

HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeals No. 158 & 177 of 2019

Present: Mr. Justice Naimatullah Phulpoto
Mr. Justice Abdul Mobeen Lakho

Date of Hearing : 27.01.2021
Date of Judgment : 09.02.2021
Appellants : Sheikh Muhammad Rehan and Muhammad Bilal through Mr. Habib-ur-Rehman Jiskani advocate
Respondent : The State through Mr. Mohammad Iqbal Awan DPG

JUDGMENT

NAIMATULLAH PHULPOTO, J.- Sheikh Muhammad Rehan and Muhammad Bilal appellants were tried by learned Judge, Anti-Terrorism Court No.XVIII Karachi, in Special Cases No.169 and 169-A of 2017. After full-dressed trial, appellants were found guilty vide judgment dated 29.03.2019, they were convicted and sentenced as under:-

1. Sheikh Muhammad Rehan s/o Sheikh Rashid Ali
 - i. He is found guilty of offence under section 392 PPC and sentenced R.I for 10 years and a fine of Rs.10,000/- in default thereof, he shall undergo R.I for six months.
 - ii. He is found guilty for offence under section 353 PPC and sentenced R.I for 02 years.
 - iii. He is found guilty for offence under section 324 PPC and sentenced R.I for 10 years and fine of Rs.25,000/- in default thereof, he shall undergo S.I for six months.
 - iv. He is found guilty for committing offence under section 7(1)(c) of ATA, 1997 and sentence R.I for 10 years and shall also liable to pay fine of Rs.25,000/-, in default thereof, he shall undergo S.I for six months.
 - v. He is found guilty for committing offence U/s 23(1)A, SAA, 2013 and sentence R.I for 07 years and to pay a fine of Rs.5000/- and in default of payment of fine he shall further undergo S.I for 03 months.
2. Accused Muhammad Bilal son of Zaheeruddin sentenced as follows:
 - i. He is found guilty of offence under section 392 PPC and sentenced R.I for 10 years and a fine of Rs.10,000/- in default thereof, he shall undergo R.I for six months.

- ii. He is found guilty for offence under section 353 PPC and sentenced R.I for 02 years.
- iii. He is found guilty for offence under section 324 PPC and sentenced R.I for 10 years and fine of Rs.25,000/- in default thereof, he shall undergo S.I for six months.
- iv. He is found guilty for committing offence under section 7(1)(c) of ATA, 1997 and sentence R.I for 10 years and shall also liable to pay fine of Rs.25,000/-, in default thereof, he shall undergo S.I for six months.

All the sentences were directed to run concurrently except payment of fine. Benefit of Section 382(b) Cr.P.C was also extended to the accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 15.11.2016 at 0130 hours complainant along with his friend Muhammad Shan was going to their houses at Surjani Town, on a motorcycle. It is alleged that when reached at service road, near Nusrat Bakery, Sector 11-L, New Karachi, four persons riding on two motorcycles forcefully stopped complainant and on the force of weapons snatched cash and cell phones from them. In the meanwhile police mobile arrived there and complainant informed the police about the incident. Police chased the accused persons and directed them to surrender but they fired on the police mobile, police also fired in retaliation. Two accused persons succeeded to flee away on a motorcycle whereas, the other motorcycle slipped and the accused on it fell on the ground. Police arrested them and found that both the accused sustained firearm injuries. On inquiry they disclosed their names as Sheikh Rehan and Muhammad Bilal. Upon personal search of accused Sheikh Rehan police recovered one 30 bore pistol containing 3 live bullets so also mobile phone and cash of Rs.3000/- which were snatched from the complainant. Accused Sheikh Rehan could not furnish license of the 30 bore pistol. From personal search of accused Muhammad Bilal police recovered two mobile phones and cash of Rs.500/- snatched from P.W Muhammad Shan in presence of mashirs. They also disclosed the names of their companions as Muhammad Salman and Wahid Bux. The motorcycle No.KDM-0001 was also seized by the police in presence of mashirs. Injured were brought at hospital for treatment. Syed Ahmed Abbas lodged F.I.R it was recorded vide Crime No. 352/2016 under Sections 392,353,324,34, 186 PPC read with Section 7 Anti-Terrorism Act, 1997, whereas FIR No.353/2016 under Section 23(1)(a) of Sindh Arms Act, 2013 was lodged by ASI Muhammad Karam on behalf of state against accused Sheikh Rehan Ali.

