

Not for reporting.

Convicted u/s 353  
324 and 13(D)

433

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## IN THE HIGH COURT OF SINDH AT KARACHI

Special ATA Appeal No \_\_\_\_\_ / 2015

27

Sarfraz alias Bhoora  
S/o Sakhi Muhammad  
Muslim, Adult, Resident of  
Mujahid Colony, Street 07,  
Katchi Abadi, Dalmia, Karachi.  
Presently confined in Central Prison,  
Karachi.

05-08-2015  
15/8/2015

APPELLANT

2480

*Versus*

The State..... RESPONDENT

FIR No. 653/2011  
U/S. 353/324/34 PPC  
P.S. Aziz Bhatti, AVCC/CIA

### APPEAL UNDER SECTION 25 OF ANTI TERRORISM ACT, 1997 READ WITH SECTION 410 CR.PC

Being aggrieved and dissatisfied with the impugned judgment dated 23-04-2015 passed by the Anti Terrorist Court No. 2 in Special Case No. 171/2011, whereby the above named Appellant was convicted for Life Imprisonment, however the benefit of section 382-B Cr.P.C has been extended in favor of Appellant, therefore the Appellant above named have preferred the instant appeal praying herein to set aside the impugned judgment and acquit him, inter-alia on consideration of the following among other facts and grounds:-

(Copy of the impugned Judgment dated 23-04-2015 is herby marked as Annexure 'A')

### FACTS

That is a nutshell facts in brief leading to the filing of instant appeal is that on 28-10-2011 at about 1840 hours Inspector Ghulam Hussain Arain of P.S. Aziz Bhatti alongwith Police party under the supervision of SHO

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**THE HIGH COURT OF SINDH AT KARACHI**

Special ATA Appeal No 28 / 2015

Sarfraz alias Bhoora  
S o Sakhi Muhammad  
Muslim, Adult, Resident of  
Mujahid Colony, Street 07,  
Katchi Abadi, Dalmia, Karachi.  
Presently confined in Central Prison,  
Karachi.

05-5-2015  
05/25

0421

..... APPELLANT

*Versus*

The State..... RESPONDENT

FIR No 654/2011  
U/S 13-D A.O  
P.S. Aziz Bhatti

**APPEAL UNDER SECTION 25 OF ANTI  
TERRORISM ACT, 1997 READ WITH SECTION  
410 CR.PC**

Being aggrieved and dissatisfied with the impugned judgment  
dated 23-04-2015 passed by the Anti Terrorist Court No. 2 in Special Case  
No. 72/2011, whereby the above named Appellant was convicted for R.I  
Seven Years, however the benefit of section 382-B Cr.P.C has been  
granted in favor of Appellant, therefore the Appellant above named have  
filed the instant appeal praying herein to set aside the impugned  
judgment and acquit him, inter-alia on consideration of the following among  
other facts and grounds:-

*(Copy of the impugned Judgment dated 23-04-2015 is hereby  
marked as Annexure 'A')*

**FACTS**

That is a nutshell facts in brief leading to the filing of instant appeal  
that on 24-10-2011 at about 1840 hours Inspector Ghulam Hussain Arain  
P.S. Aziz Bhatti alongwith Police party under the supervision of SHO



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**IN THE HIGH COURT OF SINDH AT KARACHI**

Special ATA Appeal No \_\_\_\_\_ / 2015

75

Sarfraz alias Bhoora  
S/o Sakhi Muhammad  
Muslim, Adult, Resident of  
Mujahid Colony, Street 07,  
Katchi Abadi, Dalmia, Karachi.  
Presently confined in Central Prison,  
Karachi.

05-5-2015  
24/8

..... APPELLANT

*Versus*

The State..... RESPONDENT

FIR No 655/2011  
U/S 4/5 Explosive Act  
P.S. Aziz Bhatti

**APPEAL UNDER SECTION 25 OF ANTI  
TERRORISM ACT, 1997 READ WITH SECTION  
410 CR.PC**

Being aggrieved and dissatisfied with the impugned judgment  
dated 23-04-2015 passed by the Anti Terrorist Court No. 2 in Special Case  
No. 173/2011, whereby the above named Appellant was convicted with R.I  
Fourteen Years, however the benefit of section 382-B Cr.P.C has been  
granted in favor of Appellant, therefore the Appellant above named have  
filed the instant appeal praying herein to set aside the impugned  
judgment and acquit him, inter-alia on consideration of the following among  
other facts and grounds:-

*(Copy of the impugned Judgment dated 23-04-2015 is hereby  
marked as Annexure 'A')*

**FACTS**

That is a nutshell facts in brief leading to the filing of instant appeal  
that on 28-10-2011 at about 1840 hours Inspector Ghulam Hussain Arain

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## IN THE HIGH COURT OF SINDH AT KARACHI

Spl. CrI. Anti-Terrorism Appeal No.87 of 2015.  
Spl. CrI. Anti-Terrorism Appeal No.88 of 2015.  
Spl. CrI. Anti-Terrorism Appeal No.89 of 2015.

