

IN THE HIGH COURT OF SINDH, KARACHI

Before:

**Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi**

**Special Criminal Anti-Terrorism Appeal No.318 of 2018
Special Criminal Anti-Terrorism Appeal No.319 of 2018**

Appellant in both the Appeals: Ali Ahmed alias Khatiya S/o
 Mumtaz-ul-Haq
 Through Mr. Muhammad
 Zareen Satti

Respondent/The State : Mr. Mohammad Iqbal Awan,
 Deputy Prosecutor General,
 Sindh

Date of Hearing : 25.11.2019

Date of Judgment : 06.12.2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., This single judgment will dispose of two captioned Special Criminal Anti-Terrorism Appeals as the same have arisen out of the common judgment. Appellant Ali Ahmed in the above mentioned two Appeals was convicted by the learned Judge, Anti-Terrorism Court-X, Karachi in Special Case No.161/2018 (Old No.2294/2016) under FIR No.493/2016 for the offences under sections 353, 324, 186 & 34 PPC r/w 7 ATA, 1997 and Special Case No.161-A/2018 (Old No.2295/2016) under FIR No.494/2016 for the offences under section 23(i)A Sindh Arms Act, 2013 registered at PS Awami Colony, Karachi; whereby the appellant was convicted u/s 7(h) of ATA, 1997 r/w sections 353/324/186 PPC and sentenced to undergo R.I. for 10 years with fine of Rs.100,000/. In default of payment of fine, he shall suffer further R.I. for 06 months. He was also convicted for the offence u/s 23(i) A Sindh Arms Act, 2013 and sentenced to undergo R.I. for 07 years with fine of Rs.50,000/-. In default of payment of fine, he

shall suffer further R.I. for 06 months. All the sentences were ordered to run concurrently. However, the benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. Brief facts of the prosecution case in nutshell are that on 08.10.2016 in between 0130 to 0145 hours, ASI Muhammad Naeem got registered FIR No.493/2016 u/s 353/324/186/34 PPC and FIR No.494/2015 u/s 23(i)A SAA, 2013 at PS Awami Colony, Karachi stating therein that on that day, he was on patrolling duty alongwith his subordinate staff in official police mobile. During patrolling, when the police party had reached at Link Road near Graveyard Korangi No.6 at about 0030 hours, they saw two suspicious motorcyclists. As such, ASI Muhammad Naeem, gave signal to stop them for checking purpose but the said motorcyclists had suddenly opened straight fire upon the police party with intention to commit their murder as well as deterred them from discharging their lawful duties. The police officials also made fire in retaliation. During cross-firing, one of the assailants, who was sitting on the rear seat of the motorbike, sustained bullet injury and fell on the ground. Later on, ASI Muhammad Naeem with the help of his subordinate staff encircled the injured culprit and succeeded to apprehend him on the spot. Whereas, the second assailant managed to flee away from the crime scene on his motorbike. Upon inquiry, the apprehended culprit disclosed his name as to be Ali Ahmed @ Khatiya son of Mumtaz-ul-Haq. Due to non-availability of private persons at the place of Wardaat and in presence of official witness, ASI Muhammad Naeem conducted personal search of the injured/apprehended accused and recovered one 30 bore pistol from his right hand alongwith loaded magazine having 03 Rounds whereas 01 Round loaded in the chamber. The

apprehend person also disclosed the name of his absconding accomplice as to be Muhammad Hussain son of Mian Hussain. The accused was also asked to produce license of the recovered pistol but he failed to produce the same. Consequently, the accused was arrested on the spot. Under the memo of arrest, recovery and seizure, the injured/arrested accused was shifted to Jinnah Hospital through police mobile. Hence, the said FIRs were registered.

3. After completion of investigation of these cases, report u/s 173 Cr.P.C. was submitted by the I.O. against the present accused in the concerned Court of law as well as against the absconding accused u/s 512 Cr.P.C.

4. Thereafter, formal charge was framed against the accused Ali Ahmed at Ex.8, to which he pleaded not guilty and claimed to be tried vide his plea at Ex.8/A.

5. In order to prove its cases, the prosecution examined PW-1 HC Zahid Ali at Ex.9, who produced memo of arrest, recovery and seizure at Ex.9/A, memo of inspection of place of incident at Ex.9/B, roznamcha entry No.6 at Ex.9/C. PW-2 ASI Muhammad Naeem at Ex.12, who produced roznamcha entry No.12/A, roznamcha entry No.47 at Ex.12/B, FIRs at Ex.12/C and Ex.12/D respectively. PW-3 PI Waheed Ahmed Awan at Ex.13, who produced roznamcha entry No.8 at Ex.13/A, roznamcha entry No.10 at Ex.13/B, letter addressed to the Incharge CRO/CIA at Ex.13/C, letter addressed to the Incharge FSL at Ex.13/D, FSL Examination Report at Ex.13/E. PW-4 SIP Ghulam Yaseen at Ex.14, who produced roznamcha entry No.46 at Ex.14/A, attested copy of Medico Legal Certificate of the injured accused at Ex.14/B.

Thereafter, learned APG for the State closed the prosecution side vide statement at Ex.15.

