

En Comter: Undergone

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IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal A.T. Appeal No.63 of 2022
Special Criminal A.T. Appeal No.64 of 2022

Present:

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

Appellant in both appeals	Naseer Ahmed Bhatti S/o Muhammad Arif through Mr. Maroof Hussain Hashmi, Advocate
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Hearing	29.03.2023
Date of Order	29.03.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellant Naseer Ahmed Bhatti was tried in the Court of Anti-Terrorism No.I, Karachi Division in Special Cases No.517/2021 and 517-A both of 2021 pursuant to FIRs No.1800/2021 & 1801/2021 registered U/s 353/324/34 PPC R/w 7 ATA 1997 & U/s 23(1)(A) Sindh Arms Act, 2013 at PS Sachal, Karachi and vide judgment dated 26.02.2022, he was convicted of the said offences and sentenced to suffer R.I. for 10 years and fine of Rs.50,000/- for the offence punishable U/s 7(b) ATA, 1997 and in case of default, he shall serve S.I. for 06 months more. He was also convicted and sentenced to suffer R.I. for five years with fine of Rs.30,000/- for the offence punishable U/s 324 PPC and in case of default, he shall suffer S.I. for three months more. He was also convicted and sentenced to suffer R.I. for five years with fine of Rs.30,000/- for the offence punishable U/s 7(h) of ATA, 1997 and in case of default, he shall suffer S.I. for three months more. He was also convicted and sentenced R.I. for one year with fine of Rs.10,000/- for the offence punishable U/s 353 PPC and in case of default, he shall suffer S.I. for one month more. He was also convicted and sentenced R.I. for five

years with fine of Rs.30,000/- for the offence punishable under Section 23(1)(a) of Sindh Arms Act, 2013 and in case of default, he shall suffer S.I. for three months more. All the sentences were ordered to run concurrently. However, the appellant was granted benefit of Section 382-B Cr.P.C.

2. The Brief facts of the prosecution case are that on 01.11.2021, complainant ASI Nasir Iqbal registered above said FIRs at police station Sachal, Karachi, wherein he has stated that he along with subordinate staff left police station under entry No03 for patrolling. During patrolling when they reached at Main superhighway Road, Bismillah Centre, adjacent to Punjab Bus Stop, at about 1230 hours, they saw two suspects while coming on one motorcycle bearing registration No.KGC-4557, Maker Unique of Black Colour, as such, they were signaled to stop, who instead to stop, started firing upon police party with intention to commit their murder and police also fired in their defence. During encounter both accused sustained bullet injuries and fell down, however, police succeeded in apprehending one accused with motorcycle, who sustained bullet injury on his right leg. One 30 bore pistol with two bullets and Rs.10,000/- were recovered from his possession, whereas his companion runaway while making firing. The apprehended accused disclosed his name Naseer Bhatti son of Arif and disclosed name of absconding accused as Nana son of unknown. Accused failed to produce license of pistol and documents of motorcycle. Complainant also secured two empties of 9 MM pistol, four empties of SMG and one empty of 30 bore pistol from place of incident. Complainant through telephone came to know that motorcycle of accused persons was stolen and such FIR bearing Crime No.1508/2021 was registered at P.S. Sachal, as such, accused was arrested under memo of arrest and recovery after sealing the case property, hence, present FIRs were registered.

3. After usual investigation, the case was challaned and charge was framed against the appellant whereby he pleaded not guilty to the above said offences.

4. The prosecution in order to prove its case examined 05 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 levelled against him and claimed false implication 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 these appeals 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 26.02.2022 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 contest the case on merits and the appellant accepted his guilt provided that he was given some reduction in sentence based on following special features/mitigating factors:-

- i) That the appellant was a young man, who had a large family to support.
- ii) That the appellant had not been convicted in any offence, as such, he was a first time offender and was capable of 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 special features/mitigating factors, the learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellant.

9. We find that the facts and circumstances of this case do not fall within the purview of Anti-Terrorism Act, 1997. This is because the appellant when signaled by the police to stop failed to do so and instead fired upon the police in order to escape which lead to his arrest on the spot and as such he had no design, intention or purpose to create terror. Therefore, he is acquitted of the offences under the ATA, 1997. In this

respect, reliance is placed on the case of Ghulam Hussain vs. the State (2020 PLD SC 61).

10. We have gone through the evidence and found that the appellant was arrested on the spot by the police in injured condition after a shootout with the police and from his possession an unlicensed pistol was recovered which was sent to FSL which matched with the empties recovered at the scene. We find the evidence of the police witnesses to be reliable, trustworthy and confidence inspiring and believe the same and the injuries to the appellant have been proven by the medical evidence as such, we uphold the conviction of the appellant in respect of the offences under Section 324, 353 PPC and Section 23(1)(A) of Sindh Arms Act, 2013.

11. With regard to sentencing based on the special features/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 served out a substantial part of his sentence, we hereby maintain the conviction of the appellant as mentioned above, however, reduce the appellant's sentence to the period already undergone in custody in respect of each offence for which he has been convicted 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 appeals stand disposed of in the above terms.