IN THE HIGH COURT OF SINDH AT KARACHI

Sp. Cr. AT Appeal No.54 of 2024
Sp. Cr. AT Appeal No.55 of 2024
Sp. Cr. AT Appeal No.56 of 2024

DATE ORDER WITH SIGNATURE OF JUDGE

Sp. Cr. AT Appeal No.54 of 2024

Appellant : Waris Khan son of Fareed Baloch,
through Mr. S. Qaem Ali Shah, Advocate.

Sp. Cr. AT Appeal No.55 & 56 of 2024

Appellant : Murad son of Kareem Bukhsh,
through Mr. Muhammad Hanif, Advocate.

Respondent : The State through Mr. M. Iqbal Awan,
Additional Prosecutor General, Sindh.

Date of hearing : 18.8.2025

Date of decision : 18.8.2025

O R D E R

Dr. Syed Fiaz ul Hassan Shah, J. Since common questions of law and facts involved in the above captioned Appeals, hence these Appeals are decided through this common Order. The appellants were convicted as under:

> *"I, convict the accused Waris Khan for the offence punishable under Section (b) Explosive Substance Act, 1908 in bearing Crime No.436/2023 in respect of recovery of live hand-grenade from his exclusive possession in presence of mashirs, which were to be used in the commission of targeting the Government Installations and destabilization of peace in the country and sentence him to suffer R.I. for fourteen years and to pay the fine of Rs.50,000/- and in case of default in payment of fine, he shall suffer further R.I. for four months. The whole property of the abovenamed accused Waris Khan is forfeited to the Government.*
> *I, convict the accused Murad for the offence punishable under section 4(b) Explosive Substance Act, 1908 in bearing Crime No.437/2023 in respect of recovery of live hand-grenade from his exclusive possession in presence of mashirs, which were to be used in the commission of targeting the Government*

Installations and destabilization of peace in the Country and sentence him to suffer R.I. for fourteen years and to pay the fine of Rs.50,000/- (Rupees Fifty Thousand) and in case of default in payment of fine, he shall suffer further R.I. for four months. The whole property of the abovenamed accused Murad is forfeited to the Government.

I also convict the accused Murad, for the offence punishable under Section 23(i)A of Since Arms Act, 2013 and sentence him to suffer R.I. for seven years and to pay the fine of Rs.20,000/- (Rupees Twenty thousand). In case of default in payment of fine, he shall suffer further R.I. for two months.

I, also convict the accused Waris Khan and Murad for the offence punishable under Section 7(ff) of ATA, 1997 and sentence them to suffer R.I. for fourteen years each and to pay fine of Rs.50,000- (Rupees fifty thousand) each. In case of default in payment of fine, they shall suffer further R.I. for six months each."

2. Anti-Terrorism Court No.XIII at Karachi ("trial Court") after recording the evidence convicted the appellants and sentence under Section 7 (ff) Anti-Terrorism Act, 1997 (ATA) and Section4(b) Explosive Substance Act, 1908 (ESA).

3. Learned counsel contends that the appellants Waris Khan and Murad are convicted and sentenced under Section 7(ff) of ATA and sentenced them to suffer R.I. for 14 years each, is passed in violation of ATA and requested that sentence to the extent may be set-aside, while candidly state that he does not press the appeals for the remaining sentence provided if the conviction and sentence awarded to the appellants by the trial Court is reduced to one which is already undergone by the appellants.

4. We have heard learned counsel for the appellants and learned Additional Prosecutor General Sindh and perused the record.

5. The pivotal legal issue for determination in the present appeal revolves around the validity of the conviction awarded under Section 7(ff) of

ATA by the learned trial court, and whether such conviction is sustainable in law. It is imperative to examine whether the essential ingredients of Section 4(b) of the ESA have been duly satisfied to warrant a simultaneous conviction under both statutes. Upon careful scrutiny of the evidence and record, it is to be assessed whether the trial court was legally justified in convicting and sentencing the Appellants under two distinct legal provisions of different statutes based on the same set of facts, circumstances and evidence. The determination of this question requires a harmonious interpretation of the legislative intent behind both statutes, the nature of the offence committed, material brought before the trial Court during evidence and the applicability of the ATA in light of the facts established during trial.

6. From the perusal of the record, it transpires that although a generalized charge was framed that the Appellants kept hand grenade grade of explosive substance in illegal custody with intent to target Government installation and were arrested after successful recovery of hand grenades. However, the prosecution has failed to produced direct or tangible evidence to attract any of the ingredients as prescribed in section 6(1) or (2) of the ATA that may term it act or design of terrorism even no specification of government installation has come on record nor it was adduced by the prosecution witnesses nor it was corroborated from material on record with the exception of recovery of such impermissible explosive substance or arms.

7. We have also noticed that learned Anti-Terrorism Court has passed the sentence against illegal control or possession of hand grenades grade of explosive substance under Section 4(b) ESA as well as under Section 7(ff) of the ATA, 1997 in absence of ingredients as required by Section 6 of ATA, 1997, which is appropriate to reproduce hereunder:

"6. Terrorism. – (1) In this Act, "terrorism" means the use or threat of action where:

(a) the action falls with the meaning of sub-section (2), and

(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect [or a foreign government or population or an international organization] or create a sense of fear or insecurity in society; or

(c) the use of threat is made for the purpose of advancing a religious, sectarian or ethnic cause [or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies]."

