

IN THE HIGH COURT OF SINDH AT KARACHI

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

SPL. CR. ANTI TERRORISM APPEAL NO. 108 OF 2024

Appellants : Shaukat Khan & another
Through Mr. Kher Muhammad,
Advocate

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

Date of Hearing : 08.04.2025

Date of Decision : 05.05.2025

JUDGMENT

Omar Sial, J.: The appellants were nominated as accused in a case arising out of F.I.R. No. 1610 of 2021 registered under sections 353, 324, and 34 P.P.C. Each was also charged in F.I.R. Nos 1611 and 1612 of 2021 registered under section 23(1)(a) of the Sindh Arms Act, 2013. The case against the appellants is that on 20.12.2021, a police party on regular patrol signaled the appellants riding a motorcycle to stop, but instead of stopping, the motorcyclists opened fire on the police. The firing caused no damage to life or property, but the appellants were nonetheless apprehended when they fell off their motorcycle. One unlicensed pistol was also recovered from each appellant.

2. After a full dress trial, the learned A.T.C. No. 20 at Karachi convicted the appellants and sentenced them to five years for offences under section 324 P.P.C. read with Section 7(h) of ATA 1997 and section 23(1)(a) of the Sindh Arms Act, 2013. They were also sentenced to one year for an offence under section 353 P.P.C.

3. The learned counsel for the appellant 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 sentence already undergone by the appellants be treated as their final sentence.

4. We have heard the learned counsel for the appellant 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 Shamsuddin had completed three years and six months and appellant Shaukat Khan had completed two years and ten months of the sentence awarded to them. After reviewing the record and confirming that the appellants had no previous crime record, the learned Additional Prosecutor General conceded that the sentence 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, the appeal is 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. The appellants may be released if not required in any other custody case.

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

JUDGE

JUDGE