

Arns Case - 11-12-2018

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PRESENTED ON

11-12-2018

[Signature]
Deputy Registrar (Judicial)

IN THE HIGH COURT OF SINDH AT KARACHI

Special Anti Terrorism Appeal No. 350 / 2018

MUMTAZ ALI @ ZAMIN
S/o. Muhammad Ayoub,
Muslim, Adult, R/o. House No. 05,
Sector No. 28, Block B, Qayyumabad,
Karachi, Presently confined in
Central Jail, Karachi ----- APPELLANT

VERSUS

The State ----- RESPONDENT

FIR No. 271 / 2016
U/s. 353/324/186/34 PPC
R/w. 7 ATA 1997
P.S. Awami Colony,
Karachi

APPEAL AGAINST CONVICTION U/S. 25 OF ATA 1997
R/W. SECTION 410 CR.P.C.

Being aggrieved and dissatisfied with the impugned Judgment dated 30-11-2018 passed by the learned Anti Terrorism Court No. X, Karachi, whereby the learned judge convicted the appellant above named and convicted him in offence U/s. 7(h) of ATA 1997 R/w. Section 353/186/324 PPC and sentenced to undergo R.I. for 10 years with fine of Rs.1,00,000/-. In default in payment of such fine, he shall suffer further RI for 06 months, therefore the appellant abovenamed prefers this appeal with the prayer that this Hon'ble Court may

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Abdul Mubeen Lakho.

Spl. Criminal A.T. Appeal No.350 of 2018
Spl. Criminal A.T. Appeal No.351 of 2018

Appellant:	Mumtaz Ali alias Zamin through Syed Lal Hussain Shah, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.
Date of hearing:	04.02.2020
Date of announcement:	10.02.2020

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Mumtaz Ali alias Zamin son of Mohammad Ayoub has preferred this appeal against the impugned judgment dated 30.11.2018 passed by the Anti-Terrorism Court No.X, Karachi in Special Case No.151 of 2018 (Old Case No.1275/2016), F.I.R. No.271/2016 u/s. 353/324/186/34 PPC registered at P.S. Awami Colony, Karachi and Special Case No.151-A of 2018 (Old Case No.1276/2016), F.I.R. No.272/2016 u/s. 23(i) A Sindh Arms Act, 2013 registered at P.S. Awami Colony whereby the appellant Mumtaz Ali alias Zamin has been convicted and sentenced as under:-

1. The accused Mumtaz Ali @ Zamin son of Muhammad Ayoub is hereby convicted for the offence u/s.7(h) of ATA, 1997 r/w. S. 353/186/324 PPC and sentenced to undergo R.I. for 10 years with fine of Rs.1,00,000/- . In default in payment of such fine, he shall suffer further R.I for 06 months.
2. The accused Mumtaz Ali @ Zamin for the offence u/s.23 (i) A Sindh Arms Act, 2013 and sentence him to undergo R.I. for 07 years with fine of Rs.50,000/- . In default in payment of such fine, he shall suffer further R.I for 06 months.

2. The brief facts of the prosecution case in a nutshell are that on 24.05.2016 in between 1820 to 1830 hours ASI Ali Nawaz (Complainant) got registered FIR No.271/2016 U/s. 353/324/186/34 PPC, FIR No.272/2016

