

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Amjad Ali Bohio

Spl. Cr A.T. Jail Appeal No.205 of 2022

Appellant Talib Hussain s/o. Nawab Ali through  
Mr. Abdul Quddos, Advocate.

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

Date of Judgment 18.08.2023.

J U D G M E N T

Mohammad Karim Khan Agha, J:- Appellant Talib Hussain was tried in the Court of Anti-Terrorism Court No.II, Karachi in Special Case No.105/2021 arising out of FIR No.625 of 2020 U/s. 392/397/353/324/34 PPC r/w section 7 ATA 1997 and Special Case No.105-A/2021 arising out of FIR No.626 of 2020 U/s. 23(I)(A) both registered at P.S. SITE-A, Karachi and vide Judgment dated 30.11.2022 the appellant was convicted and sentenced as under:-

1. For offence under section 6(2) (m) which is punishable u/s. 7 (H) of AT A r/w. Section 353 PPC to undergo R.I. for 05 (five) years and fine of Rs.5,000/- (Five thousand only) and in default of payment of fine the accused shall further undergo S.I. for 03 (three) months.
2. For offence under section 6(2) (m) which is punishable u/s. 7 (H) of AT A r/w. Section 324 PPC to undergo R.I. for 05 (five) years and fine of Rs.10,000/- (Ten thousand only) and in default of payment of fine the accused shall further undergo S.I. for 06 (six) months.
3. For offence under Section 337 (f) (2) PPC to undergo R.I. for 02 (Two) years and pay Rs.10,000/- (Ten thousand only) as Daman to the injured HC Pervaiz Iqbal.

4. For offence under Section 392 r/w Section 511 PPC to undergo R.I. for 03 (Three) years and fine of Rs.5,000/- (Five thousand only) and in default of payment of fine the convict shall further undergo SI for three months.
5. For offence under section 23(i)(A) of Sindh Arms Act to suffer R.I. for 05 years and fine of Rs.3,000/-. In default of payment of fine the convict shall further suffer S.I. for 03 (three) months.

All the above sentences were ordered to be run concurrently. The benefit of section 382-B Cr.P.C. was also extended to the accused from the date of his arrest.

2. The case of the prosecution against the accused as put-forth in the FIR registered against him are that complainant Whaeed Khan s/o Fazal Dad on 28.12.2020 had taken Rs. 120000/- from his house for depositing in Bank and when he reached at Metrovil Site near Girls College at about 11:00 hours, saw four young men on motorcycles, one of who came towards him, and on show of weapons, threatened him and demanded the amount. As per FIR complainant offered some resistance on which said culprits had beaten him and tried to snatch the cash from him. However, in the meantime, a police party of PS SITE-A reached there and on seeing the police party, the said culprits made firing upon them with intention to kill, as a result, one police official HC Pervaiz Iqbal Lodhi had sustained fire injury on his left leg. Police party had also fired and apprehended one accused on spot, while his three accomplices fled away. SIP Ashraf had also arrived at the crime scene. On enquiry the said accused disclosed his accomplices Faiz Muhammad, Khan Muhammad and Jan Muhammad alias Janoo. On personal search of accused Talib one 30 bore pistol black in colour, without number, loaded magazine with three live rounds and one Brown Wallet, containing one colour copy of CNIC, One Mobile of Vigo-Tel red colour and cash amount of Rs.460/- were recovered from his possession. Accused had failed to produce license or given any law full justification of the weapon. The injured police official was shifted to hospital. All the formalities were completed on the spot, thereafter accused and property were brought at PS, hence these FIRs were registered.



3. After usual investigation, the matter was challaned and appellant was sent up to face the trial. The trial court amalgamated the above cases under section 21-M of ATA, 1997 and held a joint trial. The appellant pleaded not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 06 Prosecution Witnesses and exhibited various documents and other items. The appellant in his section 342 Cr.P.C. statement denied the allegations against him and claimed false implication. However, he did not give evidence on oath and did not call any D.W. in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellant as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts and evidence in respect of the case have been well set-out in the impugned judgment and as such there is no need to reproduce the same in order to avoid unnecessary duplication and repetition.

7. At the very outset, learned counsel for the appellant under instructions stated that the appellant did not contest the case on merits and accepted his guilt and prayed only for reasonable reduction in sentence based on the following mitigating circumstances:-

- a) That the appellant is first time offender and is capable of reformation.
- b) That the appellant is a young man and has a large family to support.
- c) That by accepting his guilt the appellant has shown genuine remorse and saved the time of this Court.
- d) That he has served a substantial portion of his sentence.

8. Based on these mitigating circumstances mentioned by the appellant, learned Additional Prosecutor General had no objection to the reduction in sentence to some reasonable extent.



9. We have gone through the evidence on record and find that the complainant Waheed Khan on 28.12.2022 whilst having money which he intended to deposit in his Bank was intercepted by young men who on showing weapons demanded the money which he had in his possession. The complainant put up some resistance whilst fighting with the appellant and other accused a police party arrived at the scene. As per evidence of the police witnesses the appellant and co-accused fired upon the police party which resulted in one of police constable receiving a fire arm injury as proven by medical certificate. According to the evidence of police witnesses they returned fire and were able to apprehend the appellant on the spot while his co-accused managed to make their escape good. As per police witnesses, they arrested the accused on the spot and recovered an unlicensed pistol which matched with empties which were recovered at the scene through a positive FSL report. Neither the complainant nor any of the police witnesses had any ill will or enmity towards the appellant and had no reason to implicate him falsely in this case and we find the evidence of the prosecution witnesses to be consistent with the prosecution story and their evidence corroborated each other which we find to be trustworthy, reliable and confidence inspiring and we believe the same and find that the prosecution has proved its case against the appellant beyond any shadow of doubt in respect of convictions under PPC and Section 23(i)(A) of SAA and uphold these convictions. However, we find that this case does not attract the ATA, 1997 and the appellant is acquitted of any offence under ATA, 1997. This is because there was no intention, purpose or design to create terror. In fact the appellant opened fire on the police in order to avoid his arrest. In this respect reliance is placed on the case of Ghulam Hussain v. The State (2020 PLD 61).

10. Based on the mitigating circumstances mentioned above and in particular no objection given by the learned Additional Prosecutor General Sindh, we hereby reduce the sentences of the appellant as under:-

- (a) For offence u/s. 353 PPC to time already served in jail;
- (b) For offence u/s. 324 PPC to time already served in jail;

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- (c) For offence u/s. 337 (f) (2) to time already served in jail, however, appellant shall pay Rs.10000/- as Daman to the injured HC Pervaiz Iqbal prior to his release;
- (d) For offence u/s. 392 to time already served in jail;
- (e) For offence u/s. 23(i)(a) of Sindh Arms Act to time already served in jail.

11. Appellant Talib Hussain s/o Nawab Ali shall be released after payment of Rs.10000/- as Daman to the injured HC Pervaiz Iqbal unless he is wanted in any other custody case.

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