

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Arshad Hussain Khan*

SPL. CR. A.T. APPEALS NO.21 & 22 OF 2022

Appellant	Muhammad Ismail s/o. Hayat through Mr. Ajab Khan Khatak, Advocate.
Respondent	The State through Mr. Ali Haider Saleem, Addl. Prosecutor General Sindh.
Date of Judgment	30.11.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- We intend to dispose of above captioned two appeals by a single judgment as both the appeals arising of the same impugned judgment.

2. Appellant Muhammad Ismail son of Hayat was tried in the Court of Judge, Anti-Terrorism Court No.XX, Karachi in Special Case No.346 and 346-A of 2020 under FIR Nos.702/2020 u/s. 383/324/427/34 PPC r/w Section 7 ATA 1997 and FIR No.703/2020 u/s. 23(I)-A, SAA 2013 both were registered at PS Sohrab Goth Karachi and vide judgment dated 13.01.2022 he was convicted and sentenced as under:

- A. Accused Muhammad Ismail found guilty of the charge of Section 324 PPC punishable u/s. 7 of ATA 1997 was convicted and sentenced to suffer R.I. for five (05) years with fine of Rs.20,000/= and in case of default in payment he shall suffer R.I. for six months more;
- B. Accused Muhammad Ismail found guilty of the charge of Section 353 PPC was convicted and sentenced to suffer R.I. for One (01) year;
- C. Accused Muhammad Ismail found guilty of the charge of Section 23(I) A of SAA 2013 for which he was convicted and sentenced to suffer R.I. for five (05) years with fine of Rs.20,000/= and in case of default in payment he shall suffer R.I. for six months more;

All the sentences were ordered to run concurrently. However, benefit of Section 382-B was also extended to the appellant.

3. Brief facts of the prosecution case are that on 20.09.2020 complainant ASI Turab Ali Shah of PS Sohrab Goth was on patrolling duty along with his subordinate staff and during such patrolling when it was about 2355 hours they reached at the Indus Plaza No.8 Road Karachi where he saw three culprits were coming on two motorcycles, they signaled them to stop but the culprits, who after seeing police party, started making straight fire shots at police party with an intention to commit their murder and in response to such fire shots made by the accused persons the police also allegedly made fire shots in their defense and during such cross firing two of the accused persons received fire arm injuries and fell down on the ground and later on they were arrested by police party and their companion had fled away from spot. On an inquiry accused persons disclosed their names as Mohammad Ismail and Feroz and they also disclosed the name their accomplice to be Amir Khan, who managed to escape from the place of incident. The personal search of accused Mohammad Ismail was conducted which led to the recovery of a revolver of 32 bore bearing NO.265 loaded with two live bullets from his possession. His further personal search was conducted which led to the recovery of three mobile phones viz: one Samsung, Moto E-4 and Infinix and Cash amount of Rs.6800/- from his possession. The personal search of accused Feroz was conducted which led to the recovery of a pistol of 30 bore loaded with five live bullets in its magazine from his possession. His further personal search was conducted which led to the recovery of one mobile phone viz: Oppo and Samsung and cash amount of Rs.5000/- from his possession. The accused failed to produce any license of the weapons. The motorcycle 125 having engine No.R809329, chassis No: EB491577 was seized by the police. The police mobile had also received fire shots. The police also secured five empties of SMG and two empties of 30 bore from the place of incident.

4. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.

5. The prosecution in order to prove its case examined 10 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him and claimed false implication

by the police. However, the appellant did not give evidence on oath nor produced any DWs in support of his defence.

6. After hearing the parties and 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 convictions.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 13.01.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. At the very outset, learned counsel for the appellant under instructions stated that he did not press these appeals on merit as the appellant accepted his guilt provided that he was given some reasonable reduction in sentence based on following special features/mitigating circumstances :-

- i) The appellant is a young man and has large family to support.
- ii) The appellant is first time offender and capable for reformation.
- iii) By accepting his guilt the appellant has shown genuine remorse and saved the precious time of this court.
- iv) The appellant had served out a substantial portion of his sentence.

9. At the very out set we find that this case does not fall within the provisions of ATA 1997 based on the particular facts and circumstances there is no design, intent or object to create terror as such the appellant is acquitted from all the ATA offences.

10. We have gone through the evidence on record and find that the appellant after an encounter with the police was arrested on the spot in an injured condition. We find that the evidence of police in this regard to be reliable, trust worthy and confidence inspiring and as such believe the same. At the time of his arrest an unlicensed pistol was also recovered from the appellant which matched with the empties recovered from the

crime scene. As such we find that the prosecution has proved its case beyond any reasonable doubt and uphold the convictions of the appellant in respect of the offences under PPC.

11. With regard to sentencing based on the above mitigating factors and in particular no objection given by the Addl. Prosecutor General Sindh and the fact that the appellant has served out a major portion of his sentence we hereby reduce the appellant's sentences under section 324/353 of PPC and Section 23(I)A of SAA 2013 to the period already undergone in custody and waive off any fine payable by him. The appellant shall be released unless he is wanted in any other custody case.

12. The instant appeals stand disposed of in the above terms.