

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

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

SPL. CRIMINAL A.T. APPEALS NO.160 & 161 OF 2022

Appellant Sabir-u-Rehman s/o Shafiq-ur-Rehman
through Mr. Irshad Ali Bhatti, Advocate
Respondent The State through Mr. Muhammad Iqbal
Awan, Additional Prosecutor General,
Sindh.

SPL. CRIMINAL A.T. APPEAL NO.168 & 169 OF 2022

Appellant Muhammad Sohail s/o Abdul Talib through
Mr. Muhammad Iqbal Baloch, Advocate
Respondent The State through Mr. Muhammad Iqbal
Awan, Additional Prosecutor General,
Sindh.

SPL. CRIMINAL A.T. JAIL APPEAL NO.191 OF 2022

Appellants 1) Muhammad Aamir s/o Muhammad Iqbal
2) Noman s/o. Liaquat Ali through M/s.
Mehwish Naz and Zahida Parveen,
Advocates
Respondent The State through Mr. Muhammad Iqbal
Awan, Additional Prosecutor General,
Sindh.
Date of Hearing : 30.05.2023
Date of Judgment : 30.05.2023

J U D G M E N T

Mohammad Karim Khan Agha, J. Appellants Muhammad Aamir, Muhammad Sohail, Sabir-u-Rehman and Noman were tried in the Anti-Terrorism Court No.I, Karachi in Special Cases Nos.60 of 2022, No.60-A of 2022, No.60-B of 2022, No. 60-C of 2022 and No.60-D of 2022 arising out of FIR No.04 of 2022 to 08 of 2022 u/s 353/324/186/34 PPC r/w Section 7 of ATA 1997 and u/s 23(1)(a) Sindh Arms Act, 2013 registered at Police Station SIU/CIA, Karachi and vide Judgment dated 29.08.2022 all the appellants were

convicted u/s.265-H(2) and sentenced R.I. for five (05) years each with fine of Rs.20,000/- each for the offence punishable under Section 7(h) of ATA, 1997, in case of non-payment of fine they will suffer S.I. for 06 months more. All the appellants were also convicted and sentenced R.I. for five (05) years each with fine of Rs.20,000/- each for the offence punishable under Section 353 PPC and in case of non-payment of fine they will suffer S.I. for 06 months more. Appellants were also convicted and sentenced R.I. for ten (10) years each with fine of Rs.50,000/- each for the offence punishable under Section 7(c) of ATA, 1997, in case of default in payment they will suffer S.I. for 06 months more. All the appellants also convicted and sentenced R.I. for ten (10) years each with fine of Rs.50,000/- each for the offence punishable under Section 324 PPC, in case of default in payment they will suffer S.I. for 06 months more. They were also convicted and sentenced R.I. for five (05) years each with fine of Rs.20,000/- each for the offence punishable under Section 23(1)(a) Sindh Arms Act, 2013 and in case of default in payment they will suffer S.I. for 06 months more. All the sentences were ordered to run concurrently. Benefit of Section 382-B were also extended to the appellants.

2. Brief facts of prosecution case are that on 12.01.2022 complainant SIP Khalid Khan left P.S SIU along with subordinates under entry No.47 in two police mobiles for patrolling. During patrolling when they reached at Gudam Chowrangi, KIA, Karachi, the complainant received spy information about four culprits involved in different crimes. On receiving such information, complainant held Nakabandi inside River Cause Way Road, Korangi Industrial Area, Karachi. At about 1650 hours, they saw four accused persons while coming on two Motorcycles, who were signaled to stop, but the persons sitting on rear seats of motorcycles started firing upon police party to commit their Qatl-e-amd and police also fired in retaliation. Due to firing of accused persons one bullet hit to police mobile bearing registration No.SPC-954. During encounter the accused sitting on rear seat of motorcycle bearing registration No.KDN-5480, Supper Power became injured, however, all the four accused persons were apprehended by the police. On inquiry, they disclosed their names Muhammad Aamir son of Muhammad Iqbal, Noman son of Liaquat Ali, Muhammad Sohail son of Abdul Talib and Sabir Rehman son of Shafiq-ur-Rehman. One 30 bore pistol with three bullets and Rs.250/- were recovered from accused Muhammad Aamir, one 30 bore pistol with four live bullets and Rs.300/- were recovered from accused Noman, one

