

IN THE HIGH COURT OF SINDH, KARACHI

Present:

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

Spl. CrI. A.T.J.A. No.204 of 2022.

Appellant

**Farooq Masih S/o. Bin Yamin
Masih through Mrs. Abida
Parveen Channar, Advocate.**

Respondent

**The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General Sindh.**

Date of hearing

01.06.2023.

Date of Judgment

01.06.2023.

JUDGMENT

Mohammad Karim Khan Agha, J. Appellant Farooq Masih S/o. Bin Yamin Masih was tried in the Anti-Terrorism Court No.XX Karachi in Special Cases No.182 of 2022 arising out of FIR No.341 of 2022 under Section 397/353/324/186/34 PPC r/w Section 7 of ATA 1997 Special Case No.182-A of 2022 arising out of FIR No.342 of 2022 u/s. 23(1)(a) Sindh Arms Act, 2013 registered at Police Station Zaman Town, Karachi and vide Judgment dated 26.11.2022 the appellant was convicted and sentenced as under:-

1. For the offence under section 397 PPC the appellant is convicted and sentenced to undergo R.I. for 07 years and fine of Rs.20,000/- (Rupees twenty thousand only), in default of payment of fine the accused shall further undergo R.I. for 03 (three) months.
2. For the offence under section 7(h) of ATA Act, R/w section 353 PPC the appellant is convicted and sentenced to undergo R.I. for 02 years and fine of Rs.20,000/- (Rupees twenty thousand only), in default of payment of fine the accused shall further undergo S.I. for 03 (three) months.
3. For the offence under section 7(i)(b) ATA Act, R/w. section 324 PPC to undergo R.I. for 05 years and fine of Rs.20,000/- in default of payment of fine accused shall further undergo S.I. for 06 (six) months.

4. For the offence under section 23(1)(a) of Sindh Arms Act, 2013 to suffer R.I. for 05 years and fine of Rs.20,000/- (Rupees twenty thousand only), in default of payment of fine the accused shall further undergo S.I. for 03 (three) months.

All the sentences were ordered to be run concurrently. The benefit of section 382-B Cr.P.C. is also extended to him.

2. Brief facts of prosecution case as per FIR lodged by complainant Suleman stated therein that on 25.03.2022 the police party headed by HC Kashif was busy in patrolling duty. During patrolling around the area when they reached at Korangi Crossing Indus Hospital where one person signaled them to stop, who disclosed his name to be Suleman and further disclosed that two culprits on a motorbike snatched his two mobile phones viz. Real-me and Tecno Spark and Rs.3000/- by showing him pistol and they were going ahead. Thereafter, complainant along with police party went to chase culprits while chasing the accused persons HC Kashif Lodhi tried to intercept them by shouting whereupon the said culprits made fire shots upon police party with an intention to commit their murder, and the police party also retaliated in defence and during exchange of firing one accused received fire shot, who was sitting on rear seat of motorcycle and fell down on the ground and his accomplice fled away from the spot on the motorcycle. Thereafter, one injured accused was apprehended by police on the spot. The apprehended accused/applicant disclosed his name to be Farooq Masih and he also disclosed the name of absconding accused to be Haroon Masih. The personal search of apprehended accused was conducted and he was found in possession of 9mm bore along with magazine loaded with one live bullet which was secured by police.

3. The apprehended accused had received fire arms injuries on his right calf/shin and on his left thigh. Further personal search of accused was conducted which led to the recovery of two mobile phones viz. touch real-me and keypad phone I-tel and one purse, mobile phones Real-me and Tecno Spark, which were snatched from the complainant, from his possession. Two empties of 9mm bore and three empties of official weapon secured by the police from the spot.

4

4. Thereafter the accused was arrested under such memo at the spot and he was brought at JPMC hospital for his first aid treatment. Thereafter he was brought at PS where he was booked in cases as mentioned above.
5. During course of investigation co-accused Haroon Masih was arrested by the police of PS Mehmoodabad in case Crime No.113/2022 u/s. 23(i)(a) of Sindh Arms Act and during such interrogation conducted by Inspector Mohammad Baqir. He admitted his guilt of this case, therefore, Inspector Mohammad Baqir re-arrested accused Haroon Masih in this case on 31.03.2022 and prepared memo of re-arrest in presence of mashirs.
6. After usual investigation the matter was challaned and the appellant were sent up to face trial. He pleaded not guilty to the charge and claimed trial.
7. In order to prove its case, the prosecution examined four (06) PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. and denied the allegations against him. He did not give evidence on oath or call any DWs in support of his defence case.
8. 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 hence, the appellant has filed this appeal against his conviction and sentence.
9. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment and as such there is no need to reproduce the same in order to avoid duplication and unnecessary repetition.
10. 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 admitted his guilt and only sought reasonable reduction in sentence based on the following mitigating circumstances:-

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- i) That the appellant is first time offender and capable for reformation.
- ii) That he is a Youngman with large family to support.
- iii) That by admitting his guilt the appellant has shown genuine remorse and saved the time of this Court.

11. Based on the above mitigating circumstances learned Additional Prosecutor General Sindh had no objection to the reduction in sentence to some reasonable extent.

12. We have gone through the evidence on record and find that the complainant was robbed by the appellant and was making his escape good. The police signaled the appellant to stop whereupon the appellant fired at police party and the police returned the fire which led to the capture of the appellant at the spot in an injured condition with an unlicensed fire arm. The complainant was an independent witness and has no reasons to falsely implicate the appellant in this case, as such we have no reason to disbelieve the evidence. Likewise the police arresting officer and mashir have no enmity or ill will against the appellant and had no reason to falsely implicate him in this case and as such we believe the evidence which we find to be reliable, trustworthy and confidence inspiring. The empties were also recovered at the crime scene when matched with the recovered unlicensed pistol from the appellant and produced a positive FSL report, thus we find that the prosecution has proved its case against the appellant beyond reasonable doubt.

13. Based on the evidence led, we hereby convert the offence under section 397 PPC into 392 PPC and uphold his convictions with respect of other PPC convictions and the offence under section 23(1)(a) of Sindh Arms Act, 2013. However, we do not find that this was a case of terrorism as there was no intention, purpose or design to create terror rather the appellant was trying to escape from the police when the encounter occurred. In this regard reliance is placed on the case of PLD 2020 SC 61 and 2021 SCMR 488.

14. With regard to the sentencing based on the mitigating circumstances raised by the appellant and no objection given by the

learned Additional Prosecutor General Sindh we hereby modify the convictions and sentences as under:-

- i) The appellant is convicted u/s. 392 PPC and sentenced to R.I. for three (03) years without fine;
- ii) The appellant is convicted u/s. 353 PPC and sentenced to R.I. for two (02) years without fine;
- iii) The appellant is convicted u/s. 324 PPC and sentenced to R.I. for three (03) years without fine;
- iv) The appellant is convicted u/s. 23(1)(a) of Sindh Arms Act, 2013 and sentenced to R.I. three (03) years without fine;

All the sentences shall run concurrently and the appellant shall have the benefit of Section 382-B Cr.P.C. He shall also be entitled to all remissions applicable to him under the law now he has been acquitted of the offences under the Anti-Terrorism Act, 1997.

15. The appeal is disposed of in the above terms.

M. Anj