

Robbery, extortion, Arms Case  
Reduction in sentence

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## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha*  
*Mr. Justice Irshad Ali Shah*

SPL. CRIMINAL ATA NO.28 OF 2020

SPL. CRIMINAL ATA NO.44 OF 2020

Appellant: Yahya Ateeq s/o. Ateeq Ahmed Through  
Mr. Iftikhar Ahmed Shah Advocate,  
Respondent: State through Mr. Mohammad Iqbal Awan,  
Additional Prosecutor General, Sindh.

SPL. CRIMINAL ATA NO.29 OF 2020

Appellant: Asif @ Kalal @ Abbas s/o. Muhammad  
Sadiq Through Mr. Iftikhar Ahmed Shah,  
Advocate  
Respondent: State through Mr. Mohammad Iqbal Awan,  
Additional Prosecutor General, Sindh.

SPL. CRIMINAL ATJA NO.54 OF 2020

Appellant: Yahya Ateeq s/o. Ateeq Ahmed Through  
Mr. Iftikhar Ahmed Shah Advocate,  
Respondent: State through Mr. Mohammad Iqbal Awan,  
Additional Prosecutor General, Sindh.  
Date of Hearing: : 08.10.2021  
Date of Order: : 12.10.2021

### JUDGMENT

*Mohammad Karim Khan Agha, J.* The Appellants Yahya Ateeq s/o Ateeq Ahmed and Asif alias Kala alias Abbas s/o Mohammad Sadiq were charge sheeted to face their trials in three Special Case Nos.70/2019 to 70-B/2019, arising out of FIR No.353/2018 u/s. 392/353/324/34 PPC r/w section 7 ATA 1997 FIR No.354/2018 u/s. 23(i)A Sindh Arms Act, 2013 and FIR No.355/2018 u/s. 23(i) A Sindh Arms Act 2013, lodged by private complainant namely Malik Adil son of Azam

Hussain. After recording complete evidence and hearing the Judge, Anti-Terrorism Court No.XX, Karachi convicted the appellants as under:-

1. For offence under section 392/34 PPC to undergo R.I. for 05 (five) years and fine of Rs.20,000/- (twenty thousand only) in default of payment of fine the convict shall further undergo S.I. for 03 (three) months.
2. For offence under section 7(h) of AT Act r/w Section 353 PPC to undergo R.I. for 02 (two) years and fine of Rs.20,000/- (twenty thousand only) in default of payment of fine the convict shall further undergo S.I. for 03 (three) months.
3. For offence under section 7(i)(b) of AT Act r/w Section 324 PPC to undergo R.I. for 05 (five) years and fine of Rs.20,000/- (twenty thousand only) in default of payment of fine the convict shall further undergo S.I. for 06 (six) months.
4. For offence under section 23(i) A. Sindh Arms Act to undergo R.I. for 05 years and fine of Rs.20,000/- in default of payment of fine the convict shall further undergo S.I. three months.

All the sentences shall run concurrently. The benefit of section 382-B Cr.PC also extended to the accused persons.

2. The brief facts of the case are that on 28.12.2018, ASI Ghulam Fareed was busy in patrol duty around the area along with his subordinate staff in official police mobile. During patrolling at about 0215 hours when they reached at the street of Dow Lab Chanesar Goth, Karachi they saw two accused persons were available and were snatching some valuable things from one person on gunpoint. After seeing the police mobile the accused persons started straight firing on the police party with intention to commit Qatl-e-Amd. In retaliation the police officials had also made some fire shots upon accused persons. During the encounter both accused persons received fire arm injuries on their respective legs and both were apprehended by ASI Ghulam Fareed on the spot. On inquiry both accused disclosed their names to be Yahya Ateeq who received fire arm injury on his left leg and whereas the other disclosed his name to be Asif alias Kala alias Abbas, who had also received fire arm injury on his right leg. The police mobile which was used by the police party also received bullet shot on its driving side door. Upon the personal search of accused Yahya Ateeq, ASI Ghulam Fareed secured one 30 bore pistol without number along with loaded magazine containing 02 rounds in magazine and one round in chamber from his right hand. Upon the

