

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

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

**SPL. CRIMINAL A .T. APPEAL NO.86 OF 2021
SPL. CRIMINAL A .T. APPEAL NO.87 OF 2021**

Appellant	Kashif son of Ali Nawaz through Mr. Kausar Ali Shar, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.
Date of Hearing.	02.06.2022
Date of Announcement	02.06.2022

J U D G E M E N T

Mohammed Karim Khan Agha, J. Appellant Kashif son of Ali Nawaz was charge sheeted to face his trials in two Special Cases Nos. 304 of 2020 arising out of FIR No.481/2020 u/s.397/353/324/34 PPC r/w Section 7 of ATA, 1997 of PS Aziz Bhatti, Karachi and No. 304-A of 2020 arising out of FIR No.482/2020 u/s. 23(I)-A SAA of PS Aziz Bhatti, Karachi. Vide impugned judgment dated 10.06.2021 the appellant was convicted and sentenced as under:-

1. For offence under section 397 PPC to undergo R.I. for 05 (five years) and fine of Rs.20,000/- (Twenty thousand only) in default of payment of fine the accused shall further undergo R.I for 03 (three) months.
2. For offence under section 7(h) of ATA r/w section 353 PPC to undergo R.I. for 02 (two years) and fine of Rs.20,000/- (Twenty thousand only) in default of payment of fine the accused shall further undergo R.I for 03 (three) months.
3. For offence under section 7(i)(b) of ATA r/w section 324 PPC to undergo R.I. for 05 years and fine of Rs.20,000/- in default of payment of fine the accused shall further undergo R.I for 06 (six) months.
4. For offence under section 23(i)-A Sindh Arms Act to suffer R.I. for 05 years and fine of Rs.20,000/- in default of payment of fine the accused shall further undergo R.I for 03 (three) months.

All the sentences shall run concurrently and the benefit of Section 382-B Cr.P.C. was also extended to the appellant/accused.

2. Brief facts of the prosecution case are that on 06.09.2020, complainant Syed Mohammad Hassan Salman Rizvi had recorded his statement u/s.154 Cr.P.C. which was incorporated in 154 Cr.P.C. book. He has stated therein that on 06.09.2020 he was waiting for a rickshaw at Gulshan-e-Iqbal Karachi where all of sudden two culprits had come on a motorcycle, who snatched his wallet containing Rs.6000/-, original CNIC while they were snatching his mobile phone, a police mobile had come there. One of the culprits, who was riding the motorcycle managed to escape from place of incident by making fire shots and the culprit who was snatching from complainant after seeing police mobile started straight firing on the police party with intention to commit **Qatl-e-Amd**. In retaliation police officials had also made some fire shorts upon accused. During encounter accused received fire arm injuries on his right hand and he was apprehended by SI Sadaruddin on the spot. On an inquiry accused disclosed his name to be Kashif and whereas he disclosed the name of his absconded accomplice to be Sameer. Upon the personal search of accused Kashif, ASI secured one 30 bore pistol bearing words "Diamond Khyber Arms Co Peshawar" rubbed number alongwith loaded magazine containing 02 rounds in magazine and one live round in its chamber from his right hand. Upon personal search of accused, SI Sadaruddin also recovered one brown colour wallet containing Rs.6000/- and original CNIC which were identified by the complainant to be his property which was snatched by the accused. Upon his further personal search SI secured two mobile phones i.e. one Nokia and one G-Five China, one purse of brown colour containing three ATM cards of different banks of one Fayaz Ahmed, one blank cheque No.00150448 of Askari Bank, one duplicate CNIC of Fayaz Ahmed, one ATM Card of Sikandar Ali, one ATM Card of Kashif Idress and one running page of motorcycle registration No:KLB-3485 maker Unique 70 of Faiz Rasool from his possession. The accused on an inquiry disclosed the weapon as unlicensed. Thereafter SI secured two empties of 30 bore and three empties of official 9mm bore from the place of incident. Therefore, the police arrested accused in the above crimes and sent him to the hospital JPMC in the Chipa ambulance No.EA.0741 through ASI Saad Khan and PC Muneer for his first aid treatment thereafter accused was brought at the police station hence this FIR.

3. After usual investigation the case was challaned and the appellant was sent up to face his trial. He pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 05 PWs and exhibited various documents and other items. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent and falsely implicated in this case. He did not give evidence on oath or call any witness in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier in this judgment and hence, the appellant has filed this appeal against his conviction.

6. The evidence led before the trial Court has been reproduced in detail in the impugned judgment and as such there is no need to reproduce the same so as to avoid any unnecessary repetition and duplication.

7. At the very outset learned counsel for the appellant, under instructions stated that he did not press his appeals on merit and that the appellant would accept his guilt provided that his sentences were reduced to some reasonable extent keeping in view the following mitigating circumstances.

- i) That the appellant is first time offender and capable of reformation;
- ii) That the appellant is a young man and had large family and is sole breadwinner of his family.
- iii) That the appellant has accepted his guilt and as such has shown genuine remorse.

8. Learned Additional Prosecutor General Sindh after considering the mitigating circumstances mentioned above stated that he has no objection to a reasonable reduction in respect of the appellant's sentences.

9. We have gone through the evidence on record and after reassessment of the same we find that the appellant was arrested on the spot after robbing the complainant after exchange of fire with the police. The appellant was arrested in injured condition and items belonging to the complainant were recovered. That an unlicensed pistol was also recovered from his possession which led to a positive FSL report in

respect of empties recovered at the scene and as such we find that the prosecution has proved its case against the appellant beyond any reasonable doubt and as such we uphold the conviction and sentences of the appellant except in respect of ATA offences as there was no purpose intent or design to create terror rather there was a robbery which escalated into an encounter with the police on the spot at the spur of the moment and as such the appellant is acquitted from the ATA offences and his convictions are upheld in respect of only all PPC offences.

10. With regard to the sentencing we find that the mitigating circumstances raised by the appellant warrant a reduction in sentences especially keeping in view the no objection certificate given by the learned Additional Prosecutor General Sindh and the fact that the appellant has already served more than 2½ years in jail.

11. Based on above mitigating factors we hereby reduce the appellant's sentences to the period which he has already served in jail (which shall include the amount of fine) and the appellant shall be released unless wanted in any other custody cases.

12. These Special Criminal A.T. Appeals are dismissed except as modified in terms of sentencing as mentioned above.