

IN THE HIGH COURT OF SINDH AT KARACHI

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Before: Mr. Justice Ahmed Ali M. Shaikh
Mr. Justice Mohammed Karim Khan Agha

Cr. Revision Application No. 60 of 2015

Kamran Khan @ Doctor & another
Vs.
The State

Date of hearing:	25.04.2016.
Date of Order	06.05.2016
Appellants:	Through Mr. Muhammad Lateefuddin Pasha, Advocate for the appellants.
Respondents:	Through Mr. Zafar Ahmed Khan, A.P.G. for the State along with complainant Muhammad Shoaib.

ORDER

Mohammed Karim Khan Agha, J. By this order, we propose to dispose of the above criminal revision application filed under Section 526 and 561 A Cr.PC on behalf of the appellants(Kamran Khan @ Doctor and Muhammed Asif @ Goga) challenging therein the order dated 02.05.2015 passed by the learned Anti-Terrorism Court (ATC) No.IV, Karachi in Special Case No.A58/2014 whereby their application under section 23 of the Anti Terrorism Act 1997 (ATA) to transfer their cases from the ATC to the ordinary criminal courts for trial was dismissed (the impugned order).

2. The brief facts of the case as narrated in FIR No.127/2013, lodged under section 302/34 P.P.C. read with Section 7 ATA at Police station Awami Colony, is that the complainant on 03.5.2013, was outside his house when at about 3.00 p.m. one Farooq informed him that his brother namely Aurangzeb, aged about 42/43 years, who was an employee of the police department as head constable, was sitting in Chapra Hotel when two unknown persons came on motorcycle and made straight firing upon him and due to that firing his brother received firearm injuries on his head, face and chest on account of which he died on the spot and his pistol No.5823 was also missing.

3. The appellants were charged with the above offense and are facing trial before the ATC.

4. It was inter-alia contended in the revision application that the impugned order was based on false presumptions, conjectures and surmises which do not have sustainability on the important question of facts and law and has therefore no legal effect. Learned counsel submitted that an order must lay out reasons in consonance with Section 24-A General Clauses Act, 1897 as even public functionaries are bound to decide the case after application of mind with cogent reasons and in line with legal justification which was missing in the instant case hence it cannot be treated as a speaking order and should be set aside.

5. Learned counsel further submitted that the learned trial court has erred in the impugned order by finding that the case fell under S.7 ATA based on the sole ground that the appellants have been involved in the heinous offence of murder of a police official working in the police department which was in fact not the case as the deceased was off duty at the time of the incident. He next argued that under the circumstances dismissal of the application under section 23 of ATA 1997 was unwarranted as the ingredients of section 6 of ATA 1997 are missing in the instant case and as such the offense does not fall within the ambit of the ATA.

6. In support of his contentions he placed reliance on **Nazim Khan V Special Judge ATC Faisalabad** (2002 MLD 1433), **Syed Raees Alam V the State** (2002 MLD 1949) and **Bashir Ahmed V Muhammed Siddique** (PLD 2009 SC 11)

7. For all the above reasons he contended that the impugned order should be set aside and their case be transferred from the ATC to the ordinary criminal courts having jurisdiction in murder cases for trial.

8. Learned A.P.G. appearing on behalf of the State supported the impugned order while submitting that the learned trial court has not committed any irregularity and in-competency in deciding the application under section 23 of the ATA, 1997, which is a well reasoned order. Furthermore, he placed reliance on S.22 of the Police Act 1861 which in effect stated that police officers were always on duty and contended that the case fell within S.6 (1) © and 6 (2) (n) ATA and as such the criminal revision application should be dismissed.

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9. We have perused the record, considered the submissions of the learned counsel for the parties, the relevant law and the authorities cited by them at the bar.

10. Turning to the first issue namely whether the impugned order complies with S.24 (A) of the General Clauses Act 1897. Having carefully reviewed the order we are of the view that it is sufficiently reasoned and speaking and shows that there has been an application of judicial mind before passing the same and as such this contention is rejected.