30 bore pistol with four live bullets and Rs.250/- were recovered from accused Muhammad Sohail and one 30 bore pistol with four live bullets and Rs.350/- were recovered from accused Sabir Rehman. The recovered weapons were sealed separately on the spot. During encounter accused Muhammad Aamir son of Muhammad Iqbal became injured, as such, he was referred to Jinnah Post Graduate Medical Centre, Karachi for treatment through ASI Muhammad Shahzad. The complainant secured three empties of 30 bore pistol, four empties of SMG and two empties of 9mm pistol. The motorcycles bearing registration No.KDN-5480 & KHI-1483 were also taken in to police custody. Accused failed to produce licenses of their respective weapons as well as documents of motorcycles, as such, they were arrested under memo of arrest and recovery after sealing the case property. The complainant came at police Station and registered five FIRs against all the four accused persons. After registration of the FIRs, the investigation of all cases was entrusted to Inspector Muhammad Sohail, who inspected place of incident and prepared such memo and sketch in presence of mashirs. The statements of witnesses u/s 161 Cr.P.C were recorded. He seized official weapons with bullets as well as police mobile and such memo was prepared. He referred the pistols recovered from accused, official weapons, bullets, empties and police mobile under his letter to the FSL for report, which he received. He also obtained past criminal record of accused Sabir and Sohail under his letter and after completing usual investigation, submitted charge sheets in the court of law.

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

4. In order to prove its case, the prosecution examined four (04) PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. wherein they claimed that they are innocent. They did not give evidence on oath or call any witness in support of their defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellants as set out earlier and hence, the appellants have filed these appeals against their convictions and sentences .

6. After reading out the evidence, learned counsel for the appellants, under instructions, did not press these appeals on merit provided that the

appellants were given a reasonable reduction in sentence handed down to them based on the following mitigating circumstances:-

- i) That the appellants are first time offenders and capable for reformation.
- ii) That they are the sole breadwinners of their family, who relies on their income.
- iii) That by accepting their guilt they have shown genuine remorse and saved the precious court time;

7. Based on the above mitigating circumstances learned APG had no objection to the reduction in sentence to some reasonable extent.

8. We have gone through the material available on record which reveals that while police patrolling at about 1650 hrs they saw suspected persons while coming on two motorcycles and signaled them to stop but they did not stop and started firing upon the police party in order to make their escape good with one bullet hitting the police mobile. In return police also opened fire upon them which lead to one of the appellants Muhammad Aamir receiving bullet injury. All the appellants were arrested on the spot after encounter with the police and unlicensed weapons were recovered from their possession. Empties also recovered which produced positive FSL which matches with the pistols which were recovered from the appellants. The arresting officer and Mashir who made memo of arrest and recovery had no enmity or ill will with the appellants and had no reason to implicate them in a false case. We find the evidence of four PWs to be reliable, trustworthy and confidence inspiring who arrested the appellants on spot red-handed with unlicensed pistols which led to a positive FSL report, as such, we find that the prosecution has proved its case against the appellants beyond a reasonable doubt and we maintain the conviction of all the appellants for offences under PPC and SAA, 2013, however, we do not find that this was a case of terrorism under the Anti-Terrorism Act, 1997 as there was no intention, purpose or design to create terror rather the appellants opened fire on the police in order to avoid their arrest and escape. In this regard reliance is placed on the case of Ghulam Hussain v The State (PLD 2022 SC 61).

9. With regard to the sentencing based on the mitigating circumstances raised by the appellants and no objection given by the learned Addl. }

Prosecutor General Sindh we hereby modify the convictions and sentences as under:-

- a) All the appellants are convicted u/s 353 PPC and sentence to R.I. for three (03) years without fine;
- b) All the appellants are convicted u/s 324 PPC and sentence for R.I. for three (03) years without fine;
- c) All the appellants are convicted u/s 23(1)(a) of Sindh Arms Act, 2013 and sentence for R.I. three (03) years without fine;

All the sentences shall run concurrently and the appellants shall have the benefits of Section 382-B Cr.P.C. Since all the appellants namely Muhammad Aamir, Muhammad Sohail, Sabir-u-Rehman and Noman have been acquitted of the offences under the Anti-Terrorism Act, 1997, they shall also have the benefits of all the remissions available under the law.

10. The instant Special Criminal Anti-Terrorism Appeals and Special Criminal Anti-Terrorism Jail Appeal are disposed of in the above terms.