

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

SPL. CR. AT APPEAL NO.53 OF 2021

SPL. CR. AT APPEAL NO.54 OF 2021

Appellant; Asghar Ali son of Mohammad Latif
Through Mr. Mohammad Arshad Khan,
Advocate

Respondent; The State through Mr. Ali Haider
Saleem, Additional Prosecutor
General, Sindh.

SPL. CR. AT APPEAL NO.55 OF 2021

Appellant; Tufail Ahmed son of Meer Muhammad
@ Mir Ali Through Mr. Mohammad
Arshad Khan, Advocate

Respondent; The State through Mr. Ali Haider
Saleem, Additional Prosecutor
General, Sindh.

SPL. CR. AT APPEAL NO.56 OF 2021

Appellant; Muhammad Naveed son of Nabi Bux
Through Mr. Mohammad Arshad Khan,
Advocate

Respondent; The State through Mr. Ali Haider
Saleem, Additional Prosecutor
General, Sindh.

Date of Hearing; 18.10.2021

Date of Announcement; 21.10.2021

J U D G M E N T

Mohammad Karim Khan Agha, J. We intend to dispose of all the above captioned four appeals by one common judgment. The Appellants Asghar Ali, Tufail Ahmed and Muhammad Naveed were convicted by the

learned Judge, Anti-Terrorism Court No.XX, Karachi in Special Cases No.275 of 2020 in Crime No.316 of 2020 under Sections 353/324/34 PPC r/w Section 7 ATA 1997, PS Tipu Sultan Karachi, No.275-A of 2020 in Crime No.317 of 2020 under Sections 23(i)-A SAA, PS Tipu Sultan Karachi, No.275-B of 2020 in Crime No.318 of 2020 under Sections 23(i)-A SAA, PS Tipu Sultan Karachi and No.275-C of 2020 in Crime No.319 of 2020 under Sections 23(i)-A SAA, PS Tipu Sultan Karachi vide Judgment dated 30.03.2021 and were sentenced as under:

Section	Conviction.
1. 324 PPC r/w Section 7 ATA 1997	Each of accused persons to suffer R.I. for five years and fine of Rs.20,000/- and in case of default of payment of fine, each of the accused to undergo R.I. for six months, more.
2. 353 PPC	Each of accused persons to suffer R.I. for one year.
3. 23(I)-A SAA	Each of accused persons to suffer R.I. for five years and fine of Rs.20,000/ and in case of default of payment of fine, each of the accused will have to undergo R.I. for six months, more.
	All the sentences shall run concurrently and the benefits of section 382-B Cr.PC extended to the accused persons.

2. The brief facts of the case are that on 16.09.2020 complainant ASI Adeel Hussain was on patrolling duty along with his subordinate staff and during such patrolling when they reached at Service Road near Bank Al-Habib Karachi it was about 0315 hours when they saw three culprits on a motorcycle coming towards them who they signaled to stop. The accused however rather than stopping opened fire with deadly weapons at the police party with an intention to commit their murder and in response to such fire made by the accused the police party also returned fire in retaliation in order to defend themselves and during such cross firing one of the accused persons received fire arm injuries and fell down on the ground and later on all the accused were arrested by the police party. On inquiry the injured accused disclosed his name as Asghar Ali and other accused persons disclosed their names to be Tufail Ahmed and

Mohammad Naveed. The personal search of injured accused Asghar Ali was conducted which led to the recovery of a pistol of 30 bore loaded with two live bullets in its magazine and one live bullet in its chamber from his possession. His further personal search was also conducted which led to the recovery of one wallet of brown colour containing copy of CNIC and Rs.160 and mobile phone. The personal search of accused Tufail Ahmed was conducted which led to the recovery of a revolver of 32 bore loaded with two live bullets from his possession. His further personal search was also conducted which led to the recovery of one touch mobile phone and Rs.110/- from his possession. The personal search of accused Naveed was conducted which led to the recovery of a revolver of 32 bore loaded with two live bullets from his possession. His further personal search was also conducted which led to the recovery of one Vigo Tel mobile phone and Rs.120/- from his possession. The accused persons failed to produce any license of the weapons. The police also secured two empties of SMG and two empties of TT pistol from the place of incident. The motorcycle bearing No.KNF-2197 was also seized by the police at the spot. Thereafter, all three of the accused were arrested by the police which lead to the lodging of the aforesaid FIR's against the accused.

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 04 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 based on the particular facts and circumstances of the case and relevant mitigating circumstances under instructions has raised no objection to such proposition.

7. We find that the prosecution has proved its case beyond a reasonable doubt through reliable, trustworthy and confidence inspiring evidence of police eye witnesses who had no enmity with the appellants and thus had no reason to implicate them in a false case; that the appellants were arrested on the spot one of whom was in injured condition as corroborated/supported by the medical evidence; that an unlicensed pistol was recovered from each of the appellants upon their arrest on the spot and the empties recovered at the scene of the incident lead to a positive FSL report 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 in the early hours of the morning and there was no one from the public present who could have been terrorized. Besides, the encounter took place at the spur of the moment without any design or intention to create terror among the public and there is no evidence that it did so.

9. In mitigation, learned counsel for the appellants have submitted that (a) all 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 one of the appellants has already suffered a lot as he received firearm injuries on his leg which might lead to future permanent disability and (f) no police officer was injured during the encounter. 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.