11. In our view however the main issue before us is whether based on the facts of the incident and nature of the offense the offense was one which fell within the ambit of the ATA and thus could be tried by an ATC as opposed to an ordinary criminal court.

12. Terrorism is defined in S.6 of the ATA which reads as under:

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

(a) the action falls within the meaning of sub-section (2);

(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 or 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:**

Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.

(2) An "action" shall fall within the meaning of sub-section (1), if it:

(a) **involves the doing of anything that causes death;**

(b) **involves grievous violence against a person or grievous bodily injury or harm to a person;**

(c) involves grievous damage to property including government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking,

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looting or arson or by any other means;

- (d) involves the doing of anything that is likely to cause death or endangers a person's life;
- (e) involves kidnapping for ransom, hostage-taking or hijacking;
- (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;
- (f) involves hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;
- (g) involves taking the law in own hand, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions, including law enforcement agencies beyond the purview of the law of the land;
- (h) involves firing on religious congregations, mosques, inambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;
- (i) creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civic life;
- (j) involves the burning of vehicles or any other serious form of arson;
- (k) involves extortion of money ("bhatta") or property;
- (l) is designed to seriously interfere with or seriously disrupt a communication system or public utility service;
- (m) involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties.
- (n) **involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant.**
- (o) **involves in acts as part of armed resistance by groups or individuals against law enforcement agencies; or**
- (p) involves in dissemination, preaching ideas, teachings and beliefs as per own interpretation on FM stations or through any other means of communication without explicit approval of the government or its concerned departments.

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(3) **The use or threat of use of any action falling within sub-section (2), which involves the use of firearms, explosives or any other weapon, is terrorism, whether or not sub-section 1(C) is satisfied.**

(3A) Notwithstanding anything contained in sub-section (1), an action in violation of a convention specified in the Fifth Schedule shall be an act of terrorism under this Act.

(4) In this section "action" includes an act or a series of acts.

(5) In this Act, terrorism includes any act done for the benefit of a proscribed organization.

(6) **A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.**

(7) In this Act, a "terrorist" means:

(a) **An individual who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation facilitation, funding or instigation of acts of terrorism;**

(b) An individual who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation, facilitation, funding or instigation of acts of terrorism, shall also be included in the meaning given in clause (a) above."

13. It is apparent from the definition of terrorism in S.6 ATA as reproduced above that a case of murder does not automatically become an act of terrorism under the ATA. In addition to the murder the other ingredients which form a part of S.6 ATA also need to be satisfied based on the facts and circumstances of each case.

14. The distinction of what would amount to an act of murder falling under the jurisdiction of an ordinary criminal court and an act of murder falling under the jurisdiction of the ATC was in our view well set out in the case of **Basharat Ali v. Special Judge, Anti-Terrorism Court-II, Gujranwala** (PLD 2004 Lah. 199) which was cited with approval by the Hon'ble Supreme in **Ahmed V Muhammed Siddique** (PLD 2009 SC 11) in terms of when acts may be regarded as terrorism and can, in our view, through its scholarly discussion of the issue be regarded as one of the seminal cases, albeit at the High Court level, in determining the distinction between whether an act of murder can be elevated to an act of

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terrorism falling within the ambit of the ATA which at P.213 held as under:

"4. Terror and terrorism are concepts quite distinct from each other and the quintessence of the two notions is not difficult to distil. Terror as a manifestation of fright, dread, fear or insecurity is a consequential effect created by an act that may not necessarily be motivated to create such an effect whereas terrorism is an activity designed to create such an effect of terror. **The critical difference between the two is the design and purpose understood in the criminal jurisprudence as mens rea. In the case of terror the act, or the actus reus, is not motivated to create fear and insecurity in the society at large but the same is actuated with a desire to commit a private crime against targeted individuals, etc, and the fear and insecurity created by the act in the society at large is only an unintended consequence or a fall out thereof whereas in the case of terrorism the main purpose is the creation of fear and insecurity in the society at large and the actual victims are, by and large, not the real targets.** Every crime, no matter what its magnitude or extent, creates some sort of fear and insecurity in some section of the society but every felony or misdemeanor cannot be branded or termed as terrorism. As against that an act of terrorism designed to create fear and insecurity in the society at large may or may not succeed in achieving the desired effect but nonetheless it can be accepted as nothing but terrorism because of the object or purpose behind such act. **Thus, the real test to determine whether a particular act is terrorism or not is the motivation, object, design or purpose behind the act and not the consequential effect created by such act.** In this context terrorism has to be understood as a species different and apart from terror, horror, shock, fear, insecurity, panic or disgust created by an ordinary crime".

