

Arms Case - Acquitted S-324

Convicted S.353 + 13-D Armed 414

PRESENTED ON

07-05-2019

*[Signature]*  
Deputy Registrar (Judl.)

1676

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

A.T.A.  
SPL Criminal Appeal No. 129 /2019

1. **Farhan Memon**  
Son of Ali Dino Memon  
Muslim, adult, resident of:  
House No.440, Ghousia Masjid,  
Tharo Lane Garden West, Karachi
2. **Shahnawaz Baloch**  
Son of Abdul Rehman  
Muslim, adult, resident of:  
House No.104, Sector-9/A  
Scheme No.42, Musharraf Colony  
Hawksbay Karachi
3. **Abdul Haq @ Abul Haq @ Ablu**  
Son of Abdullah  
Muslim, adult, resident of:  
House No.N-198, Tharo Lane,  
Pakistan Quarter, Karachi  
All Muslims, adults, presently  
Confined at Central Jail  
Karachi..... Appellants

**VERSUS**

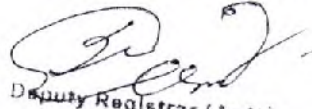
The State ..... Respondent

FIR No.02/2019  
U/S: 353/324/34 PPC  
R/w 7-ATA 1997  
P.S: Soldier Bazar Karachi

**CRIMINAL APPEAL AGAINST CONVICTION U/S 25**  
**(I) OF ATA 1997 R/W SECTION 410 Cr.P.C.**

Being aggrieved and dissatisfied with the impugned  
judgement dated 30-04-2019, passed by the Learned Anti

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PRESENTED ON  
07-05-2019
  
Deputy Registrar (Judl.)

1678

## IN THE HIGH COURT OF SINDH AT KARACHI

spc <sup>ATA</sup> Criminal Appeal No. 131 /2019

**Shahnawaz Baloch**

Son of Abdul Rehman

Muslim, adult, resident of:

House No.104, Sector-9/A

Scheme No.42, Musharraf Colony

Hawksbay Karachi

Presently confined

At Central Jail,

Karachi..... Appellant

## VERSUS

The State ..... Respondent

FIR No.04/2019

U/S: 23 (i) A SAA

P.S: Soldier Bazar Karachi

**CRIMINAL APPEAL AGAINST CONVICTION U/S 25**  
**(I) OF ATA 1997 R/W SECTION 410 Cr.P.C.**

Being aggrieved and dissatisfied with the impugned judgement dated 30-04-2019, passed by the Learned Anti Terrorism Court No.X, Karachi in Spl. Case No.93-B/2019, whereby the Learned Trial Court sentenced the accused as under:-

1. The accused Farhan Memon S/o Ali Dino Memon convicted for the offence U/s 7 (h) of ATA 1997 R/w Section 353/324 PPC and sentenced to undergo RI for 10 years with fine of Rs.100000/- in

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## IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Appeal No.129 of 2019.  
Special Criminal Anti-Terrorism Appeal No.130 of 2019.  
Special Criminal Anti-Terrorism Appeal No.131 of 2019.  
Special Criminal Anti-Terrorism Appeal No.132 of 2019.

Present:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Muhammad Saleem Jessar.

Appellant	1. Farhan Memon s/o Dino Memon 2. Shahnawaz Baloch s/o Abdul Rehman 3. Abdul Haq @ Abul Haq @ Ablu s/o Abdullah all through Mr. Asadullah Memon, Advocate.
Respondent	The State, through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General, Sindh
Date of Hearing	20.03.2020.
Date of Judgment	03.04.2020.

