

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. 210 of 2022
Spl. Cr. A.T.A No. 211 of 2022

Appellant	Sono Masih son of Aslam Masih through Mr. Muhammad Qayyum Qadri, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of hearing	11.05.2023.
Date of order	11.05.2023.

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Sono Masih son of Aslam Masih was tried in the Court of Anti-Terrorism Court No.IV, Karachi Division in Special Case No.81 of 2022 arising out of F.I.R. No.87 of 2022 U/s. 353/324/34 PPC read with Section 7 of ATA, 1997 registered at P.S. Taimoria, Karachi and Special Case No. 81-B of 2022 arising out of F.I.R. No.88 of 2022 U/s. 23(i) a of Sindh Arms Act, 2013 registered at P.S. Taimoria, Karachi along with co-accused Phillips son of Stephen and vide Judgment dated 05.12.2022 appellant Sono Masih was convicted and sentenced as under, along with his co-accused Phillips who has not filed an appeal against him conviction so far.

- Accused Sono Masih s/o Aslam Masih and Phillips s/o Stephen are found guilty for the offences u/s 353/324/34 PPC R/w section 6(2) (n) punishable under section 7(1) (h) ATA 1997, they are convicted and sentenced to suffer imprisonment for five years, each, and fine of Rs.10,000/- (Rupees Ten Thousands) each, in case of default of payment of fine, they shall further suffer imprisonment for three months each.
- Accused Sono Masih s/o Aslam Masih and Phillips s/o Stephen are found guilty for the offences punishable u/s 23 (i) (a) of Sindh Arms Act, 2013, they are convicted and sentenced to suffer imprisonment for three years and fine of Rs.5000/- (Rupees Five

(thousand), in case of default in payment of fine, they shall further suffer imprisonment for two months.

All the sentences shall run concurrently. Accused shall also be extended the benefit of Section 382-B Cr.P.C.

2. Succinctly facts of the prosecution are that 25.01.2022, complainant ASI Aslam Abbas of PS Taimoria, Karachi along with subordinate staff was on patrolling duty in the area, during patrolling, at about 2300 hours at Main road Flyover adjacent to Haroon Shopping Center, Sector 15/A-1 Buffer Zone Karachi police party signaled three suspects boarded on a motorcycle to stop, accused persons seated on pillion started firing on police party to kill them and deterred them to perform their lawful duties. In relation and self-defence police party also opened fire, due to which two accused persons fell down on Sakhi Hassan Flyover along with motorcycle while one accused tried to escape by jumping over the wall of flyover towards nala/river who fell in the nala and was arrested by the police party. On inquiry motorcycle rider disclosed his name as Kamran s/o Javed, he sustained firearm injury on his left arm and butt. On his personal search, one Infinix Touch screen mobile phone was recovered from right pocket of his pant. The second suspect, disclosed his name as Sono Masih s/o Aslam Masih, sustained firearm injuries on right side of chest and on both legs. From his right hand one 30 bore pistol, black colour rubbed number along with magazine loaded with two live bullets and one bullet chamber loaded was recovered. The third suspect who fell in the nala/river disclosed his name as Phillips s/o Stephen. From his right hand one 30 bore pistol, rubbed number, black wooden butt along with magazine loaded with one live bullet and one bullet chamber loaded was recovered. He sustained firearm injuries on both legs. On demand accused persons failed to produce valid license of recovered arms and ammunition and ownership documents of motorcycle. After completion of legal formalities on return back at police station FIRs were lodged against above named accused persons.

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

4. The prosecution in order to prove its case examined 09 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

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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) That the appellant had no previous conviction and was capable of reformation.
- b) That the appellant is of young age and had 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 firing on the police party which led the police party returning fire, upon which, appellant fell down on the ground. He was immediately arrested in an injured condition which is supported by the medical report. Arresting police official and mashir 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 the 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

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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. 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. Based on the mitigating factors and no objection given by learned Addl. P.C, Sindh, the appellant's sentence is modified as follows;_

- a. The appellant is convicted under section 353 PPC and is sentenced to 2 years R.I, without fine.
- b. The appellant is convicted under section 324/34 PPC and is sentenced to 3 years R.I, without fine.
- c. The appellant is also convicted under section 23(i) A of Sindh Arms Act, 2013 and is sentenced R.I for 3 years, without fine.

11. All 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 now that he has been acquitted of the offences under the ATA.

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