

Arms Case : Reduction

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IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Khadim Hussain Tunio

Special Criminal A.T.A. No.181 of 2022.  
Special Criminal A.T.A. No.182 of 2022.  
Special Criminal A.T.A. No.183 of 2022.

Appellant	Zohaib @ Lala S/o. Hamza through Ms. Farzana Mateen, Advocate
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Hearing	03.05.2023
Date of Judgment	03.05.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- Appellant Zohaib @ Lala S/o. Hamza was tried in the Anti-Terrorism Court No.IV, Karachi Division in Special Case No.70-A/2022 arising out of FIR No.58/2022 U/s. 353/324/186/34-PPC r/w section 7 ATA 1997, Special Case No.70/2022 arising out of FIR No.57/2022 U/s. 393/397/34 PPC and Special Case No.70-B/2022 arising out of FIR No.59/2022 U/s. 23(1)(a) Sindh Arms Act registered at P.S. Shah Latif Town, Karachi and vide Judgment dated 25.10.2022 he was convicted and sentenced as under:

- Accused Zohaib @ Lala S/o. Hamza found guilty of the charged offence punishable u/s 392 PPC, is convicted and sentenced to suffer rigorous imprisonment for three years and fine of Rs.10,000/- (Rupees ten thousand only), in case of default of payment of fine, he shall further suffer imprisonment for one month.
- Accused Zohaib @ Lala S/o. Hamza found guilty of the charged offences U/s 353/324/34 PPC R/w Section 6(2)(ii)



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 only), in case of default of payment of fine, he shall further suffer imprisonment for three months.

- c. Accused Zohaib @ Lala S/o. Hamza 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.5,000/- (Rupees five thousand only), in case of default in payment of fine, he shall further suffer imprisonment for two months.

However, all sentences were ordered to run concurrently. The benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. The Brief facts of the prosecution cases are that on 17.01.2022 Complainant/ASI Shah Nawaz of Shah Latif Town PS along with his subordinate staff was busy in patrolling within the jurisdiction of PS in search of absconder terrorist and proclaimed offenders. During patrolling, when he reached Jogi More Bus stop, National Highway Road, Razakabad, Malir, Karachi and found a victim who was calling for help and told him that three suspects boarded on motorcycle have committed robbery from him and fled away towards Bhens Colony. Police party chased them at Zafar Town Graveyard, on seeing police party the suspects started firing upon them. In retaliation, police party also shot fires one of the suspects sustained gunshot injury and fell down, while his accomplice fled from the scene by taking advantage of darkness. Injured suspect was apprehended by police party, who disclosed his name Zohjaib @ Lala and disclosed the names of his accomplices as Saeed @ Aba and Haji Pathan. Police party conducted personal search of apprehended accused Zohaib and recovered one pistol of 30 bore from his possession. On demand of valid license of the pistol he failed to produce the same. On his further search one black colour wallet containing cash of Rs.7000/-, CNIC copy in the name of Zaheer Ahmed and one keypad mobile were also recovered, which were robbed from the victim Zaheer Ahmed. The police party seized the weapon at the spot. After completion of required formalities at the spot, FIRs were lodged against the accused.

3. After completion of usual investigation, the challan was submitted and the appellant was sent up to face trial where he pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 07 Prosecution Witnesses and exhibited various documents and other items. His statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him and claimed false implication. However, he did not give evidence on oath nor produce any DWs in support of his defence case.

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 these appeals against his convictions.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 25.10.2022 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 did not press the appeals on merits and stated that the appellant accepted his guilt and only sought a reduction in sentences to some reasonable extent based on the following special features/mitigating factors:-

- i) That the appellant was first time offender and capable of reformation.
- ii) That the appellant had a large family to support.
- iii) That by admitting his guilt the appellant has shown genuine remorse.
- iv) That the appellant had served out some of his sentence.

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8. Based on the above special features/mitigating factors, the learned Additional Prosecutor General had no objection to a reasonable reduction in the sentences of the appellant within the parameters of law.

9. We have gone through the entire evidence on record and find that the appellant robbed the complainant of his wallet and mobile phone which were recovered from the appellant. The complainant was an independent witness and had no enmity or ill will against the appellant to involve him in a false case. After the complainant was robbed a police mobile chased the appellant and signaled him to stop where-after the appellant opened fire on the police party. The police party returned fire in retaliation. As per prosecution evidence the appellant fell down having received one fire arm injury having medical report in support of the same. One police mobile was also hit by a bullet fired by the appellant. Both the empties recovered at the crime scene and an unlicensed pistol which was recovered from the appellant on the spot and one bullet which hit the police mobile matched and produced positive FSL reports. We have no reason to disbelieve the evidence of the police witnesses and find the evidence of the police officials to be reliable, trustworthy and confidence inspiring and believe the same. In addition the robbed wallet which was taken from the complainant was identified by the complainant which linked the appellant to the robbery. Seven other mobile phones were also recovered from the accused at the time of his arrest which once again indicate his involvement in other robberies, as such based on the evidence mentioned above, we find that the prosecution has proved the case against the appellant beyond any reasonable doubt and maintain his conviction in respect of the PPC offences but acquit him in respect of AIA offences. Since based on the above facts and circumstances of this case there was no intent, design or purpose to create terror instead the appellant was trying to escape from the police after committing robbery.

10. With regard to sentencing based on the mitigating factors mentioned above and the no objection by the APG (a) for the offence under section 392 PPC, the sentence of three years is maintained, however, the amount of fine is waived off, (b) with regard to offences under section

353/324/34 PPC, the sentence is reduced to 03 years R.I. and the fine is waived off and (c) with regard to the sentence under section 23(1)(a) of Sindh Arms Act, 2013, the sentence is maintained, however, the fine is waived off.

11. All the sentences shall run concurrently. The accused shall have the benefit of section 382-B Cr.P.C. and all remissions available to him under the law as he has been acquitted of the offences under A.T.A. 1997.

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

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