

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Sp. Cv ATA 149 & 150 of 2019

Abid Ali vs. The State

HIGH COURT OF SINDH

Composition of Bench: ~~S.B.~~/D. B.

Mr. Justice Mohammad Karim Khan Agha,
Mr. Justice Zulfiqar Ali Sangi

Date(s) of Hearing: 18-11-19

Decide on: 26-11-2019

(a) Judgment approved for reporting:

Yes



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 / overrules / reverses / explains a previous decision.

* Strike out whichever is not applicable.

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- 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.

418(a)
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Deem
By Karim (Jodh)

2047

IN THE HONOURABLE HIGH COURT OF
SINDH, AT KARACHI

Sp. Criminal ATA Appeal. *168* /2019

ABID ALI

S/O. AHMED

Muslim, adult, Resident of Karachi,

At presently confined in

Central Prison, Karachi.....

APPELLANT

*R/O Haidar No 40-40/A DAFOSH Nagar Nazimabad
Karachi*

VERSUS

THE STATE

RESPONDENT

FIR NO. 131 / 2016

U/S.392/324/353/34 PPC

P.S.Shahrah-e-Noor Jehan,
Karachi.

SPECIAL CRIMINAL APPEAL UNDER
SECTION 25 ATA, 1997

Being aggrieved and dissatisfied with the
Impugned Judgment dated: 20-03-2019, announced
and passed by the XVIITH Anti Terrorism Court,
in Spl. Case No. 38 / 2016, thereby convicted
the accused for offense under section
392 PPC to undergo R.I. for five years
with fine of Rs.20,000/- in default of payment
of fine he shall suffer S.I. for one month
more, Under Section 7(h) of Anti-Terrorism
Act, 1997 R/w. Section 353 / 324 PPC to
undergo R.I. for five years with fine of
Rs.20,000/- in case of default of payment
thereof, shall undergo S.I. for one month more.,

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418 (b)

[Signature]
Deputy Registrar (Judl.)

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IN THE HONOURABLE HIGH COURT OF
SINDH, AT KARACHI

Sp. Criminal ATA Appeal. 150 /2019

ABID ALI

S/O. AHMED

Muslim, adult, Resident of Karachi,

At presently confined in

Central Prison, Karachi..... APPELLANT

*R/O House No 10-40/A Pafos Nagar Nazimabad
Karachi*

VERSUS

THE STATE

RESPONDENT

FIR NO. 132 / 2016
U/S.23(i)A SAA.
P.S.Shahrah-e-Noor Jehan,
Karachi.

SPECIAL CRIMINAL APPEAL UNDER
SECTION 25 ATA, 1997

Being aggrieved and dissatisfied with the
Impugned Judgment dated: 20-03-2019, announced
and passed by the XVIITH Anti Terrorism Court,
in Spl. Case No. 38-A / 2016, thereby convicted
the accused for offense under section 23(i)A
SAA 2013 to undergo R.I. for 05-years and to
pay fine of Rs.10,000/- In Case of default of
payment of fine he shall undergo S.I. for one
month more, 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

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IN THE HIGH COURT OF SINDH AT KARACHI

Special Crl. Anti-Terrorism Appeal No.149 of 2019.

Special Crl. Anti-Terrorism Appeal No.150 of 2019.

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Zulfiqar Ali Sangi.

Appellant: Abid Ali son of Ahmed through Mrs. Khadija Kulsoom, Advocate.

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

Date of hearing: 18.11.2019

Date of announcement: 26.11.2019

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Abid Ali son of Ahmed has preferred these appeals against the impugned judgment dated 20.03.2019 passed by the learned Judge Anti-Terrorism Court No.XVII, Karachi in Special Case No.38 of 2016, F.I.R. No.131 of 2016 u/s. 392/324/353/34 PPC r/w section 7 of ATA, 1997 and another Special Case No.38-A of 2016, F.I.R. No.132 of 2016 u/s. 23(I)-A Sindh Arms Act, 2013 both registered at P.S. Shahra-e-Noor Jahan, Karachi whereby the appellant has been convicted and sentenced as under:-

- Under Section 392 PPC to undergo R.I. for five years with fine of Rs.20,000/- and in default of payment of fine he shall suffer S.I. for one month more.
- Under Section 7(h) of Anti-Terrorism Act, 1997 r/w. Section 353/324 PPC to undergo R.I. for five years with fine of Rs.20,000/- in case of default of payment thereof, shall undergo S.I. for one month more.
- Under Section 23(1) (a) of Sindh Arms Act, 2013 to undergo R.I. for five years and to pay fine of Rs.10,000/-. In case of default of payment of fine he shall undergo S.I. for one month more.

