

Life Sentence upheld but no ATA.

~~303~~

309

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain.

SPL. CRIMINAL A .T. APPEAL NO.50 OF 2018
SPL. CRIMINAL A .T. APPEAL NO.51 OF 2018

Appellant: Jawed Ahmed son of Bashir Ahmed
Through Mr. Mohammad Daud
Narejo, advocate.

Complainant: Muhammad Anwar Through Moulvi
Iqbal Haider, Advocate

Respondent /State: Through Mr. Mohammad Iqbal
Awan, Addl. Prosecutor General.

Date of Hearing: 05.11.2021

Date of Announcement: 12.11.2021

JUDGMENT

Mohammad Karim Khan Agha, J. Appellant Jawed Ahmed son of Bashir Ahmed was charge sheeted to face his trial in two Special Cases No.636/2016 (New Special Case NO.109/2016) and No.637/2016 (New Special Case NO.110/2016), arising out of FIR No. 58/2016 under section 302/397/353/324 PPC r/w section 7 of ATA 1997 and FIR No: 59/2016 u/s 23(I)-A SAA of P.S Mithadar, Karachi. Appellant was convicted vide impugned judgment dated 18.01.2018 passed by the learned Judge, Anti-Terrorism Court No.VIII, Karachi to suffer Life Imprisonment for the offence under Section 7(i)(a) of ATA r/w Section 302/397 PPC and fine of Rs.500000/- and in case of default in payment of fine he will further undergo imprisonment for 03 years. He was also convicted for an offence u/s. 23(I)-A SAA and awarded sentence for 10 years R.I. for the offence punishable u/s.324 PPC and 02 years R.I. for offence u/s.353 PPC and R.I. for 10 years with fine of Rs.2,00,000/- for the offence punishable u/s.23(i)(a) of SAA, 2013 and in case of default in payment he shall suffer 01 year imprisonment.

2. The brief facts of the prosecution case are that on 02-04-2016, complainant Muhammad Anwar was informed through telephone from the office of deceased Abdul Ghani, who was working as Manager, in Haji Adam

~~301~~
~~30~~
310

Chambers, New Challa Karachi that while going to his office, during a robbery, Abdul Ghani had received fire shot injuries and died in Civil Hospital, Karachi. The complainant immediately reached at Civil Hospital, Karachi and found the dead body of his nephew Abdul Ghani lying in the mortuary. The complainant further came to know that on 02.04.2016, while the deceased was going for his duty on foot and when at about 0920 hours, reached near Pukar building, Shahrah-e-Liaquat, Karachi one person by show of weapon snatched his wallet containing cash of Rs.400/- copy of CNIC and other documents including mobile phone I-5 with Sim No.0300-8945328 and on his resistance, the accused fired at Abdul Ghani with intention to commit his murder. It is further the case of the prosecution that at that moment a police party of PS Mithadar headed by ASI Lutufulah reached there and tried to arrest the accused. On seeing police, the accused also fired on them in order to commit their murder and avoid his arrest. In retaliation police party also fired and managed to apprehend the accused. The complainant also came to know that the police had recovered a wallet containing cash, copy of CNIC and mobile phone of the deceased from the possession of accused. The police also recovered a 30 bore pistol with 03 live bullets from the possession of accused, who on enquiry, disclosed his name as Jawad Ahmed s/o Bashir Ahmed, hence the FIR. Complainant Muhammad Anwar has also got his statement recorded u/s.154 Cr.PC.

3. After usual investigation the matter was challaned and a joint charge under Section 7(1)(a)(b) of ATA 1997 r/w Section 302/397/353/34 PPC and Section 23(I)(A) of SAA, 2013 was framed to which the appellant pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 09 PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent. He did not give evidence on oath but produced his brother Haris Bashir as DW-1 in support of his defence.

5. Learned Judge Anti-Terrorism Court No.VIII, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 18.01.2018, convicted and sentenced the appellant as stated above, hence these appeals have been filed.

4

~~305~~
~~302~~
311

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. After reading out the evidence learned counsel for the appellant under instructions contended that the appellant did not press the appeals on merits but only to the extent of removing the provisions of the ATA out of the convictions and sentences handed down with the convictions and sentences under the PPC remaining for which he was convicted as according to him this was not a case which fell within the purview of the ATA.

8. Learned Additional Prosecutor General for the State conceded that based on the particular facts and circumstances of the case it was not a case of terrorism and had no objection to the convictions and sentences under the ATA being removed but the sentences under the PPC remaining. In support of his contentions he placed reliance on the cases of **Amjad Ali and others vs. The State** (PLD 2017 Supreme Court 661), **Farooq Ahmed vs. The State** (2020 SCMR 78) and **Muhammad Bilal vs. The State and others** (2019 SCMR 1362).

9. On the other hand learned counsel for the complainant has contended that the case fell squarely within the purview of the ATA. Namely, the appellant had intention to rob and murder the deceased and then deliberately opened fire on the police with intent to kill them and create terror and as such the convictions and sentences under the ATA should remain in place.

10. We have heard the parties and considered the evidence on record as well as the relevant case law.

11. After our reassessment of the evidence we find that the prosecution has proved its case against the appellant beyond a reasonable doubt by reliable and trust worthy and confidence inspiring prosecution witnesses and evidence which included the arrest of the appellant at the spot with an unlicensed fire arm, the recovered empties when matched with the pistol producing a positive FSL report and the medical evidence.

12. The only issue before us as contended by learned counsel for the appellant is whether the offences for which the appellant was convicted fall within the purview of the ATA.

5

~~306~~
312

13. Based on the particular facts and circumstances of this case we find that the offences committed by the appellant do **not** fall within the purview of the ATA. This is because although admittedly there was no enmity between the appellant and the deceased and it was a day light incident the evidence shows that the intent of the appellant was to rob the deceased, however when the deceased resisted the robbery the appellant shot and killed him. He then tried to escape and on doing so fired at the police before his capture. It is well settled by now that in order to attract the provisions of the ATA there must be an intent, purpose and design to create terror amongst the general public. Based on the particular facts and circumstances of this case as narrated above we find that such intent, purpose and design was lacking on behalf of the appellant who set out initially only with the intention to rob the appellant but which situation escalated once the appellant resisted the robbery.

14. Thus all convictions and sentences under the ATA are removed from the impugned judgment and the appellant is convicted and sentenced under S.302/397 PPC to life imprisonment and fine of RS 5,00,000 and in case of his failure to pay the fine he is sentenced to suffer 3 years further imprisonment. He is also convicted and sentenced under S.324/353 PPC and u/s 23 (i) (a) SAA 2013 for RI for 10 years u/s 324 PPC and 2 years RI u/s 353 PPC and for RI for 10 years u/s 23 (i) (a) SAA 2013 with a fine of Rs 200,000. In case he fails to pay the fine he shall further undergo RI for one year more.

15. All the sentences shall run concurrently and the appellant shall be entitled to the benefit of S.382(B) Cr.PC and any remissions available to him under the law now that the convictions and sentences under the ATA have been removed.

16. The appeals stand dismissed except as modified in terms of convictions and sentences as mentioned above.