

**IN THE HIGH COURT OF SINDH, KARACHI**

*Present:*

*Mr. Justice Mohammad Karim Khan Agha*

*Justice Mrs. Kausar Sultana Hussain.*

**Criminal A.T.J.A. No.197 of 2020**

Appellant: Abdul Jabbar S/o. Muhammad Bachal  
through Mr. Moula Bux Bhutto, Advocate.

The State/Complainant: Through Mr. Ali Hyder Saleem,  
Additional Prosecutor General.

Date of Hearing: 22.11.2021

Date of Judgment: 25.11.2021

**J U D G M E N T**

**MOHAMMAD KARIM KHAN AGHA, J:-** The Appellant Abdul Jabbar S/o. Muhammad Bachal was convicted in the Court of Anti-Terrorism Court No.XVII, Karachi in Special Case No.19/2019 in Crime No.311/2019 U/s. 353/324/392/34 PPC R/w section 7 ATA, 1997, Special Case No. 19-A/2019 in Crime No.312/2019 U/s. 23(I)-A of Sindh Arms Act registered at P.S. Steel Town, Karachi vide Judgment dated 29.10.2020 and was sentenced to R.I. for 05 years in section 392 PPC and section 353/324 PPC and to pay fine of Rs.20,000/- each and in section 23(1)(a) R.I. for 05 year along with fine of Rs.10,000/- and in default of payments of fine, the appellant was to undergo further S.I. for period of 01 month in each section. However, he was also given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case are that complainant Din Muhammad has lodged FIR at about 0030 hours on 17.07.2019 and stated therein that he is residing in Haji Khuda Bakhsh village Jam Kanda and employee of Pakistan Steel. On the very day i.e. 16.07.2019 he was coming

on his motorcycle No.KFX-0031 Maker "Super Power" from Green Bus Adda situated in Extension Area of Gulshan-e-Hadeed Phase-II and going towards Katcha Road of National Highway when reached at near traffic police chowki of Steel Town at about 2245 hours he saw two persons were coming on motorcycle from the side of National Highway, while appearing in the proximity of complainant stopped their motorcycle and pointed their pistols upon him and forcibly robbed from him of China mobile phone of Blue colour, one wallet of black colour containing driving license, ATM Card of Allied Bank, cash of Rs.4000/- visiting card, CNIC from him as well as motorcycle and other miscellaneous papers. In the meantime motorcycle patrolling party reached there abruptly from the side of Ayesha Hospital and Gulshan-e-Hadeed but on seeing the police party, the culprits trying to escape started firing upon the police party with intention to commit their murder and police party also made firing in retaliation with the result one of the robbers got injured and fell down while other accomplice made his escape good in the bushes/jungle by taking advantage of darkness. The police arrested accused in injured condition and recovered pistol from his right hand. On enquiry the arrested accused disclosed his name as Abdul Jabbar S/o. Muhammad Bachal Sheikh as well as the name of escapee accused as Raja S/o. not known. The police party took his personal search and recovered from his right side pocket two mobile phones, one Nokia 105 black colour and 2<sup>nd</sup> Q-Mobile of golden colour while from his right side pocket of wearing shirt one black colour Wallet of complainant containing NIC Card, ATM Card of Allied Bank, Driving license in the name of Din Muhammad, Cash of Rs.4000/-. The accused failed to produce license of the pistol. In the meantime SIP Mian Muhammad Hasnain whose name was known later on and ASI Muhammad Sarwar along with his staff reached there in government mobile and patrolling party handed over the recovered case property to SIP Mian Muhammad Hasnain whereas the complainant informed him that the recovered wallet and motorcycle robbed from him on the show of fire arm. Upon which SIP checked the recovered pistol it contained two rounds loaded magazine and one in chamber and on the basis of such recovery SIP arrested the accused and handed over the



custody of accused to ASI Muhammad Sarwar Khan for providing medical treatment from Jinnah Hospital. SIP after sealing the case property secured three empties of 30 bore, three empties of 9MM, one motorcycle of complainant and another motorcycle "Crown" black colour recovered from the possession of accused showing only engine No.RMI-791178 but its registration number and chassis number were rubbed from the surface of its body, whereas one pistol 9MM bearing No.11102-17E06660 of Constable Muhammad Ayaz loaded magazine with seven live rounds were also sealed on the spot and prepared such memo. Contents of FIR read over to complainant by police, upon which he admitted to be true and obtained his signature and police brought them at PS where SIP Mian Hasnain lodged FIR on the report of complainant Din Muhammad vide Crime No.311/2019 for the offences u/s.353/324/392/34 PPC r/w section 7 ATA, 1997.

3. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 06 PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he is innocent and had been falsely implicated in the case as he refused to pay the police a bribe. He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his conviction and sentence.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated

29.10.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is completely innocent and has been falsely implicated in this case by the police; that no robbery or encounter ever took place; that the pistol was foisted on him and that the FSL report was negative and thus for any of the above reasons the appellant should be acquitted of the charge and his appeal allowed.

8. On the other hand Mr. Ali Hyder Saleem, Additional Prosecutor General appearing on behalf of the State who was also representing the complainant has fully supported the impugned judgment and prayed for the dismissal of the appeal. Learned APG however when confronted by the court however did concede that this case did not come within the ambit of the ATA.

9. We have heard the parties and gone through the evidence and the impugned judgment with their able assistance.

10. We find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the following reasons;

(a) That the FIR was lodged by the complainant with promptitude and thus there was no time for the complainant to cook up a false case with the police in order to falsely implicate the appellant. The appellant has been named in the FIR with a specific role.

(b) The complainant was an independent witness who had no enmity with the appellant and no reason to implicate him in a false case.

(c) That the appellant was arrested red handed on the spot in an injured condition after the encounter which injury was supported by the medical evidence and also supports the prosecution case that the firing from a distance of about 6 to 10 feet and thus there was no blackening around the wound. The appellant was captured as he was hit on the thigh and was unable to run away unlike his accomplice.

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(d) That on his arrest from the spot the robbed items of the complainant and an unlicensed pistol was recovered from the appellant.

(e) That the empties recovered at the scene produced a positive FSL report with the pistol of the police officer who fired at the appellant during the encounter as well as the pistol recovered from the appellant at the spot.

(f) That all PW's gave there evidence in a straightforward manner, corroborated each other, were not damaged in cross examination and although some of them were police witnesses no ill will or enmity has been suggested against them by the appellant and as such it is well settled by now that in such situations the evidence of police witnesses is as good as any other witness and can be relied upon and we do rely on the same.

(g) That the appellants' case is one of false implication on account of him refusing to pay the police a bribe. He however did not raise this in cross examination and his defence appears to be a complete after thought which we disbelieve especially as he did not give evidence on oath or call any witness in support of his defence case..

11. We do however find that the ATA is not attracted in the instant case as it was a night time incident in a remote place and as such there was no public who could have been terrorized. More significantly, there was no intent, purpose or design to create terror rather the police encounter happened at the spur of the moment whilst the appellant was trying to escape.

12. Thus, the appeal is dismissed however since the ATA is not applicable the appellant shall have the benefit of S.382 (B) Cr.PC and any remissions applicable to him under the law.

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