All the sentences shall run concurrently and accused shall be entitled to benefit u/s.382-B Cr.P.C.

2. The brief facts of the case as per roznamcha entry No.25 dated 22.06.2016 of PS Shahra-e-Noor Jehan are that ASI Rasool Bux along with his subordinate staff namely PC Dilshad Hussain, PC Zafar Siddiqi returned to PS along with arrested injured accused Abid Ali son of Ahmed and taking the Rickshaw from near Anjuman Complex Block-J, North Nazimabad, Karachi along with S.154 Cr.P.C. statement of the complainant Muhammad Shahroz s/o Muhammad wherein he has stated that he is residing in House No.A/02, Block-J in North Nazimabad, Karachi along with his parents and student of Matric when on 22.06.2016 at about 2210 hours he and his friends Saad s/o Mohiuddin and Faizan Illahi s/o Amjad Illahi proceeded towards their houses after offering Namaz Taraveeh from Masjid Isra. Suddenly, a rickshaw had come in front of them in which three people were riding along with driver, who were dressed in shalwar and Qameez, two persons from them one of whose form and shape seemed to be Pathan and the other one was an Urdu language speaker, have snatched three mobile phones from them and attempted to escape in the same rickshaw towards Anjuman Complex Block-J. Simultaneously, police patrolling party headed by ASI Rasool Bux reached there and the complainant narrated the whole story. Whereupon police party took the complainant in the police mobile and chased the rickshaw at some distance, but the culprits on seeing the police mobile started firing upon them with intention to kill them. In order to overawe the accused, police had also fired in their self defense with the result the rickshaw turned over. One of the accused had received a bullet injury and fell down from the rickshaw while his two accomplices left the rickshaw and escaped from the spot by taking advantage of darkness. The police arrested the injured accused and got recovered three mobiles and one unlicensed pistol of 30 bore loaded with one bullet in chamber and two in magazine from his possession. The ASI demanded the license of the pistol but the accused failed to produce any valid license. The arrested accused disclosed his name as Abid Ali s/o Ahmed and his escaped co-accused as Rashid and Bilal. The ASI prepared the memo of arrest and recovery and recorded the statement of the complainant at the spot, then he took the injured accused to Abbasi Shaheed Hospital along with his letter to MLO for providing medical treatment from where the ASI returned to PS along with ML Certificate No.4615./2016 and the statement u/s. 154 Cr.P.C. of the Complainant Muhammad Shahroz was

incorporated in the FIR book by ASI Rasool Bux as crime No.131/2016 u/s. 392/353/324/34 PPC at PS Shahra-e-Noor Jahan, Karachi and so also he lodged separate FIR No.132/2016 u/s 23(1)(a) of Sindh Arms Act, 2013 on behalf of the State.

3. As per orders of SSP Investigation West-II the Investigation of both crimes were being conducted by SIO/Inspector Syed Zulqarnain of PS Nazimabad who visited the place of incident along with complainant and PC Sufyan where he prepared such memo of inspection in presence of both witnesses. The I.O recorded S.161 Cr.P.C. statements of the witnesses and so also obtained the criminal record of the accused and sent the case property to FSL for opinion and report and so also produced the accused before competent court for remand and after completing the investigation produced the challan in which two accused Rashid and Bilal were shown as absconders, whereas accused Muhammad Abid was shown as arrested. Thereafter the absconder accused Rashid and Bilal were declared proclaimed offenders and proclamation under section 87 and 88 Cr.P.C were issued against them.

4. The charge was framed against the accused to which he pleaded not guilty and claimed his trial.

5. In order to prove its case the prosecution examined 3 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under S.342 Cr.PC whereby he claimed false implication in the case. He did not give evidence on Oath or call any witness in support of his defense case.

