

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Muhammad Iqbal Kalhoro J.
Mr. Justice Shamsuddin Abbasi, J.

Spl. Cr. A.T. Appeals No.332 and 333 of 2019

Appellant: Muhammad Salim through Ms. Zahida Majeed
Advocate.

Respondent: The State through Mr. Abrar Ali Khichi Addl. P.G.

06.10.2020.

JUDGMENT

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Muhammad Iqbal Kalhoro, J. Appellant was arrested by police of P.S Mominabad Karachi in injured condition alongwith an unlicensed 30 bore pistol with two rounds after an encounter on 02.06.2017 at 0500 hours from Mominabad, Bloock-D, near Zia Colony Graveyard, Double PMT street, sector 4/F, Orangi Town Karachi, when he alongwith his accomplice was signaled by the police but did not stop and made firing upon them whereas his accomplice, whose name he disclosed as Amjad made his escape good. Accordingly, he was booked in Crime No.213/2017 U/s 353, 324, 34 PPC r/w section 7 ATA, 1997 and 214/2017 U/s 23(i) A, of Sindh Arms Act, 2013 of P.S. Mominabad.

2. Appellant was tried against the same allegations and has been convicted U/s 324, 353 PPC r/w section 7(h) ATA, 1997 and sentenced to suffer R.I for 05 years with fine of Rs.20,000/-, in default to suffer imprisonment for 06 months and u/s 23(i), A, Sindh Arms Act, 2013 to suffer R.I. for 03 years with fine of Rs.10,000/-, in default to suffer R.I. for 04 months more. All the sentences are ordered to run concurrently. Benefit under section 382-B Cr.P.C has been extended to him. By means of these appeals, the appellant has challenged his conviction and sentences as stated above.

3. Learned defence counsel at the very outset submits that the appellant is the first offender and is continuously in jail since the date of his arrest i.e. 02.06.2017, therefore, the period already undergone by him in jail may be treated as his sentence and he may be released. He further submits that there

are certain discrepancies in the prosecution case which are sufficient for reduction of sentence.

4. Learned Additional Prosecutor General has not opposed this proposal and has conceded that the appellant is not a previous convict.

5. We have heard learned counsel for the parties and perused the material available on record. In the trial, the prosecution has examined three witnesses, who have supported the prosecution case that appellant was arrested on the spot and from him one unlicensed pistol loaded with two live rounds was recovered. However it is noted that at the time of encounter no one from the police party sustained any injury and it was only the appellant who got injured. Besides, there is no evidence to suggest that due to the alleged encounter the general public had gone into panic or suffered from sense of insecurity or that the offence was committed by the appellant with a design to achieve any of the objective specified in clause (b) of subsection (1) of section 6 of ATA, 1997 or aimed to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6, ATA, 1997. In the circumstances, applicability of section 7(h) ATA, 1997 does not seem attracted. This legal position has not been denied by the learned Addl. P.G either. Further no record has been produced before us to show that the appellant is a previous convict. His counsel has stated that he is regretful of what went wrong in the past and has improved himself. The jail roll of appellant dated 06.10.2020 reflects that he has served a sentence of 03 years, and 06 months including remission. The punishment u/s 324 PPC is extendable to 10 years, section 353 PPC is punishable upto two years and fine and punishment u./s 23(i), A of Sindh Arms Act, 2013 may extend to 14 years and fine. In such circumstances, we see no impediment legal or otherwise in acceding to the request of learned defence counsel for reduction of the sentence of the appellant, when he has already served out more than 03 years.

6. In view of above, conviction of the appellant u/s 7(h) ATA, 1997 is set-aside. However, his conviction u/s 353, 324 PPC; and u/s 23(i), A, of the Sindh Arms Act, 2013 is maintained, but his sentence on all counts is reduced to the period already undergone by him. Fine on all counts is also reduced to Rs.5000/- and in case of default, the appellant will have to undergo a period of 15 days more.

The appeals in the terms as stated above stand disposed of alongwith pending applicatons.

Judge

Judge