Present:

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

Appellant: Sarfraz alias Bhoora S/o. Sakhi  
Muhammad through M/s. Hasan  
Feroz and Shah Imroze Khan,  
Advocates.

Respondent: The State through Mr. Saleem Akhtar  
Buriro, Additional Prosecutor General.

Date of hearing: 31.03.2020.

Date of Judgment: 08.04.2020.

### J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J:-** Accused Sarfraz alias Bhoora was tried by learned Judge, Anti-Terrorism Court No.II, Karachi in a common judgment for three separate offences being Special Case No.171 of 2011 arising out of Crime No.653/2011 u/s. 353/324/186/34 PPC, Special Case No.172/2011 arising out Crime No.654/2011 u/s. 13-D of Arms Ordinance and Special Case No.173/2011 arising out of Crime No.655/2011 u/s. 4/5 Explosive Substances Act 1908 registered at P.S. Aziz Bhatti (AVCC/CIA). After trial vide judgment dated 23.04.2015 appellant Sarfraz alias Bhoora S/o. Sakhi Muhammad was convicted for Life Imprisonment u/s. 7 (h) of Anti-Terrorism Act, 1997. He was also convicted for 7 years u/s 13-D of Arms Ordinance. The appellant was also awarded R.I. for 14 years u/s 4 and 5 of Explosive Substances Act, 1908. All the sentences were ordered to be run concurrently. The benefit of section 382-B Cr.PC was also extended to the appellant.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.II Karachi, these appeals have been preferred by the appellant.



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3. The brief facts according to FIR No.653/2011 filed by Sub-Inspector Ghulam Hussain Arain of P.S. Aziz Bhatti on 28.11.2011 at about 1840 hours are that on the same day he along with his police party which included S.I. Umaruddin, SI Ishtiaq Hussain, ASI Abdul Jabbar Abro, ASI Ahmed Ali Suhag, HC Bashir Ahmed, PC Abdul Naveed, PC Javed Ahmed, PC Mansoor, PC Qamar Abbas, PC Asghar Ali, PC Noor Sultan and PC Abdul Majid under the supervision of SHO Ahsanullah Jatt was on ilaqa gusht in search of accused when he received spy information that in a house near Golden Kitchen Gali No.15 Dalmia Katchi Abadi wanted persons Sarfraz alias Bhora, Waqas Foji, Mehmood Kala alias Chandio were present armed with heavy weapons upon which he reached the pointed place at about 1330 hours when from inside the house of accused persons seeing the police party started firing at them. Sub-Inspector in self defence had retaliated upon which the accused persons tried to escape however, one accused was arrested from whom a K.K. was recovered from his left hand on the body of which the numbers were rubbed on the bullet group two numbers were rubbed whereas on the body there was number 2956 one live bullet in chamber whereas magazine was empty. On his further search was recovered two magazines of K.K tucked on the front side of right and left containing 15 live rounds each and a thella made of cloth was hanging over on the shoulder from his left side from which was recovered 60 rounds of K.K. and a hand grenade wrapped in plastic thelli was recovered and Rs.150/- from his right pocket. The arrested accused disclosed his name as Sarfraz alias Bhora S/o. Sakhi Muhammad, he could not produce the license for his weapon and disclosed the names of escaping accused as Waqas Foji, Mehmood Kala. A repeater which was lying on the floor of the house, a repeater 12 bore, one cartoon without number and a pistol 30 bore one round in chamber and the magazine was empty. There was no plastic cover of both the sides of butt. Arrested accused disclosed that the repeater was of Waqas Foji and the pistol belonged to Mehmood Kala alias Chandio who had thrown the arms and had escaped. As such cases were registered against all the three accused u/s. 353/324/34 PPC and separate case u/s 13-A-13-E of Arms Ordinance and u/s 4 and 5 of Explosive Substances Act 1908 was registered against the accused and each case was registered against the



escaping accused. The arms and ammunition was sealed on the spot and different FIRs were registered against the accused.