personal search of accused Asif, ASI Ghulam Fareed secured one 30 bore pistol without number along with loaded magazine containing 03 rounds in magazine and one round in chamber from his right hand. From the further personal search of accused Yahya Ateeq, the police also recovered one Nokia mobile 3310 of Orange Colour, one wallet of brown colour containing Rs.400/- and some miscellaneous cards from his possession. The mobile phone which was recovered from the possession of accused Yahya, was identified by the complainant Malik Adil to be the same which was snatched from him by the accused Yahya. The accused persons failed to produce the license of the recovered pistols. Thereafter ASI Ghulam Fareed secured empties from the place of incident. The police arrested accused persons in the above crimes and sent them to the hospital through ASI Afzal Bhatti for their first aid treatment thereafter both accused were brought at the police station, where the present FIRs were registered against them.

3. After usual investigation the case 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 05 PWs and exhibited various items and other documents. The appellants recorded their statements under Section 342 Cr.P.C. whereby they claimed that they were innocent and had been falsely implicated in this case by the police on their refusal to pay bribes. 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 and the impugned judgment, learned counsel for the appellants did not press the appeals on merits, but instead under instructions from the appellants prayed for reduction of the sentences handed down to them to some reasonable extent. Learned Additional Prosecutor General Sindh who was also representing the complainant based on the particular facts and circumstances of the case under instructions has raised no objection to such proposition.

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7. We find that the prosecution has proved its case beyond a reasonable doubt through reliable, trustworthy and confidence inspiring evidence of an independent complainant eye witness who was robbed of his mobile phone by the appellants on gun point who had no ill will or enmity with the appellants to falsely implicate them in this case, that the appellants were arrested on the spot by the police after a brief chase; during the encounter with the police a police mobile was hit by a bullet fired by the appellants which produced a positive FSL report and both the appellants received firearm injuries from the police side as proven through medical evidence as a result of the police encounter; that unlicensed pistols were recovered from each of the appellants at the spot which when matched with the empties recovered at the spot produced a positive FSL report; that the complainant's robbed mobile phone was also recovered from the appellants on their arrest on the spot; that the police had no ill will or enmity with the appellants and had no reason to involve them in a false case and as such we find the prosecution evidence to be reliable trust worthy and confidence inspiring and we believe the same.

8. We however, find that the ATA 1997 is not applicable in this case as at the time of the encounter it was night time and there was no one from the public present who could have been terrorized. Besides, the encounter took place at the spur of moment without any design or intention to create terror among the public and there is no evidence that it did so. The offences therefore fall u/s 324, 353, 324, 34 PPC and u/s 23 SAA. This legal position has not been disputed by the learned Addl. PG.

9. In mitigation, learned counsel for the appellants have submitted that (a) both the appellants are of young age and are capable of reformation, (b) that the appellants are married and their families are suffering due to their continued incarceration, (c) that the appellants are the only bread earners of their families, (d) that the appellants have shown genuine remorse for their conduct by accepting their guilt, (e) that the appellants have already suffered a lot as they both received firearm injuries on their legs which will lead to future permanent disability and (f) the appellants have both served out a substantial portion of their sentence. In light of the above mitigating factors

and keeping in view the no objection given by the learned Additional Prosecutor General Sindh for reduction in sentences, we hereby reduce each of the sentences handed down to each of the appellants which was for 5 years RI to 3 years RI which shall also include all the fines imposed on the appellants. All the sentences shall run concurrently. The appellants shall have the benefit of S.382 (b) Cr.PC and since the ATA is not attracted in this case any remissions available to them under the law.

10. The appeals stand disposed of in the above terms.

MAK/PS\*