

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Special Criminal Anti-Terrorism Appeal No.09 of 2021

Appellant : Zohaib son of Akram
Through Mr. Muhammad Arif Afzal
Khan, Advocate

Respondent : The State
Through Mr. Muhammad Iqbal
Awan, Addl. Prosecutor General,
Sindh.

Date of Hearing : 08.02.2022

Date of Order : 08.02.2022

J U D G M E N T

Mohammad Karim Khan Agha, J. The Appellant Zohaib was tried by Anti-Terrorism Court No.VIII, Karachi in Special Old Case No.250/2020 (New Special Case No.16/2021) pursuant to FIR No.306/2020 under Sections 4/5 Explosive Substance Act, 1908 read with Section 7 of ATA, 1997 lodged at PS Karli, Karachi and vide judgment dated 12.01.2021, the appellant was convicted under Section 5 of Explosive Substance Act, 1908 and sentenced to suffer R.I. for five years and fine of Rs.50,000/- and in case of default, he shall suffer three months more.

2. The brief facts of the case as stated in the FIR are that on 03.09.2020, ASI Muhammad Siddiq alongwith police officials was on patrolling when at about 17.30 hours on main Maripur Road near Grid Station Karli, Liyari spotted a young boy who was standing in a suspicious condition. The police apprehended him, who disclosed his name as the appellant and on his search, one live hand grenade was recovered from him. The accused was arrested and FIR was lodged against him under the aforesaid sections.

3. After usual investigation, the case was challaned and the appellant proclaimed his innocence and claimed trial.

4. In order to prove its case, the prosecution examined four PWs and exhibited numerous documents and other items. The appellant in his Section 342 Cr.P.C. statement claimed false implication by the police at the behest of Rangers. However, he did not examine himself on oath and did not call any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the learned trial Court convicted the appellant as stated above. Hence, the appellant filed the instant appeal against his conviction.

6. The facts of the case as well as evidence are set out in detail in the impugned judgment and as such, there is no need to reproduce them here so as to avoid any unnecessary duplication and repetition.

7. After reading out the evidence, learned counsel for the appellant, under instructions, stated that he did not press this case on merits and only sought a reduction in sentence based on various mitigating factors including the following:

- i) The appellant was a first time offender and was capable of reformation.
- ii) The appellant was only 18 years of age and had family to support, who was suffering on account of his continuing incarceration.
- iii) That by accepting guilt, the appellant has shown genuine remorse.

Lastly, learned counsel submits that keeping in view the above mitigating factors, the sentence of the appellant may be converted into the period already undergone.

8. Learned Addl. Prosecutor General appearing on behalf of the State has no objection to a reduction of sentence of the appellant being reduced on the aforesaid mitigating factors.

9. On our re-assessment of the evidence, we find that the prosecution has proved its case against the appellant beyond reasonable doubt based on the fact that the arrest and recovery of live hand grenade from him was made on spot by police officials, who had no enmity with the appellant and had no reason to falsely implicate him. The evidence was given in a straightforward manner and was not dented during cross-examination and we believe the same; that the hand grenade recovered from the appellant on his arrest on the spot was kept in safe custody and when it was examined by the BDU expert it produced a positive report and as such, the conviction of the appellant is maintained.

10. With regard to sentencing, keeping in view the mitigating factors raised by counsel for the appellant and the no objection given by learned Addl. Prosecutor General, we hereby reduce the sentence of the appellant to time already undergone in jail which shall also include the payment of fine. The appellant shall be released unless he is wanted in any other custody case.

11. The instant Special Criminal Anti-Terrorism Appeal stands disposed of.