

## IN THE HIGH COURT OF SINDH, KARACHI

Spl. Cr. AT Jail Appeal No.59 of 2023

**Present Before:**  
**Justice Zafar Ahmed Rajput**  
**Justice Tasneem Sultana**

Appellant	:	Saifuddin son of Ghousuddin, through Mr. Zulfiqar Ali Shaikh, advocate.
Respondent	:	The State, through Mr. Abrar Ali Khichi, Addl. Prosecutor General, Sindh
Date of hearing	:	21.03.2025
Date of order	:	25.04.2025

### **J U D G M E N T**

**Zafar Ahmed Rajput, J.,** Appellant-Saifuddin son of Ghousuddin was tried by the Anti-Terrorism Court XX, Karachi, in Special Cases No.231 and No.231-A of 2020, arising out of FIRs No.641 and 642 of 2020, registered under sections 394, 397, 353, 324, 34, PPC read with section 7 of the Anti-Terrorism Act, 1997 (“**Act of 1997**”) and under section 23(1)(a) of the Sindh Arms Act, 2013 (“**Act of 2013**”), respectively, at Police Station Sachal, District East, Karachi.

2. As per the contents of the crime reports, on 22.7.2020 at 02.40 pm, complainant Makhan was available along with his brother Muhammad Ismail and labourers Muhammad Nadeem and Muhammad Akhtar at his go-down of scrap, situated in Sikandar Goath, when three accused on two motorbikes came there, who on showing pistols snatched Rs.3,000/-, one colour copy of CNIC from him and robbed mobile phones and cash amount from his brother and labourers. On offering resistance, they opened fire on his brother and labourers, who sustained injuries on their person, and thereafter they (accused) went away from there on their motorbikes. The complainant followed them; meanwhile, police party also arrived there and chased them. Eventually, an encounter took place wherein the appellant was apprehended, who sustained fire shots on his both legs, while co-accused made good their escape, whose names the appellant disclosed as Ameen and Faisal. From

personal search of the appellant, police recovered one pistol of 30 bore, along with an empty magazine and one live bullet loaded in its chamber, cash amount of Rs.3,000/- and photocopy of complainant's CNIC. Police also secured four empties of 30 bore and five of SMG from the spot and seized the motorcycle bearing registration No.KLJ-2671.

3. The learned trial Court, after a full-fledged trial convicted the appellant and sentenced him, vide judgment dated 26.5.2022, as under: -

- (i) For offence under section 397, PPC to undergo RI for seven years and pay fine of Rs.20,000/-; in default thereof, he shall undergo SI for three months more.
- (ii) For offence under section 7(h) of the Act of 1997 r/w section 353, PPC to undergo RI for two years and pay fine of Rs.20,000/-; in default thereof, he shall undergo SI for three months more.
- (iii) For offence under section 7(i)(b) of the Act of 1997 r/w section 324, PPC to undergo RI for five years and to pay fine of Rs.20,000/-; in default thereof, he shall undergo SI for six months more.
- (iv) For offence under section 23(1)(a) of the Act of 2013 to undergo RI for five years and to pay fine of Rs.20,000/-; in default thereof, he shall suffer SI for three months more.

4. At the very outset, learned counsel for appellant, after arguing the matter at some length, has submitted that, under instructions, he does not challenge the conviction and sentences recorded under the provisions of PPC as well as Act of 2013, however, as the provision of sections 7(h) and 7(i)(b) of Act of 1997 do not attract to the facts of the case, he prays for setting-aside the conviction recorded and sentences awarded to the appellant in aforesaid provisions of Act of 1997.

5. Learned Addl. PG while referring the cases of Muhammad Farhan alias Irfan v. The State (**2021 SCMR 488**) and Muhammad Akram v. The State (**2022 SCMR 18**), has conceded the contentions of learned counsel for appellant.

6. Heard learned counsel for appellant, learned Addl. PG and with their able assistance perused the material available on record.

7. Since learned counsel for the appellant did not challenge the conviction and sentences under the provisions of PPC and Act of 2013, we are not inclined to deliberate on the evidence led by the prosecution to substantiate the charge against the appellant under the said provisions and we confine ourselves to only consider the request of learned counsel for the appellant, supported by learned Addl. PG, for the conviction and sentences awarded to the appellant under the provisions of Act of 1997.

8. It appears from the perusal of the evidence on record that the appellant committed the offence under the provisions of PPC and nowhere in the evidence of prosecution witnesses it is mentioned that he is a person of desperate character having any previous antecedents of criminal activities. No injury of whatsoever nature has been caused to any police official/party. It is an admitted position that in the alleged encounter even no bullet hit the police mobile. The alleged encounter was apparently not projected or intended by the appellant and it is a case of ineffective firing from the appellant's side vis-à-vis tends to cause serious doubt on the version of the prosecution regarding police encounter.

9. For the foregoing, we are of the considered view, that the appellant's conviction and sentences awarded under sections 7(h) and 7(i)(b) of Act of 1997 are not sustainable in law; accordingly, his conviction and sentences to that extent is set-aside. Remainder of the conviction and sentences consequent thereupon including the amount of fine are kept intact.

In the above terms, this Spl. Cr. AT Jail Appeal No.59/2023 is disposed of.

Judge

Judge

Karachi,  
Dated:25.4.2025  
Ayub