

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

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

SPL. CRIMINAL A.T. APPEAL NO.152 OF 2020

SPL. CRIMINAL A.T. APPEAL NO.153 OF 2020

Appellant:	Anwar alias Faisal son of Sultan Mohammad through Mr. Mohammad Umar Panhwar, advocate.
Respondent /State:	Through Mr. Mohammad Iqbal Awan, Addl. Prosecutor General.
Date of hearing:	02.11.2021
Date of Judgment:	08.11.2021.

J U D G M E N T

Mohammad Karim Khan Agha, J. Appellant Anwar alias Faisal was charge sheeted to face his trial in two Special Cases Nos.471/2019 and 471-A/2019, arising out of FIR No. 285/2019 under section 353/324 PPC r/w section 7 of ATA 1997 and FIR No: 286/2019 u/s 23(I)-A SAA of P.S Gulshan-e-Iqbal, Karachi. The appellant was convicted vide impugned Judgment dated 23.09.2020 passed by the learned Judge, Anti-Terrorism Court No.XX, Karachi to suffer R.I. for five years and fine of Rs.10000/- and in case of default in payment of fine, he shall suffer R.I. for six months more. He was also convicted for one year R.I. for an offence u/s. 353 PPC. He was further convicted for an offence u/s. 23(I)-A SAA and awarded sentence for five years R.I. with fine of Rs.10000/- and in case of default in payment he shall suffer six months R.I. more.

2. The brief facts of the prosecution case are that on 29-05-2019, ASI Arz Mohammad was busy in routine patrolling along with his subordinates. While roaming around the areas, they reached Rashid Minhas Service Road, Karachi at about 0048 hours when they saw a suspect to be going on foot. They signaled him to stop but instead of stopping said person made fire shots upon them with an intention to take their lives and also deterred them from discharging their lawful duties and official functions. In retaliation, police officials also fired back as a result of which the accused received fire arm injuries and fell down on the ground and later he was apprehended on the spot. The apprehended accused disclosed his name to be Anwar alias Faisal. The personal search of accused was

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conducted which led to the recovery of an unlicensed pistol of 30 bore bearing wording "CAL 30 MADE IN CHINA NORINCO" along with magazine loaded with one live bullet and one live bullet in its chamber from his possession. His further personal search was conducted which also led to the recovery of Rs.16230/ (four notes of Rs.1000/-, 24 notes of Rs. 500, 02 notes of 100, 01 note of Rs: 20), one Movado Wrist Watch, one purse of dark blue colour and one mobile phone Nokia from his possession. The apprehended accused disclosed that the pistol is unlicensed. The complainant arrested him on the spot under the memo of arrest and recovery in presence of mashirs. The police also recovered 5 empties of 9mm and four empties of 30 bore from the spot. The accused was shifted to Jinnah Hospital through SIP Ashiq, for treatment of his injuries. Thereafter, the police returned back at the police station, where the present FIRs were registered against present accused.

3. After usual investigation the case was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 06 PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent and had been falsely implicated in this case by the police. He did not give evidence on oath or call any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed these appeals against his convictions and sentences.

6. After reading out the evidence and the impugned judgment, learned counsel for the appellant did not press the appeals on merits, but instead under instructions from the appellant prayed for reduction of the sentences handed down to him to some reasonable extent based on numerous mitigating circumstances. Learned Additional Prosecutor General Sindh based on the particular facts and circumstances of the case and the mitigating circumstances submitted by the appellant under instructions has raised no objection to such proposition.

7. We find that the prosecution has proved its case beyond a reasonable doubt against the appellant through reliable, trustworthy and confidence

inspiring evidence of witnesses who had no ill will or enmity with the appellant so as to implicate him in a false case which we believe; that the appellant was arrested on the spot by the police after a brief encounter with them; that the appellant received bullet wounds to his abdomen during the encounter with the police which is corroborated by the eye witnesses and medical evidence; that on his arrest from the spot an unlicensed pistol was recovered from the appellant; the empties recovered at the scene of the encounter when matched with the recovered pistol produced a positive FSL report and as such uphold the conviction handed down to the appellant by the learned trial court.

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 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 appellant has submitted that (a) the appellant is of young age and is capable of reformation, (b) the appellant is married and his family is suffering due to his continued incarceration, (c) the appellant is the sole bread earner of his family, (d) the appellant has shown genuine remorse for his conduct by accepting his guilt, (e) the appellant is not a previous convict, (f) the appellant has already suffered a lot as he received serious firearm injuries at the time of the encounter with the police and (g) the appellant has served out a substantial portion of his 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 the appellant which was for 5 years RI to 3 years RI which shall also include all the fines imposed on the appellant. All the sentences shall run concurrently. The appellant shall have the benefit of S.382 (b) Cr.PC and since the ATA is not attracted in this case any remissions available to him under the law.

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