6. The statement of accused was recorded u/s 342 Cr.P.C. at Ex.16 in which he denied all the allegations leveled against him and claimed to be innocent and prayed for justice. He also stated that he had been falsely booked in these cases.

7. Learned counsel for the appellant mainly contended that appellant is innocent and has been involved by the police in false cases; that recovery was not effected from him and the same was foisted upon him by the police; that no private persons were made witness of the recovery. During arguments, the learned counsel, in the face of overwhelming evidence against him and under the instructions of his client/appellant has not pressed the instant appeals on merit but has requested for a reduction in sentence on the ground that the appellant is the only male member of a large family of which he is the main breadwinner and is not a previous convict and is capable of reformation.

8. Mr. Muhammad Iqbal Awan, learned DPG appearing for the State has no objection to a reduction in sentence to some reasonable extent taking into account the above mitigating circumstances.

9. We have heard the arguments of learned counsel for the parties and have perused the material available on record.

10. The record reflects that all the prosecution witnesses supported the case of prosecution, arrest of appellant at spot in injured condition as well as recovery of pistol were proved by the prosecution by providing oral and documentary evidence including reports of MLC of appellant and we are satisfied that the

prosecution has proved its case against the appellant beyond a reasonable doubt.

11. The Police officials are as good as private witnesses and their testimony could not be discarded merely for the reason that they were police officials, unless the defense would succeed in giving dent to the statements of prosecution witnesses and prove their mala fide or ill-will against accused which the appellant has not been able to do. The appellant was arrested at spot in injured condition, pistol was recovered from him and empties were recovered from place of wardat all of which things are against the appellants and are in line with prosecution case. All the witnesses furnish ocular evidence and supported the case of prosecution, medical evidence is in line with oral evidence, no enmity was suggested against the appellants, they were cross-examined at length but we do not find any major contradiction in their evidence which would lead us to believe that they are not trustworthy.

12. In view of the mitigating circumstances raised by the appellant and no objection extended by learned Deputy Prosecutor General, we have carefully gone through the relevant law for which appellant was convicted, the punishment provided under Sections 324, 353 and 186 PPC are produced as under:-

*S.324. **Attempt to commit qatl-i-amd.** Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused qatl, he would be guilty of qatl-i-amd, shall be punished with imprisonment of either description for a term which may extend to ten years [but shall not be less than five years, if the offence has been committed in the name or on the pretext of honour], and shall also be liable to fine, and, if hurt is caused to any person by such act, the offender shall be liable to the punishment provided for the hurt caused.*

Provided that, where the punishment for the hurt is qisas which is not executable, the offender shall be liable to arsh and may also be punished with

imprisonment of either description for a term which may extend to seven years.

S.353. Assault or criminal force to deter public servant from discharge of his duty. *Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharge his duty as such public servant, or in consequence of anything done or attempted to be done such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

S.186. Obstructing public servant in discharge of public functions. *[(1) Whoever, voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to [One year], or with fine which may extend to [fifty thousand], or with both.*

[(2) Whoever, intentionally hampers misleads jeopardizes or defeats an investigation, inquiry or prosecution, or issues a false or defective report in a case under any law for the time being in force shall be punished with imprisonment for a term which may extend to three years or with fine, or with both.]

13. Punishment provided under section 7(h) of ATA, 1997 as under:-

S.7(h). the act of terrorism committed falls under clauses (h) to (n) of sub-section (2) of section 6 shall be punishable, on conviction, to imprisonment of not less than [five years] and not more than [but may extend to imprisonment for life] and with fine; and

14. Punishment provided under Section 23(i)(a) of Sindh Arms Act, 2013 is produced as under:-

23. Punishment for certain offences. – (1)
Whoever –

(a) acquires, possesses, carries or control any firearm or ammunition in infringement of section 3, shall be punishable with imprisonment for a term which may extend to fourteen years and with fine;

15. The above provisions of law provide the words may extend to (S.324, ten years but shall not be less than five years, S.353, two years or with fine or with both, S.186, three years or with fine or with both) as stated above and thus do not restrain the Court from

awarding lesser sentence in its discretion keeping in view Section 423 Cr.P.C. Since the appellant is the sole bread winner of a large family and is of previous good character and in our view is capable of reformation under such circumstances, we hereby dismiss the instant appeals of the appellant on merits but reduce the sentences of appellant as under:-

- a) *Convicted u/s 7(h) of ATA, 1997 R/W S. 353,324,186 PPC and sentenced to suffer R.I. for 05 years and fine of Rs.100,000/-. In case of default of payment, he shall further suffer R.I. for 06 months.*
- b) *Convicted u/s 23(I)(A) of Sindh Arms Act, 2013 and sentenced to suffer R.I. for 05 years and fine of Rs.50,000/-. In case of default of payment, he shall further suffer R.I. for 06 months.*

16. All the other sentences and fines, penalties etc. should remain intact however all sentences of imprisonment shall run concurrently and the appellant shall also have the benefit of Section 382(B) Cr.P.C.

17. The instant appeals are disposed of in the above terms.

JUDGE

JUDGE