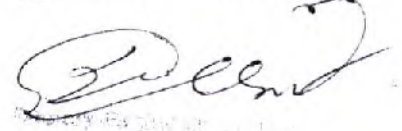


PRESENTED ON
11-02-2019

539

(1)

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Special ATA APPEAL No. 43 / 2019

SAAD QAISER

S/O QAISER ALI

Muslim, adult, resident of,

Karachi Presently Confined At Central

Prison Karachi Appellant

Versus

The state Respondents

Special Case No 687/2017

FIR No 656/2015

U/S 353/324/186/34 PPC

R/W 7 ATA of 1997

P.S: FERROZABAD KARACHI

CRIMINAL APPEAL UNDERSECTION 25 OF ANTI TERRORISM ACT 1997

1. Being aggrieved and dissatisfied with the impugned judgment dated 30.1.2019 passed by Learned Trial Court of ATC No VI Karachi convicting the appellant u/s 353 PPC read with section 6 (2)(m) and 7(1)(H) of ATA 1997 and he is convicted and sentenced to undergo for RI (5) years with the fine of Rs.10,000/- , and in case of default in payment of fine he shall suffer SI four months .

2. That the appellant also convicted u/s 324 PPC and is also sentenced of undergo for RI 5 years and with fine rupees

11/02/19
Sd/-
11/02/19

①

540

1

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Special ATA APPEAL No. 44/ 2019

SAAD QAISER
S/O QAISER ALI
Muslim, adult, resident of,
Karachi Presently Confined At Central
Prison Karachi Appellant

Versus

The state Respondents

Special Case No 688/2017
FIR No 657/2015
U/S 23 (i) A SAA 2013
P.S: FEROZABAD KARACHI

CRIMINAL APPEAL UNDER SECTION 25 OF ANTI TERRORISM ACT 1997

1. Being aggrieved and dissatisfied with the impugned judgment dated 30.1.2019 passed by Learned Trial Court of ATC No VI Karachi convicting the appellant u/s 23(i) A SAA of 2013 and he is convicted and sentenced to undergo for RI (7) years.
2. That all the sentences shall run concurrently and the benefit of the section 382 b CRPC shall be extended to the accused/appellant.
3. That the appellant most respectfully preferred this appeal with the prayer that this Honorable Court may be pleased to call for Record and proceedings of the above mentioned case from The Learned Trial Court ATC 6 KARACHI and after hearing both the sides set aside the impugned judgment dated 30.1.2019 passed by the Trial Court ATC VI Karachi and allow the appeal and

/

IN THE HIGH COURT OF SINDH
AT KARACHI

Crl./Jail Appeal No. ⁵⁶₁₁₅ Of 2019.

Ghulam Kabir @ Sunny s/o Thoraz Khan
Muslim, adult, presently
confined in Central Prison,
Karachi.....Appellant in person.

Versus

The state.Respondent.

Special Case NO.687/2017.
FIR No.656/2015
Sections.353/324/186/34 PPC.
R/w Sec. 7 ATA, 1997.
PS.Ferozabad, Karachi.

APPEAL UNDER SECTION 25 OF THE
ANTI-TERRORISM ACT, 1997 READ
WITH SECTION 410 CR.P.C.

Honourable Sir,

Being aggrieved and dis-satisfied with
impugned judgement dated 30.01.2019, passed by Mr.
Muneer Bhutto, Learned Judge Anti-Terrorism Court-VI,
Karachi, in Special Case number mentioned above re:
State Vs. Saad Qaiser and another, being outcome of FIR

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Appeal No.43 of 2019.
Special Criminal Anti-Terrorism Appeal No.44 of 2019.

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Muhammad Saleem Jessar.

Appellant	Saad Qaiser s/o Qaiser Ali through Mr. Liaquat Hussain, Advocate.
Respondent /State	Through Mr. Saleem Akhtar Buririo, Addl: Prosecutor General, Sindh

Special Criminal Anti-Terrorism Jail Appeal No.56 of 2019.

Appellant	Ghulam Kabir @ Sunni s/o Thoraz Khan through Mr. Muhammad Farooq, Advocate.
Respondent /State	Through Mr. Saleem Akhtar Buririo, Additional Prosecutor General, Sindh
Date of Hearing	10.03.2020.
Date of Judgment	19.03.2020.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- Accused Saad Qaiser s/o Qaiser Ali and Ghulam Kabir @ Sunni s/o Thoraz Khan were tried by the learned Judge, Anti-Terrorism Court No.VI, Karachi in Special Cases No.687/2017 arising out of Crime No.656/2015 U/s. 353/324/186/34 PPC r/w Section 7 ATA of 1997, registered at P.S. Ferozabad, Karachi and Spl. Case No.688 of 2017 arising out of Crime No.657/2015 U/s. 23(1) (A) SAA of 2013, registered at P.S. Ferozabad, Karachi. After trial vide judgment dated 30.01.2019 the appellants named above were convicted and sentenced as under:-

1. Accused Saad Qaiser s/o Qaiser Ali and Ghulam Kabir @ Sunni s/o Thoraz Khan convicted for an offence u/s 353 PPC r/w S. 6 (2) (m) and 7 (1) (h) of ATA, 1997 and sentenced to undergo for R.I. for (5) years with fine of Rs.10,000/- each. In default in payment of such fine, they shall suffer further S.I. for "04" months each.
2. Accused Saad Qaiser s/o Qaiser Ali and Ghulam Kabir @ Sunni s/o Thoraz Khan also convicted for offence u/s 324 PPC and sentenced to undergo for R.I. for (5) years with fine of Rs.10,000/- each. In default in payment of such fine, they shall suffer further S.I. for "04" months each.

