

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.

Mr. Justice Shamsuddin Abbasi, J.

Spl. Cr. A.T. Jail Appeal No.289 of 2019

Appellant: Adnan produced in custody, in person.

Respondent: The State through Mr. Abrar Ali Khichi Addl. P.G.

30.09.2020.

JUDGMENT

Muhammad Iqbal Kalhoro, J. Appellant was arrested after an encounter from Lyari Express Way near Ilyas Goth opposite Teen Hati Bridge, Liaqatabad, Karachi by police of P.S Super Market, Karachi in injured condition alongwith an unlicensed 30 bore pistol with two live rounds on 01.02.2017 at 2215 hours when he alongwith his accomplice Abdullah, who however escaped, did not stop on signal by police. Accordingly, he was booked in Crime No.31/2017 U/s 353, 324, 34 PPC r/w section 7 ATA, 1997 and 32/2017 U/s 23(i) a of Sindh Arms Act, 2013 registered at P.S. Super Market, Karachi.

2. Appellant was tried against the same allegations and has been convicted U/s 7(h) ATA, 1997 r/w sections 353, 324,34 PPC and sentenced to suffer R.I. for 05 years with fine of Rs.50,000/-, in default to suffer RI for 01 year and u/s 23(i), A, Sindh Arms Act, 2013 to suffer R.I. for 05 years with fine of Rs.50,000/-, in default whereof, to suffer RI for 06 months. All the sentences have been ordered to run concurrently. Benefit under section 382-B Cr.P.C has been extended to him. By means of this appeal, the appellant has challenged his conviction and sentences as stated above.

3. Appellant has been produced in custody. He submits that he is not previous convict and is continuously in jail since the date of his arrest i.e. 01.02.2017, he is remorseful of his act and that the period already undergone by him in jail may be treated as his sentence and he may be released.

4. Learned Additional Prosecutor General has not opposed this proposal.

5. We have heard appellant and learned APG and perused the material available on record. In the trial, the prosecution has examined 04 witnesses, who have supported the prosecution case on its salient features viz. arrest of

the appellant on the spot at the time of encounter with police and recovery of an unlicensed pistol from him. However, it is noted that at the time of encounter no one from the police party sustained any injury and it was only the appellant who got injured. Besides, there is no evidence to suggest that due to the alleged encounter the general public had gone into panic or suffered from sense of insecurity or that the offence was committed by the appellant with a design to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of ATA, 1997 or aimed to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6, ATA, 1997 to attract applicability of sections 7(1)(h) and 6(2) (m) (n), ATA, 1997 in the case. At the most the offences seem to fall u/s 324, 353 PPC. This legal position has not been disputed by the learned DPG. No record has been produced to show that the appellant is a previous convict. He has stated that he is regretful of what went wrong in the past and wants to improve himself. The jail roll of appellant dated 28.09.2020 reflects that appellant has served sentence of 02 years, and 05 days including remission. The punishment u/s 324 PPC is extendable to 10 years, section 353 PPC is punishable upto two years and fine and punishment u/s 23(i),A of Sindh Arms Act, 2013 may extend to 14 years and fine. In such circumstances, we see no impediment legal or otherwise in acceding to the request of appellant for reduction of his sentence, when he has already served out sentence of more than 02 years.

6. In view of above, conviction and sentence of the appellant u/s 7(1) (h) ATA, 1997 is set-aside. However, his conviction u/s 353, 324 PPC and u/s 23(i), A Sindh Arms Act, 2013 is maintained, but his sentence on all counts is reduced to the period already undergone by him. Fine in respect of all counts is also reduced to Rs.5,000/, in default, the appellant will have to undergo a period of 10 days more on each count.

The appeal in the terms as stated above stand disposed of.

Judge
Judge

A.K.