

CERTIFICATE OF THE COURT IN RECORD NO. ---

Spl. Criminal ATA Appeal

178/2019, 179/2019

SINDH HIGH COURT 180/2019 &

Spl. Cr. ATA Jail A 303/2019

Composition of Bench.

Single/D.B.

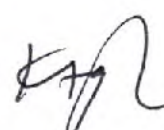
HONORABLE MR JUSTICE KARIM KHAN AGHA

Dates of hearing: 20-02-2020

Decided on 04-03-2020

(a) Judgment approved for reporting.

Yes  
No



CERTIFICATE

Certified that the judgment \*/Order is based upon or enunciates a principle of law \*/decides a question of law which is of first impression/distinguishes/over-rules/ reverses/explains a previous decision.

\*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

No Consider u/s 324 only 353

PRESENTED ON  
28-06-2019

1

Deputy Registrar (Judl.)

28/6/19

**IN THE HONOURABLE HIGH COURT OF SINDH,  
AT KARACHI**

2282

Sp. Criminal ATA Appeal. 178 /2019

**SYED SHEERAN ALI  
S/O. AHSAN ALI SHAH**Muslim, adult, R/o. H.No. ,  
Liaquat Market Malir, Karachi,  
At presently confined in  
Central Prison, Karachi .....**APPELLANT****VERSUS****THE STATE.....****RESPONDENT**FIR NO.20/2019  
U/S.353/324/34 PPC  
R/W. SEC. 7-ATA  
P.S.AL-FALAH, Khi.**SPECIAL CRIMINAL APPEAL UNDER SECTION  
25 ATA, 1997**

Being aggrieved and dissatisfied with the **Impugned Judgment** dated: 31-05-2019, announced and passed by the XTH Anti Terrorism Court, Karachi in Spl. Case No. 153 / 2019, thereby convicted the accused for offense under section 7-ATA R/w. Section 353/324/34 PPC to undergo R.I. for 10-years and to pay fine of Rs.100,000/- In Case of default of payment of fine he shall undergo S.I. for further one year, all sentences shall run concurrently and accused shall be entitled to benefit U/s. 382-B Cr.P.C. Hence it is most respectfully prayed on behalf of the abovenamed Appellant that this Honourable Court may graciously be pleased to set aside/ recall the impugned Judgment and to acquit him from the alleged charge in the larger interest of justice, now therefore, this appeal is being filed on the consideration of following facts and grounds:-

(Certified Copy of the Impugned Judgment is annexed herewith and marked as Annexure "A").

Contd on page.....2

PRESENTED ON  
28-06-2019

178/2019  
Deputy Registrar (Judt.)

**IN THE HONOURABLE HIGH COURT OF SINDH,**  
**AT KARACHI**

2283

Sp. Criminal ATA Appeal. 178/2019

**SYED JIBRAN ALI**  
**S/O. AHSAN ALI SHAH**

Muslim, adult; R/o. H.No. ,  
Liaquat Market Malir, Karachi,  
At presently confined in  
Central Prison, Karachi .....

**APPELLANT**

**VERSUS**

**THE STATE.....**

**RESPONDENT**

FIR NO.20/2019  
U/S.353/324/34 PPC  
R/W. SEC. 7-ATA  
P.S.AL-FALAH, Khi.

**SPECIAL CRIMINAL APPEAL UNDER SECTION**  
**25 ATA, 1997**

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Contd on page.....2

PRESENTED ON  
28-06-2019

Deputy Registrar (Judl.)

**IN THE HONOURABLE HIGH COURT OF SINDH,**  
**AT KARACHI**

Sp. Criminal ATA Appeal. 180 /2019

**SYED JIBRAN ALI**  
**S/O. AHSAN ALI SHAH**

Muslim, adult, R/o. H.No. ,  
Liaquat Market Malir, Karachi,  
At presently confined in  
Central Prison, Karachi .....

**APPELLANT**

**VERSUS**

**THE STATE.....**

**RESPONDENT**

FIR NO.21/2019  
U/S.23(i)A SAA.  
R/W. SEC. 7-ATA  
P.S.AL-FALAH, Khi.

