

# IN THE HIGH COURT OF SINDH, KARACHI

## **Before:**

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

## **Special Crl. Anti-Terrorism Appeals No.367, 368 & 369 of 2018**

Appellant in Appeal No.367 of 2018:

1. Atif Mehmood S/o Ali Asghar
  2. Akhtar S/O Hashim
- Through Mr. Ali Gohar Masroof, Advocate

Appellant in Appeal No.368 of 2018:

Atif Mehmood S/o Ali Asghar  
Through Mr. Ali Gohar Masroof, Advocate

Appellant in Appeal No. 369 of 2018:

Akhtar S/o Hashim  
Through Mr. Ali Gohar Masroof, Advocate

Respondent : The State  
Through Mr. Farman Ali Kanasro,  
Addl. Prosecutor General.

Date of Hearing : 18-12-2019

Date of Judgment : 24-12-2019

## **J U D G M E N T**

**ZULFIQAR ALI SANGI---J.**, Appellants filed the instant Special Criminal Anti-Terrorism Appeals on being aggrieved and dissatisfied with the impugned judgment dated 06.11.2018 passed by learned Judge, Anti-Terrorism Court No.VI, Karachi Division in (1) Special Case No.401/2018 under FIR No.72/2018 for the offences under sections 392/353/324/34 PPC R/w section 7 ATA, 1997, (2) Special Case No.402/2018 under FIR No.73/2018 for the offences under section 23(1)(A) of Sindh Arms Act, 2013 and (3) Special Case No.403/2018 under FIR No.74/2018 for the offences under section 23(1)(A) of Sindh Arms Act, 2013 registered at PS SITE-A, Karachi whereby the appellants were convicted and sentenced as under:-

- a) *Convicted Atif Mehmood S/o Ali Asghar and Akhter S/o Hashim for the offence u/s 353 PPC and sentenced to suffer R.I. for two years each with fine of Rs.5000/- each. In case of non-payment of fine, they shall suffer S.I. two months more.*

- b) Convicted Atif Mehmood S/o Ali Asghar and Akhter S/o Hashim for the offence u/s 324 PPC and sentenced to suffer R.I. for five years each.*
- c) Convicted Atif Mehmood S/o Ali Asghar and Akhter S/o Hashim for the offence u/s 392 PPC and sentenced to suffer R.I. three years each.*
- d) Convicted Atif Mehmood S/o Ali Asghar and Akhter S/o Hashim for the offence u/s 23(1)(A) of Sindh Arms Act, 2013 and sentenced to suffer R.I. for seven years each and fine of Rs.10,000/- each. In case of non-payment of fine, they shall suffer S.I. four months more.*

All the sentences were ordered to run concurrently. The benefit of section 382(B) Cr.P.C. was also extended to the appellants.

**2.** Brief facts of the prosecution case are that complainant Ashar S/o Saleem works as a Fabric Incharge in MR Industries, SITE Area, Karachi. On 08.03.2018, the complainant lodged FIR No.72/2018 under sections 392/353/324/34 PPC R/w section 7 ATA, 1997 and stated therein that on the same day he alongwith driver namely Rehmat Khan went to Habib Metropolitan Bank to encash a cheque of his company amounting to Rs.200,000/-. Thereafter, they returned after receiving the cash and at about 12:45 PM reached the main gate of the factory in company vehicle Shahzor. When he came out of the vehicle all of sudden two accused persons emerged on a motorcycle. One of the accused pointed a gun and demanded to hand over the cash amount but the complainant replied that he had no cash with him upon which the accused put his hand in his front pocket and deprived him of cash amount of Rs.2300/- while the other accused also relieved the driver of cash amount of Rs.1200/- and a mobile phone. After snatching, they tried to escape from the spot but suddenly a police mobile arrived and on seeing police the complainant party raised hue and cry on such accused who made aerial firing and tried to escape. The police also returned fire in which one accused was