3. After usual investigation, challan was submitted against accused Muhammad Bilal and Sheikh Rehan Ali under above referred sections. Accused Muhammad Salman and Wahid Bux were shown as absconders. Trial Court declared them as proclaimed offenders.

4. Learned Trial Court amalgamated the aforesaid cases for joint trial in terms of Section 21-M of Anti-Terrorism Act, 1997.

5. Trial Court framed Charge against accused at Ex.4 under the above referred sections. Accused pleaded not guilty and claimed their trial.

6. At trial, prosecution examined five witnesses. Thereafter, learned DDPP closed the prosecution side.

7. Statements of accused under Section 342 Cr.P.C were recorded at Ex. 14 & 15. Accused claimed their false implication in the present cases and denied the prosecution allegations. Accused neither examined themselves on oath under section 340(2) Cr.P.C in disproof of the prosecution allegations nor led any evidence in their defense.

8. Trial Court after hearing the learned counsel for the parties and assessment of evidence, by judgment dated 29.03.2019, convicted and sentenced the appellants as stated above. Separate Special Criminal Anti-Terrorism Appeals were filed by the appellants against the conviction and sentences recorded against them. We intend to decide aforesaid appeals by this common judgment.

9. The facts of the case as well as evidence produced before the Trial Court find an elaborate mention in the judgment dated 29.03.2019 passed by the Trial Court and therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

10. Mr. Habib-ur-Rehman Jiskani, learned counsel for the appellants after arguing the appeals at length, did not press the appeals on merits and submitted that appellants are young boys, first offenders and supporters of their old parents. The sentence of 10 years may be reduced to already undergone. Reliance is placed upon the case reported as **Deedar Ali and others vs. The State (2019 YLR 2902)**.

11. Mr. Mohammad Iqbal Awan, learned DPG supported the judgment of the trial Court. However, recorded no objection, in case, sentences are reduced to some reasonable extent.

12. We have carefully heard learned counsel parties and scanned the entire evidence available on record. Evidence of complainant Syed Ahmed Abbass (P.W-01) is fully supported by Muhammad Shan (P.W-02) on all material aspects with regard to the manner of the incident, date, time and details of the robbed articles. These witnesses identified the appellants/accused soon after, the incident when they were arrested after the encounter. According to the prosecution case complainant (P.W-01) and Muhammad Shan (P.W-02) at the time of incident were returning from a function at Surjani Town, when reached at Service road, near Nusrat Bakery Sector 11-L, Karachi, four culprits appeared on two motorcycles and the motorcycle of the complainant was stopped and they snatched cash and mobile phones from them. Evidence of (P.W-01) and (P.W-02) was straight forward and natural in which whole episode was mentioned in detail. Evidence of (P.W-01) and (P.W-02) appears to be confidence inspiring. Both the appellants had also sustained fire arm injuries in the police encounter. This fact has not been denied by them. We have no hesitation to hold that ocular account established that appellants robbed (P.W-01) and (P.W-02) and robbed articles were recovered from the accused soon after the incident resulting in the police encounter. Defence plea has been raised that appellants were arrested by the police a few days prior to the incident, but such plea raised by the appellants has not been substantiated at trial. Perusal of the evidence shows that complainant Syed Ahmed Abbass (P.W-01) and Muhammad Shan (P.W-02) had no motive or enmity whatsoever with the appellants. It is matter of record that these witnesses were subjected to the lengthy cross-examination but nothing favourable to accused except minor discrepancies could be sucked. Defence tested these witnesses by number of pleas which could be taken as a reason for their false implication by the complainant party but we have found no substance in this plea and trial Court rightly rejected the defence plea. We have found that ocular account is supported by the medical evidence to the extent of sustaining fire arm injuries by the accused persons in which police encounter and evidence of (P.W-01) and (P.W-02) cannot be discarded on minor discrepancies in the prosecution evidence. Reliance is placed on the case reported as **Ravi Kapur vs. State of Rajasthan (2013 SCMR 480)**.