**SPECIAL CRIMINAL APPEAL UNDER SECTION**  
**25 ATA, 1997**

Being aggrieved and dissatisfied with the **Impugned Judgment**  
**dated: 31-05-2019, announced and passed by the XTH Anti**  
**Terrorism Court, Karachi in Spl. Case No. 153-A/2019,** *gpr*  
thereby convicted the accused for offense under section 7-ATA  
R/w. Section 25 of Sindh Arms Act 2013 to undergo R.I. for 07-  
years and to pay fine of Rs.50,000/- In Case of default of  
payment of fine he shall undergo S.I. for further 06 months, all  
sentences shall run concurrently and accused shall be entitled  
to benefit U/s. 382-B Cr.P.C. Hence it is most respectfully  
prayed on behalf of the abovenamed Appellant that this Honourable  
Court may graciously be pleased to set aside/ recall the  
impugned Judgment and to acquit him from the alleged charge  
in the larger interest of justice, now therefore, this appeal is  
being filed on the consideration of following facts and grounds:-

(Certified Copy of the Impugned Judgment is  
annexed herewith and marked as Annexure "A").

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**IN THE HIGH COURT OF SINDH**  
**AT KARACHI**

**(Criminal Appellate Jurisdiction)**  
Crl. Spl. Jail A.T. Appeal No. 303 Of 2019.

Hasnain  
Son of Rehmat Ali,  
Muslim, adult, presently  
confined in Central Prison, Karachi.....Appellant in  
person.

Versus

The state.

.....Respondent.

Speacial Case NO.153/2019.  
FIR No.20/2019  
Sections.353/324/34 PPC.  
R/w Sec. 7 ATA, 1997.  
PS. Al-Falah, 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 31.05.2019, passed by Mr. Muhammad Khan  
Burio, Learned Judge Anti-Terrorism Court-X, Karachi, in Special  
Cases numbers mentioned above re. State Vs. Syed Jibran Ali &  
Others, being outcome of FIR numbers mentioned above, Police  
Station Al-Falah, Karachi, under sections as mentioned above.

Whereby convicting and sentencing the Appellant/  
accused and awarding him:

## THE HIGH COURT OF SINDH AT KARACHI

Spl. Crl. Anti-Terrorism Appeal No.178 of 2019.  
 Spl. Crl. Anti-Terrorism Appeal No.179 of 2019.  
 Spl. Crl. Anti-Terrorism Appeal No.180 of 2019.  
 Spl. Crl. Anti-Terrorism Jail Appeal No.303 of 2019.

### Present:

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

Appellants: 1. Syed Sheeran Ali S/o. Ahsan Ali Shah.  
 2. Syed Jibran Ali S/o. Ahsan Ali Shah.  
 3. Hasnain S/o. Rehmat Ali, through Mr. Abdul Razaq, Advocate.

For State: Through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.

Date of hearing: 20.02.2020.  
 Date of Judgment: 04.03.2020.

### J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J:-** Accused Syed Sheeran Ali S/o. Ahsan Ali Shah, Syed Jibran Ali S/o. Ahsan Ali Shah and Hasnain S/o. Rehmat Ali, were tried by learned Judge, Anti-Terrorism Court No.X, Karachi in Special Cases No. 153/2019 arising out of Crime No.20/2019 U/s. 353/324/34 PPC r/w section 7 ATA, 1997 and Special Case No.153-A/2019 arising out of FIR No.21/2019 u/s 23(i) A Sindh Arms Act, 2013, registered at P.S. Al-Falah, Karachi. After trial vide judgment dated 31.05.2019 the appellants named above were convicted and sentenced as under:-

- i. The accused Syed Jibran Ali s/o Syed Ahsaan Ali is hereby, convicted for the offence u/s 7(h) of ATA, 1997 r/w Section 353/324 PPC and sentenced to undergo R.I. for "10" years with fine of Rs.100,000/-. In default in payment of such fine, he shall suffer further R.I. for "01" year more.
- ii. Convicted the accused Syed Jibran Ali s/o Syed Ahsaan Ali for the offence u/s 23 of Sindh Arms Act, 2013, and sentenced him to undergo R.I for "07" years with fine of Rs.50,000/-. In default in payment of such fine, he shall suffer further R.I. for "06" months more.
- iii. Convicted the accused Syed Sheeran Ali s/o Syed Ahsaan Ali for the offence u/s 7(h) of ATA, 1997 r/w Section 353/324 PPC and sentenced to undergo R.I. for "10" years with fine of Rs.100,000/-. In default in payment of such fine, he shall suffer further R.I. for "01" year more.

