

THE HIGH COURT OF SINDH AT KARACHI

Spl. Criminal A.T. Jail Appeal No.202 of 2023

Present:

Justice Zafar Ahmed Rajput

Justice Mrs. Rashida Asad

Appellant : Muhammad Ashraf, through
Barrister Aamir Nazir Shaikh, Advocate.

Respondent : The State, through
Mr. Siraj Ahmed Khan Chandio, Addl.
Prosecutor General, Sindh

Date of hearing : 02.04.2024.
Date of order : 02.04.2024

ORDER

ZAFAR AHMED RAJPUT, J.- This Special Criminal Anti-Terrorism Jail Appeal is directed against the judgment, dated 12.10.2023, passed in Special Case No.266 of 2023 (*re-The State versus Muhammad Ashraf*) arising out of Crime No.216 of 2023, registered at Police Station Saeedabad, Karachi-Keamari under Section 4/5 of the Explosive Substance, Act, 1908 (***“the Act of 1908”***) read with Section 7 of the Anti-Terrorism Act, 1997 (***“the Act of 1997”***), whereby the Anti-Terrorism Court No. XIII, Karachi (***“the Trial Court”***) convicted the appellant for the offence under Section 4(b) of the Act of 1908 and under Section 7(ff) of the Act of 1997 and sentenced him to suffer for each of said offences R.I. for fourteen years and to pay fine of Rs.50,000/- or in default thereof to suffer R.I. for four and six months, respectively. The benefit of Section 382-B, Cr. P.C., was, however, extended to the appellant.

2. At the very outset, learned counsel for the appellant contends that the case should be remanded to the Trial Court for recording the evidence of PW-1 Abid Farooq Inspector/ I/C. BDU, Karachi-West afresh as his evidence was recorded by the Trial Court in absence of a defense counsel and the appellant lacking the requisite skills and knowledge of cross-examination was unable to cross-examine the aforesaid PW properly.

3. Learned Additional Prosecutor General, Sindh concedes to the proposition of the learned counsel for the appellant.

4. Heard, record perused.

5. It appears from the perusal of the record that in the instant case, the Trial Court framed the charge against the appellant on 03.07.2023 in presence of his counsel, namely, Mr. Javed Ahmed Channa advocate, who on subsequent five dates of hearing i.e. 30.07.2023, 10.07.2023, 18.07.2023, 24.07.2023 and 05.08.2023 failed to make his appearance before the Trial Court; hence, on later date i.e. 05.08.2023, the Trial Court adjourned the matter as a last chance by directing the appellant to bring his counsel on the next date of hearing otherwise the Court would provide him a counsel on State expense. Then on the next date i.e. 15.08.2023, the said counsel for the appellant made his appearance but again on next date i.e. 28.08.2023 he remained absent and the matter was adjourned at the request of the appellant again as a last and final chance with direction to him to bring his counsel on the next date of hearing and in case of failure, he would be provided a counsel on State expense. Thereafter, the matter was adjourned to 13.09.2023 on which date, the counsel for the appellant was called absent; however, PW-1, Abid Farooq made his appearance; his examination-in-chief was recorded and the appellant was given an opportunity to cross-examine him by the Trial Court, ignoring the fact that on the previous date of hearing i.e. 28.08.2023, it had cautioned the appellant alternatively to provide a counsel on State expense.

6. Sub-section (8) of the Section 19 of the Act of 1997 reads, as under:-

“19(8) An Anti-terrorism Court shall not give more than two [adjournments during the trial of the case and that also imposition of exemplary costs]. If the defence counsel does not appear after two consecutive adjournments, the Court may appoint a State Counsel with at least seven years standing in criminal matters for the defence of the accused from the panel of advocates maintained by the Court

for the purpose in consultation with the Government and shall proceed with the trial of the case.”

7. As observed in the case of *Shahsawar vs. The State (1998 P Cr. L J 1758)* the Special Court constituted under the Act of 1997 has to conduct the trial in accordance with the procedure provided under section 19 of the said Act. The provisions of the Cr. P.C so far as they are not inconsistent with the provisions of the Act also apply to the proceeding before the Special Court, as laid down under section 32 of the Act. Under section 340(1), Cr. P.C., an accused person has right to be defended by a pleader in his trial before any criminal Court. This right is of paramount importance and has to be zealously guarded in order to protect life and liberty of the citizens. If adequate opportunity of defence through a pleader is not provided to an accused person it will also be violative of the fundamental right regarding security of person enshrined under Articles 9 and 10A of the Constitution of the Islamic Republic of Pakistan, 1973 (**“the Constitution”**) which provide, *“No person shall be deprived of life or liberty save in accordance with the law”*, and *“a person shall be entitled to a fair trial and due process”*, respectively. In the absence or proper opportunity of defence through a counsel, an accused person may be deprived of his life or liberty in violation of the law and would be denied fair trial and due process. To enjoy the protection of law and to be treated in accordance with the law is inalienable right of every citizen as laid down under Article 4 of the Constitution.

8. In the present case, it appears that the Trial Court was oblivious of its legal obligation to provide defence counsel to appellant/accused at the State expense as provided under section 19(8) of the Act of 1997 before recording evidence of the P.W-1. Having failed to act in consonance with the letter and spirit of the rule laid down under section 19(8) of the Act of 1997, the Trial Court has committed a gross illegality.

9. For the foregoing facts and discussion, we allow this appeal, set aside the conviction and sentence awarded to appellant vide impugned judgment and remand the case to the Trial Court for recording the evidence of P.W-1, namely, Abid Farooq afresh in presence of appellant/accused's counsel. In case, the counsel for the appellant/accused does not make his appearance, the Trial Court shall appoint a State Counsel as provided under section 19(8) of the Act of 1997 on State expenses. After recording evidence of the said P.W-1, the Trial Court shall record the statement of the accused under Section 342, Cr. P.C. afresh, and *re-write* the judgment after hearing the learned counsel for the parties, in accordance with law.

10. Appeal stands disposed of along with listed application in above terms.

JUDGE

JUDGE