

IN THE HIGH COURT OF SINDH, KARACHI

Present:

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

Spl. CrI. A.T.A. No.154 of 2022.

Spl. CrI. A.T.A. No.155 of 2022.

Appellants

1. Muhammad Aslam S/o. Ahmed
Bux,
2. Muntaz Ali S/o. Jan
Muhammad through Syed
Naimatullah Shah, Advocate.

Respondent

The State through M/s. Zafar
Ahmed Khan and Ali Haider
Saleem, Additional Prosecutor
General Sindh.

Spl. CrI. A.T.A. No.156 of 2022.

Appellant

Muhammad Aslam S/o. Ahmed
Bux through Syed Naimatullah
Shah, Advocate.

Respondent

The State through M/s. Zafar
Ahmed Khan and Ali Haider
Saleem, Additional Prosecutor
General Sindh.

Spl. CrI. A.T.A. No.157 of 2022.

Appellant

Muntaz Ali S/o. Jan Muhammad
through Syed Naimatullah Shah,
Advocate.

Respondent

The State through M/s. Zafar
Ahmed Khan and Ali Haider
Saleem, Additional Prosecutor
General Sindh.

Date of hearing

09.05.2023.

Date of Judgment

09.05.2023.

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellants Muhammad Aslam and Muntaz Ali were tried by the Anti-Terrorism Court No.IV, Karachi Division in Special Case No.307/2021 arising out of Crime No.931/2021 U/s.

395/397/34-PPC R/w Section 7 ATA, 1997, Special Case No.307-A/2021 arising out of Crime No.932/2021 U/s. 353/324/186/34-PPC R/w section 7 ATA, 1997, Special Case No.307-B/2021 arising out of Crime No.933/2021 U/s. 23(1)(a) of Sindh Arms Act, 2013 and Special Case No.307-C/2021 arising out of Crime No.935/2021 U/s. 23(1)(a) of Sindh Arms Act, 2013 registered at P.S. Shah Latif Town, Karachi and vide Judgment dated 30.07.2022 the appellants were convicted and sentenced as under:-

- a) Accused Muhammad S/o. Muhammad Ahmed and Muntaz Ali S/o. Jan Muhammad @ Jano found guilty of the charged offence u/s. 392-PPC, they are convicted and sentenced to suffer R.I. (rigorous imprisonment) for three years each and fine of Rs.10,000/- (Rupees Ten thousand) each. In case of default in payment of fine the appellants shall suffer imprisonment for two months each.
- b) Accused Muhammad S/o. Muhammad Ahmed and Muntaz Ali S/o. Jan Muhammad @ Jano found guilty of the charged offence u/s. 353/324/34-PPC r/w section 6(2)(n) punishable under section 7 (1)(h) ATA 1997, they are convicted and sentenced to suffer imprisonment for five years each and fine of Rs.10,000/- (Rupees Ten thousand) each. In case of default in payment of fine the appellants shall suffer imprisonment for two months each.
- c) Accused Muhammad S/o. Muhammad Ahmed and Muntaz Ali S/o. Jan Muhammad @ Jano found guilty of the charged offence punishable u/s. 23(1)(a) of Sindh Arms Act, 2013 are convicted and sentenced to suffer imprisonment for three years each and fine of Rs.5,000/- (Rupees five thousand) each. In case of default in payment of fine the appellants shall suffer imprisonment for one month each.

2. The brief facts of the prosecution cases as unveiled by the Complainant in the FIR are that Complainant Shahzad Abbasi, P.O. No.22, Street No.02, Sherpao Colony Landhi, Malir, Karachi stating that on 02.06.2021, he was going to his home from the bus stand situated at Port Qasim Colony and was waiting for passenger vehicle at Port Qasim more, main National Highway, near Razzalabad, at about 10:00 hours six persons boarded on two motorcycles came there and on gunpoint snatched his keypad mobile phone of Call Me Company having IMEI No 03112445330, cash of Rs 5000/- and one color copy of CNIC. After the persons were decamping towards Dham Parto both on their motorcycles and one police mobile of P.S. Shah Latif Town reached there, he stopped the police mobile and narrated the incident to them. Mobile officer, S/O. Ali Khoso took the complainant with them and in the evening when police party reached near P.S.O Depot Dham Parto each of the

