

## IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Appeal No.133 of 2019.  
Special Criminal Anti-Terrorism Appeal No.134 of 2019.

Present:

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

Appellant Shayan alias Babu s/o Muhammad  
Siraj-u-Din through Ms. Bushra Rehman  
Advocate.  
Respondent /State Through Mr. Muhammad Iqbal Awan,  
Deputy Prosecutor General, Sindh

Special Criminal Anti-Terrorism Appeal No.145 of 2019.  
Special Criminal Anti-Terrorism Appeal No.146 of 2019.

Appellant Siraj-ul-Haq s/o Aziz Khan  
through Mr. Ajab Khan Khattak,  
Advocate.  
Respondent /State Through Mr. Muhammad Iqbal Awan,  
Deputy Prosecutor General, Sindh  
Date of Hearing 16.03.2020.  
Date of Judgment 26.03.2020.

## JUDGMENT

**MOHAMMAD KARIM KHAN AGHA, J:-** Accused Shayan @ Babu s/o Muhammad Siraj-u-din and Siraj-u-Haque s/o Aziz Muhammad were tried by the learned Judge, Anti-Terrorism Court No.IV, Karachi in Special Cases No.476/2017 arising out of Crime No.40/2017 U/s. 353/324/34 PPC r/w Section 7 ATA of 1997, registered at P.S. Peerabad, Karachi, Spl. Case No.476-A of 2017 arising out of Crime No.41/2017 U/s. 23(I) (a) SAA of 2013, registered at P.S. Peerabad, Karachi and Spl. Case No.476-B of 2017 arising out of Crime No.42/2017 U/s. 23(1) (A) SAA of 2013, registered at P.S. Peerabad, Karachi. After trial vide judgment dated 29.04.2019 the appellants named above were convicted and sentenced as under:-

1. Accused Siraj-ul-Haque and Shayan @ Babu found guilty of the charges of offence u/s 324/353/34-A PPC, r/w Section 7 (h) ATA 1997, they are convicted and sentenced to suffer imprisonment for five years, each, and fine of Rs.20,000/- (Rupees twenty thousand) each, in case of default of payment of fine, they shall further suffer imprisonment for six month each.



2. Accused Siraj-ul-Haque and Shayan @ Babu found guilty of the charge of offence punishable u/s 23(1) (a) of Sindh Arms Act, 2013, are convicted and sentenced to suffer imprisonment for three years, each, and fine of Rs.10,000/- (Rupees ten thousand) each, in case of default in payment of fine, they shall further suffer imprisonment for six month each.

All the sentences were ordered to 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.IV, Karachi, the aforesaid appeals have been preferred by the appellants.

3. The brief facts of the prosecution case are that on 08.02.2017, Complainant Rizwan Gilberg SHO of PS Peerabad Karachi, along with his subordinate staff was busy in patrolling duty within the jurisdiction of the PS. At about 01:45 hours, when they reached at Main Road, Shahra-e-Orangi, opposite Metro Cinema, they saw two persons in suspicious condition. The police party tried to apprehend them, but on seeing police party, both the culprits started firing upon police party with intention to kill and deterred them from their lawful duty. In retaliation police party also started firing, in result of such encounter, both the culprits became injured and were apprehended by the police, who disclosed their names as Siraj ul-Haq and Shayan @ Babu. Their personal search was conducted. From the possession of accused Siraj one pistol of 30 bore, without number, Pak Made, along with loaded magazine with three live bullets and, cash of Rs.230/- one Nokia and one Q-Mobile and his CNIC were recovered. From the possession of accused Shayan @ Babu one 9mm pistol, without number, along with loaded magazine with two live rounds, cash of Rs.270/- were recovered. Police party secured three empties of SMG, two empties of 9mm and one empty of 30 bore. On demand of valid license/permission accused failed to produce the same. After completion of legal formalities FIRs were lodged.

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

5. To prove its case the prosecution examined 04 prosecution witnesses and thereafter the side of the prosecution was closed. 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 to have been falsely implicated in this case. They did not examine themselves on oath or call any witness in support of their defense case.

6. Learned Judge, Anti-Terrorism Court No.IV, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 29.04.2019, convicted and sentenced the appellants as stated above, hence these appeals have been filed by the appellants against their convictions.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 29.04.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. After reading out of the evidence and the impugned judgment learned counsel for the appellants initially tried to argue the appellant's case on merits however in the face of the overwhelming evidence against the appellants on record they decided not to press the appeal on merits but instead prayed for reduction of the appellant's sentences to lesser ones based on the mitigating circumstances that the appellants (a) were the sole bread winners of large families and (b) that they were young men with no CRO and were first time offenders and were capable of reformation.

9. Learned DPG conceded that based on the above mitigating circumstances a reduction in sentence was justified and he had no objection to the sentences of the appellants being reduced to some reasonable extent. When asked by the court whether based on the particular facts and circumstances of this case it fell within the purview of the ATA he was of the view that it did not based on the recent pronouncements of the Supreme Court on cases under the ATA.

10. Having gone through the evidence on record we are of the view that the prosecution has proved its case against the appellants beyond a reasonable doubt through the arrest of the appellants on the spot, the injuries to the appellants on the spot, recovery of the pistols on the spot from each of the appellants along with empties and positive FSL reports

and the fact that the police witnesses corroborated themselves in all material respects and had no ill will or enmity towards the appellants and as such had no reason to implicate them in a false case.

11. Based on the mitigating factors raised by the appellants and the no objection to the reduction in sentences to some reasonable extent by the DPG we in exercise of our powers under S.423 Cr.PC deem this to be a fit case which warrants a reduction in sentences handed down to the appellants

12. Having gone through the evidence we are also of the view that the offenses committed by the appellants do not fall under the purview of the ATA.

13. Thus, for the reasons mentioned above we hereby uphold the convictions of the appellant **except** in respect of offenses under the ATA but modify their sentences as under:

1. Accused Siraj-ul-Haque and Shayan @ Babu found guilty of the charges of offence u/s 324/353/34-A PPC, and they are convicted and sentenced to suffer imprisonment for three years, each, and fine of Rs.20,000/- (Rupees twenty thousand) each, in case of default of payment of fine, they shall further suffer imprisonment for six month each.
2. Accused Siraj-ul-Haque and Shayan @ Babu found guilty of the charge of offence punishable u/s 23(1) (a) of Sindh Arms Act, 2013, are convicted and sentenced to suffer imprisonment for three years, each, and fine of Rs.10,000/- (Rupees ten thousand) each, in case of default in payment of fine, they shall further suffer imprisonment for six month each.

14. The appellants shall have the benefit of S.382-B Cr.PC and the sentences shall run concurrently and since the offenses do not fall within the purview of the ATA the appellants will be entitled to remission in accordance with the law.

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