15. As noted above this case was affirmed by the Hon'ble Supreme Court in the case of **Bashir Ahmed V Muhammed Siddique** (PLD 2009 SC 11) where at P.14 Para 6 onwards it was held as under:

Para 6. In order to determine as to whether an offence would fall within the ambit of section 6 of the Anti-Terrorism Act, 1997, it would be essential to have a glance over the allegations made in the F.I.R. record of the case and surrounding circumstances. It is also necessary to examine that the ingredients of alleged offence have any nexus with the object of the case as contemplated under section 6, 7 and 8 thereof. Whether a particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said act is to be seen. It is also to be seen as to whether the said

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act has created a sense of fear and insecurity in the public or any section of the public or community or in any sect. Examining the case in hand on the above touchstone, it is manifest on the face of it that the alleged offence took place because of previous enmity and private vendetta. A perusal of the record would reveal, that occurrence has taken place in front of the 'haveli' of the respondents, situated in village 'Fatoowala'. The motive for the occurrence is enmity inter-se the parties on account of some previous murders. In this view of the matter, we are of the opinion that since motive was enmity inter-se the parties, the application of section 7 of the Act, which primarily requires the spread of sense of insecurity and fear in the common mind is lacking in the present case. The occurrence neither reflects any act of terrorism nor it was a sectarian matter instead the murders in question were committed owing to previous enmity between the two groups. The present case, as observed above, does not fulfill the requirements laid down in the judgment titled as "Basharat Ali v. Special Judge Anti-terrorism Court-II, Gujranwala (PLD 2004 Lag. 199), wherein it was held that fear or insecurity must not be a by-product, fall out or unintended consequence of a private crime. As such, creation of fear and insecurity in the society is not itself terrorism unless the same is coupled with the motive. The gist of the citation is that act of terrorism desires to be determined from the yardstick and scale of motive and object, instead of its result or after effect. From the facts of case, the definition of terrorism is not attracted as the said offence has neither created any threat to coerce or intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society. Reference in this regard can be made on Ch. Bashir Ahmed v. Naveed Iqbal and 7 others (PLD 2001 SC 521), Muhammad Mushtaq v. Muhammad Ashiq and others (PLD 2002 SC 841) and Basharat Ali v. Special Judge, Anti-Terrorism Court-II, Gujranwala (PLD 2004 Lah. 199).

8(sic). In Bashir Ahmed's case (supra), a reference was made to Mehram Ali and others v. Federation of Pakistan and others PLD 1998 SC 1445, in which it was observed that:-

"The offences mentioned in the schedule should have nexus with the object of the Act and the offences covered by section 6, 7 and 8 thereof. It may be stated that section 6 defines terrorist act, section 7 provides punishment of such acts, and section 8 prohibits acts intended or likely to stir up sectarian hatred mentioned in clauses (a) to (d) thereof. If an offence included in the Schedule has no nexus with the above sections, in that even notification including such an offence to that extent will be ultra-vires."

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9. From the entire resume, it is manifest on record that intention of the respondents was not at all to create sense of insecurity or destabilize the public-at-large or to advance any sectarian cause. Thus, we are of the view that the design or purpose of the offence as contemplated by the provisions of section 6 of the Act is not attracted. Reference can be made to the case of this Court reported as *Bashir Ahmed v. Naveed Iqbal* PLD 2001 SC 521 whereby sprinkling of spirit on the person of victim was made within the boundary walls of the house of petitioner which was not a public place and accordingly the element of striking terror or creating sense of fear and insecurity in the people or any section of the people was found missing, therefore, the order of transferring the case to the court of learned Sessions Judge passed by the High Court was upheld.

