

# IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Amjad Ali Bohio*

## Special Criminal A.T.J.A. No.218 of 2022

Appellant	Waseem Usman s/o. Muhammad Usman through Mr. Muhammad Dawood Narejo, Advocate.
The State	Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh
Date of Judgment	20.09.2023.

## J U D G M E N T

Mohammad Karim Khan Agha, J:- Appellant Waseem Usman s/o. Muhammad Usman was tried in the Anti-Terrorism Court No.VIII, Karachi in two Special Cases bearing No.491/2022 arising out of FIR No.367 of 2022 U/s.353/324/186/34 PPC r/w section 7 ATA 1997 and Case No.491-A of 2022 arising out of FIR No.368 of 2022 u/s. 23(I)(A) both registered at P.S. Baghdadi, Karachi and vide Judgment dated 30.11.2022 the appellant was convicted and sentenced as under:-

1. Accused is sentenced to undergo R.I for 05 years in offence u/s 324 PPC and to pay fine of Rupees five thousand rupees only in default to S.I for three months.
2. Accused is sentenced to undergo R.I for 01 year in offence u/s 353 PPC and to pay fine of Rupee two thousand rupees only in default to payment of fine amount to further undergo S.I for one month.
3. Accused is sentenced to undergo R.I for 01 year in offence u/s 186 PPC and to pay fine amount of five thousand Rupees only on default to payment of fine to further undergo S.I for one month.

4. Accused is also sentenced to suffer R.I for 03 years in offence u/s 23 (I) (a) S.S.A 2013, and pay fine amount of rupees five thousand only in default to which accused to further undergo S.I. for three months.
5. Accused is also sentenced for his act of Terrorism to undergo Imprisonment for 10 years u/s. 7(i)(b) of Anti-Terrorism Act-1997 and to pay fine amount of Rupees five thousand only in default to payment of fine amount accused to further undergo S.I. for six 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 brief facts of the above case are that, on 17.08.2022 at about 0315 hours, ASI Munawar Hussain of PS Baghdadi lodged FIR at PS stating therein that as per entry No.54, at about 2200 hours on 16-05-2022 he along with subordinate staff namely HC Jabbar Shah armed with 9mm pistol bearing No.25519, PC Asad Ashraf armed 9mm pistol bearing No.38007, PC Qutub-ud-din armed with SMG No. 4411, driver PC Kaleemullah armed with 9mm pistol bearing No.36993 and ASI Munawar Hussain himself armed with 9mm pistol loaded with 05 bullets left police station on government police mobile bearing No.SPG-163 for patrolling in area. During patrol when they reached at Ahmed Shah Bukhari road, where he received spy information that one rickshaw driver in his rickshaw, who used to take passengers to abandoned area and used to commit robbery with the help of weapon. He further received spy information that same rickshaw driver is available on his rickshaw behind MM Sadiq School near Chotta gate Eidoo lane Lyari, who is having weapon. On such information he alerted his subordinate staff and thereafter, proceeded to pointed place along with his staff and reached there at about 0145 hours. They saw that one rickshaw driver along with his rickshaw was available there. They encircled the rickshaw driver, to which rickshaw driver looking at police party came down and fired upon police party from his weapon in order to kill police party. ASI party also returned fires towards the accused by taking shelter of wall in order to capture accused. During encounter the accused rickshaw driver received

firearm injury on his right leg and thereafter, ASI captured accused driver along with weapon. At inquiry accused disclosed his name to be Waseem s/o Usman. ASI Munawar appointed HC Jabbar Shah and PC Asad Ashraf as mashir due to non-availability of private persons and secured one 30 bore pistol loaded with 01 live bullet in chamber and 01 live bullet in its magazine bearing No. MSW 824 with English words 7 SHOT TARGET CAL 30 BORE PISTOL engraved and BEST QUALITY engraved on other side of the pistol. It was about 0150 hours. ASI demanded licence from the accused who failed to produce licence. At personal search of the accused one mobile phone Touch Screen VIVO, sky color and one mobile phone keypad VGOTEL and cash amount of Rs.500/only from accused. ASI also recovered rickshaw bearing registration No.00842 but accused failed to produce registration papers before ASI. ASI Munawar seized rickshaw. ASI fired 04 rounds from his weapon, PC Qutub-ud-din fired 05 rounds from his pistol and HC Jabbar Shah fired 03 rounds from his pistol. ASI also collected 02 empties of 30 bore pistol, 03 empties of 9mm pistol from place of incident. ASI sealed all the recovered properties separately and also drawn sketch of the pistol of the accused and prepared such Mushirnama of arrest and recovery in presence of mashirs, ASI also collected blood stained earth of accused from place of incident. ASI called SIP Zareen Khan from police station, who came there and ASI handed over custody of the injured accused to him in order to take him to Civil Hospital for treatment. Thereafter, ASI party returned to PS, where ASI registered separate FIRs against the accused. The investigation of the case was entrusted to SIO/PI Abdul Nabi of PS Mochko.

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

4. The prosecution in order to prove its case examined 04 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 convictions.

6. The facts and evidence well set out in the impugned judgment and as such there is no need to reproduce the same here in order to avoid duplication and unnecessary 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 had 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 it is not the case of ATA and as such he has served out reasonable 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 on 17.08.2022 at about 0315 hours ASI Munawar Hussain was on patrolling with other police personnel when on spy information they reached on pointed place where accused, who is rickshaw driver, sitting in his rickshaw in suspicious condition. When police party approached to the accused he opened fire on the police party, in return police party fired upon the accused in self defence. The police arrested the accused on the spot with fire arm injury to his leg with an unlicensed pistol. During cross examination no enmity or ill will suggested against any of the police witnesses including those who apprehended the appellant on the spot and prepared mashirnama and recovery of arrest as such we have no reason to

doubt their evidence and we find the evidence of the complainant and the police arresting officer and other police witnesses at the spot to be trustworthy, reliable and confidence inspiring and we believe the same.

10. According to the evidence on record, the police was arrested the appellant on the spot in an injured condition with an unlicensed fire arm and the empties recovered from the crime scene matched with the pistol recovered from the appellant which led to positive FSL, as such we find that the prosecution has proved its case against the appellant beyond a reasonable doubt in respect of the convictions under PPC and SAA and uphold the said convictions. However, we do not find that this is a case of terrorism as there was no intention, purpose or design to create terror but rather appellant wanted to escape from police who had come to arrest him. As such the appellant is acquitted of any offence under ATA, 1997.

11. With regard to the sentencing 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) in respect of offence u/s.324 PPC to time already spent in jail subject to payment of fine of Rs.5000/- and in default thereof appellant shall undergo SI for 03 months.
- (b) in respect of offence u/s.353 PPC to time already spent in jail;
- (c) in respect of offence u/s.186 PPC to the time already spent in jail subject to payment of fine of Rs.5000/- and in default thereof appellant shall undergo SI for 01 months.
- (d) in respect of offence u/s.23(i)(a) of SAA, 2013 to time already spent in jail subject to payment of fine of Rs.5000/- and in default thereof appellant shall undergo SI for 3 months.

12. Subject to the payment of fine in default, the appellants shall be released from custody if not required in any other custody case.

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

JUDGE

JUDGE