

Encounter: Undergone

26

## IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Amjad Ali Bohio

### Spl. Cr A.T. Appeal Nos.212 & 213 of 2022

Appellant	Danish s/o. Rustam through Mr. Nazeer Ahmed Gorar, Advocate.
The State	Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh
Date of Judgment	25.08.2023.

### J U D G M E N T

Mohammad Karim Khan Agha, J:- Appellant Danish @ Dani @ Sunny was tried in the Court of Anti-Terrorism Court No.I, Karachi in Special Case No.151 and 151-A of 2022 arising out of FIR Nos.51 and 52 of 2022 u/s. 353/324/186/427/34 PPC r/w section 7 ATA 1997 and u/s. 23(1)(a)/25 of Sindh Arms Act 2013 both registered at P.S. Sharafi Goth, Karachi and vide Judgment dated 07.12.2022 the appellant was convicted u/s.265-H(2) and sentenced R.I. for ten years with fine of Rs.20,000/- for the offence punishable u/s. 7(b) of ATA, 1997 and in case of non-payment of fine he was ordered to suffer S.I. for 06 months more. Appellant was also convicted and sentenced for five years with fine of Rs.20000/- for the offence punishable u/s.324 PPC and in case of non-payment of fine he was ordered to suffer S.I. for 06 months more. Appellant was also convicted and sentenced R.I. for five years with fine of Rs.20000/- for the offence punishable u/s.7(h) of ATA 1997 and in case of non-payment of fine he was ordered to suffer S.I. for 03 months more. He was also convicted and sentenced R.I. for one year with fine of Rs.10000/- for the offence punishable u/s.353 PPC and in case of non-payment of fine he was ordered to suffer S.I. for 02 months more. Appellant Danish was also convicted and sentenced R.I. for five years with fine of Rs.20000/- for the offence punishable u/s.23(1)(a) of SAA 2013 and in case of non-payment of fine he was ordered to suffer S.I. for 03 months more. All sentences



were ordered to run concurrently. The benefit of section 382-B was also extended to the appellant.

2. Brief facts of the case are that on 06.02.2022 at 0300 hours complainant ASI Muhammad Nawaz Dhaku registered the FIRs at PS Sharafi Goth wherein it is alleged that he along with his staff was on patrolling in police mobile to prevent crime under entry No.35. During patrolling at about 0035 hours, when they reached at Malir Al-Falah Nadi Road near Badal Goth, Landhi Karachi they found one suspect while coming on a motorcycle from front side, as such he was signaled to stop but the accused instead of stopping his motorcycle tried to escape during which he slipped from the motorcycle and took out his pistol and fired upon the police party with intention to commit their Qatl-e-Amd and police was also fired in their defence. Due to firing of accused one bullet hit to bulletproof jacket of PC Ali Gohar while firing encounter accused sustained bullet injury on his right leg and was apprehended by the police on the spot. On inquiry he disclosed his name as Danish @ Dani @ Sunny son of Rustam and during his personal search one 30 bore unlicensed pistol blurred number with empty magazine, one wrist watch of golden colour and Rs.5300/- were recovered from his possession. Complainant also recovered three empty bullets of 30 bore pistol, two empty bullets of 9-mm pistol and two empty bullets of SMG from the place of incident. Accused also failed to produce the registration documents of motorcycle bearing No.KLW-4968 which was stolen on 23.10.2021 from the jurisdiction of PS Zaman Town, Karachi as such same was taken into custody. Appellant was arrested under memo of arrest and recovery after sealing the case property including official weapons separately. Thereafter complainant brought case property, hence the FIRs were registered.

3. After usual investigation, the matter was challaned and appellant was sent up to face the 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 these appeals against his convictions.

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 discuss the same herein in order to avoid unnecessary repetition and duplication.

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 in respect of all the offences except the offences under ATA, 1997 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) If it was not a case of Terrorism and he has served a substantial portion of his sentence.

8. Based on these mitigating circumstances mentioned by the appellant and, according to the learned Additional Prosecutor General Sindh this case does not fall within the purview of Anti-Terrorism Act, he had no objection to the reduction in sentence to some reasonable extent.

9. We have gone through the evidence on record and find that on 06.02.2022 at about 0300 hours the police were on patrolling and when they reached at Malir Al-Falah Nadi Road, near Badal Goth they saw the appellant coming on motorcycle and when they signaled him to stop he fired upon the police mobile. The appellant fell off his bike in injured condition and was arrested on the spot by the police after the encounter with the appellant and unlicensed fire arm was also recovered from his



possession which was matched with empties which were recovered at the scene through a positive FSL report. One of the fire shots even hit one of the police witness in his bullet proof jacket. We have considered the evidence of the arresting officers and mashir and find that there is no enmity or ill will towards the appellant and they had no reason to implicate him falsely in this case and we find the evidence of the prosecution witnesses 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 and convict him of all the offences mentioned in the impugned judgment except the offences under ATA, 1997 for which he is acquitted.

10. We do not find that this case falls within purview of 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).

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

- (a) For offence u/s. 324 PPC to the time already served in jail;
- (b) For offence u/s. 353 PPC to the time already served in jail;
- (c) For offence u/s. 23(i)(a) of Sindh Arms Act to the time already served in jail.

12. Appellant Danish s/o Rustam shall be released unless he is wanted in any other custody case.

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