

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,*

SPL. CRIMINAL A .T. APPEAL NO.198 & 199 OF 2021

Appellant	Javed son of Raheem through Mr. Mushtaq Ahmed Jahangiri, Advocate.
Respondent	The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

SPL. CRIMINAL A .T. APPEAL NO.03 & 04 OF 2022

Appellant	Aziz-ur-Rehman son of Momin through Mr. Shah Imroz Khan, Advocate.
Respondent	The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

SPL. CRIMINAL A .T. APPEAL NO.05 OF 2022

Appellant	Shahid Khan son of Hassan Khan through Mr. Shah Imroz Khan, Advocate.
Respondent	The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

SPL. CRIMINAL A .T. JAIL APPEAL NO.12 OF 2022

Appellant	1) Aziz-ur-Rehman son of Momin through Mr. Shah Imraon Khan Advocate 2) Abdullah s/o Mardan through Mr. Awais Ahmd, Advocate 3) Noor Aleem s/o Hazran Muhammad through Mr. Awais Ahmed, Advocate 4) Javed s/o Rheem Khan through Mr. Mushtaq Ahmed Jahangiri, Advocate
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- 5) Shahid Khan s/o Hassan Khan through Mr. Shah Imroz Khan, Advocate
- 6) Sadiq s/o Fazal Wahid
- 7) Rasheed Ali s/o Ameen KHan both through Mr. Iftikhar Ahmed Shah, Advocate.

Respondent The State through Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

Date of Hearing. 16.05.2022

Date of Announcement 16.05.2022

JUDGEMENT

Mohammed Karim Khan Agha, J. Accused Aziz-ur-Rehman, Shahid Khan, Abdullah, Javed, Noor Aleem, Sadiq and Rasheed Ali were charge sheeted to face their trials in eight Special Cases Nos. 125/2021 to 125-G/2021, arising out of FIR Nos.21/2021 to 28/2021 u/s.353/324/34 PPC R/w Section 7 of ATA, 1997 and Section 23(I)-A Sindh Arms Act of PS Bahadurabad, Karachi. Vide impugned judgment dated 13.12.2021 all the appellants were convicted and sentenced as under:-

Section	Conviction
01. Section 324 PPC r/w section 7 of ATA 1997	Each of accused persons to suffer R.I. for five years and fine of Rs.20,000/ and in case of default of payment of the fine, each of the accused to undergo R.I. for six months more.
02. Section 353 PPC	Each of accused persons to suffer R.I. for one year.
03. Section 23(I)-A of SAA	Each of accused persons to suffer R.I. for five years and fine of Rs.20,000/ and in case of default of payment of the fine, each of the accused will have to undergo R.I. for six months more.

All the sentences shall run concurrently and the benefit of Section 382-B Cr.P.C. were also extended to the accused persons.

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2. Brief facts of the prosecution case are that on 19.01.2021 complainant SI Taveez Gul was on patrolling duty along with his subordinate staff and during such patrolling they received a call from police emergency "15" about availability of accused persons on a white colour car Toyota Corolla and on a motorcycle in the area. After such information the police party started patrolling in the area and when it was about 0440 hours they reached at the Habib Rehmatullah Service Road opposite Bungalow No.C-104 KDA Scheme No.1 Karachi where they saw a car and one motorbike were coming from the opposite side to them, he signaled them to stop but instead of stopping the motorcyclists and the car riders allegedly made fire shots at complainant party with an intention to commit their murder and while making their defense the complainant party also allegedly made fire shots and during such cross firing four accused persons received fire arm injuries and all seven were apprehended on the spot. The apprehended accused persons disclosed their names to be Aziz-ur-Rehman, Shahid Khan, Abdullah, Javed, Noor Aleem, Sadiq and Rasheed Ali. The personal search of injured accused Aziz-ur-Rehman, was conducted which led to the recovery of a SMG but without number along with magazine loaded with ten live bullets and one in its chamber from his possession. His further personal search was taken which led the recovery of Rs.900/-, one mobile phone Nokia, his Pakistani Passport as well as his CNIC from his possession. The personal search of accused Shahid Khan was conducted which led to the recovery of one pistol of 30 bore along with magazine loaded with four live bullets and one live bullet in its chamber from his possession. His further personal search was taken which led the recovery of Rs.600/- and one mobile phone Nokia of keypad from his possession. The personal search of injured accused Abdullah was conducted which led to the recovery of one pistol of 9mm bore along with magazine loaded with 05 live bullets and one live bullet in its chamber from his possession. His further personal search was taken which led the recovery of Rs.780/-, one mobile phone of Keypad K-135 from his possession. The personal search of injured accused Javed was conducted which led to the recovery of one pistol of 9mm bore along with magazine loaded with 04 live bullets and one live bullet in its chamber from his possession. His further personal search was taken which led the recovery of Rs.700/-, one mobile phone of White colour from his possession. The personal search of injured Noor Aleem was conducted which led to the recovery of one pistol of a 30 bore along with

