

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Arshad Hussain Khan.

Spl. Criminal ATJA No.138 of 2020.

Appellant: Ghulam Mustafa S/o. Ghulam Murtaza
through Mr. Ajab Khan Khattak,
Advocate.

The State: Through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General.

Date of Hearing: 16.12.2021

Date of Judgment: 21.12.2021

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- The Appellant Ghulam Mustafa S/o. Ghulam Murtaza was convicted by the Anti-Terrorism Court No.XX, Karachi in Special Cases No.68/2019 in Crime No.547/2018 u/s. 353/324/186/34 PPC r/w section 7 ATA, 1997, Special Case No. 68-A of 2019, Crime No.548/2018 u/s. 23(1)A of Sindh Arms Act, 2013 registered at P.S. Korangi Karachi vide Judgment dated 26.08.2020 whereby the appellant was convicted and sentenced as under:-

1. The accused Ghulam Mustafa S/o. Ghulam Murtaza was convicted U/s. 324 PPC r/w section 7 ATA, 1997 and sentenced to suffer R.I. for five years and fine of Rs.20,000/- and in case of default of payment of fine, he has to undergo R.I. for six months.
2. The accused Ghulam Mustafa S/o. Ghulam Murtaza was also convicted U/s. 353 PPC and sentenced to suffer R.I. for one year.
3. The accused Ghulam Mustafa S/o. Ghulam Murtaza was also convicted U/s. 23(1)-A of Sindh Arms Act and was sentenced to suffer R.I. for five years and fine of Rs.20,000/-. In case of default of payment of fine, he has to undergo R.I. for six months.

All the above sentences were directed to run concurrently. Benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the prosecution case are that on 20.12.2018 ASI Zahid Hussain was busy in routine patrolling alongwith his subordinates. Whilst on patrol they reached at Link road Vita Chowrangi Reti Bajri Stop, Karachi where a

passerby came to them and disclosed that on the road ahead two culprits were committing robbery from the people and they also robbed him. On receiving such information the complainant party went to the pointed place viz. Link Road opposite Zia Colony Korangi No.1 when it was about 2130 hours where they saw two suspects were on a motorbike who they signaled to stop but instead of stopping said motorcyclist speed up and also made some 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, the police officials also fired back as a result of which both of the accused persons received fire arm injuries. One of them fell down on the ground whilst the other one was apprehended on the spot. The accused who had fallen down on the ground who had received fire arms shot on his back expired on the spot whereas upon an inquiry the apprehended person disclosed his identity as Ghulam Mustafa, who also received fire arms injuries on his left arm. He also disclosed the name of his accomplice to be Muhammad Akram, who had died on the spot. The personal search of accused Ghulam Mustafa was conducted which led to the recovery of an unlicensed pistol of 30 bore along with magazine loaded with two live bullets and one live bullet in its chamber from his possession. His further personal search was conducted which also led to the recovery of Rs.4000/- and one Vigo Tel mobile phone from his possession. The personal search of dead accused Muhammad Akram was conducted which led to the recovery of an unlicensed pistol of 30 bore bearing No.A-8062 along with magazine loaded with three live bullets from his possession. His further personal search was conducted which also led to the recovery of one Samsung mobile phone Golden, one mobile Nokia and Rs.5200/- from his possession. The apprehended accused Ghulam Mustafa disclosed that the pistol was unlicensed and he also disclosed that the above-mentioned articles were snatched by them prior to this incident. The motorcycle bearing NoKFW-5160 maker Unique was also seized by the police u/s. 550 Cr.P.C. Later on complainant arrested him on the spot under the memo of arrest and recovery in presence of mashirs. The police also secured three empties of 30 bore and four empties of 9mm from the spot. Both accused persons were shifted to Jinnah Hospital through ASI Aijaz in Edhi Ambulance for the treatment of injured accused as well as proceedings u/s 174 Cr.P.C. of dead body/accused.

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

4. The prosecution in order to prove its case examined 06 witnesses and exhibited various documents and other items. The statement of accused person was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him and claimed false implication. He did not give evidence on oath or call any DW in support of his defence case. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against his convictions.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 26.08.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

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 the appellant 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 eye witnesses and other witness evidence 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 the police in injured condition; that the injuries to the appellant are corroborated/supported by the medical evidence; that on his arrest from the spot an unlicensed pistol was recovered from the appellant along with robbed items; that the empties recovered at the scene of the encounter when matched with the recovered pistol produced a positive FSL report and the bike on which he attempted to make his escape good was seized and as such we uphold the convictions handed down to the appellant by the learned trial court.

8. In mitigation, learned counsel for the appellant has submitted that (a) the appellant is a young man and is capable of reformation, (b) that the appellant's

family is suffering due to his continued incarceration, (c) that the appellant is the sole bread earner of his family, (d) that the appellant has shown genuine remorse for his conduct by accepting his guilt, (e) that the appellant is a first time offender and (f) the appellant has already suffered a lot as he received firearm injury at the time of the encounter with the police.

9. 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 of imprisonment** which were handed down to the appellant which were for over 3 years RI to 3 years RI along with fine of RS 10,000 in respect of each offence for which he was fined and in default of payment the appellant shall undergo 3 months further SI. All the sentences shall run concurrently. The appellant shall have the benefit of S.382 (B) Cr.PC.

10. The appeal stands disposed of in the above terms.