

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain

Spl. Cr. A.T.A No. 208 of 2022
Spl. Cr. A.T.A No. 209 of 2022

Appellant	Haris son of Ghulam Habib through Mr. Hashmat Khalid, Advocate.
Respondent	The State through Mr. Ali Haider Saleem, Addl. Prosecutor General Sindh.
Date of hearing	30.05.2023.
Date of judgment	30.05.2023.

JUDGMENT

Mohammad Karim Khan Agha, I:- The appellant Haris son of Ghulam Habib was tried in the Court of Special Judge, Anti-Terrorism Court No.IV, Karachi in Special Cases No.253 & 253-A both of 2022 arising out of F.I.R. No.512 of 2022 U/s. 393/353/324/34 PPC read with Section 7 of ATA, 1997 registered at P.S. Taimoria, Karachi and F.I.R. No.513 of 2022 U/s. 23(1) (a) of Sindh Arms Act, 2013 registered at P.S. Taimoria, Karachi and vide Judgment dated 26.11.2022 appellant was convicted and sentenced as under;_

- a. Accused Haris S/o Ghulam Habib found guilty of the charged offence punishable u/s 393/34 PPC, is convicted and sentenced to suffer imprisonment for three years R.I and fine of Rs:10,000/- (Rupees Ten thousand), in case of default of payment of fine, he shall further suffer imprisonment for two months.
- b. Accused Haris S/o Ghulam Habib is also found guilty of the charged offence u/s 353/324/34 PPC R/W Section 6(2) (n) punishable under section 7(1) (h) ATA 1997, he is convicted and sentenced to suffer imprisonment for five years, and fine of Rs:10,000/- (Rupees Ten thousand), in case of default of payment of fine, he shall further suffer imprisonment for two months.

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- c. Accused Haris S/o Ghulam Habib found guilty of the charged offence punishable u/s 23 (1) (a) of Sindh Arms Act 2013, is convicted and sentenced to suffer imprisonment for three years and fine of Rs:05,000/- (Rupees Five thousand), in case of default in payment of fine, he shall further suffer imprisonment for one month.
- d. All the sentences shall run concurrently. The benefit of section 382-B Cr.P.C shall be extended to the accused.

2. Succinctly, facts of the prosecution case are that on 17.04.2022, Complainant namely Syed Nusrat Abbas S/o Syed Nisar Hussain, R/O A-412, Block-L, North Nazimabad, Karachi, lodged his FIR, stating therein that on 16.04.2022, at about 11:15 PM, at Nadra Mega Centre, Block-L, North Nazimabad, Karachi, he was waiting for his son in his car bearing No-BNL-360, maker Corolla GLL, having black colour. In the meanwhile, two persons boarded on one motorcycle came there. One armed person, on gunpoint, got the Complainant out of the car forcibly. The person tried to start the car but failed, when he just came out of the Car. Complainant saw the police mobile and raised hue and cry. On seeing police mobile, the person who was on motorcycle escaped from the scene. However, armed person on seeing police party, started firing upon them with intention to kill, in reprisal police party, in their self-defense, also started firing. Consequently, police party apprehended the culprit. On inquiry, apprehended accused disclosed his name as Haris and his escaped accomplice as Muhammad Ali Pathan. Police party, recovered one 30 bore pistol, having silver colour, along with magazine loaded with one live bullet and one bullet was stuck in chamber. Accused failed to produce valid license of recovered pistol. After completion of formal proceedings, separate FIRs were lodged at PS.

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 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 detailed 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 was first time offender 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 above mitigating circumstances, 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 on 16.04.2022 at 11:15 A.M at Nadra Mega Centre, North Nazimabad, Karachi attempted to steal the complainant's car who was sitting in the car; however, complainant made hue and cry and a police mobile arrived on the scene. In order to escape, the appellant fired at the police mobile which returned firing. Accused was injured and fell down whilst attempting to escape and he was arrested on the spot and one unlicensed pistol was recovered from him. We find evidence of the complainant, police officials including arresting officer and mashirs of arrest and recovery to be reliable, trustworthy and confidence inspiring and believe the same. Empties recovered from the place of incident also relate to a positive FSL report which matches with the recovered pistol. Thus we find that the prosecution has proved its case against the appellant beyond any reasonable doubt and therefore maintain his convictions for the offences,

under the PPC and Sindh Arms Act, 2013; however, we find that there was no intention, purpose or design to create terror and the appellant was simply trying to escape arrest by the police who had stopped him from hijacking the complainant's car, as such, the appellant is acquitted of all the charges under the ATA. In this respect, reliance is placed on the cases of (i) Ghulam Hussain Versus The State (PLD 2020 SC 61) and (ii) Muhammad Farhan alias Irfan Versus The State (2021 SCMR 488).

10. With regard to sentencing based on the mitigating circumstances raised by learned counsel for the appellant and no objection given by learned Addl. P.G, Sindh, we hereby modify the convictions and sentences of the appellant as under;_

- a. The appellant is found guilty of the offence under Section 393 / 34 PPC and is convicted and sentenced to suffer rigorous imprisonment of 02 years and 06 months, without fine.
- b. The appellant is also found guilty of the offence under Section 353 PPC and is convicted and sentenced to suffer R.I for 02 years, without fine.
- c. The appellant is also found guilty of the offence under Section 324 / 34 PPC and is convicted and sentenced to suffer R.I for 02 years and 06 months, without fine.
- d. The appellant is also found guilty of the offence under Section 23 (1) (a) of Sindh Arms Act, 2013 and is convicted and sentenced to suffer imprisonment for 2 years and 06 months, without fine.

11. All the sentences shall run concurrently and the appellant shall have benefit of section 382(b) Cr.P.C and any other remissions applicable under the law now that he has been acquitted of the ATA offence.

12. Both the appeals are disposed of in the above terms.