

No Conviction u/s 324

Conviction only u/s 353

PRESENTED ON  
14-03-2019

Deputy Registrar (Judl.)

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IN THE HIGH COURT OF SINDH AT KARACHI

SPECIAL ANTI-TERRORISM APPEAL

NO. 73 OF 2019

HAFEEZ UR REHMAN Son of MUHAMMAD URS

Muslim, adult, Presently confined in  
Central Prison Karachi)

APPELLANT

VERSUS

The State

RESPONDENT

FIR No.282 of 2017

U/s: 353/324/34 PPC R/W

SECTION 7 ATA 1997

PS: SURJANI TOWN, KARACHI

**SPECIAL CRIMINAL ANTI-TERRORISM APPEAL UNDER  
SECTION 25 OF ANTI-TERRORISM ACT-1997**

Being aggrieved of and dissatisfied with the consolidated impugned judgment dated February 28, 2019, passed by the learned Judge Anti-Terrorism Court No. IV, Karachi, whereby the said Court convicted the appellant in Special Case No. No. 1625 of 2017 in which appellant was tried for the charge framed against him by the said court, appellant has been convicted and sentenced to suffer RI for 5 years and also pay fine of Rs. 20,000/- and in case of default in payment of fine, appellant has been ordered to suffer further RI for one year. ***(Certified Copy of impugned Judgment dated February 28, 2019 is annexed as Annexure "A")***. The appellant prefers this appeal on the following facts and grounds:-

**FACTS AS ALLEGED IN THE FIR**

According to the subject FIR bearing No. 282 of 2017 lodged by the Complainant/SI Ch. Liaquat Ali that he was busy in patrolling of the area in Police Mobile – II along with sub ordinate staff in search of absconder

PRESENTED ON

14-03-2019

Deputy Registrar (Judl.)

## IN THE HIGH COURT OF SINDH AT KARACHI

## SPECIAL ANTI-TERRORISM APPEAL

NO. 74 OF 2019

HAFEEZ UR REHMAN Son of MUHAMMAD URS  
Muslim, adult, Presently confined in  
Central Prison Karachi)

APPELLANT

VERSUS

The State

RESPONDENT

FIR No.284 OF 2017

U/s: 23 (1) (a) SINDH ARMS ACT

PS: SURJANI TOWN, KARACHI

**SPECIAL CRIMINAL ANTI-TERRORISM APPEAL UNDER  
SECTION 25 OF ANTI-TERRORISM ACT-1997**

Being aggrieved of and dissatisfied with the consolidated impugned judgment dated February 28, 2019, passed by the learned Judge Anti-Terrorism Court No. IV, Karachi, whereby the said Court convicted the appellant in Special Case No. No. 1625-B of 2017 in which appellant was tried for the charge framed against him by the said court, appellant has been convicted and sentenced to suffer RI for 3 years and also pay fine of Rs.10,000/- and in case of default in payment of fine, appellant has been ordered to suffer further RI for six months. ***(Certified Copy of impugned Judgment dated February 28, 2019 is annexed as Annexure "A")***. The appellant prefers this appeal on the following facts and grounds:-

**FACTS AS ALLEGED IN THE FIR**

According to the subject FIR bearing No. 284 of 2017 lodged by the Complainant/SI Ch. Liaquat Ali that he was busy in patrolling of the area in Police Mobile – II along with sub ordinate staff in search of absconder



TAIL APPEAL8369  
8370

IN THE HIGH COURT OF SINDH AT KARACHI

(U. special Anti Terrorism Tail Appeal No 77 of 2019).

(7)

1- Muhammad Naeem Butt  
s/o  
Fida Hussain

2- Ghulam Mustafa  
s/o  
Rasool Pux chandio.

presently both are  
confined at central  
prison, Karachi. ————— appellants

Versus

The state

Respondent.

01- special Case NO. 1625/2017  
FIR NO: 282/2017  
U/S: 353/324/34 P.P.C  
P.S: Surjani Town, Karachi.

02- special Case NO: 1625-A/2017.  
FIR NO: 283/2017  
U/S: 23(i)(a) S.A.A 2013  
P.S: Surjani Town, Karachi.

