

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Irshad Ali Shah

Spl. Crl. A.T.J.A. No.315 of 2019

Spl. Crl. A.T.J.A. No.179 of 2020

Appellant in Appeal No.315/2019	:	Muhammad Yousuf S/o Muhammad Hassan
Appellant in Appeal No.179/2020	:	Izzat Khan S/o Muhammad Anwar Through Mr. Habib-ur-Rehman Jiskani, Advocate in both the Appeals
Respondent	:	The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General, Sindh.
Date of Hearing	:	03.09.2021
Date of Order	:	03.09.2021

J U D G M E N T

By this common judgment, we intend to dispose of both the Spl. Crl. A.T.J. Appeals filed by Appellants Muhammad Yousuf and Izzat Khan, who were convicted and sentenced by the Anti-Terrorism Court-XX, Karachi vide Judgment dated 07.08.2019 as under:-

Convictions:-

Appellant Muhammad Yousuf was convicted in Special Case No.48/2019 under FIR No.404/2018 registered under Sections 392, 353, 324, 34 PPC R/w Section 7 ATA, 1997 of PS Mubina Town. He was also convicted in Special Case No.48-B/2019 under FIR No.406/2018 registered under Section 23(i)A, Sindh Arms Act, 2013 of PS Mubina Town.

Appellant Izzat Khan was convicted in Special Case No.48/2019 under FIR No.404/2018 registered under Sections 392, 353, 324, 34 PPC R/w Section 7 ATA, 1997 of PS Mubina Town. He was also convicted in Special Case No.48-A/2019 under FIR No.405/2018 registered under Section 23(i)A, Sindh Arms Act, 2013 of PS Mubina Town.

Sentences:

Both the appellants were sentenced in the following manner:

Section 392 PPC: *to suffer R.I. for five years and fine of Rs.20,000/- and in case of default of payment of fine, both of them have to undergo R.I. for six months more.*

Section 324 PPC r/w Section 7 ATA, 1997:

to suffer R.I. for five years and fine of Rs.20,000/- and in case of default of payment, they have to undergo R.I. for six months more.

Section 353 PPC: *to suffer R.I. for one year.*

Section 23(i)A, SAA: *to suffer R.I. for five years and fine of Rs.20,000/- and in case of default of payment, they will have to undergo R.I. for six months more.*

However, the sentences were ordered to run concurrently and the benefit of Section 382-B was extended in favour of them.

2. The brief facts of the case are that on 28.12.2018, Complainant Muhammad Waqas was walking outside of his house when at about 0145 hours he was available near Margalla Heights Road where all of sudden three culprits on a motorcycle came there and snatched two mobile phones and cash amount of Rs.8500/- from him by showing TT pistol and in the meantime, one of the culprits slipped away on the motorcycle and two, who snatched accessories from the complainant, managed to run away on foot. However, the complainant made hue and cry and saw a police mobile coming towards him and he signaled the police and shared the whole incident and then he sat in the police mobile to chase the culprits. In the meantime, the culprits started firing on seeing police party coming towards them. In retaliation, police party also fired upon them and as a result one of the culprits received firearm injuries on his right leg and both fell down and were arrested on the spot. However, one of the culprits succeeded to flee away. The personal search of accused Izzat Khan was conducted which led to the recovery of an unlicensed pistol of 30 bore alongwith magazine loaded with two,

live bullets and one live bullet in its chamber so also two mobile phones and cash amount of Rs.8500/- which were snatched from the complainant. The personal search of Muhammad Yousuf was also conducted which led to the recovery of an unlicensed pistol of 30 bore alongwith magazine loaded with four live bullets from his possession so also mobile phone and cash of Rs.470/- from his possession. The police also secured four empties of 30 bore, four empties of 9mm bore and two empties of SMG from the spot. Thereafter, police shifted injured accused Izzat Khan to Abbasi Shaheed Hospital and returned him back to police station alongwith accused Muhammad Yousuf and case property and hence, the instant FIRs were registered against them.

3. After usual investigation the matter was challaned and the appellants were sent up to face trial. They pleaded not guilty and claimed their trial. However, the Court issued NBWs against absconding accused Nazeer Ali and subsequently proclamation against him.

4. In order to prove these cases, the prosecution examined five PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. whereby they claimed that they were innocent. However, they did not give evidence on oath or call any witness in support of their defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellants as set out earlier and hence, the appellants have filed these appeals against their convictions and sentences.

6. After reading out the evidence, learned counsel for the appellants, under instructions, stated that he did not press these appeals on merit and that the appellants would accept their guilt provided that the sentences handed down to the appellants were reduced. When this proposal was put to learned DPG, he had no objection to the reduction of sentence.

7. We have gone through the evidence and we find the evidence of five PWs to be reliable, trustworthy and confidence inspiring who arrested the appellants on spot red-handed with

weapons, snatched mobile phones and cash which led to a positive FSL report after being kept in safe custody, as such, we find that the prosecution has proved its case against the appellants beyond a reasonable doubt.

8. However, in this case, we find numerous mitigating factors which can justify a reduction in sentence which are as follows:

- i) That the appellants are first time offenders.
- ii) That the appellants are young men and are capable of reformation.
- iii) That the appellants belong to poor families and due to their confinement, their families are suffering badly as the appellants are the main breadwinners.
- iv) That the appellants have fully accepted their guilt and as such have shown genuine remorse.

9. Based on these mitigating factors and the no objection of learned DPG we hereby maintain all the convictions of the appellants. However, we hereby reduce the appellants' sentences to three (03) years R.I. from the sentences awarded by the learned trial Court to the appellants i.e. five (05) years R.I. under Sections 392, 324 and 23(i)A of Sindh Arms Act, 2013. However, the appellants shall have to pay fines as awarded in the impugned judgment. Thereafter, the appellants shall be released unless they are wanted in any other custody case. The appellants shall have the benefit of Section 382-B Cr.P.C. and any remission lawfully available to them.

10. So far as the Section 7 of ATA, 1997 is concerned, the same is not attracted in these cases as there was no design or intent to create terror.

11. The instant Special Criminal Anti-Terrorism Jail Appeals are dismissed except as modified in terms of sentence as mentioned above.