

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.203 OF 2021.

Appellant	Kashif Ali @ Tanker S/o. Muhammad Umar through Mr. Habib-ur-Rehman Jiskani, Advocate.
Respondent	The State through Mr. Ali Hyder Saleem, Additional Prosecutor General Sindh.
Date of Judgment	03.11.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Kashif Ali @ Tanker S/o Muhammad Umar was tried in the Court of Anti-Terrorism Court No. XX, Karachi in Special Case No.303 of 2020 in respect of FIR No. 616 of 2020 u/s 353/324/427/34 PPC r/w Section 7 ATA, 1997 registered at PS Azizabad, Karachi as well as in Special Case No.303-A/2020 in respect of FIR No.617/2020, u/s 23(i) A Sindh Arms Act, 2013, registered at Police Station Azizabad, Karachi and vide judgment dated 17.11.2021 appellant was convicted and sentenced as under:-

1. The accused Kashif Ali @ Tanker is convicted u/s 324 PPC r/w section 7 of ATA, 1997 and sentenced to undergo R.I for 05 years with a fine of Rs.20,000/-. In default in payment of fine, he shall suffer R.I for 06 months, more.
2. The accused Kashif Ali @ Tanker is convicted u/s 353 PPC and sentenced to undergo R.I for 01 year.
3. The accused Kashif Ali @ Tanker is convicted u/s 23(i)-A Sindh Arms Act and sentenced to undergo R.I for 05 years with a fine of Rs.20,000/-. In default in payment of fine, he shall suffer R.I for 06 months, more.

All the above sentences shall run concurrently. However, the benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the prosecution case are that on 30.09.2020 complainant SI Aijaz Muhammad of PS Azizabad was on patrolling duty along with his subordinate staff and during such patrolling when it was about 0150 hours they reached at the opposite street Yasinabad Graveyard, Block-B, Azizabad, Karachi, where he saw two culprits were present on a motorcycle, they signaled them to stop but the culprits, who after seeing police party started making fire shots at police party with an intention to commit their murder and in response to such fire shots made by the accused persons the police also made fire shots in their defense and during such cross firing one of the accused persons received fire arm injuries and fell down on the ground and later on he was arrested by police party. The police mobile bearing registration No.SPD-354 had also received two fire shots. On an inquiry the injured accused disclosed his name as Kashif Ali @ Tanker S/o Muhammad Umar and he also disclosed the name of his accomplice to be Muhammad Nadeem, who managed to escape from the place of incident. The personal search of injured accused Kashif Ali was conducted which led to the recovery of a pistol of 30 bore pistol loaded with two live bullets in its magazine and one live bullet in its chamber from his possession. His further personal search was conducted which led to the recovery of one black colour wallet containing Rs.500/-, one mobile Nokia and other documents from his possession. The accused had received injuries on his right thigh. The accused failed to produce any license of the weapon. The motorcycle having engine No.7313729, chasis No.313607 was seized by the police. The police also secured two empties of official 9mm, three empties of 30 bore and two empties of SMG bore from the place of incident. Thereafter, injured accused Kashif Ali @ Tanker was shifted to Abbasi Shaheed Hospital for his treatment wherefrom they returned back along with custody of accused at the police station, where the present FIRs were registered against them.

3. After usual investigation, the *challan* was submitted against the appellant to which the appellant pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 07 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. However, the appellant did

not give evidence on oath nor produced 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 17.11.2021 passed by the trial court 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 of the appellant states that he would not contest the case on merits provided that he was given some reasonable reduction in the sentence based on the following mitigating circumstances:-

- a) That the appellant had no conviction in any other case and was capable of reformation.
- b) That the appellant had a large family to support.
- c) By not contesting the case on merits the appellant has admitted his guilt and shown genuine remorse.
- d) That the appellant had served out a major part of his sentence.

8. Based on these mitigating factors mentioned by the appellant, learned Additional Prosecutor General has no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and note that the appellant was arrested on the spot after encounter with the police in injured condition. The unlicensed pistol was recovered from him at the time of arrest, which led to positive FSL which matched with the empties recovered at the crime scene.

10. The Police witnesses who arrested the appellant had no enmity with him and had no reason to falsely implicate the appellant in this case and as such we find their evidence trustworthy and confidence inspiring and believe the same and find that the prosecution has proved its case.

against the appellant beyond any shadow of doubt and maintain his conviction except in respect of offences under the ATA.

11. So far as the ATA offences are concerned, we note that this was not a case of terrorism as there was no intent, purpose or design or create terror and as such the appellant is acquitted of the offences under the ATA. With regard to all PPC offences, for which the appellant was convicted and the offence under Section 23 of the Sindh Arms Act, 2013, we maintain the same for the reasons mentioned above.

12. With regard to sentencing based on the mitigating factors mentioned by learned counsel for the appellant and the no objection given by learned APG we reduce the sentences for the PPC offences and the offence under Section 23-A of Sindh Arms Act to the time already undergone in custody and waive off any fine. The appellant shall be released unless wanted in any other custody case.

13. This appeal stands disposed of in the above terms.