

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Muhammad Hasan (Akber)

Spl. Cr. Anti-Terrorism Appeal No. 58 of 2024
[Hussain Shah vs. The State]

Appellant : through Mr. Nazeer Ahmed Gorar,
Advocate

The State : through Mr. Muhammad Iqbal Awan
a/w Mr. Ali Haider Saleem, Additional
Prosecutors General, Sindh

Date of Hearing : 16.05.2025

Date of Decision : 04.06.2025

J U D G M E N T

Omar Sial, J.: The appellant Hussain Shah was nominated as an accused in a case arising out of F.I.R. No. 128 of 2023 registered under sections 392, 397, 353, 324 and 34 P.P.C. read with section 7 of the ATA 1997 at Defence police station.

2. The case against the appellant is that on 06.03.2023 complainant Ali Haider along with his friend Hassan was riding on a motorcycle from Qayoumabad Chowrangi PSO Petrol Pump towards Defence-I, Service Road when at about 1125 hours, two persons on 125 motorcycle intercepted them and deprived his cell phone and money. Complainant chased the accused at some distance, two police personnel were coming behind Petrol Pump on Service Road, Phase-I, DHA and complainant along with the police party chased the accused and tried to stop them. The accused, instead of stopping, opened fire on the police party and in retaliation police also fired upon them. None of the police was injured, but the police managed to injure one of the accused, later identified as Ali Akber. The two appellants were also arrested at the spot.

2. The accused was tried and convicted and sentenced by the learned Anti-Terrorism Court No.14 at Karachi on 30.03.2024, as follows:

- (a) The accused was convicted of an offence under section 397 PPC and under section 7(i)(c) ATA 1997 read with section 324 PPC and sentenced to seven years in prison.
- (b) The accused was also convicted of an offence under section 7(h) of the ATA 1997 read with section 353 P.P.C. and sentenced to two years in prison.

3. Learned counsel for the appellant 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 appellant has already completed his sentence. 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, 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.”

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 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 6 years 8 months and 13 days of the sentence awarded to him.

6. Given the above, the appeal is allowed only to the extent of the conviction for section 7 of the ATA 1997. The conviction and sentence awarded to the appellant for the offense under the Penal Code is upheld. The appellant may be released once the jail confirms that he has completed his sentence as well as the sentence in lieu of fine.

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

JUDGE

JUDGE