10. **After having gone through the entire law as enunciated by this Court in different cases the judicial consensus seems to be that striking off terror is sine qua non for the application of the provisions as contained in section 6 of the Act which cannot be determined without examining the nature, gravity and heinousness of the alleged offence, contents of F.I.R its cumulative effect on the society or a group of persons and the evidence which has come on record. There could be no second opinion that where the action of an accused results in striking terror or creating fear, panic, sensation, helplessness and sense of insecurity among the people in a particular vicinity it amounts to terror and such an action squarely falls within the ambit of section 6 of the Act and shall be triable by a Special Court constituted for such purpose but in the instant case position is all together different. Learned Special Court has no jurisdiction to try the offence and it did not fall within the ambit of the Act and is triable by an ordinary Court having jurisdiction". (bold added)**

16. This case was followed by the Hon'ble Supreme Court in 2012 in the case of **Ahmed Jan V Nasrullah** (2012 SCMR P.59) which in essence held that if the act was a result of a private enmity or dispute then it would not amount to terrorism since it lacked the necessary intent to create a sense of fear or insecurity in society.

17. Later in 2012 in the case of **Nazeer Ahmed V Nooruddin** (2012 SCMR P.517) it was observed by a two member bench of the Hon'ble Supreme Court that no intent to cause terror was required to bring an act within the ambit of the ATA and that it could even include cases of personal enmity provided that the act created a

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sense of fear or insecurity in society.

18. This position regarding intent and mens rea in cases under the ATA has recently been examined by a three member bench of the Hon'ble Supreme Court in the case of **Shahbaz Khan V Special Judge Anti Terrorism Court Lahore** (PLD SC 2016 1) whereby it was held as under at P.6.

"7. It is clear from a textual reading of Section 6 of ATA that an action categorized in subsection (2) thereof constitutes the offence of terrorism when according to Section 6(1)(b) *ibid* it is "designed" to, inter alia, intimidate or overawe the public or to create a sense of fear or insecurity in society. Therefore, the three ingredients of the offence of terrorism under Section 6(1) (a) and (b) of ATA are firstly, taking of action specified in Section 6(2) of ATA; **secondly, that action is committed with design, intention and mens rea**; and thirdly, it has the impact of causing intimidation, awe, fear and insecurity in the public or society.

19. In dealing specifically with the question of mens rea the Hon'ble Supreme Court at P.9 found as under:

"11. Primarily, the rule laid down in **Bashir Ahmed's** case *ibid* requiring the ascertainment of the design, intention and *mens rea* of an act for establishing the jurisdiction of a learned ATC rests on dicta given **Mehran Ali's** case *ibid*. However, **Bashir Ahmed's** case *ibid* does not consider the ways and means by which the design, intention or *mens rea*, for an act of terrorism, requiring in essence the proof of an assailant's state of mind, should be ascertained by a Court of law. Whether the Court should mechanically consider the motive alleged by a complainant in the FIR to be decisive or should it also scrutinize other aspects of an occurrence to assess if the culprits had any design, intention or *mens rea* to commit a terrorist act?

12. In most cases, the nature of the offences, the manner of their commission and the surrounding circumstances demonstrate the motive given in the FIR. However, that is not always the case. **When offences are committed by persons with impunity disregarding the consequence or impact of their overt action, the private motive or enmity disclosed in the FIR cannot be presumed to capture their true intent and purpose. In such cases, it is plain that action taken and offences committed are not instigated "solely" by the private motive alleged in the FIR.** It is settled law that intention, motive or *mens rea* refer to the state of mind of an offender. It is equally well established that