13. As regards to the second episode of the police encounter ASI Muhammad Akram has deposed that on 14.11.2016, he along with his subordinate staff left P.S entry No. 35 at about 2000 Hrs along with his subordinate staff for patrolling. At 1:30 a.m, when police party reached at service road near Nusrat Bakery Sector 11-L, New Karachi, two young boys called police party and gave signal towards the four

robbers riding two motorcycles and stated that the accused committed robbery from them on gun point and snatched cash and cell phones. ASI directed the accused to stop but they fired upon police party, hence, police also fired in self defence. In the encounter two accused fell down on the ground due to slipping of their motorcycle whereas remaining two accused succeeded in running away. Police arrested accused who fell on the ground. On enquiry they disclosed their names as Sheikh Rehan Ali and Bilal. ASI conducted personal search of accused Sheikh Rehan Ali and recovered 30 bore pistol No. KAC11526 silver steel colour loaded with three live bullets as well as robbed articles viz. two Q mobile, one wallet containing Rs.3000/- and some visiting cards. On personal search of accused Bilal, ASI recovered two mobile phones and cash of Rs.500/-. Complainant and P.W Muhammad Shan identified the mobile phones and wallet as robbed articles. One motorcycle No. KDM-0001 Unique 70 of black colour was secured from the possession of accused who could not produce the ownership documents of the same. ASI Muhammad Akram also secured three empties of 30 bore pistol and four empties of SMG from the spot. Both the accused sustained fire arm injuries in the encounter. Pistol, bullets, empties and other articles were sealed on the spot in presence of mashirs Syed Ahmed Abbas and Muhammad Shan and prepared such mashirnama of arrest and recovery. The accused disclosed the names of their accomplices as Muhammad Salman and Wahid Bux. SIP Kabeer Abbasi reached at the spot and took both the accused to Abbasi Shaheed Hospital for treatment whereas, ASI brought the motorcycle, pistol and other articles at police station, where FIRs were lodged.

14. P.Ws have also supported the version of head of the police party. SIP Aziz Ghauri Investigating Officer has conducted investigation and stated that on 15.11.2016 he received investigation of Crime No.352/2016 u/s 392/353/324/34 PPC as well as FIR No.353/2016 u/s 23(1)(a) of Sindh Arms Act 2013, memo of arrest and case property. He inspected the place of incident identified by complainant Syed Ahmed Abbas (P.W-01) and Muhammad Shan (P.W-02) and prepared such mashirnama of inspection in presence of mashirs. I.O also prepared the site plant/ sketch of the place of incident and recorded statements of P.Ws. He also obtained C.R.O of the accused. On 16.11.2016 I.O dispatched pistol for FSL examination and received positive report and after completing the formalities submitted the challan before the concerned Court.

15. Evidence of police officials was reliable and trustworthy. Police officials are as good witnesses as any other and their evidence is subject to same standard of proof and principles of scrutiny as applicable to any other category of witnesses; in the absence of any animus, infirmity or flaw in their depositions, their statements can be relied without demur. Reliance is placed on the case reported as **Qari Muhammad Ishaq Ghani vs. The State (2019 SCMR 1646)**. The evidence of the police officials is supported by private persons namely Syed Ahmed Abbass (P.W-01) and Muhammad Shan (P.W-02). From the place of encounter empties of 30 bore pistol and SMG were secured and pistol was also recovered from the possession of appellant Sheikh Rehan whose number has been mentioned in the mashirnama of arrest and recovery. Pistol was dispatched to the Ballistic Expert and positive report was received. Injured accused were referred to hospital for examination and medical certificates. Doctor has opined that injured sustained fire arm injuries and timings mentioned by the Doctor tally with the timings of the incident. I.O thoroughly carried out investigation. We have found no malafide on the part of the I.O. Prosecution has succeeded to prove its case against the appellants. Learned counsel for the appellants while realizing this fact, did not press the appeals on merits but prayed for reduction of their sentences on the ground that both appellants are young belong 25 years and sole supporters of their old parents. It is also argued that they are first offenders.

