

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Jail Appeal No.D-14 of 2022
Cr. Jail Appeal No.D-03 of 2023

BEFORE:

Mr. Justice Omer Sial,
Mr. Justice Khalid Hussain Shahani

Appellant:

Asif Ali s/o Arbab Ali @ Baqar Mastoi,

Through Mr Sajad Ali Solangi,
Advocate.

Mr. Waqar Ahmed A. Chandio,
Advocate for complainant.

State:

Through Mr. Aitbar Ali Bullo, Deputy
Prosecutor General, Sindh.

Date of hearing:

27-02-2025

Date of Judgment:

20-03-2025

JUDGMENT

Khalid Hussain Shahani J.- The appellant, Asif Ali Mastoi, was convicted by the learned Special Judge, Anti-Terrorism Court, Larkana, in Special Case Nos.03/2018 and 16/2021, arising from Crime Nos. 14/2018 and 43/2020 registered at Police Station B-section, Shahdadt Kot and sentenced as under:-

- Offence u/s 302(b) PPC to life imprisonment and directed to pay compensation of Rs. 500,000/- to the legal heirs of the deceased, Sallar Mastoi, failing which he would undergo simple imprisonment for an additional one-year term.
- Offence u/s 7(a) of the Anti-Terrorism Act, 1997, he was awarded life imprisonment and a fine of Rs. 500,000/-, with an additional one-year term in case of non-payment.
- Offence u/s 24 of the Sindh Arms Act, 2013, he was sentenced to rigorous imprisonment for five years along with a fine of Rs. 10,000/-, failing which he would serve an additional one-month simple imprisonment.

02. The benefit of Section 382-B Cr.P.C was extended to the appellant.

03. The facts underlying the prosecution's case are that the accused, Niaz Mastoi, who is alleged to be a known criminal, demanded

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extortion money (Bhatta) from Sallar Mastoi, the father of the complainant. On 03-03-2018, at about 11:30 a.m, while returning to their village from Peer Nabi Shah in a car, the complainant and his father were allegedly intercepted near Mastoi Shakh Bridge by Saddar @ Sajad, Asif (the appellant), and two unidentified individuals. It is contended that due to the non-payment of the demanded extortion money, accused Saddar and Asif fired upon Sallar Mastoi with their respective firearms, causing fatal injuries that led to his demise while en route to the hospital. Consequently, a FIR was lodged, leading to the initiation of criminal proceedings.

04. Upon the conclusion of a comprehensive trial, the appellant was convicted and sentenced in accordance with the aforementioned terms.

05. The case record indicates that the parties have entered into a settlement, wherein the legal heirs of the deceased have pardoned the appellant. Consequently, applications u/s 345(5) & 345(6) Cr.P.C were filed. However, it was observed that the appellant, among others, had been convicted u/s 7(a) of the Anti-Terrorism Act, 1997, an offence that does not fall within the category of compoundable offences as per the statutory framework.

06. Learned counsel contended that no substantial evidence was presented during the trial to establish the commission of an act of terrorism by the appellant. He further argued that the trial court erroneously convicted the appellant under the provisions of the Anti-Terrorism Act, 1997, asserting that the conviction and sentence were not legally sustainable in the absence of requisite evidentiary support.

07. The learned Deputy Prosecutor General (DPG) admitted that, aside from the complainant's allegations, no independent or corroborative evidence was presented to substantiate the charge of terrorism against the appellant. He further acknowledged that the fundamental requirements stipulated u/s 6(a) of the Anti-Terrorism Act, 1997, were not satisfied. Consequently, he raised no objection to the acceptance of the compromise application.

08. In light of the compromise reached between the parties, the critical legal question before the Court is whether the trial court was

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justified in convicting the appellant u/s 7(a) of the Anti-Terrorism Act, 1997, based solely on an allegation that his accomplice demanded Bhatta. This issue necessitates an examination of whether the offense falls within the legal definition of "terrorism," thereby invoking the exclusive jurisdiction of the Anti-Terrorism Court.

