

IN THE HIGH COURT OF SINDH, KARACHI

Before:

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

Special Criminal Anti-Terrorism Appeals No.224, 225 & 226 of 2019

Appellant : Muhammad Aslam @ P.C son of
Muhammad Yousuf,
Through Mr. Azhar Hussain, Advocate

Respondent : The State
Through Mr. Zaffar Ahmed Khan,
Additional Prosecutor General, Sindh.

Date of Hearing : 20-12-2019

Date of Order : 24-12-2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., By this common judgment, we will dispose of all three Appeals mentioned above filed by the appellant on being aggrieved and dissatisfied with the common judgment dated 31.07.2019 passed by the Judge, Anti-Terrorism Court No.X, Karachi in Special Cases No.268, 268-A & 268-B of 2019 under (1) FIR No.127/2019 for the offences under section 353/324 PPC, R/w section 7 ATA, (2) FIR No.128/2019 for the offence under section 4/5 Explosive Substances Act, R/w Section 7 ATA and (3) FIR No.129/2019 for the offences under sections 23 (i) A Sindh Arms Act, 2013 registered at PS Shah Faisal Colony, Karachi whereby the appellant was convicted as under:-

- i. Accused Muhammad Aslam @ P.C S/o Muhammad Yousuf was convicted for offence punishable u/s 7(h) of ATA, 1997 and sentenced to undergo R.I for ten (10) years and fine of Rs.100,000/-. In case of default of payment of fine, he shall further suffer R.I. for six months.*
- ii. Accused Muhammad Aslam @ P.C S/o Muhammad Yousuf was convicted for offence punishable u/s 7(ff) of ATA, 1997 and sentenced to undergo R.I for fourteen (14) years.*

iii. Accused Muhammad Aslam @ P.C S/o Muhammad Yousuf was convicted for offence punishable u/s 25 of Sindh Arms Act, 2013 and sentenced to undergo R.I for ten (10) years and fine of Rs.100,000/-. In case of default of payment of fine, he shall further suffer R.I. for six months.

All the sentences were ordered to run concurrently and benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The facts of the case as stated in the FIRs are that on 28.03.2019, police party headed by ASI Mukhtar ul Hassan was busy in routine patrolling of the Area in Police Mobile No.SPC-385, vide entry No.39. At about 0100 hours when the police party reached at Natha Khan Bridge, Shah Faisal Colony, Karachi, they saw one person who was standing by a Pillar who on seeing the police party started direct firing upon them with intent to commit their intentional murder and also deter them from discharging their lawful duties and official functions. In self-defense, the police party fired upon the said assailant. During exchange of firing police officials encircled the assailant and managed to apprehend him on the spot. The assailant disclosed his name as Muhammad Aslam son of Muhammad Yousuf. Thereafter, ASI Mukhtar ul Hassan made personal search of the apprehended accused which led to the recovery of one 30 bore pistol alongwith loaded Magazine having two rounds whereas one round loaded in the chamber in presence of official Mashirs. Further personal search also led to the recovery of an unlawful Rifle Grenade (Avan Bomb) from right side pocket of his worn Pant. Upon his further personal search, ASI Mukhtar ul Hassan also secured Cash Rs. 200/- from his pant pocket, as well as 02 Mobile Phone sets viz. Nokia (black colored) & Vivo (Black colored) including original CNIC of the accused were also secured from his possession. ASI Mukhtar ul Hassan also inquired from the

apprehended accused regarding license of the recovered pistol, but he failed to produce the same. ASI Mukhtar ul Hassan also secured 02 empty shells of 30 bore pistol and 01 empty shell of SMG from the place of Wardaat. Thereafter, ASI Mukhtar ul Hassan sealed the recovered pistol, live rounds and empty shells on the spot, separately. ASI Mukhtar ul Hassan then arrested the accused under memo of arrest, recovery and seizure and obtained signatures of Mashirs on it. Later on the police party returned to P.S alongwith custody of accused, case property and police papers. At P.S, ASI Mukhtar ul Hassan registered FIR No.127/2019 under Section 353/324 PPC R/w Section 7 ATA 1997, FIR No.128/2019 under Section 4/5 Explosive Substances Act R/w Section 7 ATA 1997 and FIR No. 129/2019 under Section 23(i) A Sindh Arms Act, 2013 against the arrested accused on behalf of the State.