03- special Case NO: 1625-C/2017  
FIR NO: 285/2017  
U/S: 23(i)(a) S.A.A 2013  
P.S: Surjani Town, Karachi

## THE HIGH COURT OF SINDH AT KARACHI

Spl. CrI. Anti-Terrorism Appeal No.73 of 2019.  
 Spl. CrI. Anti-Terrorism Appeal No.74 of 2019.  
 Spl. CrI. Anti-Terrorism Jail Appeal No.78 of 2019.

**Present:**

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

**Appellants:**

1. Hafeez-ur-Rehman S/o. Muhammad Urs  
 through Mr. Afaq Ahmed, Advocate.
2. Muhammad Naeem Butt S/o. Fida Hussain  
 through Mr. Intikhab Ahmed, Advocate.
3. Ghulam Mustafa S/o. Rasool Bux Chandio  
 through Syed Nadeem-ul-Haq, Advocate.

**For State:**

Through Mr. Muhammad Iqbal Awan, Deputy  
 Prosecutor General.

**Date of hearing:**

**21.02.2020.**

**Date of Judgment:**

**05.03.2020.**

## J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J:-** Accused Hafeez-ur-Rehman S/o. Muhammad Urs, Muhammad Naeem Butt S/o. Fida Hussain and Ghulam Mustafa S/o. Rasool Bux Chandio were tried by the learned Judge, Anti-Terrorism Court No.IV, Karachi in Special Case No.1625/2017 arising out of Crime No.282/2017 u/s. 353/324/34 PPC r/w section 7 ATA, 1997, Special Case No.1625-A/2019 arising out of FIR No.283/2011 u/s 23(I) A Sindh Arms Act, 2013, Special Case No.1625-B of 2017, FIR No.284/2011 u/s 23(I) A Sindh Arms Act, 2013 and Special Case No.1625-C of 2017 FIR No.285/2011 u/s 23(I) A Sindh Arms Act, 2013 registered at P.S. Surjani Town, Karachi. After trial vide judgment dated 28.02.2019 the appellants named above were convicted and sentenced as under:-

- (a) Accused (1) Muhammad Naeem Butt S/o. Fida Hussain, (2) Hafeez-ur-Rehman S/o. Muhammad Urs and (3) Ghulam Mustafa S/o. Rasool Bux found guilty of the charge of offence u/s.324/353-PPC r/w section 6(2) (n) punishable under section 7(1)(h) ATA 1997 and were convicted and sentenced to suffer R.I. for five years each and fine of Rs.20,000/- (Rupees twenty thousand) each. In case of default in payment of fine, they were ordered to suffer further R.I. for one year each.
- (b) Accused (1) Muhammad Naeem Butt S/o. Fida Hussain, (2) Hafeez-ur-Rehman S/o. Muhammad Urs and (3) Ghulam Mustafa S/o. Rasool



Bux also found guilty of the charge of offence u/s. 23(1) (a) of Sindh Arms Act 2013 and convicted and sentenced to suffer R.I. for three years each and fine of Rs.10,000/- (Rupees ten thousand) each. In case of default in payment of fine, they were ordered to suffer further R.I. for six months each.

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

3. The brief facts of the prosecution cases are that on 03.08.2017 complainant/SI Choudhary Liaquat Ali along with his sub-ordinate staff namely ASI Abdul Shakoor, HC Behzaad, PC Noroz Khan, PC Hyder Ali, PC Hassan Aziz was busy in patrolling the area in police mobile-II in search of absconders, terrorists and proclaimed offenders. During patrolling at about 0100 hours, when they reached at Gulshan-e-Kanzeez Fatima Society, Katcha Rasta, Surjani Town, Karachi they saw six persons in suspicious condition boarded on three motorcycles. The police party signaled them to stop. The accused persons on seeing the police mobile started firing upon the police party with intention to kill them. In retaliation and self defence the police party also opened fire. During encounter PC Noroz sustained bullet injury, SI Chaudhry Liaquat called more police force. In this respect ASI/Aamir Malik along with other staff reached at the place of incident. During cross firing three culprits received bullet injuries and fell down on the ground while three culprits fled away from the scene. The police party apprehended injured accused persons. On inquiry the apprehended accused persons disclosed their names as Muhammad Naeem Butt S/o. Fida Hussain, Ghulam Musatafa S/o. Rasool Bux and Hafeez-ur-Rehman S/o. Muhammad Urs. The police recovered one 9-MM Pistol without number, loaded magazine with one round in chamber from the possession of accused Naeem Butt. One 30 bore Pistol without number loaded magazine with one round in chamber recovered from the possession of accused Ghulam Mustafa. One pistol of 30 bore without number along with magazine loaded with four live bullets was also recovered from the possession of accused Hafeez-ur-Rehman. The police party also secured five empties of 30 bore pistol, 10 empties of SMG and 03 empties of 9mm from the place of incident. On demand of valid license accused



