

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Saig

SPL. CRL. A.T. JAIL APPEAL NO. 182 OF 2021.

Appellant	Akbar Ali S/o. Muhammad Yar through Mr. Sarfaraz Khan, Advocate.
Respondent	The State through Mr. Abrar Ali Khichi, Additional Prosecutor General Sindh.
Date of Judgment	16.11.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Akbar Ali S/o. Muhammad Yar was tried in the Anti-Terrorism Court No.X Karachi in Special Case No.120/2021 in respect of FIR No.34/2021 under section 394/397/353/324/34 PPC r/w section 7 ATA, 1997 and Special Case No. 120-A/2021 in respect of FIR No.35/2021 under section 23(i)(A) of Sindh Arms Act, 2013 registered at P.S. Quaidabad, Karachi and vide impugned Judgment dated 25.10.2021 the appellant was convicted and sentenced as under:-

1. The accused Akbar Ali S/o. Muhammad Yar was convicted U/s. 397 PPC r/w 394 PPC and was sentenced to undergo R.I. for a period of 07 years.
2. The accused Akbar Ali S/o. Muhammad Yar was convicted U/s. 7(1)(h) of ATA, 1997 r/w section 353/324 PPC and was sentenced to undergo R.I. for a period of 07 years with fine of Rs.50,000/- and in default in payment of such fine he was ordered to suffer further S.I. for a period of 06 months.
3. The accused Akbar Ali S/o. Muhammad Yar was convicted U/s. 25 of the Sindh Arms Act, 2013 and was sentenced to undergo R.I. for a period of 07 years with fine of Rs.50,000/- and in default in payment of such fine he was ordered to suffer further S.I. for a period of 06 months.

The benefit of section 382-B Cr.P.C. was extended to the appellant.

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2. The brief facts of the prosecution case are that on the day of incident viz. 20.01.2021 at about 2215 hours inside an isolated lane, behind Traffic Chowki, LIA Karachi, two robbers duly armed in furtherance of their common intention looted/snatched a Wallet from a civilian namely Zohaib Ali S/o. Faiz Muhammad which contained cash of Rs.2500/-, colored copy of NIC, whereas, they also looted a Q-Mobile Phone (Basic) from the same victim on gunpoint. Apart from this the said robbers also caused Pistol blow to the complainant's brother namely Rahib Ali due to which he sustained injury on left side of his Head. In this scenario, the victims made hue and cry due to which the armed robbers started fleeing away on their feet. In the meantime, Police Mobile of P.S. Quaidabad, Karachi headed by ASI Naik Zada appeared at the scene of crime, whom the victims narrated the entire incident. Subsequently, said Police party along with victim started chasing the armed robbers, during which Police also made Lalkara to stop them, but robbers opened firing on the Police party with intention to kill them, due to which they also caused deterrence in their official duties and lawful functions. In retaliation, Police officials also made firing on the armed Assailants using right of self-defence. Resultantly, on firing of ASI Naik Zada one of the robbers sustained bullet injury on his right leg below the kneecap, due to which, he fell down on the ground, who was accordingly apprehended at the spot whereas his accomplice managed to flee away from the crime scene while making firing by taking advantage of darkness. On query, the apprehended robber (injured) disclosed his identity as to be Akbar Ali Son of Muhammad Yar and also disclosed the name of his absconding accomplice as to be Muhammad Suleman @ Sheena S/o. Musafir Khan. Thereafter, on personal search of said Akbar Ali ASI Naik Zada secured looted/snatched Wallet belonging to the Victim, containing cash of Rs.2500/-, colored copy of NIC as well as looted Q-Mobile Phone (Basic) from his exclusive possession in presence of Mashires. Moreso, on being confronted the above articles recovered from the apprehended robber by the Police, the same were duly identified by victim Zohaib Ali as to be same, belonging to him, which were looted by the robbers, a while ago. Apart from this, one 30 bore Pistol along with loaded Magazine containing 01 live round and 01 live round loaded in its chamber was also secured by the Police, which was held by the injured/apprehended robber in his right hand and the same was unloaded and taken into custody. On demand made by the

