

ORDER SHEET  
IN THE HIGH COURT OF SINDH, AT KARACHI.

**Spl. Crl. ATA No.84 of 2019.**  
**Spl. Crl. ATA No.85 of 2019.**

Date	Order with signature of Judge
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1. For orders on office objection a/w reply as flagged.
2. For hearing of main case.

**22.02.2022.**

M/s. Fahim Zia and Sawan Meghwar, Advocates for the appellant.

Mr. Muhammad Abu Bakar Khalil, Advocate for the complainant.

Mr. Abrar Ali Khichi, Additional Prosecutor General.

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**JUDGMENT**

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant Shahid Ali @ Sikandar S/o. Basit Ali was convicted by the Anti-Terrorism Court No.I, Karachi Division in Special Cases No.01 and 01-A both of 2017 in respect of FIRs No.601 and 602 both of 2016 U/s. 397/353/324/34 PPC r/w section 7 ATA, 1997 and U/s. 23(i)(A) Sindh Arms Act, 2013 lodged at P.S. Preedy, Karachi and sentenced him R.I. for seven years punishable under section 397 PPC, R.I. for ten years with fine of Rs.20,000/- for the offence punishable under section 324 PPC, in case of non-payment of fine, he will suffer S.I. for three months more, R.I. for ten years with fine of Rs.20,000/- for the offence punishable under section 7(c) of Anti-Terrorism act, 1997, in case of non-payment of fine, he will suffer S.I. for three months more, R.I. for one year with fine of Rs.10,000/- for the offence punishable under section 353 PPC, in case of non-payment of fine, he will suffer S.I. for one month more, R.I. for five years with fine of Rs.10,000/- for the offence punishable under section 7(h) of Anti-Terrorism act 1997, in case of non-payment of fine, he will suffer S.I. for three months more, R.I. for five

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years with fine of Rs.20,000/- for the offence punishable under section 23(1)(A) of Sindh Arms Act, 2013, in case of non-payment of fine, he will suffer S.I. for three months more. All the sentences were ordered to run concurrently. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the prosecution case are that on 11.12.2016 on the basis of statement u/s 154 Cr.P.C. of complainant Tahir Hussain son of Mirza Wajid Baig, the FIR being Crime No.601/2016 was registered at police station Preedy, Karachi, wherein the complainant stated that on 11.12.2016, he alongwith his guest Sajjad Baig son of Mirza Latif Baig were present at his Chicken Shop situated at Rainbow Centre and at about 10:00 p.m. three boys came on a motorcycle and entered inside his shop and out of them two took out pistols while directing the complainant to hand over what he had. The complainant gave them Rs.25,000/- and thereafter, all three accused started searching his shop and drawers, in the meanwhile the complainant caught hold one of them and during scuffle the said culprit fired upon him with intention to commit his murder, as such complainant sustained firearms injuries at his left leg and the second accused fired on Sajjad Baig, who also sustained fire arms injuries at his leg. On hearing fire reports, the police mobile of P.S. Preedy headed by HC Ali Dino reached there and during encounter one of the culprits sustained firearms injuries and fell down, whereas his two companions fled away. At about 2215 hours, police arrested injured accused and recovered one 30 bore pistol with four bullets from his possession. The arrested accused disclosed his name as Shahid Ali son of Muhammad Basit and disclosed names of absconding accused as Zia @ Abbas and Owais. The complainant and his relative Sajjad were sent to Jinnah Post Graduate Medical Centre, for treatment and after treatment they were discharged from the hospital and his guest Sajjad was mentally disturbed and was admitted in Liaquat National Hospital, hence present FIR and separate FIR of Crime No.602/2016 under section 23(i)(A) of Sindh Arms Act, 2013 was also registered.

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3. After registration of the FIRs the investigation of both cases was entrusted to Inspector Liaquat Ali Jutt, who inspected place of incident, prepared such memo in presence of mashirs, recovered three empty bullets of SMG and three empty bullets of 30 bore pistol. He recorded statements of PWs u/s. 161 Cr.P.C. He referred one 30 bore pistol with four bullets three empty bullets of SMG and three empty bullets of 30 bore pistol to the Incharge FSL under his letter for report, which he received and after completing investigation submitted charge sheet in the court of law while showing accused Mehmood @ Muna son of Abdul Muneem as absconder.

4. After usual investigation the case was challaned and the accused was sent up to face trial. He pleaded not guilty to the charge and claimed trial.

5. In order to prove its case the prosecution examined 08 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 all the allegations leveled against him and claimed false implication. He did not give evidence on oath or call any DWs in support of his defence.

6. After hearing the parties and appreciating the evidence on record, the learned trial court convicted and sentenced the appellant as mentioned earlier in this Judgment, hence the appellant has filed this appeal against his conviction.

7. The facts of the case as well as evidence in respect of the case have been set out in the impugned judgment and as such there is no need to repeat them here so as to avoid unnecessary repetition and duplication.

8. At the very outset learned counsel for the appellant stated that under instructions he would not press this case on merits provided that



the appellant's sentence is reduced to that already undergone. In support of his contention he has relied on the following mitigating circumstances:-

- (a) That the appellant is a first time offender.
- (b) That the appellant is young men and is capable of reformation.
- (c) That the appellant had a family to support.
- (d) That the appellants vide pleading guilty and admitting to his crime has shown genuine remorse.
- (e) That the appellant has already served out a substantial portion of his sentence.

9. When confronted with this proposition, learned Additional Prosecutor General had no objection likewise Mr. Muhammad Abu Bakar Khalil, learned counsel for the complainant under instructions has also no objection to the sentence being undergone based on the above mentioned mitigating circumstances.

10. We have gone through the evidence and find that the prosecution has proved its case against the appellant beyond any reasonable doubt. The appellant during the course of robbery shot the complainant and has injured the eye witness who was able to correctly identify the appellant whose evidence we find reliable trustworthy and confidence inspiring and since they had no enmity with the appellant, we believe the same. The appellant was arrested at the spot after a brief encounter with the police and a pistol was recovered from him so there is no question of misidentification. The empties recovered from the scene were sent for FSL report and were found to be matched with the recovered pistol. The medical evidence also supports the prosecution case and as such we uphold the conviction of the appellant in respect of all the offences in the impugned judgment except in respect of the offences under the ATA. So far as the Section 7 of ATA, 1997 is concerned, the same is not attracted in this case as it appears that the appellant's motive was

to rob the complainant and when the complainant resisted he made fire upon him and as such there was no intention, purpose or design to create terror which is a necessary ingredient of the offence of terrorism under the ATA as has recently been held by the Hon'ble Supreme Court in the case of **Ghulam Hussain v. The State** (2020 Supreme Court 61).

11. With regard to sentencing taking into account, the mitigating circumstances raised by the appellant and the no objection given by the learned Additional Prosecutor General and learned counsel for the complainant and keeping in view that the appellant has already spent almost two thirds of his sentence in Jail, we hereby reduce the sentence in respect of all offences for which he was convicted to that of time already undergone in Jail which shall include applicable fines. The appellant shall be released unless he is wanted in other custody case.

12. The appeal stands disposed of in the above terms.

*Muhammad Arif*