persons failed to produce the same. The apprehended accused disclosed the names of absconding accused as Tariq, Asad and Faisal. The recovered case properties were sealed on the spot separately. SI Chaudhry Liaquat prepared memo of arrest and recovery and made sketches of recovered weapons on the spot. The recovered Motorcycles bearing No.KEE-2307 and KTS-3886 were seized u/s.550 Cr.P.C. The injured accused persons and PC Noroz Khan were shifted to Abbasi Shaheed Hospital for Medical Treatment. The police mobile was also damaged during the encounter. After completion of legal formalities, they returned back to PS where FIRs were lodged. The investigation was entrusted to Inspector Muhammad Yousif Khan, who after completion of investigation submitted separate charge sheets before the Administrative Judge, Anti-Terrorism Courts, Karachi, wherein accused Muhammad Naeem Butt son of Fida Hussain, Hafeez-ur-Rehman son of Muhammad Uris and Ghulam Mustafa son of Rasool Bux Chandio were shown in custody and their names were mentioned in column 03 of the challan. Cases were transferred to Anti-Terrorism Court/1<sup>st</sup> Additional District & Sessions Judge West Karachi for disposal in accordance with law.

4. A joint charge against the accused persons was framed to which they all pleaded not guilty and claimed trial of the case.

5. To prove its case the prosecution examined 04 prosecution witnesses and exhibited numerous documents and other items thereafter the side of the prosecution was closed. The statements of the accused were recorded under S.342 Cr.PC in which they denied the allegations leveled against them and claimed false implication. They did not call any defense witnesses 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 judgment dated 28.02.2019, convicted and sentenced the appellants as stated above, hence this appeal has 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 28.02.2019 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 offenses u/s 353 PPC and S.23 (1) (a) of the Sindh Arms Act 2013 and thus did not press these convictions on merits but only requested for a reduction in sentence to some extent in respect of these offenses as according to him S.324 PPC had not been proven beyond a reasonable doubt as there was no intention to murder any one. The evidence reflected that very few rounds were fired at the police, there were some contradictions in the police evidence in respect of the distance from which the rounds were fired, that one of the appellants had enmity with the police and crucially the allegedly injured police officer had not given evidence for some unexplained reason and as such he may not have supported the prosecution case of the accused firing at the police 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 offenses under S. 353 PPC and under S.23 (1) (a) SAA 2013 in respect of all the appellants. He contended that the appellants had been arrested on the spot whilst firing at the police, that all the accused had received firearm injuries on account of the police fire, empties had been recovered from the scene, the police mobile had also been hit, one of the recovered motorcycles belonged to one of the accused, pistols without license had been recovered from each of the appellants, that there were positive FSL reports in respect of the damage to the police mobile and in respect of the recovered pistols and police SMG's used during the encounter 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 fact that the injured

police officer did not give evidence and there appeared to be some enmity between the police and one of the appellants 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 appellants, 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 and S.23 (1) (a) SSA 2013 beyond a reasonable doubt 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 after being shot by the police in an injured condition.
- (c) At the time of the arrest of the appellants on the spot a pistol was recovered from each of them which matched some of the recovered empties with a positive FSL.
- (d) The police mobile received one bullet hole as proven by a positive FSL.
- (e) One of the recovered motor bikes belonged to appellant Chandio and the other recovered motorbike had been stolen.

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 few rounds were fired



at the police, the injured police officer did not give evidence and as such failed through ocular evidence to establish his injury and presence at the scene and we do not deem it safe to rely on medical evidence alone in the absence of the injured policemen's direct ocular evidence and there also appears to be some enmity between one appellant and the police 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 but in the absence of a conviction under S.324 PPC reduce all their sentences from 5 years RI to three years RI and a fine of RS 20,000 each and in default of payment

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by a particular appellant he shall undergo SI for a further period of 6 months.

(c) convict all the appellants under S.23 (1) (a) SAA 2013 and maintain their sentences as set out in the impugned judgment.

The appellants shall have the benefit of S.382-B Cr.PC and their sentences shall run concurrently.

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