

THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Arshad Hussain Khan*

SPL. CRL. A.T.A. NO.31 OF 2022

Appellant	Muhammad Asim son of Mohammad Qasim through Mr. Sardar Salman Ishaque, Advocate along with Father of Appellant, Muhammad Qasim.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

SPL. CRL. A.T.A. NO.32 OF 2022

Appellant	Muhammad Asim son of Mohammad Qasim through Mr. Sardar Salman Ishaque, Advocate along with Father of Appellant, Muhammad Qasim.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

SPL. CRL. A.T.A. NO.57 OF 2022

Appellant	Azhar son of Rafiq, through Mr. Sardar Salman Ishaque, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.

SPL. CRL. A.T.A. NO.58 OF 2022

Appellant	Azhar son of Rafiq, through Mr. Sardar Salman Ishaque, Advocate.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Hearing	14.12.2022
Date of Announcement	14.12.2022

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellants Mohammad Asim and Azhar were tried in the Anti-Terrorism Court No.XX, Karachi, in Special Cases No.333, 333-A and 333-B of 2021 in respect of FIRs No.135, 136, and 137 of 2021, under Sections 353/324/427/34, PPC, read with Section 7, ATA, 1997 and 23(I)A, SAA, registered at police station Airport, Karachi and vide impugned judgment dated 27.01.2022, appellants were convicted and sentenced as under:-

Sections	Conviction
01. Section 324 PPC r/w Section 7 of ATA, 1997	Accused Mohammad Asim and Azhar to suffer R.I for five years and fine of Rs.20,000/- each and in case of default of payment of the fine, accused persons to undergo R.I for six months more.
02. Section 353 PPC r/w Section 7 of ATA, 1997	Accused Mohammad Asim and Azhar to suffer R.I for one year each.
03. Section 23(I)A, SAA	Accused Mohammad Asim and Azhar to suffer R.I for five years and fine of Rs.20,000/- each and in case of default of payment of fine, the accused persons will have to undergo R.I for six months, more each.

It was further ordered by trial Court that all the above sentences shall run concurrently and the benefit of Section 382-B, Cr.P.C. was also extended to the appellants from the date of their arrest.

2. Brief facts of the prosecution case are that on 25.05.2021, complainant HC Babar Masood of police station Airport was on patrolling duty on police car bearing registration No.SP-050-A, along with his subordinate staff and during patrolling, when they reached at main Shahrah-e-Faisal, Kala Chapra Malir Road, at about 0215 hours on 26.05.2021, they saw two culprits to be present on motorcycle, they signaled them to stop, but the culprits who after seeing police party, accelerated their motorbike towards wrong side and started making straight 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 allegedly made fire shots in their defense and during such cross firing both of the accused persons received fire arm injuries and fell down on the main Shahrah-e-Faisal Opposite Data Darbar Hotel Moon Arcade and later on they were arrested by the police party. On an inquiry, accused persons disclosed their names as Mohammad Asim s/o Mohammad Qasim and Azhar s/o Rafiq. The personal search of

accused Mohammad Asim was conducted which led to the recovery of a pistol of 30 bore loaded with two live bullets and one live bullet in its chamber and one mobile phone viz. one Nokia, cash amount of Rs.1000/-, one PAF Family Card and one PAF Faisal Base entry card, from his possession. Accused Mohammad Asim was found to be injured and received fire arm shot on his right buttock. From the personal search of accused Azhar, police party recovered one pistol of 9mm bore bearing word 'PIETREO BERETA MADE ITALY (PB) AND MOD 93 F CAL 30 BORE PATENTED' rubbed number loaded with two live bullets in its magazine and one live bullet in its chamber, and cash amount of Rs.200/- from his possession. The accused persons failed to produce any license of the weapons. The motorcycle bearing engine No.DSE2308532, chassis No.DSC-3311045 was seized by the police which was received bullet shot on its rear tyre. Police also secured five empties of SMG, three empties of 30 bore and five empties of 9mm bore from the place of incident. The police mobile bearing No.SP-050-A had also received two fire shots on its front bumper. The officials weapons viz. 9mm bore pistol and SMG were also sealed on the spot. Thereafter injured accused persons were sent and shifted to JPMC Hospital for their treatment where concerned MLO admitted accused Asim for further treatment and the custody of accused Azhar was handed over to police and police thereafter took him at police station where complainant HC Babar Masood lodged the aforesaid FIRs against the accused persons.

3. After usual investigation, the challans were submitted and the cases were sent up for trial whereby the appellants pleaded not guilty to the charge and claimed trial.

4. The prosecution in order to prove its cases examined 06 Prosecution Witnesses and exhibited various documents and other items. The statements of accused were recorded under Section 342 Cr.P.C in which they denied the allegations leveled against them. However, the appellants did not give evidence on oath nor produce any DW in support of their defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellants and sentenced them as set out earlier in this judgment; hence, the appellants have filed these appeals against their conviction.

6. The facts of the cases as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 27.01.2022.

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 appellants stated that these cases do not fall within the purview of Section 7 of Anti-Terrorism Act, 1997; however, with regard to Sections under Section PPC and Sindh Arms Act, he, under instructions of the appellants, stated that the appellants do not contest these appeals on merits and accepted their guilt provided that they are given reduction in sentences to some reasonable extent based on the following mitigating circumstances:-

- a) That both the appellants are first time offenders and are capable of reformation;
- b) That both the appellants had large families to support;
- c) That by not contesting these cases on merits the appellants have admitted their guilt and shown genuine remorse and saved the time of this Court;
- d) That the appellants have served out almost half portion of their sentences.

8. Based on these mitigating circumstances mentioned by the appellants, learned Additional Prosecutor General, Sindh, had no objection to the reduction in sentences to some reasonable extent.

9. In essence, on 26.01.2021, the appellants were arrested by the police, when they failed to stop at the signal given by the police and started firing upon the police party. In retaliation, police party also started firing on account of which both accused persons received firearm injuries and fell down from the motorbike and were arrested on spot red hand with unlicensed weapons being recovered from their possession. In such circumstances, it appears that the intention purpose and design of the appellants was not to create terror, but rather to escape from the police and therefore, under such circumstances, we find that the Anti-Terrorism Act is not applicable in these cases. In this regard, we place reliance on the case of **Ghulam Hussain and other v. The State and others** reported as 2020 PLD SC 61. As such the appellants are acquitted for any offence under the Anti-Terrorism Act, 1997.

10. Now coming to the offences under the PPC and SAA, we have gone through the evidence on record and have found that the appellants made firing upon the police party and the police party also fired upon the appellants in retaliation, which led to the appellants being arrested at spot red handed and unlicensed weapons were recovered from their possession. Thus,

appellants both suffer ^{rel-}firearm injuries due to the encounter. Empty shells were also recovered from the place of incident and same were sent for examination and FSL report of the recovered weapons and empty shells matched; as such we find that the prosecution has proved its case against the appellants beyond a reasonable doubt under the offence of PPC and Sindh Arms Act, and maintain the conviction of the appellants for those offences.

11. With regard to sentencing based on the mitigating circumstances and the no objection given by the learned Additional Prosecutor General, Sindh, we hereby reduce the sentences of the appellants under Section 324, PPC and Section 23(1)A of Sindh Arms Act, from five (5) years to three (3) years and also waive all the fines. The appellants shall also be given the benefit of Section 382-B, Cr.P.C. and now they have been acquitted of the offence of Anti-Terrorism Act, 1997. They shall also be entitled for any applicable remissions under the law.

12. These Special Criminal Anti-Terrorism Appeals stand dismissed excepted as modified in above terms.