

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

Spl. Cr. A.T. Jail Appeal No.12 of 2021

Appellants : (i) Abidullah S/o Nawab Khan &
(ii) Abdul Khaliq S/o Ghulam Khan,
Through Mr. Iftikhar Ahmed Shah,
Advocate

Respondent : Abu Bakar Rasool through
Mr. Muhammad Iqbal Awan, Addl.
Prosecutor General, Sindh.

Date of Hearing : 18.05.2022

Date of Judgment : 18.05.2022

J U D G M E N T

Mohammad Karim Khan Agha, J. Appellants Abidullah and Abdul Khaliq were sent up to face trial in the Court of Special Judge, Anti-Terrorism Court XX, Karachi in (i) Special Case No.409 of 2019 in respect of FIR No.593 of 2019 under Sections 385/386/506/34 PPC read with Section 7 ATA 1997 registered at Police Station KIA, Karachi, (ii) Special Case No.409-A of 2019 in respect of FIR No.631 of 2019 under Sections 23(I) A of Sindh Arms Act registered at Police Station KIA, Karachi and (iii) Special Case No.409-B of 2019 in respect of FIR No.632 of 2019 under Sections 23(I) A of Sindh Arms Act registered at Police Station KIA, Karachi and vide impugned Judgment dated 23.11.2020 the appellants were convicted under Section 6(2)(k) of ATA 1997 punishable u/s 7(h) of ATA 1997 r/w section 385 PPC and sentenced to suffer R.I for five years with fine of Rs.25,000/- each and in case of default of payment of fine, the appellants were directed to undergo R.I for six months more. Both the

appellants were also convicted u/s 23(i) A of Sindh Arms Act and sentenced to suffer R.I for five years with fine of Rs.25,000/- each and in case of default of payment of fine, both the appellants were directed to undergo R.I for six months more. All the sentences were directed to run concurrently and benefit of Section 382-B Cr.P.C was also extended to them.

2. The brief facts of the prosecution case as per FIR lodged by complainant Abu Bakar Rasool on 22.05.2019 are that on 20.05.2019 at about 2100 hours his munshi had received an envelope which was given by a motorcyclist to him wherein the complainant was directed that on 23.05.2019 Rs.10,00,000/- should be paid by him to accused persons as Bhatta and in case of non-payment he would face dire consequences. Therefore, the complainant at P.S KIA lodged such FIR against unknown accused persons.

3. It is further alleged that on 30.05.2019 the munshi of complainant had found a chit from near a shutter of his Estate Agency situated at plot No.121 sector 8/E Gulzar Colony KIA, and in the said chit wherein Rs.10,00,000/- as Bhatta was demanded by unknown culprits and in case of non-payment he would face dire consequences. Thereafter the complainant disclosed entire situation to the police party which was deputed there on their routine patrolling whereupon the ASI directed him to arrange Rs.25,000/- in shape of twenty five notes of Rs.1000/- thereafter, he arranged such amount and gave it to his munshi namely Raja Muhammad Shafi and sat him at his Estate Agency and the police party also hid themselves near to the Estate Agency. In the meanwhile, two accused persons on a motorcycle having registration No.KJV-5572, one of them having helmet on his face, came at the Estate Agency and met with the Munshi Raja Shafi, who handed over them an envelope and as and when they left the Estate Agency to leave the place, the police party headed by ASI Peer Bux intercepted and apprehended them.

4. It is further alleged that on inquiry the accused persons disclosed their names to be Abidullah, who was riding the motorcycle and other one disclosed his name to be Abdul Khaliq. The police also conducted their personal search and accused Abidullah was found to be in possession of a pistol of 30 bore along with magazine loaded with three live bullets and from the possession of accused Abdul Khaliq the police party recovered one pistol of 30 bore along with magazine loaded with four live bullets. He was also found in possession of an envelope wherein the amount of Bhatta was lying, which was also recovered by the police. The police thereafter sealed the recovered articles and seized the motorcycle u/s 550 Cr.P.C on the spot. Thereafter, they both along with case property were brought at PS where such FIRs were registered against them u/s 23(i)A of Sindh Arms Act, 2013 respectively at same P.S.

5. After usual investigation, the appellants were challaned and were sent up to face trial, to which they pleaded not guilty and claimed trial.

6. In order to prove its case, the prosecution examined six 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. They did not give evidence on oath or call any witness in support of their defence.

7. 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 this appeal against their convictions and sentences.

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

9. At the very outset, learned counsel for the appellants, under the instructions of the appellants, did not press this appeal on merit but only sought a reasonable reduction in their sentences on account of the following special features/mitigating circumstances;_

- a) Both the appellants were young men and first time offender and capable of reformation.
- b) Both the appellants had families to support and
- c) Since the appellants had accepted their guilt, they had shown genuine remorse.

10. Based on the above mitigating circumstances, learned Addl. P.G, Sindh, who was also acting on behalf of the complainant, had no objection to a reduction in sentences to some reasonable extent.

11. We have gone through the evidence and find that the prosecution has proved its case beyond a reasonable doubt against the appellants through reliable, trustworthy and confidence inspiring evidence, which we believe as well as recovery of pistols on the spot from both the appellants and making demand for extortion of money and as such the conviction of the appellants is maintained.

12. When confronted whether this case falls within ATA, learned Addl. P.G, Sindh stated that this case did not fall within the purview of ATA. We agree with the contention of learned Addl. P.G, Sindh based on the Supreme Court's judgment in case of GHULAM HUSSAIN VERSUS THE STATE (2020 PLD SC 61), as there was no intent, purpose and design to create terror and as such the appellants are acquitted of all the offences under ATA and only convicted for the offences under the PPC.

13. Based on the above mitigating circumstances and learned Addl. P.G, Sindh's no objection and the fact that both the appellants have already served a reasonable period of the time in

custody, their sentences are hereby reduced to the time already spent by them in custody and their fines are also waived off. As such, they shall be released from jail if their custody is not required in any other custody case.

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

Zulfiqar/P.A