4. After registration of the FIRs, usual investigations were carried out and the charge against accused Sarfraz was framed on 31.07.2012 to which he pleaded not guilty and claimed to be tried.

5. To prove its case the prosecution examined 03 prosecution witnesses and thereafter the side of the prosecution was closed. The statement of the accused u/s 342 Cr.P.C. was recorded in which he had claimed false implication however he did not examine himself on oath or call any defense witness in support of his defense case.

6. Learned Judge, Anti-Terrorism Court No.II, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 23.04.2015, convicted and sentenced the appellant as stated above, hence these appeals have been filed by the appellant against his convictions.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 23.04.2015 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 appellant has contended that the appellant has been falsely implicated in this case, that he was not present at the place of the incident and was arrested from his house, that the arms and ammunition have been foisted upon him and that no encounter took place between him and the police and as such based on him being extended the benefit of the doubt he be acquitted of the charge. In support of his contentions he has placed reliance on the cases of **State through Advocate-General, Sindh, Karachi v. Farman Hussain and others** (PLD 1995 Supreme Court 1), **Mehmood Ahmad and 3 others v. The State and another** (1995 SCMR 127), **Ali Muhammad and 2 others v. The State** (2007 YLR 894), **Abdul Ghaffar v. The State** (2001 YLR 500), **Ikram Ullah v. The State** (2010 P. Cr.L. 213), **Muhammad Shafiq v. The State** (PLJ

1991 Cr.C (Lahore) 396 (DB), **Abdul Sattar & 3 others v. The State** (SBLR 2015 Sindh 113) and **Muhammad Rafiq-ul-Islam v. The State** (1998 P. Cr.LJ 1262).

9. On the other hand learned Additional Prosecutor General has fully supported the impugned judgment. He has contended that the appellant was arrested from the spot after firing at the police, that the weapons were recovered from him at the spot and there is a positive FSL report and as such the prosecution has proved its case against the appellant beyond a reasonable doubt. He submitted that this case fell within the ambit of the ATA however when confronted by the court he conceded that the explosives recovered from the appellant was in fact teargas which did not fall within the ambit of the Explosive Substances Act 1908. In support of his contentions he placed reliance on **Santas Maria Teresa v. The State** (1991 MLD 2576), **Mukhtiar v. The State** (2003 SCMR 1479), **Muhammad Arif alias Mama v. State** (PLJ 2003 SC 1015) and **Moula Bux and 3 others v. The State** (2010 YLR 88).

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

11. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt that the appellant has committed the offenses u/s. 353/324/34 PPC and u/s 13-D of the Arms Ordinance for the following reasons:

- (a) that the appellant was arrested on the spot.
- (b) that at the time of his arrest a huge quantity of arms and ammunition was recovered from him
- (c) that the weapons recovered from and with the appellant have produced positive FSL reports.
- (d) that the prosecution PW's corroborate each other in all material respects that they were directly fired upon by the appellant with intent to kill them and that they arrested him on the spot along with the weapons and ammunition.



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(e) that no enmity has been suggested against any of the PW's and as such they had no reason to implicate him in any false case. Under such circumstances it is settled by now that police witnesses are as reliable as any other witness.

12. We however do not find that the appellant has committed any offense under the Explosive substances Act 1908 as conceded by learned APG and as such the appellant is acquitted of this charge.

13. We also find that the offenses committed u/s 353/324/34 PPC were the outcome of a sudden raid on the premises by the police where the appellant was residing which lead to him firing at the police in order to avoid his arrest and as such there was no intent, object or design to create terror and as such these offenses do not fall under the purview of the ATA.

14. Thus, we convict the appellant for offenses u/s 353/324/34 PPC and u/s 13-D of the Arms Ordinance and sentence him as under;

(a) For offenses under S.324/34 PPC for 7 years RI and a fine of Rs. 50,000 and in default of payment he shall further under go 6 more months SI.

(b) For offense u/s 353 PPC for 2 years RI and

(c) For offense u/s 13-D of Arms Ordinance for 7 years RI.

All sentences shall run concurrently and the appellant shall have the benefit of S.382 B Cr.PC and since he has not been convicted under the ATA the appellant shall also be entitled to all other remissions applicable under the law.

15. The appeals dismissed **except** as modified above and are disposed of in the above terms.