### J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J:-** Accused Farhan Memon s/o Dino Memon, Shahnawaz Baloch s/o Abdul Rehman and Abdul Haq @ Abul Haq @ Ablu s/o Abdullah were tried by the learned Judge, Anti-Terrorism Court No.X, Karachi in Special Cases No.93/2019 arising out of Crime No.02/2019 u/s.353/324/34 PPC, registered at PS Soldier Bazar, Karachi, Special Case No.93-A/2019 arising out of Crime No.03/2019 U/s. 23(i)(a) SAA of 2013, registered at P.S. Soldier Bazar, Karachi, Special Case No.93-B/2019 arising out of Crime No.04/2019 u/s. 23(i)(a) SAA of 2013, registered at P.S. Soldier Bazar, Karachi and Special Case No.93-C/2019 arising out of Crime No.05/2019 u/s. 23(i) (a) SAA of 2013, registered at P.S. Soldier Bazar, Karachi . After trial, vide judgment dated 30.04.2019 the appellants named above were convicted and sentenced as under:-

1. Accused Farhan Memon s/o Ali Dino Memon is hereby convicted for the offence u/s Section 7 (h) of ATA 1997 r/w. S.353/324 PPC and sentenced to undergo R.I. for 10 years with fine of Rs.100,000/-. In default in payment of such fine, he shall suffer further R.I. for 06 months.

2. I also convict the accused Farhan Memon s/o. Ali Dino Memon for the offence under Section 25 of Sindh Arms Act, 2013 and sentence him to undergo R.I. for 07 years with fine of Rs.50,000/-. In default in payment of such fine, he shall suffer further R.I. for 06 months.
3. Accused Shahnawaz Baloch s/o Abdul Rehman is hereby convicted for the offence u/s Section 7 (h) of ATA 1997 r/w. S.353/324 PPC and sentenced to undergo R.I. for 10 years with fine of Rs.100,000/-. In default in payment of such fine, he shall suffer further R.I. for 06 months.
4. I also convict the accused Shahnawaz Baloch s/o. Abdul Rehman for the offence under Section 25 of Sindh Arms Act, 2013 and sentence him to undergo R.I. for 07 years with fine of Rs.50,000/-. In default in payment of such fine, he shall suffer further R.I. for 06 months.
5. Accused Abdul Haq @ Abul Haq @ Ablu s/o Abdullah is hereby convicted for the offence u/s Section 7 (h) of ATA 1997 r/w. S.353/324 PPC and sentenced to undergo R.I. for 10 years with fine of Rs.100,000/-. In default in payment of such fine, he shall suffer further R.I. for 06 months.
6. I also convict the accused Abdul Haq @ Abul Haq @ Ablu s/o. Abdullah for the offence under Section 25 of Sindh Arms Act, 2013 and sentence him to undergo R.I. for 07 years with fine of Rs.50,000/-. In default in payment of such fine, he shall suffer further R.I. for 06 months.

All the above sentences shall run concurrently. The benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.X, Karachi, the aforesaid appeals have been preferred by the appellants.

3. The brief facts of the prosecution case are that on 04.01.2019 in between 0530 to 0602 hours ASI Muzaffar Ali Gujjar (complainant) registered FIRs bearing No.02 to 05 of 2019 u/s. 353/324/186/34 PPC r/w Section 7 ATA, 1997 and 23(i)A SAA, 2013 at PS Soldier Bazar, Karachi stating therein that on 03.01.2019 he was on patrolling duty along with his subordinate staff in Government Mobile, Walkie Talkie. During patrolling duty, when the police party reached at Love Line Signal, a spy/informant informed the complainant that "03" nominated/absconding accused persons of case crime No.365/2018 U/s.397/324/34 PPC, PS Soldier Bazar namely Farhan Memon, Shahnawaz Baloch and Abdul Haq @ Abul Haq @ Ablu were selling "Charas" at Service Road, near Lyari Expressway,



