

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial
Mr. Justice Muhammad Hassan (Akber)

SPL. CR. ANTI TERRORISM APPEAL NO. 66 OF 2024
SPL. CR. ANTI TERRORISM APPEAL NO. 69 OF 2024
(Abdullah @ Sunny Versus the State)
SPL. CR. ANTI TERRORISM APPEAL NO. 67 OF 2024
SPL. CR. ANTI TERRORISM APPEAL NO. 70 OF 2024
(Abdul Qadir Versus the State)
SPL. CR. ANTI TERRORISM APPEAL NO. 68 OF 2024
(Noor Hakeem Versus the State)

Appellants : 1) Abdullah @ Sunny
2) Abdul Qadir
3) Noor Hakeem
through Syed Samiullah Soomro,
Advocate

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

Date of Hearing : 08.05.2025

Date of Decision : 14.05.2025

JUDGMENT

Omar Sial, J.: The appellants were nominated as accused in a case arising out of F.I.R. No.539 of 2023 registered under sections 353, 324, 427 and 34 P.P.C. read with Section 7 of ATA 1997. Appellants Abdullah and Abdul Qadir were also charged in F.I.R. Nos. 540 of 2023 and 541 of 2023 registered under section 23(1)(a) of the Sindh Arms Act, 2013. The case against the appellants is that on 15.10.2023 at about 0250 hours, a police party on regular patrol when reached at Khalid Bin Waleed

Masjid, Jungle Side, Machar Colony, Karachi, they signaled three persons riding on one motorcycle to stop, but instead of stopping, the motorcyclist opened fire on the police. In retaliation police party also made firing in their defence, resultantly the Appellant Abdullah @ Sunny received injury on his right thigh and they fell down. Appellants Abdullah and Abdul Qadir were arrested at the spot while their third companion Noor Hakeem made his escape good from the place of incident. One unlicensed pistol each was recovered from appellants Abdullah and Abdul Qadir. Subsequently Appellant Noor Hakeem was also arrested and after completing all formalities, the appellants were sent up for trial.

2. After a full dress trial, the learned A.T.C. No. 15 at Karachi vide Judgment dated 30.03.2024 convicted the appellants and sentenced them to suffer five years for offence under section 324 P.P.C. and under Section 7(1)(h) of ATA 1997. They were further convicted and sentenced to suffer one year for offence under Section 353 PPC and 427 PPC. Appellants Abdullah and Abdul Qadir were also convicted and sentenced for five years under section 24 of the Sindh Arms Act, 2013. Benefit of Section 382-B CrPC was also extended.

3. Learned counsel for the appellants submitted that the case against the appellants was not one of terrorism and that he would not argue the case on merits; however, he requested that the sentences already undergone by the appellants be treated as their final sentence.

4. We have heard the learned counsel for the appellants and the learned Additional Prosecution General. Our findings and observations after re-appraising the evidence are as follows.

5. **In Ghulam Hussain vs The State (PLD 2020 SC 61)**, the Supreme Court held:

“For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.”

6. In the current case, no evidence was produced at trial to establish that the ingredients of section 6(1)(b) or (c) were satisfied. No witness was produced at trial to prove the alleged insecurity. It is also evident from the very facts of the case that no design or intent was established for the offence to be categorized as a terrorism offence. We have no qualms in concluding that the prosecution failed to justify a section 7 ATA conviction. The same is accordingly set aside.

7. The case against the appellants falling outside the ambit of terrorism would mean they would be entitled to section 382-B remissions. A jail roll was called for that showed that the Appellant Abdullah had completed 4 years, 10 months and 16 days, Appellant Abdul Qadir had completed 3 years, 11 months and 25 days and Appellant Noor Hakeem had completed 3 years, 4 months and 27 days of the sentence awarded to them. After reviewing the record, the learned Additional Prosecutor General conceded that the sentences already undergone by the appellants would be an appropriate punishment. While considering the request made by the appellants, we have also considered that the appellants, remorseful and repentant for what they had done, wish to spend the rest of their lives as law-abiding citizens. Their admission has saved the time and money of the State. The jail authorities have reported that their conduct in jail has been satisfactory. We have also considered that the learned Additional Prosecutor General, on behalf of the State, very correctly and wisely, does not object to a reasonable reduction in sentence.

8. Given the above, all the appeals are allowed only to the extent of the conviction with respect to section 7 of the ATA 1997. The convictions and sentences awarded to the appellants for the offenses under the Penal Code and the Sindh Arms Act, 2013 are upheld; however, the sentences awarded to the appellants are reduced to the period they have already undergone. This will

also include imprisonment instead of a fine. All the appellants may be released if not required in any other custody case.

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

JUDGE

JUDGE