

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain*

Spl. Crl. A.T.J.A. No.221 of 2022.

Appellant	Nadeem S/o. Sher Pao through Muhammad Owais Shaikh, Advocate.
Respondent	The State through Mr. Ali Haider Saleem, Additional Prosecutor General Sindh.
Date of hearing	31.05.2023.
Date of order	31.05.2023.

JUDGMENT

Mohammad Karim Khan Agha, J. Appellant Nadeem S/o. Sher Pao was tried in the Anti-Terrorism Court No.I, Karachi in Special Cases No.537 and 537-A both of 2021 arising out of FIR No.842 and 843 of 2021 under Section 353/324/34 PPC r/w Section 7 of ATA 1997 and u/s. 23(1)(a) Sindh Arms Act, 2013 registered at Police Station Sohrab Goth, Karachi and vide Judgment dated 12.04.2022 the appellant was convicted and sentenced as under:-

The appellant is convicted and sentenced to suffer R.I. for ten years with fine of Rs.100,000/- (Rupees One Lac) for the offence punishable u/s 7(b) of Anti-Terrorism Act, 1997, in case of non-payment of fine, he shall suffer S.I. for 6 months more. The appellant was also convicted and sentenced to suffer R.I. for ten years with fine of Rs.100,000/- (Rupees One Lac) for the offence punishable u/s. 324 PPC, in case of non-payment of fine, he shall suffer S.I. for 6 months more. The appellant was also convicted and sentenced to suffer R.I. for five years with fine of Rs.50,000/- (Rupees Fifty Thousand) for the offence punishable u/s. 7(h) of Anti-Terrorism Act, 1997, in case of non-payment of fine, he shall suffer S.I. for three months more. The appellant was also convicted and sentenced to suffer R.I. for two years with fine of Rs.20,000/- (Rupees Twenty Thousand) for the offence punishable u/s. 353 PPC, in case of non-payment of fine, he shall suffer S.I. for two months more. The appellant was also convicted and sentenced to suffer R.I. for five years with fine of Rs.50,000/- (Rupees Fifty Thousand) for the offence punishable under section 23(1)(a) of Sindh Arms Act, 2013, in case of non-payment of fine, he shall suffer

4

SI for three months more. All the sentences were ordered to be run concurrently. The benefit of section 382-B Cr.P.C. is also extended to him.

2. Brief facts of prosecution case are that on 08/10/2021 complainant ASI Turab Ali Shah registered above said FIRs at police station Sohrab Goth, Karachi, wherein it is alleged that he along with subordinate staff left police station under entry No.57 for patrolling. During patrolling at about 0310 hours, when they reached at Main Road, Nadir Hospital, adjacent to Quetta Town, Sector-III, Sohrab Goth, Karachi, they saw two suspects while coming on motorcycle, as such, they were signaled to stop, but they started firing upon police party with intention to commit their murder and police also fired in their defence. During encounter one of accused escaped while taking shelter of darkness, whereas police succeeded in apprehending second accused, who had sustained bullet injury on the right leg knee. On inquiry, accused disclosed his name as Nadeem son of Sher Pao and he disclosed name of absconding accused Waqar Pathan son of unknown. One 30 bore pistol with two live bullets rubbed number, B&B BADAR & BROTHERS was written on the barrel of the pistol, three mobile phones and Rs.2,000/- were recovered from the possession on accused. Accused failed to produce license of the pistol. Police secured two empties of 30 bore pistol, one empty of 9mm pistol and two empties of SMG from place of incident. Due to firing of accused one bullet hit to the police mobile below the mudguard. Accused also failed to produce documents of motorcycle, as such, same was taken in to custody and complainant came to know from computer section ACLC that said motorcycle was stolen from the jurisdiction of P.S. Quaidabad and accused was arrested under memo of arrest and recovery after sealing the case property. Complainant referred the injured accused with police letter to Abbasi Shaheed Hospital through ASI Sajjad Ali and complainant went to police station Sohrab Goth Karachi and registered present FIRs against the accused.

3. After usual investigation the matter was challaned and the appellant were sent up to face trial. He pleaded not guilty to the charge and claimed trial.

4. In order to prove its case, the prosecution examined four (05) PWs and exhibited various items and other documents. The appellant recorded his

7

statement under Section 342 Cr P.C. and denied the allegations against him. He did not give evidence in oath or call any PWs in support of his defence case.

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

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment and as such there is no need to reproduce the same in order to avoid duplication and unnecessary repetition.

7. At the very outset learned counsel for the appellant under instructions did not press his case on merits and admitted his guilt and only sought reasonable reduction in sentence based on the following mitigating factors:-

- i) That the appellant is first time offender and capable for reformation.
- ii) That he is a Youngman with large family to support.
- iii) That by accepting his guilt he has shown genuine remorse and saved the time of this Court.

8. Based on the above mitigating circumstances learned Additional Prosecutor General Sindh had no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and find that on 08/10/2021 the police was on patrolling and at 0310 hours, when they reached at Main Road, Nadir Hospital, adjacent to Quetta Town, Sector-III, Sohrab Goth, Karachi, they saw two suspects while coming on motorcycle, as such, they were signaled to stop, however, the suspects failed to stop and fired on the police party. The police returned firing and as a result of this one of the accused received bullet injury and was arrested on spot in injured condition from whom an unlicensed firm arm was recovered. The police PWs had no enmity or ill will against the appellant and had no reason to falsely implicate him in this case and as such we believe the evidence which we find to be

reliable, trustworthy and confidence inspiring. The evidence also reveals that the empties recovered at the scene when matched with the recovered pistol from the appellant produced a positive FSL report, thus we find that the prosecution has proved its case against the appellant beyond reasonable doubt and maintain his convictions in respect of the offences under the PPC and Sindh Arms Act, 2013. However, the appellant is acquitted of any offence under the ATA 1997 as the appellant has no intention, purpose or design to create terror rather the appellant opened fire on the police in order to avoid his arrest and escape. In this regard reliance is placed on the case of PLD 2020 SC 61 and 2021 SCMR 488.

10. With regard to the sentencing based on the mitigating circumstances raised by the appellant and no objection given by the learned Additional Prosecutor General Sindh we hereby modify the convictions and sentences as under:-

- i) The appellant is convicted u/s.324 PPC and sentenced to R.I. for three (03) years without fine;
- ii) The appellant is convicted u/s.353 PPC and sentenced for R.I. for two (02) years without fine;
- iii) The appellant is convicted u/s.23(1)(a) of Sindh Arms Act, 2013 and sentenced to R.I. three (03) years without fine;

All the sentences shall run concurrently and the appellant shall have the benefit of Section 382-B Cr.P.C. He shall also be entitled to all remissions applicable to him under the law ~~and~~ he has been acquitted of the offences under the Anti-Terrorism Act, 1997.

11. The appeal is disposed of in the above terms.