3. After completing legal formalities the charge was framed at Ex.5, to which the accused pleaded not guilty and claimed for trial.

4. In order to prove its cases the prosecution examined as many as 04 witnesses before the trial court who gave their evidence and exhibited certain documents and other items in support of their evidence and thereafter prosecution closed its side.

5. The statement of accused was recorded under section 342 Cr.P.C. wherein he denied the allegations levelled against him by the prosecution and stated that he was falsely implicated in these cases by the police. He further stated that on 29.03.2018 at about 0800 P.M he was taken away by the Ranger officials from Al-Falah Society, Karachi. He claimed to be innocent and prayed for justice.

6. At the outset, learned counsel for the appellant in the face of overwhelming evidence against him and under the instructions of his client/appellant has not pressed the instant appeals on merit

but has requested for a reduction in sentence on the ground that the appellant is the only male member of a large family of which he is the main breadwinner, he is aged about 41 years having three minor children to support and is not a previous convict and is capable of reformation.

7. Mr. Zafar Ahmed Khan, Additional Prosecutor General appearing for the State has no objection to a reduction in sentence to some reasonable extent taking into account the above mitigating circumstances.

8. We have heard the arguments of learned counsel for the parties and have perused the material available on record.

9. The record reflects that all the prosecution witnesses supported the case of prosecution, arrest of appellant at spot as well as recovery of pistol and Avan Bomb were proved by the prosecution by providing oral and documentary evidence including reports of BDU and FSL and we are satisfied that the prosecution has proved its case against the appellant beyond a reasonable doubt.

10. We have found that the appellant did not use the explosive substance nor he issued any threat for using it during the encounter with the police therefore in our view his conviction under section 7(ff) of ATA, 1997 is not justified, however since the prosecution proved recovery of Avan Bomb therefore the appellant was to be convicted under section 5 of the Explosive Substances Act, 1908 for the recovery of Avan Bomb. We also found that no one received an injury during the encounter and that no any bullet hit to the police mobile. In these circumstances, it also appears to us that there was no object, design or intent to create terror.

11. In view of the mitigating circumstances raised by the appellant and no objection extended by learned Additional Prosecutor General, we have carefully gone through the relevant law for which the appellant was convicted.

12. Since the appellant is the sole bread winner of a large family having three minor children, is of previous good character and in our view is capable of reformation under such circumstances, we hereby dismiss the instant appeals of the appellant on merits but reduce/alter the sentences of appellant as under:-

- a. *Accused Muhammad Aslam @ P.C S/o Muhammad Yousuf was convicted for offence punishable u/s 7(h) of ATA, 1997 and sentenced to undergo R.I for five (05) years and fine of Rs.100,000/-. In case of default of payment of fine, he shall further suffer R.I. for six months.*
- b. *Accused Muhammad Aslam @ P.C S/o Muhammad Yousuf was convicted for offence punishable u/s 5 of Explosive Substances Act, 1908 and sentenced to undergo R.I for five (05) years.*
- c. *Accused Muhammad Aslam @ P.C S/o Muhammad Yousuf was convicted for offence punishable u/s 25 of Sindh Arms Act, 2013 and sentenced to undergo R.I for five (05) years and fine of Rs.100,000/-. In case of default of payment of fine, he shall further suffer R.I. for six months.*

13. All the other sentences and fines, penalties etc. should remain intact however all sentences of imprisonment shall run concurrently and the appellant shall also have the benefit of Section 382(B) Cr.P.C.

14. The instant appeals are disposed of in the above terms.

JUDGE

JUDGE