

IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain.

Spl. Criminal ATA No.64 of 2021

Appellants	1. Muhammad Rana S/o. Pathan 2. Israr Ahmed S/o. Ali Bux Kandhro through Mr. Naeemullah Bhutto, Advocate.
Respondent/State	Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.

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Appellant	Muhammad Rana S/o. Pathan through Mr. Naeemullah Bhutto, Advocate.
Respondent/State	Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.

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Appellant	Israr Ahmed S/o. Ali Bux Kandhro through Mr. Naeemullah Bhutto, Advocate.
Respondent/State	Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.
Date of Hearing	15.11.2021
Date of Judgment	19.11.2021

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- The Appellants Muhammad Rana and Israr Ahmed were convicted in the Court of Anti-Terrorism Court No.XX, Karachi in Special Cases No.274/2020 in Crime No.433/2020 u/s. 353/324/34 PPC R/w section 7 ATA, 1997, Special Cases No. 274-A/2020 in Crime No.434/2020 u/s. 23(I)-A of Sindh Arms Act and Special Case No.274-B/2020 in

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Crime No.435/2020 u/s. 23(1)-A of Sindh Arms Act registered at P.S. Mubina Town, Karachi vide Judgment dated 29.04.2021 and were sentenced to R.I. for 05 years and to pay fine of Rs.20,000/-each and in default of payment, the appellants were to undergo further R.I. for period of 06 months. However, they were also given the benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per FIR lodged by complainant SHO/SIP Shahid Taj are that on 11.09.2020 he was on patrolling duty along with his subordinate staff and during such patrolling police officials / staff of PS Gulshan-e-Iqbal namely PC Kashif, PC Babar Patras, PC Shahbaz and Abdul Rehman have also accompanied him in patrolling and snap checking at main Abul Asfhani Road, near Sui Gas Company when it was about 2200 hours they saw two culprits on a motorcycle 12 registration No.NFA-2000 coming towards them, 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 both were arrested by police party on the spot. One PC Kashif had also received fire arm injury on the finger of his left hand. On inquiry the injured accused disclosed his name as Muhammad Rana and other accused disclosed his name to be Israr Ahmed. The personal search of injured accused Muhammad Rana was conducted which led to the recovery of a 30 bore pistol bearing No.B-1940 loaded with three live bullets in its magazine and one live bullet in its chamber from his possession. The words "PAK MADE 30, PAK MADE" were also engraved on its barrel, and it was of black colour and black colour tape was also wrapped over its Butt. His further personal search was also conducted which led to the recovery of three mobile phone i.e. two Samsung and Q-mobile, one wallet of light brown colour containing driving license, original CNIC and Rs.1100/-. The personal search of accused Israr Ahmed 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 from his possession. His further personal search was also conducted which led to the recovery of a wallet of dark brown colour containing one colour copy of his CNIC, Rs.200/- and 43 fuel cards of PSO from his possession. The accused persons failed to produce any license for the weapons.

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The police also secured three empties of 9mm and four empties of 30 bore from the place of incident. The motorcycle was also seized by the police at the spot. Thereafter, their arrest was made by the police.

3. Thereafter, accused Israr Ahmed along with case property shifted to PS whereas the police shifted injured accused Mohammad Rana and PC Kashif to Abbasi Shaheed Hospital for their treatment wherefrom they returned back at PS along with custody of accused Mohammad Rana at the police station, where the present FIRs were registered against them.

4. After usual investigation the cases were challaned and the appellants were sent up to face trial. They pleaded not guilty and claimed trial.

5. 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. They did not give evidence on oath or call any witness in support of their defence.

6. 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.

7. 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 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 appellants under instructions has raised no objection to such proposition.

8. We find that the prosecution has proved its case beyond a reasonable doubt against the appellants through reliable, trustworthy and confidence inspiring evidence of eye witnesses and other witness evidence who had no ill will or enmity with the appellants so as to implicate them in a false case which we believe; that the appellants were both arrested on the spot by the police after

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a brief encounter with them one of whom (Rana) was injured and one policemen was also injured during the encounter; that the injuries to the appellant Rana and the police officer Kashif is corroborated/supported by the medical evidence; that on their arrest from the spot an unlicensed pistol was recovered from each of the appellants; the empties recovered at the scene of the encounter when matched with the recovered pistols produced a positive FSL report; that the recovered motorbike which was seized at the spot belonged to a relative of appellant Rana and as such we uphold the convictions handed down to the appellants by the learned trial court.

9. We however, find that the ATA 1997 is not applicable in this case as the encounter with the police took place at the spur of moment without any design, purpose or intention to create terror among the public and there is no evidence that it did so. The offences therefore fall u/s 392, 353, 324, 34 PPC and u/s 23 SAA. This legal position has not been disputed by the learned Addl. PG.

10. In mitigation, learned counsel for the appellants have submitted that (a) the appellants are both of young age and are capable of reformation, (b) that both the appellants are married and their families are suffering due to their continued incarceration, (c) that the appellants are the sole bread earners of their families (d) that the appellants have shown genuine remorse for their conduct by accepting their guilt, (e) the appellants are not previous convicts and (f) one of the appellants Rana has already suffered a lot as he received serious firearm injuries at the time of the encounter with the police. 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 appellants which was for over 3 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.

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