/s/

- iv. Convicted the accused Hasnain s/o Rehmat Ali for the offence U/s. 7 (h) of ATA, 1997 r/w S. 353/324 PPC and sentenced to undergo R.I. for "10" years with fine of Rs.100,000/-. In default in payment of such fine, he shall suffer further R.I. for "01" year more.

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

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

3. The brief facts of the case are that on 17.01.2019, in between 0600 hours to 0620 hours complainant ASI Shoukat Ali registered FIR No.20/2019 U/s 353/324/34 PPC r/w 7 ATA, 1997 and FIR bearing No.21/2019 U/s 23(i)A SAA, 2013 at PS Al-Falah, Karachi stating therein, that on 16.01.2019, he along with his subordinate staff left P.S. for patrolling duty, in Police Mobile No.SPB-718. During patrolling duty, at about 04:30 AM, when the police party reached at Baba Wilayat Ali Shah Road, near Ice Factory, they saw one Cultus Car No.ALC-278, blue colored, coming from Malir River, Jumma Goth. The police party signaled it to stop, for checking purpose but, instead of stopping, the persons sitting inside the car, opened straight firing upon them, with intent to commit their intentional murder and deter them from discharging their lawful duties and official functions and started running away from the crime scene. As such, the police officials chased them and also made fire shots upon the culprits, in their self-defence. Resultantly, one bullet hit the left rear tyre of the car, the car stopped and finally, the police party succeeded to apprehend "03" culprits on the spot, after encircling them. Thereafter, the complainant inquired the names of apprehended accused persons, who disclosed their names as Syed Jibran Ali S/o. Syed Ahsaan Ali, Syed Sheeran Ali S/o. Syed Ahsaan Ali and Hasnain S/o. Rehmat Ali. Thereafter, ASI Shoukat Ali conducted personal search of accused Syed Jibran Ali and recovered one 30 bore Pistol from his right hand along with loaded magazine having 02 Rounds, whereas 01 Round loaded in the chamber. Upon his further personal search, complainant also secured cash Rs.1300/- from his pant pocket. Thereafter, the complainant conducted personal search of accused Syed Sheeran Ali and recovered Charas weighing about 1500 Grams and Cash of Rs.1700/- from his pant pocket. Thereafter, the complainant conducted personal search of Hasnain and recovered Charas weighing about 1500 Grams and Cash Rs.2100/- from below his feet. ASI Shoukat Ali also inquired from the

apprehended accused Syed Jibran Ali to produce license of the recovered pistol but he failed to produce the same. Later on, the complainant sealed the recovered articles separately. The complainant also secured 02 empty shells of SMG and 02 empty shells of 30 bore pistol from the spot and sealed them. The complainant then prepared joint memo of arrest, recovery and seizure so also sketch of recovered pistol, bullets and magazine on back of such memo. The Cultus Car of the culprits was also taken into custody by the police. Later on, the police party returned to P.S. along with custody of accused persons, case property, police papers and Cultus Car. After completion of legal formalities FIRs against the accused persons were registered.

4. After usual investigation the case was challoned and 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 03 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statements of the accused were recorded u/s 342 Cr.P.C. where they claimed false implication. They also examined themselves on oath and called 2 DW's in support of their defense of false implication.

