

## IN THE HIGH COURT OF SINDH AT KARACHI

Present : Omar Sial, J  
Muhammad Hasan (Akber), J

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Spl. Cr. Anti-Terrorism Jail Appeal No. 87 of 2024  
**[Muhammad Ali vs. The State]**

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Spl. Cr. Anti-Terrorism Jail Appeal No. 103 of 2024  
**[Younis Khan vs. The State]**

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Spl. Cr. Anti-Terrorism Jail Appeal No. 104 of 2024  
**[Noman @ Kabari vs. The State]**

Confirmation Case No. 05 of 2024  
**[Reference made by the Judge, ATC No.13, Karachi  
 for confirmation of death sentence against Muhammad Ali]**

Mr. Jamroze Khan Afridi, Advocate for appellant in Spl. Cr. Anti-Terrorism Jail Appeal No. 87 of 2024.

Ms. Farah Khan Yousufzai, Advocate for appellant in Spl. Cr. Anti-Terrorism Jail Appeal No. 103 of 2024.

Ms. Sara Malkani, Advocate for appellant in Spl. Cr. Anti-Terrorism Jail Appeal No. 104 of 2024.

Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.

Dates of hearing : 12<sup>th</sup> & 20<sup>th</sup> May, 2025

Date of Judgment: 4<sup>th</sup> June 2025

### **JUDGMENT**

**Omar Sial, J.:** In the afternoon of 12.11.2023, Tanveer-ul-Islam and Qasim Ali, both members of an intelligence agency, were sitting at a bus stop in connection with their official duties when three boys on a motorcycle emerged on the scene. One of the three boys disembarked and shot Tanveer-ul-Islam dead. The assailants then left the scene. Qasim Ali recorded a section 154 Cr.P.C. statement at 15:15, and at 15:45, F.I.R. No. 500 of 2023

was registered under sections 302 and 34 P.P.C., read with section 7 of the Anti-Terrorism Act, 1997, at the Nazimabad police station.

2. On 22.11.2023, three people were arrested: Younis Khan, Mohammad Ali, and Noman alias Kabari. All three, when arrested, were already in police custody in another crime (F.I.R. 519 of 2023). On 27.11.2023, Qasim Ali identified all three accused as the three assailants in a test identification parade held by the learned Judicial Magistrate No. 9 at Karachi Central. The accused, Mohammad Ali, was identified as the shooter, and the remaining two had accompanied the shooter.

3. On 28.11.2023, all three accused jointly led a police team to a place from where two pistols were recovered. Both pistols were unlicensed; therefore, F.I.R. Nos. 529 and 530 were registered under section 24 of the Sindh Arms Act 2013 against Mohammad Ali and Noman alias Kabari, respectively.

4. The accused pleaded not guilty and claimed to be tried. The prosecution examined **Qasim Ali** (an eyewitness and the complainant), **Dr. Ali Mehboob Bhatti** (the doctor who did the post-mortem); **A.S.I. Mudassar Nawaz** (the first police responder to the firing); **A.S.I. Shoukat Ali** (witnessed the recovery of two pistols on the lead of the three accused); **S.I. Khadim Hussain Yousufzai** (the first investigation officer); **H.C. Faisal Yousufzai** (witnessed the inspection of the place of incident); **Wajid Ali Channa** (the magistrate who conducted the identification parade); **Inspector Mohammad Anees** (second investigating officer). The three accused denied wrongdoing and professed innocence in section 342 Cr.P.C. statements.

5. On 30.05.2024, the learned Anti-Terrorism Court No. 13 at Karachi convicted and sentenced the accused as follows:

- (i) Death sentence to Muhammad Ali for an offence under section 302 (b) P.P.C. read with section 34 P.P.C.

- (ii) Life imprisonment to Younis Khan and Noman @ Kabari for an offence under section 302 (b) P.P.C. read with section 34 P.P.C. and 7 (a) ATA, 1997.
- (iii) Seven years each to Muhammad Ali and Noman @ Kabari for an offence under section 24 of the Sindh Arms Act, 2013.
- (iv) Death sentence to Muhammad Ali for an offence under section 7(a) of ATA, 1997.
- (v) All the accused were ordered to pay compensation of Rs.500,000 each to the legal heirs of the deceased.
- (vi) Moveable or immoveable properties of all the three accused were forfeited to the State.

6. We have heard the learned counsel for the accused and the learned Additional Prosecutor General. The complainant had appeared but recorded that he would not engage a private counsel. For brevity, the arguments of counsel are not being reproduced but are reflected in our observations and findings below.

