

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,*

SPL. CRIMINAL A.T. JAIL APPEAL NO.84 OF 2021

Appellant	Rizwan son of Razaqat through Mr. Habib-ur-Rehman Jiskani, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.
Complainant	Syed Muhammad Immad through Mr. Irfan Bashir Bhutta, Advocate
Date of Hearing.	27.05.2022
Date of Announcement	27.05.2022

J U D G M E N T

Mohammad Karim Khan Agha, J. Appellant Rizwan son of Razaqat was tried in the Anti-Terrorism Court No.X, Karachi in Special Case No.322 of 2020 in respect of FIR No.695 of 2020 under section 397/353/324/186/34 PPC r/w Section 7 Anti-Terrorism Act 1997 registered at PS Gulistan-e-Jauhar, Karachi and vide impugned judgment dated 30.03.2021 the appellant was convicted and sentenced as follows:-

1. The Accused Muhammad Rizwan s/o Muhammad Razaqat is "**convicted**" for the offence u/s. 397 PPC and sentenced to undergo R.I. for "**07**" years;
2. The Accused Muhammad Rizwan s/o Muhammad Razaqat is further "**convicted**" for the offence u/s.7(h) ATA, 1997 and sentenced to undergo R.I. for 05 years with fine of Rs.2,00,000/-. In default in payment of such fine, he shall suffer further S.I. for "**01**" year;

All the above sentences shall run concurrently. The benefit of Section **382-B Cr.P.C.** is also extended to the accused from the date of his arrest.

2. The brief facts of the prosecution case are that the complainant Syed Muhammad Immad was going towards his home after offering Zohar prayer at about 2:15 p.m. when he reached to his house he was stopped by 04 persons

on 02 motorbikes who robbed him of his wallet. This incident was seen by a police mobile of PS Gulistan-e-Jauhar which was on patrol and reached the crime scene. On reaching the crime scene the robbers started firing on the police mobile and the police returned firing in self defence which led to one of the robbers Rizwan being injured by fire arm and being apprehended on the spot. A bank card belonging to the complainant Syed Muhammad Immad was recovered from the appellant/accused Rizwan on the spot who was arrested and taken into custody. This led to an FIR being lodged against the accused /appellant under the aforesaid sections of PPC and ATA, 1997.

3. After usual investigation the case was challoned and sent up for trial where the accused pleaded not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 03 PWs and exhibited various documents. The statement of accused was recorded under section 342 Cr.P.C in which he denied all the allegations leveled against him and claimed that he had been falsely implicated by the police in this case. According to him he was robbed by other individuals and when he put up resistance he was shot and when the police came at the scene they fixed him in this false case. He did not give evidence on oath or call any DW in his defence.

5. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 30.03.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. We have heard the arguments of the learned counsel for the appellant, learned Additional Prosecutor General Sindh and learned counsel for the complainant who have fully supported the impugned judgment and have gone through the entire evidence which has been read out by the learned counsel for the appellant.

8. After our re-assessment of the evidence we find that the prosecution has not proved its case against the appellant beyond a reasonable doubt for the following reasons:-

- a) At the time of appellant's alleged arrest on the spot no weapon was recovered from the appellant;
- b) That no empties have been recovered from the crime scene;
- c) That no policemen was injured, no bullet hit a police mobile or any wall despite alleged encounter going on for about 20 minutes and at least 10 rounds being fired.
- d) That the motorcycle recovered at the crime scene was not linked to the appellant;
- e) With regard to the injuries sustained at the crime scene a MLC shows blackening surrounding the wound which hit the appellant on the leg which indicates that the fire was made between 0 to 3 feet distance which is contrary to the prosecution evidence whereby according to the prosecution evidence firing was not made at such close range;
- f) In addition, the MLO who examined the accused has not been examined;
- g) Apparently a bank card belonging to the complainant was recovered from the accused at the time of his arrest, however, this was not sealed at the spot and might have been foisted on the appellant;
- h) That no independent witness was examined despite this being a day light incident which occurred outside of the house of the alleged victim whose family members would have been expected to be residing;
- i) Appellant throughout the case put the defence which he has taken in his statement recorded under Section 342 Cr.P.C. to each prosecution witness during cross examination which points to potentially some merit in the defence case;
- j) It is well settled criminal jurisprudence that the accused is entitled to the benefit of doubt not as a concession but as of right.

9. Based on the above discussion we find that there are numerous doubts in the prosecution case and as such by extending benefit of doubt to the appellant he is acquitted of the charge, his appeal is allowed and he shall be released unless he is wanted in any other custody case.

10. The above Special Criminal Anti-Terrorism Jail Appeal is disposed of in the above terms.