

IN THE HIGH COURT OF SINDH, KARACHI*Present:**Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi*

SPECIAL CRIMINAL A.T. JAIL APPEAL NO.19 OF 2021.

Appellant	Abdul Qayyum s/o Muhammad Ali through Mr. Moula Bux Bhutto, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Order	29.08.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Abdul Qayyum son of Muhammad Ali was tried in the Court of VIII Anti-Terrorism Court, Karachi in a new Special Case No.55 of 2020 (Old Special Case No.10 of 2019) in respect of three FIRs bearing No.74/2019 u/s. 253/324/34 PPC a/w Section 7 of ATA, 1997, FIR No.75/2019 u/s. 23(i) Sindh Arms Act, 2013 and FIR No.76/2019 u/s. 23(i)(a) Sindh Arms Act, 2013 all registered at PS Mubina Town, Karachi and vide judgment dated 02.01.2021 he was convicted u/s. 353/324/34 PPC punishable u/s. 7(1)(i) of ATA, 1997 and sentenced to suffer R.I. for five years with fine of Rs.50000/-, in case of default in payment of fine he shall suffer further S.I. for six months. He was also convicted u/s.23(i)(a) Sindh Arms Act, 2013 and sentenced to suffer five years with fine of Rs.50000/- and in case of default in payment of fine he shall suffer six months more. However, the appellant was granted benefit of Section 382-B Cr.P.C. All the sentences were ordered to run concurrently.

2. The brief facts of the prosecution case as per F.I.R. are that on 19.02.2019 complainant SIP Ahmed Mustafa along with PC Shahzaib, PC Faisal on official motorcycles were busy on patrolling in their area against prevention of crimes. During patrolling he received spy information that three persons duly armed with weapons are available and have hidden themselves behind the bushes at University Road near main gate of

Karachi University, Gulshan-e-Iqbal, Karachi and they are planning for committing crime of robbery. On the spy information they reached to the pointed place about 2230 hours. Police spotted the accused persons and encircled them and directed them to surrender. On seeing police, the accused persons started firing upon the police with intention to kill them and to deter them from discharging their lawful duties. In relation, police also made cross firing in self defence resultantly one accused got injured and fell down while two accused persons flee away from the crime scene. The injured accused along with weapon was apprehended by the police but due to injuries he was not able to disclose his particulars. His search was conducted in presence of mashirs and from his personal search police recovered one pistol 30 bore, silver in color, without handle cover, without number, along with magazine containing two live rounds and one round in its chamber and so also cash of Rs.1400/-. Police also secured 02 empties of 30 bore pistol and four empties of 9mm from the place of incident. Thereafter, police sealed the recovered case property, prepared memo of arrest and recovery and accused was shifted to the Abbasi Shaheed Hospital through Cheepa Ambulance. Police officials returned back to the PS Mubina Town and registered the FIRs against the accused Abdul Qayyum and two absconders.

3. After usual investigation, the case was challaned and the accused was sent-up to face the trial where he pleaded not guilty to the charge.

4. The prosecution in order to prove its case 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 the allegations leveled against him and claimed false implication in this case by the police. However, the appellant did not give evidence on oath nor produce any DWs in support of his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated

02.01.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset, learned counsel for the appellant under instructions stated that he did not press the appeal on merit and the appellant accepted his guilt provided that he was given reasonable reduction in sentence based on following mitigating factors:-

- i) That the appellant was a young man, who had a large family to support.
- ii) That the appellant was a first time offender and capable for reformation.
- iii) That the appellant had admitted his guilt and shown genuine remorse.
- iv) That the appellant had served out a substantial portion of his sentence.

8. Based on the above mitigating factors, the learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellant. We also find that this case does not fall within the purview of Anti-Terrorism Act, 1997 as it was an encounter by the appellant with the police and the present appellant was apprehended with an unlicensed weapon and as such there was no object, intention or design to create terror.

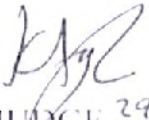
9. We have gone through the evidence and found that the appellant was arrested on the spot after an encounter with the police in an injured condition and unlicensed pistol was recovered from his possession which produced a positive FSL report when matched with the empties recovered at the scene. Injury to the appellant also supports that he was involved in a police encounter and no enmity has been suggested with any of the police officials and thus none of them had any reason to implicate him falsely in this case and as such we believe their evidence which we find to be reliable trustworthy and confidence inspiring; the medical evidence also supports the ocular evidence and as such we find that the prosecution has proved its case against the appellant beyond any reasonable doubt and maintain his convictions.

10. With regard to sentencing based on the mitigating factors raised by learned counsel for the appellant and the no objection of learned Addl.

P.G. to a reduction in sentence based on such factors and the fact that the appellant has completed a substantial part of his sentence, we hereby reduce the appellant's sentenced to the period already undergone in custody and waive off any fine payable by him. The appellant shall be released unless he is wanted in any other custody case.

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


JUDGE Ali
29/08/2022.


JUDGE 29/08/22