

## IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Jail Appeal No.197 of 2021.

*Present:*

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Zulfiqar Ali Sangi*

**Appellant**

Farhan S/o Abdul Aziz  
through Mr. Habib-ur-Rehman  
Jiskani, Advocate.

**Respondent**

The State  
through Mr. Abrar Ali Khichi,  
Additional Prosecutor General  
Sindh.

**Date of Hearing**

16.09.2022

**Date of Order**

16.09.2022.

### JUDGMENT

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant Farhan S/o Abdul Aziz was tried in the Anti-Terrorism Court No.XIX, Karachi in Special Case No.60/2018 under FIR No.118/2017 U/s 392/353/324/34 PPC R/w Section 7 ATA, 1997 and Special Case No.60-A/2018 under FIR No.119/2017 U/s 23(i)(A) SAA, 2013, both FIRs were registered at PS Paposh Nagar, Karachi and vide judgment dated 20.07.2019 the appellant was convicted of the said offence as under:-

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|----|--|---|
| 1. | Section 392 PPC                                      | To suffer R.I. for five (05) years and fine of Rs.50,000/- and in case of default of payment of fine, the accused will have to undergo R.I. for six months more.  |
| 2. | Section 7(h) of ATA, 1997 R/w Section 353/324/34 PPC | To suffer R.I. for five (05) years and fine of Rs.50,000/- and in case of default of payment of fine, the accused will have to undergo R.I. for six months more.  |
| 3. | Section 23(1)(a) Sindh Arms Act, 2013                | To suffer R.I. for seven (07) years and fine of Rs.50,000/- and in case of default of payment of fine, the accused will have to undergo R.I. for six months more. |

However, the appellant was granted benefit of Section 382-B Cr.P.C.

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2. The crux of prosecution case is that complainant of this case namely Sardar Ayoub son of Sultan lodged his FIR on the statement u/s 154 Cr.P.C. at PS Paposh Nagar, on 22.08.2017 alleging therein that on the aforesaid date I was coming from New Karachi, towards Paposh Nagar Market to receive the amount from shop, I parked my vehicle near Decent Tailor Block-5/A, Paposh Nagar at about 08:30 hours, two young boys came there on a motorcycle and on gunpoint they snatched cash from me VGO Tel mobile Set, and they both pushed me and demanded of cash amount from me, on which I fell down and raised hue & cry, resulting police party on patrolling came there and on seeing them, the accused persons having pistols in their hands started firing upon police party and in retaliation police officials also made fire shots upon the accused persons, resulting both accused having pistols in their hands became injured and fell down on the ground. Police party arrested both injured accused who on inquiry disclosed their names as Farhan s/o Abdul Aziz, who was having one 9 MM pistol bearing No.32485 loaded magazine one live bullet in magazine and one in chamber. On further personal search ASI Shahid Sher Khan recovered one mobile phone of HONOR company and one mobile set of BC China company, cash amount of Rs.560/- and one mobile phone of VGO Tel which was robbed from complainant. Another accused disclosed his name as Haider, who was having 30 bore pistol two live bullets, one in chamber and one in magazine. On further search ASI recovered one mobile set of HTC company and cash amount of Rs.160/-. After completion necessary formalities, ASI sent the injured accused to Abbasi Shaheed Hospital for their treatment through Chippa Ambulance, and thereafter registered aforesaid FIR at PS Paposh Nagar against the accused person on the statement of complainant u/s 154 Cr.P.C. and another FIR U/s 23(i)(a) SAA, 2013 on behalf of State and after completion of usual investigation, investigating officer submitted challan before Honourable Administrative Judge, Anti-Terrorism Court of Hon'ble High Court of Karachi Division, which was sent to ADJ-II Central, Karachi for disposal according to law. However, accused Haider was expired at Hospital.

3. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.



4. The prosecution in order to prove its case examined 05 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him and claimed false implication by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him 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 dated 20.07.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions stated that he did not press the case on merit and the appellant accepted his guilt provided that he was given some reduction in sentence based on following special features/mitigating factors:-

- i) That the appellant was a young man, who had a large family to support.
- ii) That the appellant was a first time offender and was capable of reformation.
- iii) That the appellant had admitted his guilt and shown genuine remorse.
- iv) That the appellant had served out a large portion of his sentence.

8. Based on the above special features/mitigating factors, the learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellant.

9. We have gone through the evidence and found that the complainant was robbed by appellants on 22.08.2017 at 0830 hours when the police party arrived and on seeing them, the appellants made fire on the police party, who also returned fire in retaliation which resulted in the

appellant being injured and subsequently arrested on spot; however, one appellant namely Haider died in hospital as a result of the injuries which he received during the encounter with the police. Since the complainant is a private person, as such, there is no chance of him falsely implicating the appellant. Likewise, there was no enmity on the part of police who arrested the accused in injured condition on spot as such we find their evidence to be reliable trustworthy and confidence inspiring and we believe the same. The medical certificate was also produced which supported the case of prosecution that the appellant and his co-accused got injured during encounter. The empties recovered at the scene when sent for FSL matched with the pistols recovered from the appellant and his co-accused as such, the prosecution has proved its case beyond any reasonable doubt against the appellant and his conviction is maintained.

10. With regard to sentencing based on the mitigating factors raised by learned counsel for the appellant and the no objection of learned Addl. P.G. to a reduction in sentence based on such factors and the fact that the appellant has completed a large portion of his sentence, we hereby maintain the conviction of the appellant; however, reduce the appellant's sentence to the period already undergone in custody and waive off any fine payable by him. The appellant shall be released unless he is wanted in any other custody case.

11. The instant appeal stands disposed of in the above terms.