

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

**BEFORE:**

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Muhammad Saleem Jessar

Criminal Appeal No.D-136 of 2021  
Criminal Appeal No.D-137 of 2021  
Criminal Appeal No.D-138 of 2021

Date of hearing : 08.06.2023  
Date of Judgment : 08.06.2023

Mr. Hameedullah Dahri, Advocate for Appellants alongwith his  
Associate Mr. Sher Muhammad Dahri, Advocate.

Ms. Rameshan Oad, Assistant P.G.

**JUDGMENT**

**MOHAMMAD KARIM KHAN AGHA, J.-** The appellants Amir Hussain @ Biloo and Muhammad Naveed @ Lundi were tried by learned Anti-Terrorism Court, Shaheed Benazirabad in Special Case Nos.03, 04 & 05 of 2021 and vide Judgment dated 26.10.2021 they were convicted and sentenced as under:-

- (i) Accused Amir Hussain alias Biloo Nizamani and accused Muhammad Naveed alias Lundi are awarded rigorous imprisonment and sentenced for ten years for commission of offence U/s. 324 PPC with further order to forfeiture of their properties with the tune of Rs.100,000/- each.
- (ii) Accused Amir Hussain alias Biloo Nizamani and accused Muhammad Naveed alias Lundi are also convicted for offence U/s. 353 PPC and awarded punishment for two years with fine amount of Rs.20,000/- each.
- (iii) Accused Amir Hussain alias Biloo Nizamani is also awarded rigorous imprisonment for possessing unlicensed weapon viz; 30 bore T.T Pistol and live bullets for offence U/s. 23(i)(a) of Sindh Arms Act-2023 for fourteen years and fine amount of Rs.50,000/-, if he fails to pay such fine amount, he shall serve the more six months as simple imprisonment.
- (iv) Accused Muhammad Naveed alias Lundi Nizamani is awarded rigorous imprisonment for possession unlicensed weapon viz; 30 bore T.T Pistol and live bullets for offence U/s. 24, 25 of Sindh Arms Act-2013 for fourteen years and fine amount of Rs.50,000/-, if he fails to pay such fine

amount, he shall serve the more six months as simple imprisonment.

- (v) Accused Amir Hussain alias Biloo Nizamani and Muhammad Naveed alias Lundi Nizamani are also convicted and awarded rigorous imprisonment U/s. 7(1)(c) of Anti-Terrorism Act-1997 for ten years and fine amount of Rs.50,000/- each, if they fail to pay the fine amount, they shall serve more six months as simple imprisonment.

All the sentences awarded to the above named accused shall run concurrently and benefit of section 382-B Cr.P.C is awarded to them.

2. The brief facts germane to the prosecution case are that complainant SIP Muhammad Iqbal Khanzada lodged present FIR at PS Sanghar on 06.03.2021 at 0600 hours, stating therein that he was posted as Sub-Inspector at P.S. Sanghar. On 05.03.2021 complainant alongwith staff each one ASI Karam Bux Ansari, HC Zulfiquar Ali, HC Budhal Khan, PC Sajid Ali, PC Dur Muhammad, PC Ishtiaq Ali, PC Afaque Ali, PC Muhammad Nasir, PC Shahbaz Ali duly armed with official arms and ammunition in official mobile van being driven by PC Muhammad Khan left police station vide entry No.38 at 2200 hours for investigation of Crime No.37/2021, under Section 324, 506/2, 504. 34 PPC of P.S. Sanghar and after investigating from different places when reached near Peer Sahab-Jo-Thalo-Kallar Sanghar, where complainant received spy information that required accused Aamir Hussain alias Biloo Nizamani and Naveed alias Lundi Nizamani are standing near the house of Aamir Hussain alias Biloo Nizamani in the street. On receiving such information on 06.03.2021 at 0100 hours reached near house of accused Aamir Hussain alias Biloo Nizamani where complainant party saw on the light of torches that two persons duly armed with T.T Pistols were standing. Complainant party immediately stopped the vehicle and alighted from it, on which both accused persons restrained complainant party from discharging their duties and made straight firing upon the complainant party with intention to commit their murder and one fire was hit to PC Afaque Ali on his left side of face and who fell down and both the accused entered into their house. Complainant immediately after preparing memo of injuries, sent the injured PC Afaque through HC Budhal Khan to Civil Hospital Sanghar by issuing letter and also informed through wireless at control and called other police force for help and proceeded towards accused and during that SHO Muhammad Yasir Nawaz of P.S. Sanghar alongwith his staff namely HC Abdul



