

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

SPECIAL CRIMINAL A.T. JAIL APPEAL NO.191 OF 2021.

Appellant	Hidayatullah @ Bombat through Mr. Habib-ur-Rehman Jiskani, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Judgment	31.10.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Hidayatullah @ Bombat S/o Mehmood Qasim was tried in the Court of Anti-Terrorism Court No. X, Karachi in Sessions Case No.647 of 2019 in respect of FIR No.348 of 2019 u/s 353/324/34 PPC r/w Section 7 ATA, 1997 registered at PS Manghopir, Karachi as well as in Special Case No.647-A/2019 in respect of FIR No.349/2019, u/s 23(i) A Sindh Arms Act, 2013, registered at Police Station Manghopir, Karachi and vide judgment dated 16.12.2020 appellant was convicted and sentenced as under:-

1. The accused Hidayatullah @ Bombat S/o Mehmood Qasim is convicted u/s 7 (h) of ATA, 1997 R/w Section 353/324/PPC and he is sentenced to undergo R.I for 08 years with a fine of Rs.50,000/-. In default in payment of fine, he shall suffer S.I for 06 months.
2. The accused Hidayatullah @ Bombat s/o Mehmood Qasim is also convicted u/s 25 of Sindh Arms Act, 2013 and he is sentenced to undergo R.I for 08 years with fine of Rs.50,000/-. In default in payment of such fine, he shall suffer S.I for 06 months.

Both the above sentences shall run concurrently. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the prosecution case are that on 23.10.2019 at about 0030 hours at ANP Chowk, Sultanabad, Manghopir, Karachi 03 persons being armed with deadly weapons sharing common intention

made direct firing upon the police party headed by PC Muhammad Usman with intention to cause their death and endangered their lives, so also caused deterrence in lawful duties and official functions of the police. In self defence, police party also fired back on the assailants, due to which, one of them sustained firearm injury on his right leg over thigh and fell on the ground. Later on, police managed to apprehend / arrest an accused on the spot in an injured condition, whereas, his other two accomplices managed to escape away from the crime scene. On query, the apprehended / injured accused disclosed his identity to be Hidayatullah @ Bombat S/o Mehmood Qasim, whereas, he also disclosed the names of his absconding accomplices as to be Imran S/o not known and Aziz S/o not known. Following which, head of police party made search of the apprehended / injured accused, which led to the recovery of 30 bore pistol along with loaded magazine containing 02 live rounds from his right hand in presence of official mashirs. On demand, the apprehended / injured accused failed to produce valid license of the recovered pistol, which further made his arrest inevitable. The police also secured charas (Narcotics) from right side pocket of his *kameez*, including cash Rs.800/-. The duty officer ASI Shabbir Ahmed had also reached at the spot, which was called by complainant (PC Muhammad Usman) and he had collected 03 empty shells of 9 MM and 03 empty shells of 30 bore pistol from the spot. The duty officer ASI Shabbir Ahmed also sealed the recovered pistol, live rounds and magazine including empties separately in parcels. He also sealed the charas separately. Accordingly, ASI Shabbir Ahmed prepared memo of arrest, recovery and seizure and obtained signatures of official Mashirs. More so, the injured accused was sent through ambulance to Abbasi Shaheed Hospital, Karachi under police supervision, for his medical treatment. Following which, police party had returned back to P.S Manghopir, Karachi along with case property and relevant police papers, whereby, PC Muhammad Usman got registered FIR against the arrested accused, being complainant on behalf of the State.

3. After usual investigation, the *challan* was submitted against the appellant accused to which the appellant pleaded not guilty and claimed trial.

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4. The prosecution in order to prove its case examined 07 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. 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 16.12.2020 passed by the trial court 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 of the appellant stated that he did not press the appeal on merits provided that he was given some reasonable reduction in the sentence based on the following mitigating circumstances:-

- a) That the appellant had no conviction in any other case as well as narcotics case and was capable of reformation.
- b) That the appellant had a large family to support.
- c) By not contesting the case on merits the appellant has admitted his guilt and shown genuine remorse.
- d) That the appellant had served out a major part of his sentence.

8. Based on these mitigating factors mentioned by the appellant, learned Additional Prosecutor General has no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and note that the appellant was arrested on the spot after encounter with the police in injured condition. The unlicensed pistol was recovered from him at the time of arrest.

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10. The Police witnesses who arrested the appellant had no enmity with him and had no reason to falsely implicate the appellant in this case and as such we find their evidence trustworthy and confidence inspiring and believe the same and find that the prosecution has proved its case against the appellant beyond any shadow of doubt and maintain his conviction except in respect of offences under the ATA.

11. So far as the ATA offences are concerned, we note that this was not a case of terrorism as there was no intent, purpose or design ~~to~~^{to} create terror and as such the appellant is acquitted of the offences under the ATA. With regard to all PPC offences, for which the appellant was convicted and the offence under Section 25 of the Sindh Arms Act, 2013, we maintain the same for the reasons mentioned above.

12. With regard to sentencing based on the mitigating factors mentioned by learned counsel for the appellants and the no objection given by learned APG we reduce the sentences for the PPC offences and the offence under Section 25-A of Sindh Arms Act to time already undergone in custody and waive off any fine. The appellant shall be released unless wanted in any other custody case.

13. This appeal stands disposed of in the above terms.