under Section 23 (i) A Sindh Arms Act, 2013 at PS Awami Colony, Karachi stating therein that on that day, he was on patrolling duty along with his subordinate staff in official police mobile. During patrolling, when the police party had reached at the road behind Dar-ul- Uloom Madressah, Sector 28 KIA, Karachi at about 1715 hours they saw 05 person on 03 motorbikes, who appeared to be suspicious. As such, ASI Ali Nawaz signaled them to stop for checking purpose, but instead of stopping, the said suspects being armed with deadly weapons made fire upon the police party, with intent to commit their intentional murder, as well as deterring them from discharging their lawful duties and official functions. The police officials also made firing in retaliation. During exchange of firing, one of the accused persons sustained bullet injuries and fell down from the Motorbike No.KBG-4364, whereas, his 04 other accomplices managed to escape away from the crime scene on their motorbikes. The said injured assailant was then apprehended by the police, who was holding a 30 bore pistol in his right hand having 04 live rounds and the same was recovered and taken into custody by the police. Upon inquiry, the apprehended / injured accused disclosed his name as Mumtaz Ali @ Zamin son of Muhammad Ayoub, whereas he also disclosed the names of his absconding accomplices as Manthar son of Muhammad Sharif, Zamin, Jawed son of unknown, Rashid Ali son of Muhammad Sharif and Bilal son of unknown. The apprehended / injured accused was also asked to produce license of the recovered pistol but he failed to produce the same. Consequently, the accused was arrested on the spot, under the memo of arrest, recovery and seizure. The injured / arrested accused Mumtaz Ali @ Zamin was shifted to JPMC through Ambulance. Later on the police party returned to Police Station Awami Colony along with the relevant papers and case property and registered FIR's for the aforesaid offenses.

3. After completion of usual investigation of the above said cases, report under Section 173 Cr.PC were submitted by the I.O against the accused in the concerned court of law as well as against the absconding accused persons under Section 512 Cr.P.C.

4. Charge was framed against the accused to which he pled not guilty and claimed trial.

5. In order to prove its case the prosecution examined 03 PW's who exhibited various documents and other items in support of the prosecution

case where after the prosecution closed its side. The appellant/accused recorded his statement under section 342 Cr.PC in which he denied all the allegations leveled against him and claimed false implication. He however did not examine himself on oath or call any DW's in support of his defense case.

6. Learned Judge, Anti-Terrorism Court No.X, Karachi after hearing the counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 30.11.2018, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. After the reading out of the evidence and the impugned judgment learned counsel for the appellant initially tried to argue the appellant's case on merits however in the face of the overwhelming evidence against the appellant on record he decided not to press the appeal on merits but instead prayed for reduction of the appellant's sentences to lesser ones based on the mitigating circumstances that the appellant (a) was the sole bread winner for his family and (b) he was a young man with no CRO and was a first time offender and was capable of reformation.

9. Learned DPG conceded that a reduction in sentence was justified based on the particular facts and circumstances of the case and had no objection to a reduction in sentence to some reasonable extent. When asked by the court whether based on the particular facts and circumstances of this case it fell within the purview of the ATA he was of the view that it did not based on the recent pronouncements of the Supreme Court on cases under the ATA.

10. Having gone through the evidence on record we are of the view that the prosecution has proved its case against the appellant beyond a reasonable doubt through the arrest of the appellant on the spot, the recovery of the pistol on the spot, the fact that the appellant was injured

condition and received treatment at the hospital, the recoveries at the scene, positive FSL report and the fact that the police witnesses corroborated themselves in all material respects and had no ill will or enmity towards the appellant and as such had no reason to implicate him in a false case.

11. Based on the mitigating factors raised by the appellant and the no objection to the reduction in sentence to some reasonable extent by the DPG we in exercise of our powers under S.423 Cr.PC deem this to be a fit case which warrants a reduction in sentences handed down to the appellant

12. Having gone through the evidence we are also of the view that the offenses committed by the appellant do not fall under the purview of the ATA.

13. Thus, for the reasons mentioned above we hereby uphold the convictions of the appellant **except** in respect of offenses under the ATA but modify his sentences as under:

(a) The accused Mumtaz Ali @ Zamin son of Muhammad Ayoub is hereby convicted for the offence S. 353/186/324 PPC and sentenced to undergo R.I. for 05 years with fine of Rs.1,00,000/- . In default in payment of such fine, he shall suffer further R.I for 03 months.

(b) The accused Mumtaz Ali @ Zamin for the offence u/s.23 (i) A Sindh Arms Act, 2013 and sentence him to undergo R.I. for 05 years with fine of Rs.50,000/- . In default in payment of such fine, he shall suffer further R.I for 03 months.

The appellant shall have the benefit of S.382-B Cr.PC and the sentences shall run concurrently.

14. The appeal stands disposed of in the above terms.