

IN THE HIGH COURT OF SINDH, KARACHI

Present:

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

Spl. Cr. A.T.A No. 206 of 2022
Spl. Cr. A.T.A No. 207 of 2022

Appellant	Amjad Ali S/o Bacha Khan through Mr. Hashmat Khalid, Advocate.
Respondent	The State through Mr. Ali Haider Saleem, Additional Prosecutor General Sindh.
Date of hearing	12.05.2023.
Date of order	12.05.2023.

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Amjad Ali son of Bacha Khan was tried in the Court of Anti-Terrorism Court No.XX, Karachi in Special Case No.239/2022 arising out of F.I.R. No.94/2022 U/s. 353/324 PPC read with Section 7 of ATA, 1997 and Special Case No.239-A/2022 arising out of F.I.R. No.95/2022 U/s. 23(i)A of Sindh Arms Act, 2013 both were registered at P.S. SIU, Karachi and vide Judgment dated 23.11.2022, the appellant was convicted and sentenced as under:

Section	Conviction
Section 324 PPC R/w Section 7 ATA 1997	Accused Amjad Ali to suffer R.I. for five years and fine of Rs.20,000/- and in case of default of payment of the fine, accused to undergo R.I. for six months more.
Section 353 PPC	Accused Amjad Ali to suffer R.I. for one year
Section 23(i)A SAA	Accused Amjad Ali to suffer R.I. for five years and fine of Rs.20,000/- and in case of default of payment of fine, accused will have to undergo R.I. for six months more.

All the sentences were ordered to run concurrently. However, the appellant was also extended the benefit of Section 382-B Cr.P.C.

2. Brief facts of the prosecution case are that on 08.04.2022 complainant SIP Aijaz Butt of PS SIU was on patrolling duty alongwith his subordinate staff and during such patrolling when they reached at inside Nadi Layari Expressway Central Karachi where he saw a culprit, who was coming on a motorcycle. SIP Aijaz Butt signaled him to stop for checking but instead of stopping the culprit allegedly made fire shot upon police party with an intention to commit their murder and while making their defense the complainant SIP Aijaz Butt also made four fire shots and during such cross firing accused received fire arm injury on shin of his left leg and fell down on the ground on the spot. The apprehended accused disclosed his name to be Anjad Ali. The personal search of injured applicant was conducted which led to the recovery of a pistol of 9mm bore bearing No:T-062021BM43100 9X19mm on its right side and ZIGNA PX9G2 TISAS TURKIYE on its left side alongwith magazine loaded with two live bullets and one in its chamber from his possession. From his personal search one mobile phone Nokia and Rs.700/- were secured from his possession. The motorcycle 125 Honda bearing registration No.MBP 7438 engine No: R-758999 and Chassis No: EB-441204 was seized. The police from the spot secured six empties of 9mm. On an inquiry the apprehended accused disclosed the recovered weapon as well as motorcycle to be unlicensed. Thereafter, the accused was arrested under such memo at the spot and was shifted to JPMC. Hence, the instant FIR.

3. After usual investigation the matter was challaned and the appellant was sent up to face the trial. The appellant pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 07 P.Ws and exhibited various documents and other items. The appellant in his section 342 Cr.P.C. statement denied the allegations against him. However, he did not give evidence on oath and did not call any D.W. in support of his defence case.

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

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by the

trial court and there is no need to repeat the same in order to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions of the appellant stated that the appellant did not contest the case on merits and accepted his guilt and prayed only for reduction in sentence based on the following mitigating circumstances:-

- a) The appellant has not been convicted before and as such, is capable of reformation.
- b) That the appellant is a young man and has a large family to support.
- c) That by accepting his guilt the appellant has shown genuine remorse and saved the time of this Court.

8. Based on these mitigating circumstances mentioned by the appellant, learned Additional Prosecutor General Sindh had no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and found that the appellant when signaled to stop by the police, failed to do so and opened fire on the police party which led the police party returning fire, upon which, appellant received a bullet injury and fell down. He was immediately arrested in an injured condition which is supported by the medical report. Arresting police officials and mashirs had no enmity or ill-will with the appellant and have no reason to implicate him in a false case and they have given evidence in a natural manner and as such we find their evidence to be reliable, trustworthy and confidence inspiring and believe the same. According to evidence, at the time of appellant's arrest on the spot, an unlicensed weapon was recovered from him, which when matched with the empties recovered at the crime scene produced positive FSL report. Thus we find that the prosecution has proved its case against the appellant beyond any reasonable doubt and the conviction of the appellant is upheld in respect of the offences under PPC and SAA. However, he is acquitted of the offences under ATA as there was no intention, purpose or design to create terror. The appellant started firing at the police simply to avoid his arrest. In this respect, reliance is placed on the case of Ghulam Hussain Versus The State (PLD 2020 SC 61).

10. With regard to sentencing based on the mitigating factors and no objection given by learned Addl. P.G, Sindh, the appellant's sentences are modified as follows;_

- a. For offence under section 324 PPC, the sentence of the appellant is reduced to 03 years R.I. without fine.
- b. For offence under section 353 PPC, the sentence of the appellant is maintained.
- c. For offence under Section 23(i)A of SAA, 2013, the sentence of the appellant is reduced to 03 years without fine.

11. All the sentences shall run concurrently. The benefit of Section 382-B Cr.P.C. shall also be extended to the appellant and the appellant shall also be entitled to all remissions available to him under the law as he has now been acquitted of the offences under the ATA.

12. The appeals are dismissed subject to modification in sentences as mentioned above.