/

3. Accused Saad Qaiser s/o Qaiser Ali convicted for offence u/s 23 (1) (A) SAA of 2013 and sentenced to undergo R.I. for 7 years.

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

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.VI, Karachi, the aforesaid appeals have been preferred by the appellants.

3. The brief facts of the prosecution case are that on 01.11.2015, at about 2105 hours complainant ASI Abdul Jabbar, along with PC Fateh Sher, PC Driver Abdul Hamid, in police mobile No. SP 3884 and two police personnel namely, HC Ather Qureshi and Abdul Rehman on a motorcycle bearing registration No.HM-2870, left the PS for patrolling in the area. During patrolling, they reached Shaheed-e-Millat Road, Tipu Sultan roundabout at about 2100 hours when they spotted two persons on a motorcycle 125 who were trying to commit robbery from the public. Meanwhile, the police signaled them to stop upon which they tried to flee towards Shahra e Faisal. The police party chased them and when they reached near Jaffar Building, the culprit who rode pillion, started firing upon the police. In retaliation the ASI ordered his subordinates to return fire. During encounter a gunshot hit right leg thigh of the pillion riding accused, resultantly, he fell off the motorcycle, whereas, the other riding accused made his escape good by taking advantage of the odd hours. The police apprehended the injured accused who had a pistol in his right hand. On enquiry he has disclosed his name as Saad s/o Qaiser Ali to the ASI. He checked the pistol, which was loaded with magazine containing four live rounds in its magazine and one in its chamber. On the pistol it was inscribed "MADE IN CHINA 10008624 CF 98 CAL 9MM". On demand he failed to produce any valid license, one Samsung mobile color black and an amount of Rs.100/- were also recovered. On enquiry the arrested accused disclosed the name of his absconding accused as Sunny. Two empties of 9mm pistol and 03 empties of SMG were secured from the place of incident. The accused was brought to JPMC for treatment where he was hospitalized; the police party returned to the PS and lodged the FIR against the accused persons and the instant case papers were handed over to SIO Ferozabad for further investigation.

4. After completion of the investigation, the charge against the accused persons was framed to which they pleaded not guilty and claimed trial of the case

5. To prove its case the prosecution examined 05 prosecution witnesses and thereafter the side of the prosecution was closed. The statement of the accused u/s 342 Cr.P.C. was also recorded in which they denied all the allegations leveled against them and claimed false implication. The accused did not examine themselves on oath or call any DW's in support of their defense case.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 30.01.2019 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 Saad Qaisar has contended that the appellant has been falsely implicated in the case, that despite the alleged encounter no police man received any injury or even police mobile received any bullet mark, the medical evidence contradicted the oral evidence and as such the appellant should be acquitted by extending him the benefit of the doubt.

8. Learned counsel for the appellant Ghulam Kabir @ Sunni has contended that there is not an iota of evidence against him and it is not even known from where and when he was arrested and as such he should be acquitted of the charge.

9. On the other hand learned Additional Prosecutor General has fully supported the impugned judgment. He has contended that the prosecution has proved its case through reliable corroborative evidence of the PW's and recoveries made on the spot as well as the arrest of appellant Saad Qaisar on the spot in an injured condition and has argued that the appeals should be dismissed.

10. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants, the impugned judgment with their able assistance and have considered the relevant law.

4

11. With regard to appellant Ghulam Kabir @ Sunni he was not arrested on the spot, no recovery has been made from him and there is not even a memo of arrest on record and no PW has given evidence as to when and where he was even arrested and as such in our view the prosecution has failed to prove its case against him beyond a reasonable doubt.

12. With regard to appellant Saad Qaisar although he was arrested on the spot in an injured condition and a pistol was recovered from him we have found that no policemen received a scratch during the encounter let alone an injury, that the police mobile was not hit by any bullet and there is no evidence of any bullet markings. More significantly the PW's in their evidence have stated that the firing took place from a distance of about 15 feet however this is contradicted by the medical evidence which shows that there was blackening around the appellant's gun shot injury which indicates that the distance was not more than 3 feet away. Thus, based on the above inconsistencies we are of the view that the prosecution has not proved its case against the appellant beyond a reasonable doubt.

13. Thus, by extending the benefit of the doubt to both the appellants both of the appellants (Ghulam Kabir @ Sunni and Saad Qaisar) are acquitted of the charge, their appeals are allowed and the impugned judgment is set aside. Consequently the appellants shall be released unless wanted in any other custody case.

14. The above appeals stand disposed of in the above terms.