal No. 128 of 2024

Present:

Justice Zafar Ahmed Rajput.

Justice Ms. Tasneem Sultana.

Appellant : Ameer Jan @ Bablu s/o. Abdul Jaleel,
through M/s. Raj Ali Wahid Kunwar &
Abdul Qadir, Advocates.

Respondent : The State, through Mr. Muhammad Iqbal
Awan, Additional Prosecutor General.

Date of hearing : 06.02.2025

Date of order : 06.02.2025

JUDGMENT

ZAFAR AHMED RAJPUT, J:- This Special Criminal Anti-Terrorism Appeal is directed against the judgment dated 30.10.2024, passed by the learned Judge, Anti-Terrorism Court No. XVIII, Karachi in Special Cases No. 146 & 146-A of 2024, arising out of F.I.Rs. No. 88 & 89 of 2024, registered at P.S. CTD, Karachi under Section 4/5 of the Explosive Substance Act, 1908 (“**Act of 1908**”) r/w Section 7 of the Anti-Terrorism Act, 1997 (“**Act of 1997**”) and section 23(1)(a) of Sindh Arms Act, 2013 (“**Act of 2013**”), whereby the appellant was convicted and sentenced, as under:-

i. For offence under section 4/5 of the Act of 1908, he was sentenced to undergo R.I for 05 years and to pay fine of Rs.25000 - (Twenty-Five Thousand Only) and in default thereof, he shall further undergo for 01-month S.I.;

ii. For offence under section 7(ff) of the Act of 1997, he was sentenced to undergo R. I for 14 years and to pay fine of Rs.25000 - (Twenty-Five Thousand Only) and in default thereof, he shall further undergo for 01-month S.I.;

iii. For offence under section 23(1)(a) of the Act of 2013, he was sentenced to undergo RI for (03) years and to pay fine of Rs.10000 (Ten Thousand Only) and in default thereof, he shall further undergo for 01 month S.I.

All the sentences were ordered to run concurrently and the appellant was extended benefit of section 382-B, Cr. P.C for the period, which he had remained in jail as under trial prisoner.

2. It is case of the prosecution that, on 07.06.2024, complainant ASI Ali Faisal of CTD Investigation Garden-Karachi, was on searching of proclaimed offenders and target killers inside the city alongwith his subordinate staff. At 0100 hours, he reached Mirza Adam Khan Road, near Kashti Wali Masjid, Karachi, where he arrested the appellant on being found in possession and control of three Avan rifle grenades, out of which two grenades were of silver brown color with marking BM<-X31-/3144 and one of golden brown color bearing No. 766(33); two ball bombs wrapped with red tape and one rubbed number black color 30 bore pistol alongwith magazine loaded with three bullets. For that, he was booked in the aforementioned F.I.Rs.

3. At the trial, charge was framed against the appellant for the offences under section 6 (2) (ee) of the Act of 1997, punishable under section 7 (1) (ff) of the Act of 1997 read with sections 4/5 of the Act of 1908 and section 23(1)(a) of the Act of 2013 by the trial Court; to which, he pleaded not guilty. After recording evidence of the prosecution witnesses and statement of the appellant under section 342, Cr. P.C., the trial Court convicted the appellant and awarded him sentences as mentioned above, vide impugned judgment.

4. After arguing the appeal at some length; pointing out some minor discrepancies in investigation and depositions of P.Ws and conceding to the fact that the appellant had failed to produce evidence before the trial Court in support of his defence plea, contends that he does not press this appeal on merits; however, seeks modification and reduction of sentences awarded to the appellant keeping in view the fact that the trial Court, besides convicting the appellant for the offence under sections 5 of the Act of 1908 and 23(1)(a) of the Act of 2013, has also convicted him for offence under section 7(ff) of the Act of 1997 and section 4 of the Act of 1908, which provisions are not applicable under the circumstances of the case and at the most the guilt of the appellant falls under section 5 of the Act of 1908, which carries punishment with imprisonment for a term which may extend to fourteen years. He further

contends that the appellant is not previously convicted of any offence; hence, he deserves leniency.

5. Learned Addl. Prosecutor General also concedes to the fact that under the circumstances of the case it is not the section 4 but section 5 of the Act of 1908, which attracts to the facts of the case and the guilt of the appellant, and section 7(ff) of the Act of 1997 also does not attract to the facts of the case.

6. We have heard the learned counsel for the appellant and learned Addl. Prosecutor General as well as perused the material available on the record.

7. Section 2 (f) of the Act of 1997 defines the term “explosives”, as under:

“explosives” means any bomb, grenade, dynamite, or explosive substance capable of causing an injury to any person or damage to any property and includes any explosive substances defined in the Explosives Act, 1884.