magazine loaded with 03 live bullets and one live bullet in its chamber from his possession. His further personal search was taken which led the recovery of Rs.1020/- one Q-mobile phone of Keypad K-135 from his possession. The personal search of accused Sadiq was conducted which led to the recovery of one pistol of a 30 bore along with magazine loaded with 05 live bullets and one live bullet in its chamber from his possession. His further personal search was taken which led the recovery of Rs.820/-, one mobile phone of Wintel mobile from his possession. The personal search of accused Rasheed Ali was conducted which led to the recovery of one pistol of a 30 bore along with magazine loaded with 02 live bullets and one live bullet in its chamber from his possession. His further personal search was taken which led the recovery of Rs.1000/- one mobile phone Vigo Tel from his possession. On an inquiry the apprehended accused persons disclosed the recovered weapons to be an unlicensed. The police also secured 06 empties of 9mn, five empties of SMG and six empties of 30 bore from the spot. The Toyota Corolla Car bearing No.BMA 450 and the motorcycle bearing registration No.KGJ-2036 were seized u/s.550 Cr.P.C. Thereafter, accused persons were arrested under such memo at the spot and they were booked in the case as mentioned above. Thereafter, accused Shahid, Sadiq and Rasheed along with case property shifted to PS whereas the police shifted injured accused Aziz-ur-Rehman, Abdullah, Noor Aleem and Javed to JPMC for their treatment under supervision of ASI Ghulam Mustafa through police mobile wherefrom they returned back at PS along with custody of accused persons at the police station, where the present FIRs were registered against them.

3. After usual investigation the matters were challaned and the appellants were sent up to face their trial. They pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 06 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 and falsely implicated in these cases. They did not give evidence on oath or call any witness in support of their defence.

5. After hearing the parties and appreciating the evidence on record, the learned trial Court convicted and sentenced the appellants as set out

earlier in this judgment and hence, the appellants have filed their appeals against their convictions and sentences.

6. The evidence led before the trial Court has been reproduced in detail in the impugned judgment and as such there is no need to reproduce the same so as to avoid any unnecessary repetition and duplication.

7. At the very outset all the learned counsel for the appellants, under instructions stated that they did not press their appeals on merit and that the appellants would accept their guilt provided that their sentences were reduced to some reasonable extent keeping in view the following mitigating features.

- i) That none of the appellants are previous convicts;
- ii) That all the appellants are young men and are capable for reformation.
- iii) That all the appellants have large families and they are sole breadwinners of their families.
- iv) That all the appellants have accepted their guilt and as such have shown genuine remorse.

8. Learned Additional Prosecutor General Sindh after considering the mitigating circumstances mentioned above stated that he has no objection to a reasonable reduction in respect of all the appellants' sentences.

9. We have gone through the evidence and we find that all the appellants were arrested on the spot after an encounter with the police and unlicensed fire arms were recovered from them and the evidence of 06 PWs to be reliable, trustworthy and confidence inspiring and they had no enmity against any of the appellants or any reason to implicate them in any false cases and as such we believe their evidence. At the time of arrest of the appellants on the spot unlicensed weapons were also recovered which led to a positive FSL report in respect of empties recovered at the scene; that both the car and motorbike which the appellants were driving / riding at the time of the encounter were recovered from the crime scene and as such we find that the prosecution has proved its case against all the appellants beyond any reasonable doubt and as such we uphold the convictions of all the appellants.

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10. However, we do not find this case to be one which falls within the Anti-Terrorism Act, 1997 as there was no purpose intent or design to create terror rather than there was an encounter with the police on the spot at the spur of the moment and as such the appellants are acquitted from all the ATA offences and convictions upheld in respect of only all PPC offences.

11. With regard to the sentencing we find that the mitigating circumstances raised by the appellants warrant a reduction in sentence especially keeping in view the no objection certificate given by the learned Additional Prosecutor General Sindh and the fact that all the appellants have under gone a reasonable period of their sentence in jail.

12. Based on above mitigating factors we hereby reduce the appellant's sentences to the period which they have already served in jail (which shall include the amount of fine) and all the appellants namely Aziz-ur-Rehman s/o Momin, Shahid Khan s/o Hassan Khan, Abdullah s/o Mardan, Javed s/o Raheem, Noor Aleem s/o Hazrat Muhammad, Sadiq s/o Fazal Wahid and Rasheed Ali s/o Ameen Khan shall be released unless wanted in any other custody cases.

13. These Special Criminal A.T. Appeals and Special Criminal A.T. Jail Appeal are dismissed except as modified in terms of sentencing as mentioned above.