accused persons were available on the road on two motorcycles. On seeing police mobile they started firing upon police mobile with intention to kill them and spread terrorism, bullets were hit on left side cabin and rear side bumper of police mobile. In retaliation and self defence police party also made firing. Resultantly, three accused persons sustained gunshot injuries and fell down, while other three accused made their escape good from the scene. Police party apprehended the injured accused persons, seized weapons from their possession as well as robbed amount of Rs.5000/-, mobile phone and CNIC of complainant Shehzad Abbasi. On inquiry apprehended accused disclosed their names as Muhammad Aslam S/o. Ahmed Bux, Munir S/o. Jan Muhammad and Farman S/o. Hussain Bux and disclosed the names of accomplices who fled away from the scene as Ismat Zardari, Asif Adnan and Irfan Magsi. Prepared memo of arrest and recovery also seized motorcycle bearing No.KIS-6967 and shifted the injured accused persons to the ambulance. After completion of legal formalities, the complainant was shifted to HRS at PS.

3. After usual investigation the challan against the appellants was submitted and the appellants were sent up to face trial. The appellants pleaded not guilty to the charge.

4. The prosecution in order to prove its case examined 10 Witnesses and exhibited various documents and other items. The appellants in their section 342 Cr.P.C. statements denied the allegations against them. Neither of the appellants gave evidence on oath nor called any D.W. in support of their defence case.

5. 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 conviction.

6. At the very outset, learned counsel for the appellants under instructions of the appellants did not press the appeals on merits and stated that the appellants admit their guilt, however, they prayed for a reduction in sentences to a reasonable extent based on the following mitigating circumstances:-

- a) That both the appellants are first time offenders and are capable of reformation.

- b) That both the appellants had large family to support.
- c) That by pleading guilty the appellants had shown genuine remorse and;
- d) That the appellants have served a substantial portion of their sentences.

7. Based on these mitigating circumstances mentioned by the appellant, learned Additional Prosecutor General Sindh had no objection to the reduction in sentences to some reasonable extent.

8. We have gone through the evidence on record and find that the complainant Shahzad Abbasi gave evidence that on his way home on 02.06.2021 at about 02:50 hours he was robbed by the persons riding motorcycles. He is an independent witness who had no enmity or ill-will with the appellants and had no reasons to falsely implicate the appellants in this case. Furthermore, the appellants were arrested on the spot and the items snatched were recovered from their possession. We have no reason to disbelieve his evidence which we find to be reliable, trustworthy and confidence inspiring and believe the same. We find that after the robbery of the complainant the appellants had an encounter with the police party who signaled them to stop, however, the appellants fired upon the police party in order to make their escape good. The police in retaliation made firing which led to each of the appellants receiving gunshot injuries. A police vehicle was also hit. The appellants were arrested on the spot in injured condition by the police and were found to have unlicensed pistols in their possession along with items snatched from the complainant which were duly recognized by the complainant. No enmity or ill-will has been shown against any of the police officials who made arrest and recovery from the appellants and they gave evidence in a straightforward manner, as such we find their evidence to be reliable, trustworthy and confidence inspiring and believe the same. Both the unlicensed fire arms when matched with the empties recovered at the crime scene produced positive FSL report, as such we find that the prosecution has proved its case against the appellants beyond a reasonable doubt in respect of all the convictions under the PPC. However, we acquit the appellants for the offences under the ATA since there was no intention, purpose or design to create terror. Rather after committing robbery the intention of the appellants to fire upon the police party was to escape from their arrest. 4

9. With regard to sentencing in respect of the convictions under the ATA which are maintained, we hereby maintain the sentences in respect of offences under section 392 PPC and section 23(1)(a) of Sindh Arms Act, 2013. However, we reduce the sentences under section 324/34 PPC to 03 years and in respect of offences under section 353 which is reduced to two years imprisonment, however, all the fines are waived off in respect of each offence.

10. All sentences shall run concurrently. The benefit of Section 382-B Cr.P.C. shall also be extended to the appellants and the appellants shall also be entitled to all remissions available to them under the law now that they have been acquitted of the offences under the ATA.

11. The appeals are dismissed subject to modification in sentence as mentioned above.