6. Learned Judge, Anti-Terrorism Court-XVII, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 20.03.2019, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the accused against his aforesaid convictions.

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

8. Learned counsel for the appellant has contended that the appellant is completely innocent and has been falsely implicated in this case; that the alleged encounter with the police was fake as no injury had been caused to the police party; that the other witnesses whose phones had also been snatched had not been examined as PW's; that there had been a violation of S.103 Cr.PC; that the pistol had been foisted on the appellant by the police and that as such for any of the above reasons the appellant was entitled to be acquitted of the charge based on the benefit of the doubt. Learned counsel for the appellant did not rely on any authority in support of her case.

9. On the other hand learned DPG has contended that the appellant was arrested from the spot; that the firearm was recovered from him; that the FSL was positive and that the appellant had a lengthy CRO for similar types of cases and that the prosecution had proved its case beyond a reasonable doubt and as such the appeal should be dismissed. In support of his contentions he placed reliance on **Muhammed Tufail V State** (2017 SCMR 1845) and **Hakim Khan V State** (2013 SCMR 777)

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 and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

11. For the reasons set out below we have found that the prosecution has proved its case against the appellant beyond a reasonable doubt;

(a) That there was no delay in lodging the FIR's which meant that there was no time for concocting a false case against the appellant.

(b) That the complainant PW 1 Sheroze Khan from whom the mobile phone was snatched from and who was an eye witness to the exchange of fire between the police party and the appellant and his co-accused was an independent witness who had no enmity with the appellant or any reason to falsely implicate the appellant and his evidence in our view is reliable, trust worthy and confidence inspiring.

(c) That the appellant was arrested at the spot and as such his identity is not in issue especially as he received a bullet wound during the encounter and was taken to hospital which issued an MLC to this effect.

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(d) That the complainant PW 1 Sheroze Khan's snatched mobile phone along with two other mobile phones which had been snatched from his friends were recovered from the accused on the spot along with the accused pistol.

(e) That the complainant PW 1 Sheroze Khan's evidence is corroborated in all material respects by the police PW's concerning the encounter, arrest of the appellant and recovery of the appellant's pistol and his mobile phone along with two other snatched mobile phones which belonged to his friends.

(f) That the recovered empties were sealed on the spot and were matched with the recovered pistol through the positive FSL report.

(g) That all relevant police entries had been made.

(h) The fact that no police officer was injured nor the police mobile damaged does not automatically lead to the conclusion that no police encounter took place especially as it appears that each side only discharged 2 rounds each whilst the chase was taking place between the Rickshaw and the police mobile and even otherwise the appellant sustained a firearm injury as per MLC which had no blackening surrounding it which indicates that it was not a close range shot and was probably caused during the chase

(i) The fact that the Rickshaw which was used in the crime was not produced before the trial court has been explained by the fact that it had been returned to its owner.

(j) That it was a night time incident and hence no member of the public was either present, let alone prepared, to be an independent musher to such an incident.

12. This is a case of a serious street crime where firearms were used to prevent the police in discharging their lawful duties which are regrettably on the rise in Karachi and as such a deterrent sentence is necessary in order to discourage the same and since we have found that the prosecution has proved its case beyond a reasonable doubt against the appellant we find no reason to interfere with the convictions or sentences in the impugned judgment save that as we have not found this to be a case which attracts the provisions of the ATA the sections under the ATA are removed from the convictions however the sentences in their entirety are up held so that the convictions and sentences are now as under with the appeal being dismissed apart from the slight variation mentioned below:

- Under Section 392 PPC to undergo R.I. for five years with fine of Rs.20,000/- and in default of payment of fine he shall suffer S.I. for one month more.

- Under Section 353/324 PPC to undergo R.I. for five years with fine of Rs.20,000/- in case of default of payment thereof, shall undergo S.I. for one month more.
- Under Section 23(1)(a) of Sindh Arms Act, 2013 to undergo R.I. for five years and to pay fine of Rs.10,000/-. In case of default of payment of fine he shall undergo S.I. for one month more.

All the sentences shall run concurrently and accused shall be entitled to benefit u/s.382-B Cr.P.C.

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

Arif