

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Amjad Ali Bohio

Special Criminal A.T.J.A. Nos.165 and 172 of 2022

Appellants	Muhammad Muzamil S/o. Gulzar Ahmed and Muhammad Umer S/o Muhammad Asghar through Mr. Iftikhar Ahmed Shah, Advocate a/w Mr. Muhammad Naeem, Advocate
The State	Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh
Date of Judgment	17.08.2023.

J U D G M E N T

Mohammad Karim Khan Agha, J:- The appellants Muhammad Muzamil S/o. Gulzar Ahmed and Muhammad Umer S/o Muhammad Asghar were tried in the Court of Anti-Terrorism Court No.XX, Karachi in (1) Special Case No.300/2021, arising out of FIR No.421 of 2021, under sections 353/324/337-F(6)/34 PPC read with Section 7 ATA, 1997, registered at P.S. Pakistan Bazar, Karachi (2) Special Case No.300-A/2021, arising out of FIR No.422 of 2021, under sections 353/324/427/34 PPC read with Section 7 ATA, 1997, registered at P.S. Pakistan Bazar, Karachi (3) Special Case No.300-/2021, arising out of FIR No.423 of 2021, under section 23(1)-A SAA, registered at P.S. Pakistan Bazar, Karachi and (4) Special Case No.300-C/2021, arising out of FIR No.424 of 2021, under section 23(1)-A SAA, registered at P.S. Pakistan Bazar, Karachi and vide judgment dated 30.07.2022, the appellants were convicted and sentenced as under:-

Section

01. Section 324 PPC r/w
7 of ATA 1997 in case crime
No.421/2021

Conviction

Present accused persons to suffer
R.I. for five years and fine of
Rs.20,000/- each and in case of
default of payment of the fine,
present accused persons to undergo
R.I. for six months more.

02. section 337-F(vi) PPC
in case crime No: 421/2021

Present accused persons to suffer R.I for five years as Ta'azir and fine in terms of Daman of Rs: 50,000/- each which will be paid to the PW PC Shafiullah.

03. Section 353 PPC in case
crime No: 421/2021

Present accused persons to suffer R.I for one year each.

04. Section 23(1)-A SAA in case crime
Nos: 423/2021 and 424/2021.

Present accused persons to suffer R.I. for five years and fine of Rs: 20,000 each and in case of default of payment of fine. present accused persons will have to undergo R.I for six months, more.

05. Section 324 PPC r/w section 7
of ATA 1997 in case crime No: 422/2021

Present accused persons to suffer R.I for five years and fine of Rs: 20,000/- each and in case of default of payment of the fine, present accused persons to undergo R.I. for six months, more.

06. Section 353 PPC in case
crime No: 422/2021

Present accused persons to suffer R.I for one year.

07. Section 427 PPC
in case crime No: 422/2021

Present accused persons to suffer R.I for two years.

All the sentences shall run concurrently and the benefits of section 382-b Cr.P.C. are allowed to be extended in favour of the accused persons from date of their arrest.

2. The facts of the prosecution case are that on 18.05.2021, complainant ASI Shoukat Ali was on patrolling duty along with his subordinate staff on official police mobile-III No. SPC-452 and during such patrolling when they reached at Nishan-e-Haider Chowk Karachi when it was about 2220 hours he had received a call from PC Yasir, Mushi from his mobile phone No: 0316-1076701, who had informed that one PC namely Junaid Shah was present near Sarwan Pakwan House sector 11-

1/2 Karachi, who had informed him that PC Junaid had seen two suspects were present on a motorcycle with intention to commit some crime. He had also informed and requested him to reach to the pointed place. After receiving such information the complainant alerted to his subordinates and proceeded to the pointed place along with police party. After reaching at the pointed place where complainant found PC Junaid was present over there, who informed him about the presence of accused persons on motorbike and on his pointation complainant moved towards accused persons. On seeing police party accused persons opened fire upon them with intention to take their lives. In retaliation ASI Shoukat Ali ordered to PC Junaid Shah to make some fire shots upon accused persons. Thereafter, PC Junaid made two fire shots through his official 9mm bore pistol having No: 01906. During exchange of firing accused persons managed to escape from there through their motorbike whereas one passerby had received firearm injuries and fell down. Later the complainant ASI Shoukat Ali came to know that injured passerby was police constable namely PC Shafiullah of PS Peerabad. ASI Shoukat Ali had secured three empties of 30 bore and 02 empties of 9mm bore from the spot. The official 9mm bore pistol of PC Junaid was also seized by the complainant. The injured PC Shafiullah was shifted to Abbasi Shaheed Hospital through police mobile for his treatment. The SHO of PS Peerabad had also arrived there and injured PC Shafiullah was handed over to him and the complainant returned back to his PS where he registered FIR No, 421/2021 u/s 353/324/34 PPC.

3. It is further alleged that after registration of FIR ASI Shoukat Ali again went in the area for patrolling through same police mobile III bearing No: SPC-452 and during patrolling they reached at Hawa Goth, Orangi Town at about 03-30 am viz: 19-05-2021 where he saw two persons were available on a motorbike they were coming from Western side they seemed to be suspicious, so ASI Shoukat Ali signaled them to stop, but instead of stopping said persons started firing upon police with intention to take their lives. In self-defense police also made some fire shots through their official 9mm bore pistols. During exchange of firing he had made three fire shots through his official 9mm bore pistol, whereas PC Haji

Khan made two fire shots through his official 9mm pistol. During exchange of firing accused persons received firearm injuries and they fell down from motorbike and finally police succeeded to apprehend both accused persons on the spot.