7. The primary evidence against the accused is the eyewitness testimony of Qasim Ali, who also identified the accused and assigned to them their respective roles in the incident. Mohammad Ali had disembarked from the motorcycle and had shot and killed Tanveer while Noman and Younus had accompanied him. No overt role was assigned to the latter two.

### Terrorism

8. We are of the view that the learned trial court erred in holding that the events of the incident and evidence produced at trial showed that this was a case falling under the ambit of terrorism. In this regard, it is pertinent to note that the prosecution did not introduce a motive for the killing. It was alleged that Tanveer and Qasim were sitting at a bus stop in their civilian clothes when three men on a motorcycle came, and one of those men shot and killed Tanveer and then ran away. Simultaneously, during the trial, evidence was produced

that reflected that it was an attempted robbery that led to a shot being fired. Be that as it may, neither motive was proved. For an offence to fall within the ambit of terrorism, it was essential to show that the conditions stipulated in section 6(1)(b) or (c) of the ATA 1997 had to be satisfied. This was not done. Prima facie, personal vendetta may have been the reason for the unfortunate incident. The evidence does not reflect that there was a design or intent to cause terrorism.

#### Recovery of weapons

9. The crime scene was inspected at 16:25 on 12.11.2023. Nothing was recovered during the inspection. Unusually, a memo of seizure made earlier, at 13:45, shows that a team of the Crime Scene Unit handed over one empty 0.30-bore bullet to A.S.I. Mudassir, and told him that it had recovered the empty from the scene. This assertion went unproven at trial, as no one from the CSU was examined.

10. On 28.11.2023, at 21:20, all three accused jointly led a police team to a place where two pistols were recovered. Both were 0.30-bore pistols, and the memo of seizure prepared shows that both had words and numbers inscribed on them. However, the report issued by the ballistics expert does not contain the identifying marks on the pistols sent to it. There was doubt whether the weapons seized were the same ones sent to the ballistic examiner and then produced in court.

#### Eyewitness and the Identification Parade

11. The accused were arrested on 22.11.2023. The investigating officer requested that the accused be put up for an identification parade on 24.11.2023, and the parade was conducted on 27.11.2023 by the 10<sup>th</sup> Judicial Magistrate, Karachi Central. The eyewitness of the incident, Qasim Ali, identified the three accused and assigned respective roles to them. Learned counsels for the accused have stressed that the identification parade cannot be relied upon because the same set of dummies was used for all three accused, albeit in

separate parades. They also submitted that the Magistrate did not record the description of the dummies nor their respective National Identity Card numbers. Lastly, they argued that the eyewitness had earlier seen the accused and that the accused had also told the Magistrate this.

12. The Supreme Court gave extensive guidelines regarding identification parades in **Kanwar Anwaar Ali, Special Magistrate: In the matter of (PLD 2019 SC 488)**. In this case, the magistrate generally complied with the precautions taken in the investigation parade, except for noting the addresses of the dummies. It would also have been proper if the same set of dummies had not been used for the identification parade of each of the three accused. Another issue that we see is that while Qasim Ali described the clothes of the assailants in the F.I.R., however, absolutely no indication was given of their features. Looking at the facts of the case holistically, in particular the fact that the accused were already under arrest when arrested in this case, there is a strong possibility that the objection raised by the accused at the time of the parade that they had been seen before by the witness cannot be wholly brushed aside. Be that as it may, the question that agitates our mind is whether the eyewitness's identification can be discarded on the ground of procedural lapses, especially when no malafide or ill intent was attributed to him. To his credit, he identified and assigned roles to each accused. He was consistent with the story he had given in the F.I.R.

13. Lapses in the identification parade apart, we believe that the testimony Qasim Ali gave at trial was confidence-inspiring, trustworthy, and with a ring of truth. We are cognizant that in **Subha Sadiq vs The State (2025 SCMR 50)** it was observed that *“if the testimony of the witness qua the identity of the accused inspires confidence and the witnesses are consistent in all material particulars and there is nothing in the evidence to suggest that the latter has deposed falsely then in such an eventuality not conducting a test identification parade is not*

*fatal to the prosecution's case.*" We believe the eyewitness. We believe what he saw and his being sure that the accused were the right people. It is obvious that the incident was sudden, and though capable of responding similarly, Qasim could not retaliate with a counterfire. No motive was ever attributed by either side. The accused attempted by saying that an agency guy killed an agency guy. We, however, find this assertion baseless and absurd. We are, however, cognizant that the deceased was a member of a premium intelligence agency. In their line of duty, many would want to harm the members of this agency. An attack was made on a member of the agency, and he died. In no manner should this be permitted. Attacks such as this have the potential to demoralize our law enforcement agencies. This too cannot be allowed as it will adversely impact national security.