(2) An "action" shall fall within the meaning of sub-section (1), if it:
(d) ……
(e) ……
(ee) involves use of explosives by any device including [bomb blast] [or having any explosive substance without any lawful justification or having been unlawfully concerned with such explosive];
…..

8. Upon a plain and harmonious interpretation of Section 6 of the Anti-Terrorism Act, 1997, it is evident that sub-section (2)(ee) is not self-executing and must be read in conjunction with the foundational elements set out under Section 6(1). The legislative intent embedded in Section 6(1) ATA is to define the foundational elements or qualify as a "terrorist act," when it is committed with the specific intent or design to terrorize, intimidate, or coerce the public, state institutions, or sections of society and only where those elements are satisfied, the provisions of Section 6(2)(ee) ATA read with provisions of Section 4(b) ESA can be invoked. Mere commission of a scheduled offence such as Section 4(b) ESA, 1908—criminalizing illegal custody of hand grenades or arms—does not, by itself, attract the penal consequences under Section 6(2)(ee) of the ATA unless the requisite mens rea defined in Section 6(1) is clearly established and therefore, the provision

of section 7(2)(ff) ATA cannot be enforced. In light of the foregoing analysis, the invocation of the Anti-Terrorism Act, 1997, particularly Section 7(ff), is contingent upon the act qualifying as a terrorist offence under Section 6(1). The Schedule to the ATA serves only to confer jurisdiction upon the Anti-Terrorism Courts but does not obviate the statutory requirement of proving intent or design to terrorize. In the present case, there is no cogent evidence to demonstrate that the offence was committed with the objective or purpose of terrorism in the manner contemplated by Section 6(1). Therefore, the attempt to prosecute the appellants under the ATA framework is legally misconceived and unsupported by the factual matrix. Accordingly, sentencing under Section 7(ff) ATA is not sustainable in law and cannot be upheld. In ***Ghulam Hussain v. State*** **(PLD 2020 SC 61)**, the larger bench of Hon'ble Supreme Court held at paragraph No.13 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.

9. Another dilemma what we find is that the trial Court has convicted the Appellants under ATA and PPC. It is a settled principle of constitutional and criminal jurisprudence that no individual shall be prosecuted or punished more than once for the same offence. This protection is firmly embedded in Article 13(a) of the Constitution of the Islamic Republic of Pakistan, 1973 which guarantees that "no person shall be prosecuted or punished for the same offence more than once." This constitutional safeguard is reinforced by Section 403 of the Code of Criminal Procedure, 1898 which bars retrial for

the same offence or upon the same facts once a person has been acquitted or convicted. Additionally, Section 26 of the General Clauses Act, 1897, provides that although a single act may constitute offences under multiple enactments, the offender may be prosecuted under any one of those enactments but "shall not be liable to be punished twice for the same offence."

10. In view of the above, the conviction and sentence passed under Section 7(ff) of ATA for the conviction of offence purportedly committed under Section 6(2)(ee) cannot be sustainable, as the prosecution has failed to prove that any of the essential ingredients as mentioned in Section 6(1) are available and attracted.

11. Now turning towards the other sentences, it appears that the appellants have served sufficient sentence. Appellants are first offender and poor persons and hardly earn bread for their family, as urged by the counsel for appellants before us. They remain in jail for a considerable period, therefore, under the present scenario of the case, the appellants have sufficiently been punished and they have also attended the court severely. Under these circumstances, they need to be given a chance in their life to rehabilitate.

12. We have perused the Judgment passed by Supreme Court in the case of ***"State through the Deputy Director (Law), Regional Directorate, Anti-Narcotics Force vs. Mujahid Naseem Lodhi",*** **(PLD 2017 SC 671)**, in which it is held that in appropriate cases, court may make departure from the sentencing guidelines as provided in the case of ***Ghulam Murtaza and another vs. The State*** **(PLD 2009 Lahore 362)**. In the present case, sufficient reasons have been assigned by the trial Court for taking lenient view.

13. In view of the foregoing discussion and upon careful reappraisal of the material available on record, it is evident that the conviction and sentence awarded to the appellants under Section 7(ff) of the Anti-Terrorism Act, 1997, are not sustainable in the eyes of law and are accordingly set aside. As regards the remaining offences, while the appeals stand partially dismissed on merits, it is observed that the appellants have already undergone a substantial period of incarceration. Considering the mitigating circumstances and the absence of any aggravating factors warranting enhanced punishment, we are inclined to take a lenient view. Consequently, the sentences awarded for the remaining offences are reduced to the period already undergone by the appellants. Furthermore, the fines imposed upon them are hereby remitted in the interest of justice. The appellants are presently confined; therefore, they shall be released forthwith if not required in any other criminal case or proceeding. The office is directed to issue release orders accordingly without delay.

Special Criminal A.T. Appeals Nos.54, 55 and 56 of 2024 stand disposed of.

JUDGE

JUDGE

asim/PA