

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain.

SPL. CRIMINAL A.T. JAIL APPEAL NO.213 OF 2020

Appellants: 1. Sajid Hussain son of Liaqat Hussain
2. Usama Javed S/o. Javed Akhtar
through Mr. Iftikhar Ahmed Shah,
Advocate.

Respondent /State: Through Mr. Mohammad Iqbal Awan,
Addl. Prosecutor General.

Date of Hearing: 29.11.2021

Date of Announcement: 01.12.2021

JUDGMENT

Mohammad Karim Khan Agha, J. Appellants Sajid Hussain S/o. Liaqat Hussain and Usama Javed S/o. Javed Akhtar were charge sheeted to face his trial in Special Cases Nos.77 of 2020 arising out of FIR No. 140/2020 under section 392/353/324/34 PPC r/w section 7 of ATA 1997 and Special Case No.77-A of 2020 FIR No: 141/2020 u/s 23(I)-A SAA of 2013 and Special Case No.77-B in FIR No.142/2020 u/s 23(I)-A SAA of 2013 registered at P.S Aziz Bhatti, Karachi. Appellants were convicted vide impugned order dated 26.11.2020 passed by the learned Judge, Anti-Terrorism Court No.IV, Karachi to suffer R.I. for three years for offence under Section 392/34 PPC. Appellants were also convicted for five years and fine of Rs.10000/- for an offence u/s.353/324/34 PPC r/w Section 6(2)(n) and in case of default in payment of fine, they shall suffer R.I. for three (03) months more. They were also convicted for three years R.I. for an offence u/s. 23(I)-A SAA with fine of Rs.5000/- each and in case of default in payment they shall suffer R.I. two (02) months more. The benefit of section 382 (B) Cr.PC was also extended to the appellants.

2. The brief facts of the prosecution case are that on 28.02.2020 complainant Muhammad Ahsan Khan stated in his statement recorded u/s.154 Cr.PC that he drives Careem Taxi and on 27.02.2020 he dropped a passenger at

Gulshan-e-Iqbal in Car No.BKA-355 Maker Mira and stayed on the service road adjacent to Bait-ul-Mukaram Mosque Pedestrian bridge, Gulshan-e-Iqbal to get another ride. At about 11:30 PM four suspects boarded on two motorcycles, among those two suspects on rear seats were holding pistols in their hands came to him and snatched two mobile phones and Rs.1250 from him on gunpoint and when they tried to decamp from the place of incident meanwhile one police mobile and police motorcycle came from Main Road NIPA Chowrangi, on seeing police party the complainant shouted for help. The police challenged the dacoits who started firing upon the police with intention to kill them in retaliation the police chased the accused and also started firing in their defence, as a result of the police firing one accused sustained gunshot injury on his right leg and fell down from the motorcycle along with his accomplice. The police apprehended both dacoits while their two accomplices managed to make their escape good on another motorcycle. The police recovered one 30 bore pistol without number loaded magazine with two live bullets and one chamber loaded from right hand of injured accused whose name transpired as Sajid Hussain s/o Liaqat Hussain. On his further search the police recovered two mobile phones and cash of RS.1250. On search of second accused whose name transpired as Usama s/o Javed Akhtr, the police recovered one 30 bore pistol without number loaded magazine three live rounds and black colour mobile phone. The complainant identified the robbed articles recovered from the possession of the accused persons. On enquiry accused disclosed their accomplice names as (1) Naveed s/o unknown and (2) Wasif s/o. unknown. The recovered arms, ammunition and empties were sealed at the spot separately while on demand of valid license of weapons and registration documents of motorcycle they failed to produce the same, therefore motorcycle No.KLT-6266 Honda 125 was seized u/s.550 Cr.P.C. on verification from AVLIC it was found that original registration number of motorcycle was SMB-4105 snatched from PS Ferozeabad. As the acts of above named accused persons fall under section 392/353/324/34 PPC r/w Section 7 ATA 1997, u/s. 23(I)(a) of Sindh Arms Act 2013, to which they were informed and duly arrested under memo of arrest and recovery and taken into police custody. Injured accused was shifted to JMPC for medical treatment in Chippa Ambulance along with two police personnel. After completion of legal formalities separate FIRs were lodged at PS Aziz Bhatti by complainant Muhammad Ahsan Khan and ASI Abdul Waheed for taking further legal action against accused persons.

3. After usual investigation the matter was challaned and the appellants were sent up to face trial. The appellants pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 05 witnesses and exhibited various documents and other items. The statements of accused persons was recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them and claimed false implication. After appreciating the evidence on record the trial court convicted the appellants and sentenced them as set out earlier in this judgment. Hence, the appellants have filed this appeal against their convictions.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 26.11.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. After reading out the evidence and the impugned judgment, learned counsel for the appellants did not press the appeals on merits, but instead under instructions from the appellants prayed for reduction of the sentences handed down to them to some reasonable extent based on numerous mitigating circumstances. Learned Additional Prosecutor General Sindh based on the particular facts and circumstances of the case and the mitigating circumstances submitted by the appellants under instructions has raised no objection to such proposition. It is noted that the complainant was not present as service on him had already been held good by this court after numerous efforts to contact him failed.

7. We find that the prosecution has proved its case beyond a reasonable doubt against the appellants through reliable, trustworthy and confidence inspiring evidence of eye witnesses and other witness evidence who had no ill will or enmity with the appellants so as to implicate them in a false case which we believe; that the appellants were both arrested on the spot by the police after a brief encounter with the police one of whom (appellant Sajid) was injured during the encounter; that the injuries to the appellant Sajid are corroborated/supported by the medical evidence; that on their arrest from the spot an unlicensed pistol was recovered from each of the appellants; that the robbed phones of the complainant were recovered from each of the appellants on their arrest on the spot; that the empties recovered at the scene of the encounter

when matched with the recovered pistols produced a positive FSL report; that the recovered motorbike which the appellants were riding was seized at the spot and belonged to another PW who had earlier been robbed by the appellants of his motorbike and other articles and as such we uphold the convictions handed down to the appellants by the learned trial court.

8. We however, find that the ATA 1997 is not applicable in this case as the encounter with the police took place in the middle of the night in a secluded area where no member of the public was present to be terrorized and even other wise the encounter took place at the spur of the moment without any design, purpose or intention to create terror among the public and there is no evidence that it did so. The offences therefore fall u/s 392, 353, 324, 34 PPC and u/s 23 SAA. This legal position has not been disputed by the learned Addl. PG.

9. In mitigation, learned counsel for the appellants have submitted that (a) the appellants are both of young age and are capable of reformation, (b) that both the appellants families are suffering due to their continued incarceration, (c) that the appellants are the sole bread earners of their families (d) that the appellants have shown genuine remorse for their conduct by accepting their guilt, (e) the appellants are not previous convicts and (f) one of the appellants Sajid has already suffered a lot as he received serious firearm injuries at the time of the encounter with the police. In light of the above mitigating factors and keeping in view the no objection given by the learned Additional Prosecutor General Sindh for reduction in sentences, we hereby reduce each of the sentences handed down to the appellants which was for over 3 years RI to 3 years RI which shall also include all the fines imposed on the appellants. All the sentences shall run concurrently. The appellants shall have the benefit of S.382 (B) Cr.PC and since the ATA is not attracted in this case any remissions available to them under the law.

10. The appeals stand disposed of in the above terms.