IN THE HIGH COURT OF SINDH, AT KARACHI

BEFORE:
MR. JUSTICE OMAR SIAL
MR. JUSTICE MUHAMMAD HASAN (AKBER)

Special Criminal Anti-Terrorism
Jail Appeal No.55 of 2023

Appellant:	Muhammad Muzammil, through Mr. Nadeem Ahmad, Advocate
Respondent:	The State, through Mr. Iqbal Awan, Additional Prosecutor General
Date of hearing:	09.04.2025
Date of decision:	05.05.2025

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- The Appellant has challenged the Judgment dated 15.10.2022 (impugned Judgment) passed by the learned Anti-Terrorist Court No.III, Karachi Division, in Special Case No.397 & 397-A of 2022, arising out of FIR Nos. 604 & 605 of 2022 registered at P.S. Manghopir Karachi, whereby the appellant was convicted under Section 265-H (2) Cr.P.C. and sentenced in the following terms:

i. Rigorous Imprisonment (RI) 5 years with fine of Rs.50,000/= for the offence punishable under Section 394/34 PPC, and in case of non-payment of fine, he was ordered to suffer S.I. for 06 months more;
ii. R.I. for 05 years with fine of Rs.50,000/= under Section 7(h) of Anti-Terrorism Act, 1997 read with sections 353/324 PPC. and in case of default in payment of fine he shall suffer S.I. for 06 months more;
iii. R.I. for 05 years under Section 24 of the Sindh Arms Act, 2013 with fine of Rs.20,000/= and in case of default in payment of fine, the appellant was ordered to suffer S.I. for 06 months more.
iv. All the sentences were ordered to run concurrently and the benefit of Section 382-B, Cr.P.C. has also been extended to the appellant.

2. Learned counsel for the appellant, after making a few submissions, submits under instructions that, he would not press the instant appeals, if this Court reduces the sentence, awarded to the appellant, to a reasonable period as deem fit and proper, in view of the fact that since no one from the police side was injured whereas the appellant himself sustained one bullet injury on left side of his chest and he is the sole

supporter of his family. Such a proposal is not disputed by learned Additional Prosecutor General.

3. Heard and perused the record. Case against the appellant is that he was apprehended on 06.07.2022 at 1840 hours while committing robbery and snatching mobile phone with wallet containing cash Rs.5,000/- and with show of weapon along with two other culprits at Ijtimah Gah, Gate 1, Ramzan Goth, and upon signalling by police to stop, the three accused persons opened fire, which was retaliated by counter firing from police side. Resultantly, the appellant sustained bullet injury on left side of his chest, and was apprehended along with one unlicensed 30 bore pistol and three live bullets were recovered, while his two accomplices fled away. After preparation of memo of arrest, the appellant was shifted to hospital and FIR was registered. Upon completion of investigation, a report under section 173 Cr.P.C. was submitted before the learned Special Judge, Anti-Terrorism Court No.III, Karachi Division (Trial Court) for the purpose of trial, which convicted the appellant in the terms as detailed in the preceding paragraph.

4. In order to ascertain the offence of Terrorism was made out against the appellant, guidance can be sought from the '*Ghulam Hussain v. The State*' PLS 2020 SC 61, wherein Honourable Supreme Court has observed that:

> "...For the purpose of further clarity on this issue it is explained for the benefit of all concerned that the cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-Terrorism Act, 1997 are cases of those heinous offences which do not per se constitute the offence of terrorism but such cases are to be tried by an Anti-Terrorism Court because of their inclusion in the Third Schedule. It is also clarified that in such cases of heinous offences mentioned in entry No. 4 of the said Schedule an Anti-Terrorism Court can pass a punishment for the said offence and not for committing the offence of terrorism. It may be pertinent to mention here that the offence of abduction or kidnapping for ransom under section 365 - A, P.P.C. is included in entry No. 4 of the Third Schedule and kidnapping for ransom is also one of the actions specified in section 7(e) of the Anti-Terrorism Act, 1997. Abduction or kidnapping for ransom is a heinous offence but the scheme of the Anti-Terrorism Act, 1997 shows that an ordinary case of abduction or kidnapping for ransom under section 365- A, P.P.C. is merely triable by an Anti-Terrorism Court if kidnapping for ransom is committed with the design or purpose mentioned in clauses (b) or (c) of subsection (1) of section 6 of the Anti-Terrorism Act, 1997 then such offence amounts to terrorism attracting section 7(e) of that Act. In the former case the convicted person is to be convicted and sentenced only for the offence under section 365 -A, P.P.C. whereas in the latter case the convicted person is to be convicted both for the offence under section 365 -A, P.P.C. as well as for the offence under section 7(e) of the Anti-Terrorism Act, 1997...." (Emphasis supplied)

5. '*Javed Iqbal and others v. The State*' 2024 SCMR 1437 is the recent case wherein the above principles have been followed, in the following words:

