IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Justice Muhammad Hasan (Akber)

Spl. Cr. Anti-Terrorism Appeal No. 102 of 2024
[Sohail & another vs. The State]

Appellants	:	through Mr. Asadullah Burdi, Advocate
The State	:	through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh
Date of Hearing	:	22.04.2025
Date of Decision	:	05.05.2025

J U D G M E N T

Omar Sial, J: Sohail and Mohammad Younus were arrested soon after they had snatched the mobile phone of Mohammad Aslam. A police party intervened, and it is alleged that both the accused had opened fire on the police party. As is always the case, the firing from the accused was ineffective while the police managed to shoot and injure one of the two accused i.e. Sohail. A pistol each was recovered from each accused and F.I.R. No. 366 of 2022 under sections 392, 397, 353, 324 and 34 P.P.C. was registered. In addition. Two FIRs, being 367 and 368 of 2022 were also registered against each accused under section 23(1)(a) of the Sindh Arms Act, 2013.

2. Both the accused were tried and convicted and sentenced by the learned Anti-Terrorism Court No. 2 at Karachi on 29.06.2024, as follows:

(a) Both the accused were convicted of an offence under section 6(2)(m) of the ATA 1997, punishable under section 7(H) of the ATA 1997 read with section 353/34 P.P.C. and sentenced to five years each in prison.

(b) They were also convicted of an offence under section 6(2)(n) of the ATA 1997, punishable under section 7(H) of the ATA 1997 read with section

324/34 P.P.C. and sentenced to five years each in prison.

(c) Accused sohail was convicted of an offence under section 23(1)(a) of the Sindh Arms Act, 2013, and sentenced to five years in prison.

(d) Accused Younus was convicted of an offence under section 23(1)(a) of the Sindh Arms Act, 2013, and sentenced to one year in prison.

3. Learned counsel for the appellants argued that this was not a terrorism case and thus the conviction and sentence under the terrorism legislation cannot be sustained. He did not want to argue on merits as according to counsel the appellants have already completed their sentences. Learned Additional Prosecutor General conceded that a terrorism case was not made out in light of the principles enunciated in **Ghulam Hussain vs The State (PLD 2020 SC 61).** In this case 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, <u>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</u>. 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."

4. 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 called 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. An on-the-spot occurrence took place, which was not pre-planned or premeditated. We also find it unusual that none of the police party was hit by the alleged indiscriminate firing of the accused, but the police still managed to injure one. Insufficient evidence was led at trial to establish a charge under the terrorism legislation. The conviction and sentence under section 7 of the ATA 1997 is thus set aside.

5. 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 appellants had completed eight years and seven months of the sentence awarded to them.

6. Given the above, the appeal is allowed only to the extent of the conviction for 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. The appellants may be released once the jail confirms that they have completed their sentences as well as the sentences in lieu of fine.

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

JUDGE

JUDGE