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a state of mind cannot be proven by positive evidence or by direct proof. **The intention of an accused for committing an offence is to be gathered from his overt acts and expression.** It has been held in the case of State v. Ataullah Khan Mangal (PLD 1967 SC 78) that an accused person "must be deemed to have intended the natural and inevitable consequences of his action." Thus apart from the overt acts of the accused, the injuries caused by him or consequences ensuing from his actions, and the surrounding circumstances of the case are all relevant to ascertain the design intention or *mens rea* that instigated the offences committed. These principles are enunciated in Zahid Imran v. The State (PLD 2006 SC 109) and Pehlwan v. Crown (1969 SCMR 641). **Intention is presumed when the nature of the act committed and the circumstances in which it is committed are reasonably susceptible to one interpretation.** In such event, the rule of evidence that the natural and inevitable consequences of a person's act are deemed to have been intended by him is applicable: Jane Alam v. The State (PLD 1965 SC 640). In Muhammad Mushtaq v. The State (PLD 2002 SC 841) the inevitable consequence of an act was considered as its design.....

13. **When wanton overt acts committed by an accused lead to horrendous consequences then the motive given in the FIR merely indicates the background. The presumption that the natural and inevitable consequences of the acts of an accused are deemed to be intended, provides a reliable touchstone for gathering the design, intention or *mens rea* of an assailant in the context of Section 6(1)(b) of ATA. (bold added)**

20. Thus, as can be seen from the latest judgment of the Hon'ble Supreme Court it is not necessarily the brutality or scale of the crime which elevates it to fall within the purview of the ATA but to an extent the intention behind the act which can be inferred from the particular facts and circumstances of each case and may even include personal disputes and enmities which escalate to such an extent that the act can be inferred as per para 6(b) ATA to be 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 as per S.6 (c) 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.

21. In our view therefore, based on the latest Supreme Court authority, on this issue it is still the *intent/mens rea*, although perhaps wider/more liberal in interpretation, behind the act which can be inferred from the facts and circumstances of the particular case which is one of the many factors for determining whether or not a case of murder is an ordinary case of murder to be tried by the ordinary criminal courts or a case of murder which would amount to terrorism and which would come within the ambit of the ATA.

22. The main thrust of the appellants case is that although the deceased was a police officer because he was not on official duty at the time of the offense the offense could not fall within S.6 ATA. Hence the appellants reliance on the cases of **Nazim Khan V Special Judge ATC Faisalabad** (2002 MLD 1433) and **Syed Raees Alam V the State** (2002 MLD 1949) which concerned incidents where policemen not on duty were murdered and such cases were transferred from the ATC to the ordinary Courts of criminal jurisdiction as they did not fall within the definition of S.6 ATA since they were cases of simple murder.

23. On the other hand the main thrust of the State's case is that the deceased was a policeman on duty at the time of the offense since under S.22 of the Police Act 1861 a policeman is always deemed to be on duty and Inspector General of Police, Sindh has recognized this through his declaration order of Shaheed dated 3-6-2014 and as such the case falls with S.6 (1) © read with S.6. (2) (a) and (n) ATA.

24. For ease of reference S.22 of the Police Act 1861 and the Declaration order of Shaheed are set out below:

"S.22. Police-officer always on duty and may be employed in any part of district.--- Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district." (bold added)

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Declaration order of Shaheed

Whereas it has been reported by Addl;IGP Crime Branch, Sindh Karachi, vide letter No.Addl;IGP/CB/Sindh/Acctt/4037-38 dated 06.03.2014, that HC/668 Aurangzeb s/o Mōhammad Ayub (CNIC No. 13501-1199747-7) **has laid his life in the line of duty** in accordance with IGP standing order No.248/201, dated 02.08.2010.

2. And whereas the matter was referred to committee constituted vide Home Department Government of Sindh Notification No.PO/-11-HD/7-125/2011, dated 29.12.2011, which after scrutiny of relevant record **vide its report No.196/2014 dated 26.05.2014 has concluded that the death is in line of duty** as such the above named Police Official is declared as "SHAHEED".(bold added)

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Sd/-
Inspector General of Police
Sindh Karachi

No.AIGP/Welfare/W-II/13133-44/2014, dated 3.06.2014.