Tharolane, Karachi. On such information, the police party immediately rushed to the pointed place and complainant also called Police Mobile-II for assistance. Thereafter, the police party reached at the pointed place at about 0330 hours and on seeing them the culprits started direct firing upon them, with intent to commit their intentional murder and deter them from discharging their lawful duties and official functions. In retaliation the police party also made fire shots upon the assailants in their self-defence. The culprits started running away towards Tharolane, in order to evade their arrest. Due to the firing of police all "03" assailants sustained bullet injuries and they fell down on the ground. Thereafter, the police party apprehended them on the spot after encircling them. The complainant also inquired the names of injured accused persons, who disclosed their names as Farhan Memon s/o Dino Memon, Shahnawaz Baloch s/o Abdul Rehman and Abdul Haq @ Abul Haq @ Ablu s/o Abdullah. Thereafter the complainant conducted personal search of accused Farhan Memon and recovered one 30 bore Pistol from his right hand, along with loaded magazine having 02 rounds, whereas, 01 round, loaded in the chamber, upon his further personal search, he also secured 1020 grams of "Charas" and Cash Rs.300/- from front pocket of his kameez. Thereafter complainant conducted personal search of accused Shahnawaz and recovered one 30 bore Pistol from his right hand, along with loaded magazine having 02 rounds, whereas 01 round loaded in the chamber, upon his further personal search, he also secured 1040 grams of "Charas" and Cash of Rs.400/ from front pocket of his kamees. Thereafter complainant conducted personal search of accused Abdul Haq and he recovered one 30 bore Pistol from his right hand, along with loaded magazine having 01 round loaded in the chamber, upon his further personal search, he also secured 1070 grams of "Charas" and Cash of Rs.500/ from his possession. The complainant also inquired regarding licenses of the recovered pistols from the accused persons but they could not produce the same. Thereafter, the complainant prepared joint memo of arrest, recovery and seizure on the spot, sealed the recovered pistols, bullets and magazines, separately in cloth parcels, including "Charas". The police party also secured 06 empty shells of 30 bore pistol, 04 empty shells of SMG and 04 empty shells of 9 MM Pistol from the place of wardaat and sealed them on the spot, separately in cloth parcels. The injured accused persons were shifted to Civil Hospital, Karachi in Police



Mobile-II through ASI Muhammad Khan, for their medical treatment. The police party then returned to PS along with case property and relevant police papers. Hence these FIRs were filed against the accused persons.

4. After completion of usual investigation the formal charge against the accused persons was framed to which they all pleaded not guilty and claimed trial of the case.

5. To prove its case the prosecution examined 04 prosecution witnesses and exhibited numerous documents and other items thereafter the side of the prosecution was closed. The statements of all the accused persons u/s 342 Cr.P.C were recorded in which they denied all the allegations leveled against them and claimed false implication. None of the accused examined themselves on oath or called any DW in support of his defense case.

6. Learned Judge, Anti-Terrorism Court No.X, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 30.04.2019, convicted and sentenced the appellants as stated above, hence these appeals have been filed by the appellants against their convictions.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 30.04.2019 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 appellants has contended that the evidence on record only showed that the prosecution had proved its case beyond a reasonable doubt against the appellants for committing offenses u/s 353 PPC and S.23 (1) (a) of the Sindh Arms Act 2013 and thus did not press these convictions on merits but only requested for a reduction in sentence to some extent in respect of these offenses as according to him S.324 PPC had not been proven beyond a reasonable doubt as their was no intention to murder any one. The evidence reflected that very few rounds were fired at the police, there were some contradictions in the police evidence, that no policemen was injured and that there was no evidence that the

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police mobile was even hit by a bullet and at most this was a case of aerial firing in order to enable the appellants to make their escape good and not to kill any policemen and as such for any of the above reasons he contended that the accused should be acquitted of the offense under S.324 PPC by extending the benefit of the doubt to the appellants. With regard to reduction in sentence in respect of offenses u/s 353 PPC and S.23 (1) (a) of the Sindh Arms Act 2013 he submitted that (a) all the appellants were of young age, (b) all the appellants were the sole bread winners of large families who relied on their financial support and (c) all the appellants were first time offenders who were capable of reformation