Ghafoor, HC Mahmood Rana, PC Yaseen in official mobile being driven by PC Muhammad Bux, LHC Abdul Hameed Eagle Squad alongwith SIP Hadi Bux Shah, SHO P.S Jhol alongwith his staff, SIP Ahmed Khan Khaskheli SHO P.S Sinjhoru in official mobile, SIP Muhammad Juman Khoso SHO P.S Mangli alongwith his staff in official mobile, SIP Nabi Bux Lashari SHO P.S Chotiaryoon alongwith his staff arrived and altogether encircled the house in which accused persons entered, but accused persons from the house were restraining complainant party from discharging their duties and making firing upon the complainant party with intention to commit their murder. Due to alleged firing there was terror spread in the Mohallah people and general public of city. Complainant party through gas gun made shelling to easily arrest the accused persons, but they went into a room and made straight fires and during that at 0200 hours one fire of accused persons was hit to PC Ali Hyder of P.S Sinjhoru SRP on his right arm and was through and through and to whom after preparing mashirnama and issuing letter in police mobile of P.S Sinjhoru sent to Civil Hospital Sanghar. Complainant with the help of staff proceeded towards the accused persons. One accused Naveed alias Lundi while firing made escape good through roof of the house by taking advantage of darkness. Complainant party also made firing in their defence. On 06.03.2021 at 0410 hours, other accused Aamir Hussain alias Biloo Nizamani due to firing became injured and complainant party arrested him from inside the room duly armed with T.T. Pistol and saw on the light who sustained firearm injury on his right thigh and fire was through and through. On inquiry accused disclosed his name as Aamir Hussain alias Biloo Nizamani. Complainant checked the pistol recovered from him and found the T.T. Pistol of 30 bore alongwith magazine. Complainant unloaded the same and found three live bullets were lying in it. Complainant inquired from the accused about the license of the pistol on which accused disclosed the weapon to be unlicensed and complainant arrested accused in Crime No.37/2021, U/S: 324, 506/2, 34 PPC and after issuing letter sent accused to Civil Hospital Sanghar through HC Mahmood Rana and other staff in official mobile. Due to non-availability of private mashirs complainant appointed ASI Karam Bux and HC Zulfiquar Ali as mashirs and sealed the recovered T.T. Pistol at the spot. Complainant also secured 30 empty bullets of 30 bore used by the accused persons and also secured 35 bullets used by the complainant party. Complainant prepared such memo on the light of torch and then brought the



recovered property at Police Station and lodged instant FIR on behalf of the State. During course of investigation the escaped accused Muhammad Naveed surrendered to the police.

3. After usual investigation, the matter was challaned and the appellants were sent up to face trial. The appellants pleaded not guilty to the charge and claimed to be tried.

4. In order to prove its case, prosecution examined 09 (nine) witnesses and exhibited various documents and other items.

5. The appellants in their statement recorded under Section 342 Cr.P.C denied the prosecution's allegation by pleading innocence, however, they did not examine themselves on oath or produce any witness in their defence.

6. After hearing the parties and appreciating the evidence on record, learned Trial Court found the appellants to be guilty for the above said offences and convicted and sentenced them as set out earlier in this Judgment; hence, appellants have filed these Appeals against their conviction.

7. The evidence has been fully set out in the impugned judgment and as such there is no need to reproduce the same here in order to avoid unnecessary repetition and duplication.

8. At the very outset, it is stated by the learned Counsel for the appellants that under the instructions of the appellants he would not contest the case on merit provided that the appellants were given a reasonable reduction in sentence based on the following mitigating circumstances:-

- (a) that appellants were first offenders;
- (b) that appellants are of young age and capable of reformation,
- (c) that appellants had to support a large family; and,
- (d) by accepting their guilt they had shown genuine remorse and saved the time of the Court.

9. Based on the above mitigating circumstances, learned A.P.G raised no objection for reduction in sentences of appellants to some reasonable extent.

10. We have gone through the evidence available on record and found that the appellants when approached by a police party opened fire on the police party and escaped to a house which was surrounded by the police where further exchange of fires took place between the police and the appellants. During this exchange of fires two police officials sustained fire arm injuries as proven by the Medical Certificate. Eventually, the police overcame appellant Amir Hussain who was arrested on the spot in injured condition with an unlicensed firearm. The other appellant Muhammad Naveed surrendered himself before the police on 08.03.2021 and took the police on his pointation to a place where he had hidden his pistol. We find that the police had no enmity or ill-will against either of the appellants and no reason to implicate them in a false case, as such, we believe the evidence of police witnesses and place reliance on it. The recovered pistols were matched to the empties so recovered at the crime scene and FLS reports were positive. The appellants were also not able to produce licenses for the pistols which were recovered from them. On the above re-assessment of the evidence, we find that the prosecution has proved its case beyond a reasonable doubt against the appellants and hence the conviction of both the appellants is hereby upheld in respect of PPC offences as well as the offences under the Sindh Arms Act, 2013; however, they are acquitted of the offence under ATA-1997 as the appellants were simply trying to escape arrest by the police and as such there was no intention or purpose or design on their part to create terror. In this respect, reliance is placed upon the case of GHULAM HUSSAIN and others v. The STATE and others (PLD 2020 SC 61).

11. With regard to sentencing based on the above mitigating circumstances and the no objection given by the A.P.G, we hereby modify the conviction and sentences as under:-

- (a) Both the appellants / accused are acquitted of the offence under the ATA-1997.
- (b) The sentences of appellants / accused Amir Hussain and Muhammad Naveed for the offence under Section 324 PPC are maintained; however, their sentences are reduced to three (03) years rigorous imprisonment without fine or forfeiture of property.
- (c) The appellants / accused Amir Hussain and Muhammad Naveed are convicted for offence under Section 353 PPC


and sentenced to two (02) years rigorous imprisonment without fine.

- (d) Both the Appellants / accused Amir Hussain and Muhammad Naveed are convicted and sentenced under Section 23(i)(a) of the Sindh Arms Act, 2013 and each of them is sentenced to three (03) years rigorous imprisonment without fine.

The appellants shall have the benefit of Section 382-B Cr.P.C and they shall also have the benefit of any remissions available to them under the law.

12 All the three Appeals are disposed of in the above terms.

~~JUDGE~~ 6-2023.  
88

  
JUDGE 08/06/2

Shahid