> "5…..To constitute an offence of a terrorism, it is necessary that; firstly, the action must fall within the ambit of subsection (2) of section 6 of the ATA of 1997; and secondly, the intent, motivation, object, design and purpose behind the said act has any nexus with the ingredients of clauses (b) and (c) of section 6(1) of the ATA of 1997. To formulate an opinion whether or not such offence is an act of terrorism, the allegations made in the FIR, material collected during the investigation and the evidence available on the record have to be considered as a whole, on the touchstone of section 6 of the ATA of 1997. In the absence of any of the ingredients of section 6 of the ATA of 1997, any action, irrespective of its heinousness, causing terror or creating sense of fear and insecurity in the society, does not fall within the ambit of terrorism.
>
> 6. It is important to mention here that under section 13 of the ATA of 1997, the Federal Government or the Provincial Government may establish one or more Anti-Terrorism Courts, for the purpose of providing for the speedy trial of the cases of the Third Schedule offences. The special court is assigned with the power to try offences falling under the ATA of 1997 as well as heinous offences, which otherwise do not fall within the definition of terrorism, but is/are part of the Third Schedule. For making any offence triable by an ATC other than the offences falling under the ATA of 1997, it is for the government to declare any offence as a heinous offence and to include it in the Third Schedule, to be tried by the ATC, only for the purpose of speedy trial. In exercise of such power, the government has categorized certain offences as heinous, which were included in the Third Schedule to the ATA of 1997 through Entry No. 4 Act II of 2005. ….."
>
> "7. Pursuant to Entry No.4, the offence of abduction or kidnapping for ransom was included in the Third Schedule to the ATA of 1997 and is made triable by the ATC, to the exclusion of any other court. Section 13 of the Act provides dual power to the ATC i.e., to try the offences falling under the ATA of 1997 and try heinous offences, which otherwise do not fall within the definition of a terrorism, but included in the Third Schedule to the ATA of 1997 by the government. It is important to mention here that the action involving kidnapping for ransom, hostage-taking or hijacking is an offence under clause (e) of subsection (2) of section 6 of the ATA of 1997, if it establishes that such action falls within the meaning of subsection (1) of section (6) of the ATA of 1997. If kidnapping for ransom, hostage-taking or hijacking is done with intent, design, purpose, or object of terrorism, the same shall fall within the meaning of subsection (1) of section 6 and is an offence under subsection (2)(e) of section 6 of the ATA of 1997, triable exclusively by the ATC and punishable under section 7(e) of the ATA of 1997. If there is no intent, object, purpose or design of terrorism in committing an act of abduction or kidnapping for ransom, it shall not be an act of a terrorism within the meaning of subsection (1) of section 6 of the ATA of 1997. Thus, in absence of an element of a terrorism, an act of abduction or kidnapping for ransom for personal vendetta shall constitute an offence under section 365-A, P.P.C. However, in view of heinousness of such act, it is exclusively triable by the ATC, only for the purpose of its speedy trial, but the accused shall be charged under the relevant provision of law, instead of charging him under any of the provisions of the ATA of 1997."

6. From the prosecution case, the events in the present case do not appear to be based upon some pre-meditated attack on the police party with intention to terrorise, but the same was a spontaneous response upon stopping by police, whereas neither any empty shell fired by the appellant has been recovered nor anyone from the police party was injured but on the contrary, the appellant himself suffered a bullet injury on left side of his chest. Applying the principles settled by the Supreme Court in the above two cases, to the facts of the present case, a case under section 7 of the Act 1997 is not spelled out against the appellant.

7. In addition to the above, it is also to be considered that the ***Quantum of punishment*** is not only discretion of the Court, which ought to be exercised while considering the circumstances of the case but also is an independent aspect of Criminal Administration of Justice which, too, requires to be done keeping the concept of ***punishment*** in view. Since, the appellant is not pressing captioned appeals on merits but seeking reduction of sentence, therefore, I would examine the legality of such plea. Conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation to bring peace which could only be achieved either by keeping evils away (criminals inside jail) or strengthening the society by reforming the guilty. There are certain offences, the punishment whereof is with phrase "**not less than**" while there is other which are with phrase "**may extend upto**". Thus, it is obvious and clear that the law itself has categorized the offences in *two* categories regarding quantum of punishment. For one category the Courts are empowered to award *any* sentence while in *other* category the discretion has been limited by use of the phrase **'not less than'.** Such difference itself is indicative that the Courts should appreciate certain circumstances before setting quantum of punishment in *first* category which appear to be dealing with those offences, the guilty whereof may be given an opportunity of "**reformation**" by awarding less punishment which how low-so-ever, may be, will be legal. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family/dependents too. A reformed person will not only be a better brick for society but may also be helpful for future by properly raising his dependents. Since, the remaining offences wherein the appellant has been convicted fall within the category of offences ***'may extend up to'***; the appellant has suffered bullet injury on the left side of his chest; whereas no one form the police party was injured; and the appellant claim's being the sole bread earner for his family; these being the circumstances which justify reduction in sentence.

8. As per the jail roll received from the Senior Superintendent, Central Prison Karachi dated 04.02.2025, whereby appellant Muhammad Muzammil has already served total sentence of 4 years 08 months (including remissions). Hence, following the principles laid down by the Supreme Court in '*Niazuddin v. The State*' 2007 SCMR 206, (wherein the Hon'ble Supreme Court was pleased to reduce the sentence from imprisonment of ten years to six years), and those propounded in '*Gul Naseeb v. The State*' 2008 SCMR page 670, (wherein Hon'ble Supreme Court reduced the sentence from imprisonment for life to ten years), and taking a lenient view in view of the facts discussed above, the appellant appears to have had suffered adequate punishment, and the ends of justice would be satisfied, if the conviction is maintained and the appeal against conviction is dismissed as not pressed, whereas the sentence awarded to the appellant is altered into imprisonment which appellant had already undergone, along with fine. Appellant is directed to be released forthwith, if not required in any other case.

9. The Appeal stands allowed to the extent of the conviction under section 7 of the Anti-Terrorism. Convictions for the Pakistan Penal Code and the Sindh Arms Act 2013 is upheld subject to the sentence being reduced to the period already undergone. This will include imprisonment in lieu of fine. The appellant may be released if not required in any other custody case.

J U D G E

J U D G E