IN THE HIGH COURT OF SINDH AT KARACHI

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

SPL. CR. ANTI TERRORISM JAIL APPEAL
NO. 05 OF 2024

Appellant	:	Nauman S/o Nawab Through Mr. Nadeem Ahmed Azar, 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 appellant was nominated as accused in a case arising out of F.I.R. No. 564 of 2022 registered under sections 353, 324, and 34 P.P.C. at Police Station Sir Syed, Karachi. He was also charged in F.I.R. No. 565 of 2022 registered under section 23(1)(a) of the Sindh Arms Act, 2013. The case against the appellant is that on 10.09.2022, a police party on regular patrol signaled two persons (including appellant) riding a motorcycle to stop, but instead of stopping, the motorcyclists opened fire on the police. In retaliation police party also made firing in their defence, resultantly both the present appellant and co-accused Mohammad Shoaib sustained firearm injuries and fell down on earth from the motorcycle and they were

arrested at the spot. One unlicensed pistol was also recovered from appellant as well as co-accused Mohammad Shoaib. They were taken to hospital for treatment, however, co-accused Mohammad Shoaib died during treatment and the appellant was sent up for trial.

2. After a full dress trial, the learned A.T.C. No. 13 at Karachi convicted the appellant and sentenced him to ten years for offence under section 324 P.P.C. and offence punishable under Section 7(h) of ATA 1997, seven years for offence under section 23(1)(a) of the Sindh Arms Act, 2013 respectively. He was also sentenced to two years for an offence under section 353 P.P.C.

3. The learned counsel for the appellant submitted that the case against the appellant 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 appellant be treated as his 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. The only reference to insecurity was made by the complainant in his testimony. 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 appellant falling outside the ambit of terrorism would mean he would be entitled to section 382-B remissions. A jail roll was called for that showed that the appellant had completed 8 years and 24 days of the sentence awarded to him. After reviewing the record and confirming that the appellant had no previous crime record, the learned Additional Prosecutor General conceded that the sentence already undergone by the appellant would be an appropriate punishment. While considering the request made by the appellant, we have also

considered that the appellant, remorseful and repentant for what he had done, wish to spend the rest of his life as law-abiding citizens. His admission has saved the time and money of the State. The jail authorities have reported that his 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. We notice that an error has crept up in the sentencing paragraph of the impugned judgment to the extent that forfeiture of property has been ordered as a part of sentence for an offence under Section 324 PPC. The forfeiture order was incorrect as the law does not permit it as a sentence for the offence.

9. Given the above, the appeal is allowed only to the extent of the conviction with respect to section 7 of the ATA 1997 and forfeiture of property. The convictions and sentences awarded to the appellant for the offenses under the Penal Code and the Sindh Arms Act, 2013 are upheld; however, the sentences awarded to the appellant are reduced to the period he has already undergone. This will also include imprisonment instead of a fine. The appellant may be released if not required in any other custody case.

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

JUDGE

JUDGE