

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-23 of 2016

PRESENT:Mr. Justice Zafar Ahmed Rajput,  
Mr. Justice Mohammad Iqbal Kalhoro,Appellant : Asghar Mugheri, through Mr. Ali Nawaz Ghanghro,  
Advocate.Respondent : The State, through Mr. Sardar Ali Shah, Assistant  
Prosecutor General.Date of hearing: 25-10-2016.Date of Judgment: 25.10.2016.J U D G M E N T.

ZAFAR AHMED RAJPUT, J.- Appellant/accused Asghar Mugheri through the instant appeal has challenged the judgment dated 07.06.2011, passed by the learned Judge, Anti-Terrorism Court, Larkana, in Special Case No.32/2009 (Re: State v. Mukhtiar Mugheri & others) arising out of Crime No.214/2009, registered at Police Station Kamber, District Kamber-Shahdadkot, for offence under Sections 302, 324, 353, 148, 149, PPC read with Sections 6 & 7 of the Anti-Terrorism Act, 1997, whereby he was convicted for offence under Section 302(b) read with Section 148, 149, PPC and Section 6 & 7 of Anti-Terrorism Act, 1997 and awarded sentences in absentia to suffer R.I. for life and to pay a fine of Rs.2,00,000/- as compensation under Section 544-A, Cr.P.C to the legal heirs of deceased PC Ghulam Qadir Detho. He has further been convicted for offence under Section 324, PPC and sentenced to suffer R.I. for ten years and to pay a fine of Rs.30,000/-. He has also been convicted for offence punishable under Section 353, PPC and sentenced to suffer R.I. for two years.

2. Mr. Ali Nawaz Ghanghro, 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. Sardar Ali Shah, learned Assistant Prosecutor General, conceded the above legal position and did not support the impugned judgment passed by trial Court in respect of conviction and sentence awarded to the appellant in absentia.

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

5. A perusal of record shows that the appellant was admittedly tried in absentia by the learned Judge, Anti-Terrorism Court, Larkana. 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 Judge, Anti-Terrorism Court, Larkana, is violative of Articles 9 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973 and Section 10(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 10(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 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 application under Section 19(12) of the Anti-Terrorism Act, 1997.

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.

Qazi Tahir/\*