6. Learned Judge, Anti-Terrorism Court No.X, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 31.05.2019, convicted and sentenced the appellants as stated above, hence this appeal has been filed by the appellants against their conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 31.05.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellants has contended that the evidence on record only showed that the prosecution had proved its case beyond a reasonable doubt against the appellants for committing an offense u/s 353 PPC and S.23 (1) (a) of the Sindh Arms Act 2013 in respect of one of the appellants and that S.324 PPC had not been proven beyond a reasonable doubt in respect of this offense as their was no intention to murder any one. The evidence reflected that

hardly any rounds were fired at the police and that this was from long range and the only purpose of making such limited fire was to enable the appellants to cover themselves as they made their escape good as they did not want to get caught with the narcotics in their possession and as such for any of the above reasons he contended that the accused should be acquitted of the offense under S.324 PPC by extending the benefit of the doubt to the appellants.

9. Learned Deputy Prosecutor General has fully supported the impugned judgment in respect of the offense under S. 353 PPC against all appellants and the offense under S.13 (1) (a) SAA 2013 in respect of the appellant Syed Jibran Ali. He contended that the appellants had been arrested on the spot whilst firing at the police, empties had been recovered, the appellants vehicle had been recovered with a bullet hole in its tyre which fitted in with the prosecution case, a pistol without license had been recovered from the appellant Syed Jibran Ali and 3 KG of charas in total had been recovered from the other two appellants, positive FSL in respect to the damage to the car which was hit by a bullet on its tyre and in respect of the pistol and empties and thus the prosecution had proved its case beyond a reasonable doubt with respect to offenses under S.353 PPC and S.13 (1) (a) SAA 2013. He however submitted that on account of the few rounds which were discharged from a long distance there were some doubts in the prosecution case in respect of the offense u/s 324 PPC. When confronted by the court he also candidly conceded that the provisions of the ATA were not applicable to this case.

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 appellant, the impugned judgment with their able assistance and have considered the relevant law.

11. After our reassessment of the evidence we are of the view that the prosecution has proved its case against the appellants under S.353 PPC beyond a reasonable doubt and against appellant Syed Jibran Ali under S.23 (1) (a) SAA 2013 for the following reasons;

⚡

- (a) There was no delay in registering the FIR which would allow any time for the police to cook up a false case against the appellants.
- (b) The appellants were arrested on the spot in the car after a car chase between the appellants and the police which was also recovered.
- (c) That the appellants had positive CRO's for narcotics and narcotics were recovered from them at the time of their arrest and hence this was the probable reason why they tried to escape from the police in order to evade yet another narcotics case against them.
- (d) That the positive FSL on the car tyre which was hit by a police bullet which caused it to stop and the recovery of the pistol from appellant Syed Jibran Ali and empty and positive FSL reports in respect of each corroborate the police version of events.
- (e) The evidence of the police PW's corroborates itself in all material respects with no major contradictions in the same. It is well settled by now that the evidence of the police is as good as any other witness provided that there is no enmity between the police and appellants and none has been shown in this case and thus we believe the police evidence.

12. We however are of the view that the prosecution has not proved its case under S.324 PPC beyond a reasonable doubt in that only a couple of rounds were fired at the police in order to facilitate the escape of the accused with no intention to kill from a long distance, that the fire was wayward and did not hit any police men, their mobile or any passerby and was quite probably aerial firing in order to facilitate their escape and as such the appellants are all acquitted of the charge under S.324 PPC by extending them the benefit of the doubt.

13. We are of the view that this case does not fall within the purview of the ATA since according to the evidence there was no design, object or intent to cause terror and thus the provisions of the ATA will not apply.

14. S.353 of the PPC is set out below for ease of reference;

⚡

*"353. Assault or criminal force to deter public servant from discharge of his duty. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".*

15. Hence based on our above discussion we hereby:

(a) acquit the appellants for the offense under S.324 PPC and find that no provision of the ATA is applicable.

(b) convict all the appellants under S.353 PPC and sentence them all to two years RI and a fine of RS 50,000 each and in default of payment by a particular appellant he shall undergo SI for a further period of 3 months.

(c) convict appellant Syed Jibran Ali under S.23 (1) (a) SAA 2013 and is sentenced to two years RI and a fine of RS 50,000 and in default of payment he shall undergo SI for a further period of 3 months.

The appellants shall have the benefit of S.382-B Cr.PC and in respect of appellant Syed Jibran Ali his sentences shall run concurrently.

16. The appeals stand dismissed **except** as modified above.