16. Trial Court has rightly appreciated the evidence according to settled principle of law as such conviction recorded by the trial Court vide judgment dated 29.03.2019 requires no interference by this Court. Resultantly it is maintained.

17. As regards to the quantum of sentence is concerned, learned Advocate for appellants has submitted that appellants are young boys, first offenders and sole supporters of their parents and has also pointed out that appellants are in custody since date of their arrest. This Court in the case of **Deedar Ali and others vs. The State (2019 YLR 2902)**, observed that appellant was aged about 26 years, he had two wives and six children and another appellant was aged about 35 years and had old parents and they were first offenders and were not previously convicted. Abovementioned circumstances were treated as mitigating circumstances/factors for reduction of the sentences and sentences of the appellants from 10 years R.I each was reduced to 05 years R.I each as under:

14. For the above reasons, the appeals are dismissed as not pressed and convictions are maintained. However, sentences of appellants Deedar Ali, Naveed Ahmed, Mushtaq and Shahid awarded under section 7(1)(h) of Anti-Terrorism Act, 1997 read with sections 384/386/34, P.P.C. are reduced from 10 years R.I

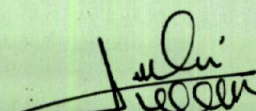
each to. 05 years R.I. each. So far as sentence of fine awarded by the trial Court is concerned, the same is maintained and in case of default, the appellants shall suffer S.I. for 06 months each more. Sentence of appellant Naveed Ahmed awarded by the trial Court under Section 23(1)(a) of Sindh Arms Act 2013 is also reduced from R.I. 05 years to R.I, 04 years, however, sentence of fine awarded by the trial Court is maintained and in case of default appellant Naveed Ahmed shall suffer S.I. 06 months more. All the sentences shall run concurrently. Benefit of section 382-B, Cr.P.C. is extended to appellants.

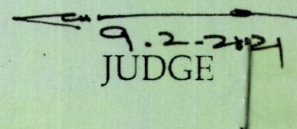
18. In the case of **State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force vs. Mujahid Naseem Lodhi (PLD 2017 SC 671)**, in the matter of sentence, it is observed that "*in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure.*" In the case of Deedar Ali and others (*supra*), this Court while considering that appellants were young boys, first offenders and not previously convicted, reduced their sentences.

19. For the above stated reasons, appeals are dismissed as not pressed.

20. As regards to the quantum of sentence is concerned, this case has peculiar circumstances, as the appellants are young boys, first offenders, sole supporters of their old parents and not previous convicts, have been convicted under Sections 392 PPC and sentenced 10 year R.I. Sentence of 10 years R.I is reduced to 05 years R.I each. Appellants were also convicted under Section 324 PPC and sentenced to 10 years R.I. Sentence of 10 years R.I is reduced to 5 years R.I each. Appellants were convicted under Section 7(1)(c) of Anti-Terrorism Act, 1997 and sentenced to R.I 10 years. According to P.Ws-1, 2 and 3, appellants were found involved in serious violence against the police force. Appellants are convicted under Section 7(1)(h) of Anti-Terrorism Act, 1997 and sentenced to R.I 05 years each. Appellant Sheikh Muhammad Rehan was convicted u/s 23(1)(a) of Sindh Arms Act 2013 and sentenced to 07 years R.I. Sentence of 07 years R.I is also reduced to 05 years R.I. All the sentences are directed to run concurrently. However, as regards to the sentence of fines and imprisonments in default thereof are concerned, the same shall remain intact.

21. In the view of above, the Appeals are disposed of in the above terms.


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