

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.A. No.560-P/2015

Date of hearing: _____

Appellant (s) : _____

Respondent (s) : _____

JUDGMENT

ASSADULLAH KHAN CHAMMKANI, J.- This common judgment shall dispose of this appeal, filed by appellant Abdur Rauf and connected Cr.A.No.568-P/2015, filed by appellant Haji Rahim, as both are the outcome of the same judgment dated 8.09.2015, of learned Judge Anti Terrorism Court-I, Peshawar, whereby appellant Abdur Rauf has been convicted under section 5 Explosive Substance Act read with section 7 (ff) Anti Terrorism Act, 1997 and sentenced to undergo 14 years R.I. alongwith forfeiture of his property, if any, in favour of the State, whereas appellant Haji Rahim has been convicted under section 11(w) Anti Terrorism Act, 1997 to undergo 01 year R.I. and to pay a fine of Rs.50,000/- or in default thereof to undergo 01 months S.I. further. Benefit of S.382-B Cr.P.C. has been extended to them.

2. The prosecution case as unfolded in First Information Report Exh.PA is that on receipt of information about presence of Liaqat, proclaimed offender in case FIR No.43 dated 10.10.2014 under sections 365-A/302/148/149 PPC, Police Station C.T.D., in Ghari Chandan Hari Chan area, within the criminal jurisdiction of Police Station Mattani, Noor Ullah Jan Inspector (PW.1) alongwith other police officials, rushed there, where on seeing them, a young man having a polythene bag in his hands, tried to flee away but was chased and overpowered. On query, he disclosed his name as Abdur Rauf (appellant). On search of the bag, explosive substance weighing 2035 grams, 48 inches prima cord and three detonators were recovered. He was formally arrested. Murasila Exh.PA/1 was drafted and sent to Police Station for registration of the case. During interrogation, he disclosed the name of his accomplices as Haji Rahim (co-appellant) and Kifayat Ullah (absconding co-accused).

3. On completion of investigation, challan was submitted against the appellants before the learned Trial Court, where they were formally charge sheeted, to which they pleaded not guilty and claimed trial. To prove its case, prosecution examined its evidence, on closure whereof, statements of the appellants were record, wherein they

denied the prosecution allegations and professed their innocence. They, however, declined to be examined on oath or to produce evidence in defence. On conclusion of trial, the learned Trial Court, after hearing both the sides convicted and sentenced the appellants as mentioned above, hence, these appeals.

4. During the course of arguments, it transpired from the record that only explosive material has been shown recovered from possession of appellant Abdur Rauf, whereas there is nothing on record to show its use by the petitioner. Mere possession of the explosive substance without use, in a mosque, imambargah, church, temple or any other place of worship in the Court premises, as contemplated in the Third Schedule attached to Anti Terrorism Act, 1997, therefore, mere possession of the explosive substance does not fall within the ambit of Third Schedule attached to Anti Terrorism Act, 1997, which read as under:-

“1.....

2.....

3.....

“4. Without prejudice to the generality of the above paragraph, the Anti Terrorism Court to the exclusion of any other Court shall try the offences relating to the following, namely,

(i) Abduction or kidnapping or ransom;

(ii) use of fire-arms or explosives by any device, including bomb blast in a mosque imambargah, church, temple or any other place of worship whether or not any hurt or damage is cause thereby; or

(ii) firing or use of explosives by any device, including bomb blast in the Court premises.

Thus, item No.4 mentioned above, shall be read in conjunction to items No.1 to 3 of the Third Schedule, which make it unambiguous that use of firearms or explosive by any device will come within the ambit of the schedule offence of Anti Terrorism Act, 1997, only in case of its use in a mosque, imambargah, church, temple or any other place of worship or court premises. Admittedly, simple possession of the explosive material has also been inserted in the Third Schedule attached to the Anti Terrorism Act, 1997, but the insertion/ amendment is only to the extent of Province of Punjab and not applicable to the Province of Khyber Pakhtunkhwa. In this view of the matter, the case of the appellants falls under the Explosive Substances Act, 1908, and would be triable by an ordinary Court i.e. the Court of Sessions.

5. For what has been discussed above, we without dilating upon the merits of the case in light of the available evidence, lest it may prejudice the case of either side, allow these appeals, set aside the impugned judgment

and send the case to the Ordinary Court/ Sessions Judge, Peshawar for trial denovo, who shall either proceed with the trial himself or entrust it to any Additional Sessions Judge. The learned Trial Court shall conclude the trial as early as possible but not later than two months from the day of receipt of the record, avoiding unnecessary adjournments except on reasonable ground, period of which too, shall not exceed a week. During pendency of trial, the appellants shall remain as under trial prisoners. Office is directed to send the record to the learned Sessions Judge, Peshawar, within two days, without fail.

6. The Additional Registrar (Judicial) of this Court is directed to circulate copy of this judgment among the learned Judges of the Anti Terrorism Courts, Khyber Pakhtunkhwa, Peshawar for future guidance.

Announced
24.11.2015

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