Head of Police Party to produce valid License of the recovered Pistol, the Robber Akbar Ali failed to produce any valid Arms License. From the spot, the Police officials also managed to collect/secure 04 empties of SMG and 02 empties of 30 bore Pistol. Consequently, all the recovered articles referred to above, were properly sealed by ASI Naik Zada at the spot, separately in presence of Mashirs as case property (evidence). Following which, the injured robber Akbar Ali was properly arrested at the spot by said ASI Naik Zada under a Fard of arrest, recovery and seizure in presence of relevant Mashirs, who also signed the same. Since, the accused Akbar Ali had become injured during encounter, therefore, he was taken to JPMC, Karachi for his treatment and further proceedings vide Police Letter and on medically examining the injured Robber, Medico-Legal Certificate was also issued by the MLO, JPMC, Karachi. Later on, Police party returned back to P.S. Quaidabad, Karachi, whereby victim Zohaib Ali got registered FIR No.34/2021 U/s. 393/397/353/324/34 PPC r/w 7 ATA, 1997 being the complainant against the arrested accused as well as the absconding accused named above. Besides another separate FIR bearing No.23/2021 U/s. 23(i)(A) Sindh Arms Act, 2013 was also registered by ASI Naik Zada against the arrested accused Akbar Ali being the complainant on behalf of the State.

3. After usual investigation, the matter was challaned and the case was sent up for trial whereby the appellant pleaded not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 04 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 leveled against him. However, the appellant did not give evidence on oath nor produced any DW 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 passed by the trial court as such 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 the appellant would not argue this case on merits and only sought reduction in sentence for the offences he had been convicted and sentenced to some reasonable extent based on the following mitigating circumstances:-

- a) That the appellant is first time offender and is capable of reformation.
- b) That the appellant has a large family to support.
- c) That by not contesting the case on merits the appellant has admitted his guilt and shown genuine remorse and saved the time of this Court.
- d) That the appellant had served out a reasonable part of his sentence.

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

9. We have gone through the evidence on record and find that the appellant robbed Zohaib Ali at gunpoint and snatched from him cash and mobile phone. We also find that after robbery the appellant attempted to make his escape good when he had an encounter with the Police which led to him being injured on the spot and an unlicensed firm arm being recovered from him, as such we find that the prosecution has not proved its case beyond reasonable doubt in respect of section 397 PPC read with section 394 PPC as in this case no evidence had been produced to show that any person sustained any serious injury during the course of the robbery. However, we find that based on the evidence, robbery was committed and we hereby convict the appellant under section 392 PPC as opposed to section 397 PPC ^{read} with section 394 PPC and reduce his sentence to 03 years R.I. At the time of his arrest an unlicensed firm arm was also recovered from the appellant which had been used in the encounter with the Police which led a positive FSL report when matched with the empties recovered at the crime scene, as such we hereby uphold the conviction of the appellant under section 25 of the Sindh Arms Act, 2013 but reduce his sentence to 03 years imprisonment and waive off his fine. We also find that based on the evidence that the appellant has committed the offence under section 353/34 PPC and as such

uphold his conviction and sentence him to 02 years R.I. and also uphold his conviction in respect of section 324 PPC but reduce his sentence to 03 years R.I. and waive off his fine.

10. We note that since there was no intent, purpose or design to create terror, therefore, provisions of ATA are not attracted and as such the appellant is acquitted in all the offences under ATA and is only convicted and sentenced as mentioned above in respect of offences under PPC. We have given some reduction in sentences based on the mitigating circumstances raised earlier by learned counsel for the appellant and no objection given by learned Additional Prosecutor General Sindh.

11. The appellant shall have the benefit of section 382-B Cr.P.C. and all remissions available to him under the law now that he has been acquitted of all the offences under ATA. All the sentences shall run concurrently.

12. The appeal stands disposed of in the above terms.