injured while the other fell from the motorcycle. Both the accused were apprehended by the police on the spot and were arrested. Upon enquiry the arrested accused disclosed their names as Atif Mehmood S/o Ali Asghar and Akhter S/o Hashim. From the personal search of accused Atif, police recovered snatched amount of Rs.2300/-, one pistol and three live bullets. From personal search of accused Akhter one 30 bore pistol without number loaded with magazine containing two live bullets and snatched amount of Rs.1200/- was recovered along with motorcycle bearing registration No.KKQ-0330. Upon enquiry the accused persons could not produce any valid license of the arms and ammunition and document of the motorcycle. SIP Raja Muhammad Riaz then prepared the memo of arrest and recovery in presence of the mashirs namely Ashar and Rehmat. The case properties were sealed on the spot in presence of the mashirs. Thereafter, the police brought both the accused persons to police station and FIRs were lodged against them.

**3.** The charge at Ex.04 was framed against the accused persons, to which they pleaded not guilty and claimed to be tried.

**4.** In order to prove its cases, the prosecution examined five witnesses which details are available in the impugned judgment. Such witnesses gave oral evidence and exhibited documentary evidence including medical evidence and the other recovered items. Thereafter, learned Special Public Prosecutor for the State closed the prosecution side.

**5.** The statements of the accused persons were recorded under section 342 Cr.P.C. to which they totally denied the allegations levelled against them. The accused persons have further stated in their statement that all the PWs including the complainant are interested and they have falsely deposed against them at the

instance of higher officials. That nothing has been recovered from their possession and police has foisted the case property on them. Accused Akhter has further stated that he was arrested from his house and the police brought him to the PS and inflicted a gunshot wound in his leg to make false case against him. The accused persons, however, did not opt to produce evidence in their defense and they also did not depose on oath to disprove the allegations levelled against them.

**6.** The learned trial Court, after hearing the parties and on assessment of the evidence convicted and sentenced the appellants vide judgment dated 06.11.2018 which is impugned before this Court by way of filing the instant Appeals.

**7.** At the outset, leaned counsel for the appellants in the face of overwhelming evidence against them and under the instructions of his clients/appellants has not pressed the instant appeals on merit except in respect of their conviction u/s 324 PPC for which he has contended that there is no evidence against them and has contended that they be acquitted of this offence but has requested in respect of the other offences for a reduction in sentences on the ground that the appellants are the only male members of their large family of which they are the main breadwinners the appellants are of a young age, the amount robbed is very little and the appellants are not pervious convicts and are capable of reformation.

**8.** Mr. Farman Ali Kanasro, Learned Addl. Prosecutor General appearing for the state has no objection to a reduction in sentence to some reasonable extent taking into account the above mitigating circumstances mentioned above and has also fairly conceded that the evidence to prove the offence u/s 324 PPC is doubtful.

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

10. On our reassessment of evidence we found that the prosecution proved the charges leveled against the appellants by producing truthful, confidence inspiring evidence/oral as well as documentary which is supported by medical evidence, **except** the charge under section 324 PPC as in our view no police personnel received injury during the encounter nor any bullet hit to the police mobile. We also found that no any empty was recovered from the place of wardat which connects the appellants with offence under section 324 PPC, therefore we acquit the appellants for offence under section 324 PPC by extending to them the benefit of the doubt and maintain the other sentences awarded by the learned trial court with the following reductions taking into account the above mentioned mitigating circumstances and no objection by the Addl. PG:-

- a) *Convicted Atif Mehmood S/o Ali Asghar and Akhter S/o Hashim for the offence u/s 353 PPC and sentenced to suffer R.I. for two years each with fine of Rs.5000/- each. In case of non-payment of fine, they shall suffer S.I. two months more.*
- b) *Convicted Atif Mehmood S/o Ali Asghar and Akhter S/o Hashim for the offence u/s 392 PPC and sentenced to suffer R.I. three years each.*
- c) *Convicted Atif Mehmood S/o Ali Asghar and Akhter S/o Hashim for the offence u/s 23(1)(A) of Sindh Arms Act, 2013 and sentenced to suffer R.I. for Three years each and fine of Rs.10,000/- each. In case of non-payment of fine, they shall suffer S.I. three months more.*

11. All the sentences are ordered to run concurrently. The benefit of section 382(B) Cr.P.C. is also extended to the appellants.

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

**JUDGE**

**JUDGE**