9. Learned Deputy Prosecutor General has fully supported the impugned judgment in respect of the offenses under S. 353 PPC and under S.23 (1) (a) SAA 2013 in respect of all the appellants. He contended that the appellants had been arrested on the spot whilst firing at the police, that all the accused had received firearm injuries on account of the police fire, empties had been recovered from the scene, pistols without license had been recovered from each of the appellants, that there were positive FSL reports in respect of the recovered pistols and police SMG's used during the encounter and thus the prosecution had proved its case beyond a reasonable doubt with respect to offenses under S.353 PPC and S.23 (1) (a) SAA 2013. He however submitted that for the reasons mentioned by the learned counsel for the appellants there appeared to be some doubts in the prosecution case in respect of the offense u/s 324 PPC. When confronted by the court he also candidly conceded that the provisions of the ATA were not applicable to this case and also conceded that the mitigating circumstances raised by the appellants in respect of offenses under S.353 PPC and S.23 (1) (a) SAA 2013 justified a reduction in sentences for those offenses to some reasonable extent.

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 appellants, the impugned judgment with their able assistance and have considered the relevant law.



11. After our reassessment of the evidence we are of the view that the prosecution has proved its case against all the appellants under S.353 PPC and S.23 (1) (a) SSA 2013 beyond a reasonable doubt for the following reasons;

- (a) There was no delay in registering the FIR which would allow any time for the police to cook up a false case against the appellants.
- (b) The appellants were arrested on the spot after being shot by the police in an injured condition as corroborated by the medical evidence.
- (c) At the time of the arrest of the appellants on the spot a pistol was recovered from each of them which matched some of the recovered empties with a positive FSL report.
- (d) That according to the spy information the appellants would be attempting to sell narcotics at Lyari expressway and narcotics were recovered from the accused on their arrest at Lyari express way.
- (e) That the police evidence corroborated each other in all material respects and there was no enmity between the police and the appellants. Under these circumstances it is settled by now that police evidence is as good as any other PW's evidence and as such we believe the same and rely on it.
- (f) Although it is for the prosecution to prove its case beyond a reasonable doubt the defense case consists of a bald allegation that the appellants were already in illegal police custody at the time of the incident having been illegally picked up from various places in Karachi by the police. However the accused did not examine themselves on oath or produce any DW in support of their defense case or even produce any document/application which had been exhibited on their behalf before any competent authority that they had been falsely arrested before the incident(except one unverified document from one of their fathers which was not exhibited) and neither had any newspaper cuttings been produced in this respect or did any of the accused raise this issue before the remand judge and as such we disbelieve their defenses.

12. We however are of the view that the prosecution has not proved its case under S.324 PPC beyond a reasonable doubt in that the evidence

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reflected that very few rounds were fired at the police, there were some contradictions in the police evidence, that no policemen was injured and that there was no evidence that the police mobile was even hit by a bullet and at most this was a case of aerial firing in order to enable the appellants to make their escape good without any intention to murder any policemen and as such the appellants are all acquitted of the charge under S.324 PPC by extending them the benefit of the doubt.

13. We are of the view that this case does not fall within the purview of the ATA since according to the evidence there was no design, object or intent to cause terror and thus the provisions of the ATA will not apply.

14. S.353 of the PPC is set out below for ease of reference;

*"353. Assault or criminal force to deter public servant from discharge of his duty. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both".*

15. Hence based on our above discussion and the mitigating circumstances raised by the appellants and the no objection to a reduction in sentences made by the DPG in respect of offenses under S.353 PPC and S.23 (1) (a) SSA 2013 to some reasonable extent we hereby:

(a) acquit all the appellants for the offense under S.324 PPC and find that no provision of the ATA is applicable.

(b) convict all the appellants under S.353 PPC but in the absence of a conviction under S.324 PPC reduce all their sentences from 10 years RI to (02) two years RI and a fine of RS 20,000 each and in default of payment by a particular appellant he shall undergo SI for a further period of 6 months.

(c) convict all the appellants under S.23 (1) (a) SAA 2013 and reduce all their sentences from 7 years R.I. to (02) two years RI with fine of Rs.50,000/- each and in default of payment by a

particular appellant he shall undergo SI for a further period of 6 months.

The appellants shall have the benefit of S.382-B Cr.PC and their sentences shall run concurrently. Since the appellants have also not been convicted under the ATA they shall all be entitled to the usual remissions available to them under the law.

16. The appeals stand dismissed **except** as modified above.