

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi.*

SPL. CRIMINAL A.T. APPEALS NO.164 & 165 OF 2021

Appellant : Shahnawaz S/o Alah Wasaya
Through Mr. G.M. Bhutto, Advocate

Respondent : The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General, Sindh.

SPL. CRIMINAL A.T. JAIL APPEALS NO.187 & 188 OF 2021

Appellant : Murtaza s/o Nazeer Ahmed
Through Mr. G.M. Bhutto, Advocate

Respondent : The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General, Sindh.

Date of Hearing : 19.08.2021

Date of Order : 19.08.2021

JUDGMENT

Mohammad Karim Khan Agha, J. The Appellants Shahnawaz and Murtaza were convicted in the Court of Anti-Terrorism Court No.X, Karachi in Sessions Case No.321 of 2020 in Crime No.671 of 2020 under Sections 397/353/324/34 PPC r/w Section 7 of ATA, 1997, Special Case No.321-A of 2020 in Crime No.672 of 2020 under Sections 23(i) A Sindh Arms Act, 2013 and Special Case No.321-B of 2020 in Crime No.673 of 2020 Sections 23(i) A Sindh Arms Act, 2013 registered at PS Gulistan-e-Jauhar, Karachi vide consolidated Judgment dated 27.09.2021 and were sentenced as under:-

1. The accused Shahnawaz s/o Allah Wasaya and Murtaza s/o Nazeer Ahmed were also convicted u/s. 397 PPC and they were sentenced to undergo R.I. for a period of 07 years.
2. The accused Shahnawaz s/o Allah Wasaya and Murtaza s/o Nazeer Ahmed were also convicted u/s.7(1)(h) of ATA 1997 r/w. Section 353/324 PPC and they were sentenced to undergo R.I. for a period of 07 years with fine of Rs.50000/- each and in default in payment of such fine, they shall undergo further S.I. for a period of 06 months.
3. The accused Shahnawaz s/o Allah Wasaya and Murtaza s/o Nazeer Ahmed were also convicted u/s.25 of Sindh Arms Act, 2013 and they were sentenced to undergo R.I. for a period of 07 years with fine of Rs.50000/- each and in default in payment of such fine, they shall undergo further S.I. for a period of 06 months.

Accused persons were also given benefit of Section 382-B Cr.P.C. All the sentences were ordered to run concurrently.

2. The brief facts of the case are that on 18.09.2021 at about 2320 hours at Block No.1, Gulistan-e-Jauhar, Karachi opposite Karachi University main gate, Karachi two robbers sharing common intention duly armed on a motorcycle No.KIN-6282 make Super Power, black color had robbed / snatched a Huawei Mobile Phone from the complainant Muhammad Haider Akhtar on gunpoint and had also snatched mobile phones from 02 other bystanders. The complainant and other victims made hue and cry whereupon a police mobile reached the scene and ordered the robbers to stop but they ignored the police directions and opened fired upon the police officers. Police officials in return fired upon the robbers who became injured and fell down from their motorcycle. One of them disclosed his name as Shahnawaz from whom mobile phone and an unlicensed pistol were recovered and the other one disclosed his name as Murtaza from whom an unlicensed pistol and mobile phone were also recovered. They were arrested on the spot and sent to the hospital and the complainant came to the Police Station where aforementioned FIRs were registered against them.

3. After usual investigation the matter was challaned and the appellants were sent up to face trial. They pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined three (03) PWs and exhibited various items and other documents. The appellants in their 342 Cr.P.C. statements claimed that they were innocent and falsely implicated in these cases. Neither of the appellants gave evidence on oath, however, accused Shahnawaz called two defense witnesses being his mother and father.

5. After hearing the parties and appreciating the evidence on record, the learned trial Court convicted and sentenced the appellants as set out earlier and hence, the appellants have filed these appeals against their convictions and sentences.

6. The facts and evidence of the case have been set out in the impugned judgment in detail and there is no need to reproduce the same in order to avoid unnecessary repetition and duplication.

7. After reading out the evidence, learned counsel for the appellants, under instructions of the appellants stated that he would not argue the case on merit and that the appellants would be satisfied with a reasonable reduction in sentence based on the following mitigating circumstances:-

- i) That the appellants were first time offenders and relatively young men and are capable of reformation.
- ii) That they are the sole breadwinners of their families, who rely on their income.
- iii) That no persons were injured during robbery and encounter with the police
- iii) That the appellants by accepting their guilt had shown genuine remorse.

8. Learned Addl. Prosecution General Sindh submitted that he has no objection to a reasonable reduction in sentence based on mitigating circumstances raised by the appellants.

9. We have perused the record and find that the accused persons were arrested on the spot after an encounter with the police both of whom were injured condition and from possession of one accused recovered a mobile phone which was snatched from the complainant. Both the recovered unlicensed pistols at the scene of the crime produced a positive FSL report when matched with the empties recovered at the scene and that there were no major contradictions in any of the prosecution witnesses' evidence which remained consistence of all material points and as such we find that the prosecution has proved its case against the appellants beyond a reasonable doubt and uphold their convictions however with regard to the convictions we find that this case does not fall within the purview of Section 397 PPC but

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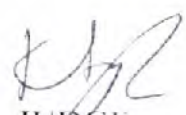
rather Section 392 of PPC on which both the appellants had adequate notice of such offence. And as such appellants are convicted under Section 392 PPC instead of Section 397 PPC for which they are acquitted for a period of 03 years.

10. Based on mitigating circumstances raised by the appellants and the no objection given by the Addl. Prosecutor General Sindh to a reduction in sentence we hereby uphold the convictions of the appellants except with respect to their convictions u/s.397 PPC. However, with respect to their conviction u/s. 392 PPC they are sentenced to undergo R.I. for a period of 03 years. With regard to their sentence u/s.393/324 PPC their sentence is reduced to a period of 03 years with fine of Rs.50000/- **each** and in default of payment they shall further undergo S.I. for 06 months. With regard to the conviction u/s.25 of Sindh Arms Act, 2013 we hereby reduce the sentence of the appellants from 07 years R.I. to 03 years R.I. with fine of Rs.50000/- **each** and in default of payment of such fine they shall further undergo for S.I. 06 months. The appellants shall have the benefit of Section 382-B Cr.P.C. and any remission applicable under the law and the sentences shall run concurrently.

11. We make it clear that the appellants are not convicted under the Anti-Terrorism Act, 1997 as based on the evidence available on record we find that this case does not fall within the purview of ATA as there was no intention or design or purpose to create terror rather it was a robbery which was carried out by the appellants which escalated into an encounter with the police in order to make their escape good.

12. The instant Criminal Appeals are dismissed except as modified in terms of sentencing as mentioned above.


JUDGE Ali
19/08/2022


JUDGE
19/08/21