25. Before proceeding further we would like to observe that the Country is passing through turbulent times in terms of threats to its internal security. The law and order situation in Karachi has been in a poor state for a number of years which even lead to the Supreme Court taking Suo Moto notice of the situation a few years ago. The para military rangers force are present in Karachi assisting the Provincial Government and its police force in maintaining law and order in Karachi on the request of the Provincial Government. The Country also witnessed a horrific and tragic attack on the Army Public school in Peshawar a year or so ago where innocent school boys were murdered by militants. Likewise in March of this year a terrorist bomb attack on a park in Lahore claimed over 70 precious lives of men, women and children.

26. The extent of terrorist activities in the Country was even recognized through Parliament being the representatives of the people which amended the Constitution through the 21st Amendment to allow trial by military Courts in extreme cases of terrorism carried out by so called "jet black" terrorists for offenses under the Pakistan Army Act 1952, the Pakistan Air Force Act 1953, the Pakistan Navy Ordinance 1961 and the Protection of Pakistan Act 2014. There is therefore a prevailing sense of insecurity amongst many members of the public -

27. We cannot however allow ourselves to be blinded by the current situation in respect of acts of terrorism being carried out in

the Country and treat every crime such as murder as falling under the ATA in a mechanical fashion. We must consider the facts, circumstances and intentions behind each offense and carefully apply the correct law in terms of jurisdiction.

28. In this case it does not seem to be disputed by either party that Aurangzeb was a policeman and that he was murdered. The dispute lies over which Court has jurisdiction to proceed with the trial. Namely the ATC or the ordinary criminal courts.

29. The fact that Aurangzeb was murdered would bring the case within S.6 (2) (a) ATA since it was an act which caused death.

30. With regard to S.6 (2) (n) ATA namely whether the act involved serious violence against a member of the police force we consider this not to be so straight forward. The fact that the murdered person was a policeman would not in our view simpliciter bring the act within the ambit of S.6 (2) (n). This is because we would need to first establish the motive behind the murder of the policeman. If the motive for the murder was on account of a private dispute and did not escalate beyond his murder as opposed to intimidating or terrorizing the police force or the public then it may not in our view fall within S.6 of the ATA as was found in all three cases which the appellant placed reliance on. Namely, **Nazim Khan V Special Judge ATC Faisalabad** (2002 MLD 1433) **Syed Raees Alam V the State** (2002 MLD 1949) and **Bashir Ahmed V Muhammed Siddique** (PLD 2009 SC 11) However, all of these cases are distinguishable from the present case as the policemen or others concerned were killed/murdered on account of personal disputes and enmities with their being no intention to terrorize the public and did not escalate into such a situation.

31. Now if we look to the facts of the present case the deceased was a policeman, nothing has come on record to show that he had any enmity with any one, he was in a crowded hotel in broad day light during the middle of the day where other members of the public would have been present, two unknown persons came on a motorcycle and shot him three times; once in the head, once in the face and once in the chest and took his service pistol. It is unclear whether the deceased was wearing a police uniform at the time.

32. Based on these facts and circumstances in our view (whether or not the deceased was wearing a police uniform-- in any event even if he was not wearing a police uniform local people at the local hotel would have most likely known that he was a police officer or whether or not he was on duty is of little, if any, significance) the only reasonable inference is that the deceased was killed because he was a policeman with a view to spread fear amongst not only serving members of the police force but also members of the public who were nearby which effect, in our view, would have been achieved. It should also be observed that attacks on and murder of members of the police force, which has become quite a frequent occurrence in recent times, must be regarded as crimes of the most serious nature and need to be both discouraged and dealt with firmly. This is largely because the role of the police by and large is to serve and protect the public on behalf of the State and as such an attack on the police can be regarded as an attack against a symbol of a State's authority which is likely to sow fear and insecurity in the minds of the public.

33. Even if the deceased had not been a police officer his cold blooded murder based on the above alluded facts and circumstances must have been intended to place a sense of fear and insecurity in society, especially amongst those present at the time of the incident or in the locality of the incident, which in our view must have followed after the murder and as such the learned ATC Judge has in our view rightly held that the offense was not a case of simple murder but fell within the ambit of the ATA.

34. As such the impugned order is upheld and criminal revision application No. 60 of 2015 is dismissed.

Dated: 06-05-2016.

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