4. It is further alleged that the apprehended accused persons disclosed their names to be Mohammad Muzamil and Mohammad Umar. Thereafter ASI Shoukat Ali conducted personal search of apprehended accused Muzamil and secured one 9mm bore pistol without number along with loaded magazine containing two live bullets, whereas one bullet in its chamber having silver colour and black Butt. Upon his further personal search ASI Shoukat Ali secured Rs: 170/- from side pocket of his pant. Thereafter complainant conducted the personal search of apprehended accused Mohammad Umar and secured one 30 bore pistol having black colour along with loaded magazine and plastic was also wrapped over its butt No: 51-52, was also written over body of recovered pistol, which containing three live bullets in its magazine whereas one bullet in its chamber secured from backside fold of his pant. Upon his further personal search Rs:120/- also recovered from the pocket of his pant. The motorcycle No: KKR-0047 was also seized u/s 550 Cr.P.C. Thereafter he contacted with CPLC official who informed him that said motorbike was stolen motorbike in FIR No: 323/2021 of PS Iqbal Market. ASI Shoukat Ali had also secured two empties of 9mm bore, one empty of 30 bore and five empties of official 9mm bore pistol from the place of incident. The complainant ASI Shoukat Ali had prepared memo of arrest and recovery and obtained signatures of mashirs on it. The police mobile had also received two fire shots on its left side. Thereafter both injured accused persons were shifted to Abbasi Shaheed Hospital through police mobile for their treatment and after providing medical treatment to them the custody of accused persons was brought at PS where such FIRs were registered against them

5. After usual investigation, the case was challaned and sent up for trial. The charge was framed against the appellants, who plead not guilty and claimed trial.

6. The prosecution in order to prove its case examined seven (07) witnesses and exhibited various documents and other items. The appellants in their section 342 Cr.P.C. statements denied the allegations against them and claimed false implication. However, neither of the appellants gave evidence on oath or called any D.W. in support of their defence case.

7. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellants as set out earlier in this judgment; hence, the appellants have filed these appeals against their convictions.

8. At the very outset, learned counsel for the appellants under instructions stated that the appellants did not contest the case on merits and accepted their guilt and prayed only for reasonable reduction in sentence based on the following mitigating circumstances:-

- a) That the appellants are first time offenders and are capable of reformation.
- b) That both the appellants are Young men and have a large family to support.
- c) That by accepting their guilt the appellants have shown genuine remorse and saved the time of this Court.
- d) That they had served out a substantial portion of their sentence.

9. Based on these mitigating circumstances mentioned by the appellants, learned Additional Prosecutor General had no objection to the reduction in sentence of the appellants to some reasonable extent.

10. We have gone through the evidence on record and find that on 18.05.2021, police witnesses attempted to stop the appellants who were riding on a motorbike. The appellants failed to stop when signaled to do so and fired upon the police party and thereafter, made their escape good. During this encounter, one passerby was injured and gave evidence to

that effect. On the next day, according to prosecution evidence, once again the two appellants were spotted in suspicious condition and they were signaled to stop by the police but they fired upon the police and attempted to make their escape good. The police returned fire and both the appellants were hit by police fire and fell down from their motorbike in injured condition as evident by medical report. The appellants were arrested from the spot and unlicensed pistols recovered from them. The police mobile was also damaged by their firing on the police. None of the police witnesses had any ill will or enmity to falsely implicate the appellants in these cases. The evidence of the police was given in a natural manner and was not dented during cross examination and as such we find the evidence of the police witnesses in both the encounters, arrest and recovery of the weapons from the accused to be trustworthy, reliable and confidence inspiring and we believe the same and place reliance on it. The empties recovered on the scene also produced a positive FSL report when matched with the pistols recovered from the appellants. As such, the convictions are maintained in respect of the offences under PPC and SAA. However, we do not find that this case falls within the purview of ATA, 1997. This is because there was no intent, purpose or design to create terror instead the offence occurred when the appellants attempted to escape from the police. In this respect, reliance is placed on the case cited as **2020 PLD 61**. As such the appellants are acquitted of any offence under the ATA, 1997.

11. With regard to sentencing based on the mitigating factors mentioned above and in particular no objection given by the learned Additional Prosecutor General Sindh, we hereby modify the sentences of the appellants as under:-

- (a) The appellants are convicted under section 324 PPC and sentenced to time already served in Jail.
- (b) Under section 337-F(6) PPC in Crime No.421/2021 are sentenced for the time already served in Jail subject to payment of Daman of Rs.10,000/- each, which shall be paid to PW Shafiullah.
- (c) Under section 353 PPC in Crime Nos. 421 and 422/2021 are sentenced to time already served in jail

- (d) Under section 23(i)(a) of Sindh Arms Act in Crime Nos.423 and 424/2021 are sentenced to time already served in Jail
- (e) Under section 427 PPC for time already served in Jail.

The appellants shall be released unless wanted in any other custody cases subject to paying the amount of *Daman* as specified in this judgment.

12. These appeals stand disposed of in the above terms.