#### Same set of facts

14. The learned Additional Prosecutor General argued that if the Court concludes that Qasim Ali's testimony is of such a nature that the shooter Mohammad Ali is held liable, then the remaining two accused, Younus and Noman, will also be held liable, as the same set of facts governs the incident. With much respect, we disagree with the position taken by the learned Additional Prosecutor General. It is correct that the same set of facts is applicable. We are also inclined to believe Qasim Ali's testimony. Yet, it must not be forgotten that both Younus and Noman were convicted and sentenced by the trial court for being vicariously liable for the act of Mohammad Ali.

15. Section 34 of the P.P.C. provides that when a criminal act is done by several persons, in furtherance of a common intention of all, each such person is liable for that act in the same manner as if it were done by him alone. It is well settled that common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be held to be vicariously liable for the criminal act of another, the act must have been done to further a common intention of them all. The

plan must not necessarily be an elaborate one, and there is a possibility that it is formed on the spur of the moment. However, there must be a premeditation or prearrangement.

16. In **Muhammad Akbar vs The State (PLD 1991 SC 923)** it was held that: *“.....it is evident that a joint action by a number of persons is not necessarily an action performed with a common object, but it may be performed on the spur of the moment as a reaction to some incident and such a case would fall within the ambit of section 34, P.P.C. However, it may be pointed out that section 34, P.P.C. contemplates an act in furtherance of common intention and not the common intention simpliciter and that there is a marked distinction between similar intention and common intention and between knowledge and common intention. It may also be observed that mere presence of an accused at the place of incident with a co-accused who commits offence may not be sufficient to visit the former with the vicarious liability, but there should be some circumstance manifesting a common intention. Generally common intention inter alia precedes by some or all of the following elements, namely, common motive, pre-planned preparation and concert pursuant to such plan. However, common intention may develop even at the spur of moment or during the commission of offence as pointed out hereinabove. Conversely common intention may undergo change during the commission of offence.”.*

17. In **Muhammad Yaqoob vs The State (PLD 2001 SC 378)** it was observed that *“It was held a few decades earlier by this Court which still holds the fields that ‘it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. The inference of common intention should never be reached unless it is a necessary inference deducible from the*

*circumstances of the case. All that is necessary is either to have direct proof of prior concert, or proof of circumstances which necessarily lead to that inference or the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis".*

18. In **Shoukat Ali vs The State (PLD 2007 SC 93)** it was held that *"After having gone through almost entire law qua the provisions as contained in section 34, in our considered view the following are the prerequisites of the section 34 before it could be made applicable:--*

*(a) It must be proved that criminal act was done by various persons*

*(b) The completion of criminal act must be in furtherance of common intention as they all intended to do so.*

*(c) There must be a pre-arranged plan and criminal act should have been done in concert pursuant whereof.*

*(d) Existence of strong circumstances (for which no yardstick can be fixed and each case will have to be discussed on its own merits) to show common intention.*

*(e) The real and substantial distinction in between 'common intention' and 'similar intention' be kept in view.*

19. Applying the principles as enunciated and interpreted by the Hon'ble Supreme Court, it was to be seen whether the appellants in the present case had acted with a pre-arranged plan and thus a common intention. As discussed above, the evidence produced at trial hinged on Qasim Ali's testimony. According to him, the co-accused did not fire. No evidence was led at trial to establish a pre-arranged plan or a prior meeting of the minds. It was quite possible that the three accused had not set out from their homes with the common intention to kill Tanveer. Motive not being established at trial also tilts the balance in favour of the accompanying accused.

### Conclusion

20. The above discussion makes us conclude as follows:

- I. The appellants are acquitted of the conviction and sentence under the Anti-Terrorism Act, 1997.
- II. The appellants are acquitted of the conviction and sentence under the Sindh Arms Act, 2013.
- III. Because of a lack of motive and lapses in the identification process, the death sentence awarded to Mohammad Ali is reduced to life imprisonment. He will be entitled to remissions under section 382-B Cr.P.C. His property shall not be forfeited. He will continue to be liable to pay a compensation of Rs. 500,000 to the deceased's legal heirs. He must stay in prison for a month if he fails to pay the compensation.
- IV. Younus Khan and Noman are acquitted as sufficient evidence was not produced at trial to make them vicariously liable for Mohammad Ali's shooting.
- V. The death reference is answered in the negative.

All appeals stand disposed of as above.

JUDGE

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