Section 4 (1) of the Explosives Act, 1884 (“the Act of 1884”) describes the term “explosives”, as under:

(a) *“explosives”---(a) means gunpowder, nitroglycerine, nitroglycol, gun cotton, dinitrotoluence, trinitro toluene, picric acid, dinitro-phenol, trinitro resorcinol (styphnic acid), cyclo trimethylence trinitramine, penta erythritol tetranitrate, tetryl, nitroguanidine, lead azide, lead styphynate, fulminate of mercury or any other metal, diazo dinitro phenol, coloured fires or any other substances whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and*

(b) *includes,-*

(i) chemical compounds, Compositions or mixture of which will produce, upon release of its potential energy, a sudden outburst of gases, thereby exerting high pressures on its

surroundings. Explosives may be solid, liquid or gas, nitro compound or in the form of water gel or slurry;

(ii) fog signals, firework, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosives as defined in this clause; and

(iii) such other substance as the Federal Government may, by notification in the official Gazette, specify for the purposes of this sub-section.

Section 2 of the Act of 1908 classifies the term “explosives substance”, as under:

“ In this Act the expression “explosive substance” shall be deemed to include any materials for making any explosive substance; also any apparatus, machine implement or material used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus machine or implement.”

(Emphasis supplied)

8. It appears from the perusal of the aforementioned provisions of the Statutes that under section 2 (f) of the Act of 1997, the “explosives” should be capable of causing an injury to any person or damage to any property and includes any explosive substances defined in the Act of 1884. Section 4 (1) of the Act of 1884 includes in terms “explosives”, various kinds/forms of solitary materials-solid, liquid and gaseous-; chemical compounds, compositions or mixture; and preassembled firearm ammunition and devices, which produce a practical effect by explosion or pyrotechnic effect. Section 2 of the Act of 1908 classifies term “explosives substance”, include the materials for making any explosive substance; any apparatus, machine implement or material used, or

intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance and any part of any such apparatus, machine or implement.

9. In the instant case, it is a matter of record that the three rifle grenades allegedly recovered from possession of the appellant were without launcher; hence, the same were not capable of explosion causing an injury to any person or damage to any property to attract the definition of “explosive” provided under section 2 (f) of the Act of 1997. It also cannot produce a practical effect by explosion or pyrotechnic effect being incomplete preassembled firearm ammunition and device in terms of “explosives” as defined under section 4 (1) of the Act of 1884. Hence, section 6 (2)(ee) of the Act of 1997, punishable under section 7(ff) *ibid* is not applicable to the facts of the case. However, being a part of an apparatus, machine or implement, it falls within the definition of “explosives substance”, as explained under section 2 of the Act of 1908, which is punishable under section 4 and 5 of the Act (*ibid*), which read as under:

4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property. — Any person who unlawfully and maliciously —

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in Pakistan of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his control any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in Pakistan, or to enable any other person by means thereof to endanger life or cause serious injury to property in Pakistan;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually caused

or not, be punished with imprisonment for life or any shorter term which shall not be less than seven years.

*5. **Punishment for making or possessing explosives under suspicious circumstances.**— Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with imprisonment for a term which may extend to fourteen years.*

10. It is an admitted position that in the instant case, the appellant has not done any act and/or made in his possession and under his control the alleged explosive substance with intent to cause by an explosive substance, an explosion of a nature likely to endanger life or to cause serious injury to property, to attract the provisions of section 4 of the Act of 1908, as the alleged explosive substance-hand grenades without launcher- are having no characteristic of being explode to endanger life or to cause serious injury to property etc. Since only the possession of the alleged hand grenades without launcher with the appellant has been established, the alleged act squarely falls within the ambit of section 5 of the Act of 1908, which carries punishment up to 14 years; hence, we alter the conviction under Section 4 to section 5 of the Act of 1908. It lucidly summed up the principles to be considered by the Courts while doing so and held that the section 4 of the Act of 1908 would apply when there is **‘an attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property,’** whereas the section 5 (ibid) would apply when there is no such attempt or intention, but there is **‘a possession or control of any explosive substance under suspicious circumstances to give rise to a reasonable suspicion that he is not having it in his possession or under his control for a lawful object,’**.

11. We are also conscious of the fact that the punishment for any offence committed by a person is awarded for retribution, deterrence and in order to strengthen the society by reforming the guilty. The law itself has categorized the offences. There are certain offences, which carry punishment with phrase “not less than” while there are also offences, which carry punishment with phrase “may extend up-to”. Such difference itself is indicative that the Courts have to appreciate certain circumstances before awarding quantum of punishment in later case which appear to be dealing with those offences; the guilty thereof may be given an opportunity of reformation by awarding less punishment.

12. For the foregoing facts and reasons, we set aside the conviction and sentence recorded for the offence under section 7(ff) of the Act of 1997. Since the appellant is not previously convicted of any offence, we are inclined to give him an opportunity for reformation. We, therefore, deem it appropriate not to award him maximum punishment provided under section 5 of the Act of 1908 and award him sentence to suffer R.I. for three (3) years. However, conviction and sentence awarded to the appellant under section 23(1)(a) of the Act of 2013 by the trial Court is maintained. Both the sentences shall run concurrently. The appellant shall also be entitled for the benefit of section 382-B, Cr.P.C.

13. The appeal stands dismissed with above alteration/modification.

JUDGE

JUDGE