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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-81 of 2015

PRESENT:

Mr. Justice Zafar Ahmed Rajput,  
Mr. Justice Khadim Hussain Tunio,

Appellant : Dodo Marhato, through Mr. Safdar Ali G. Bhutto,  
Advocate.

Respondent : The State, through Mr. Khadim Hussain  
Khooharo, Additional Prosecutor General.

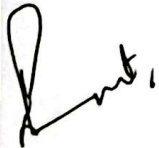
Date of hearing: 21-11-2017.

Date of Judgment: 21.11.2017.

J U D G M E N T.

ZAFAR AHMED RAJPUT, J.- Appellant/accused Dodo Marhato through instant appeal has challenged the judgment dated 18.08.2014, passed by the learned Special Judge, Anti-Terrorism Court, Kashmore at Kandhkot, in Special Case No. Old 12/2004, New No.40/2013 (Re: State v. Faiz Mohammad & others) arisen out of Crime No.20/2003, registered at Police Station Buxapur, District Kashmore at Kandhkot, for offence under Sections 302, 324, 353, 404, 427, 148, 149, PPC, 17(3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, 3/4 of Explosive Act and Section 7 of the Anti-Terrorism Act, 1997, whereby he was convicted in absentia alongwith other proclaimed offenders and sentenced as under:-

- (a) Under Section 302(b), 149, PPC, read with section 7(a) of Anti-Terrorism Act, 1997, to suffer imprisonment for life and to pay the fine of Rs.100,000/- each, which if deposited to be paid to L.Rs of deceased PC Mohammad Bhooral as compensation u/s 544-A, Cr.P.C and in case of default to suffer further S.I for two years more.



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(b) Under Section 353, 149, PPC read with section 7(a) of Anti-Terrorism Act, 1997 to suffer R.I for two years.

(c) Under Section 324, 149, PPC read with section 7(a) of A.T. Act to suffer R.I. for ten years and to pay the fine of Rs.50,000/- each and in case of default to suffer S.I for two years more.

(d) Under Section 404, 149, PPC read with section 7(a) of A.T. Act to suffer R.I for three years and to pay the fine of Rs.20,000/- each and in case of default to suffer SI for six months more.

2. Mr. Safdar Ali G. Bhutto, learned Counsel for the appellant, at very outset, contends that the appellant has been convicted by the learned trial Court in absentia, which is violative of Articles 9 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973, therefore, the matter may be remanded to the trial Court for trial afresh by setting aside the impugned judgment.

3. Mr. Khadim Hussain Khooharo, learned Additional Prosecutor General, conceded to the contention of learned Counsel for the appellant and did not support the impugned judgment passed by trial Court in respect of conviction and sentences awarded to the appellant in absentia.

4. We have heard the learned Counsel for the parties and have carefully perused the record.

5. From the perusal of record, it appears that the appellant was admittedly tried in absentia by the learned Special Judge, Anti-Terrorism Court, Kashmore at Kandhkot. The learned trial Court has held the appellant guilty, and has convicted and sentenced him as mentioned in para 1 (supra) in his absence. The conviction of the appellant recorded by the learned Special Judge, Anti-Terrorism Court, Kashmore at Kandhkot, is violative of Articles 9 and 10-A of the

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Constitution of Islamic Republic of Pakistan, 1973 as well as Section 19(11-A) of the Anti-Terrorism Act, 1997. The Hon'ble Supreme Court while considering the same point in the case of Ikhtlaq Ahmad v. State (2008 SCMR 951) has recorded following observations:

*"14. In view of the above, we feel that the trial of the appellants, in absentia, undertaken by the Special Judge, Anti-Terrorism Court, was violative of Articles 9 and 10(1) of the Constitution and section 19(11-A) of the Anti-Terrorism Act, 1997, thus, cannot be allowed to sustain. Furthermore, the appellants were not afforded any opportunity of hearing and thus, they were condemned unheard which is contrary to the principle of natural justice. We are convinced that the judgments, convictions and sentences rendered and awarded by both the Courts, in the absence of the appellants, to their extent are not sustainable under the law and violative of the Constitution and law, which has necessitated the retrial of the case."*

6. Record also shows that the appellant without filing an application under Section 19(12) of the Anti-Terrorism Act, 1997 before the trial Court has directly approached this Court through the instant appeal. However, it is relevant to say that Section 25 of the Anti-Terrorism Act, 1997 does not provide any bar that a person convicted and sentenced in absentia cannot file appeal without first making an application under Section 19(12) of the Anti-Terrorism Act, 1997 before the trial Court.

7. In view of above discussion, the appeal is allowed, the impugned judgment is set aside and the case is remanded to the trial Court for *de novo* trial and decision afresh in accordance with law.