09. The case record reveals that the allegations of demanding Bhatta were solely attributed to the accomplice of the appellant, without substantive proof linking the appellant to such a demand. Additionally, there is an absence of evidence regarding the financial standing or sources of income of the deceased, Sallar Mastoi, which could substantiate the alleged demand for Bhatta by accused Niaz Mastoi. Furthermore, the complainant failed to provide specific dates, times, and locations of such demands, nor was any corroborative evidence presented before the investigating officer or during trial to substantiate these claims. No Call Data Record (CDR) or other tangible material was produced to establish the veracity of the allegations.

10. In light of these deficiencies, a mere allegation of Bhatta demand, without independent and credible corroboration, does not satisfy the legal threshold to constitute the offence of "terrorism" under the Anti-Terrorism Act, 1997, for which the appellant was charged and subsequently convicted. Section 6 of the said Act defines "terrorism" in a two-fold manner: the first part, as contained in Section 6(1)(b) and (c), pertains to the mens rea, specifying the intent or purpose behind an act, while the second part, outlined in Section 6(2), delineates the actions which, when coupled with the requisite mens rea, would amount to an act of terrorism. The trial court, while convicting the appellant, failed to duly consider this legal framework, resulting in a misapplication of Section 6 of the Anti-Terrorism Act, 1997. Reliance is placed on the precedent set in Ghulam Hussain v. The State (PLD 2020 SC 61) and Sagheer Ahmed v. The State and others (2016 SCMR 1754), which establish that a proper application of Section 6 is essential in determining whether an act constitutes terrorism. We are, therefore, firm in opining that conviction and sentence awarded to the appellant for offence u/s 7(a) of Anti-Terrorism Act, 1997 is not sustainable.

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11. The appellant reached a settlement with the legal heirs of the deceased, following which formal applications were submitted before the court. These applications were subsequently referred to the learned trial court for a comprehensive inquiry to verify the identity of the legal heirs and to assess the authenticity and voluntariness of the compromise reached between the parties.

12. The learned trial court submitted a report dated 14.03.2025, which is part of the case record. According to the report, during the course of the inquiry, verification of the legal heirs of the deceased was conducted through the relevant Mukhtiarkar, the Station House Officer of PS B-section Shahdaskot, and the National Database and Registration Authority (NADRA). The inquiry proceedings confirmed that the deceased, Sallar Mastoi, was survived by his widow, Mst. Zareena; sons, Altaf Hussain, Tariq Hussain, and Maqbool Ahmed; daughters, Peerani, Fiza, and Dua Batool; and mother, Nimul (Nimi Khatoon), in accordance with Muhammadan Law. Statements of all the legal heirs were duly recorded, wherein they unequivocally affirmed that they had entered into a compromise with the appellant of their own volition, without any duress, coercion, or fear. Furthermore, they expressly forgave the appellant in the name of Almighty Allah and waived their right to Qisas/Diyat, while also recording their no objection to the appellant's acquittal.

13. Under the provisions of the Criminal Procedure Code, there exists no statutory limitation or categorical restriction on the eligibility of an individual to enter into a compromise. The offence in question is compoundable, and since the legal heirs of the deceased have voluntarily waived their right to Qisas and Diyat, there remains no legal impediment preventing the parties from effectuating the compromise.

14. The legal heirs of the deceased personally appeared before the Court and unequivocally confirmed that they had pardoned the appellant of their own free will, without any duress, coercion, or undue influence.

15. In light of the aforementioned discussion, the Cr. Jail appeal No.D-14/2022, along with the pending application(s), stand disposed of in accordance with the terms outlined above.

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16. The appellant since his arrest on 25-06-2020 is behind the bars and almost completed the sentence of five years awarded to him in a case bearing crime No.43/2020, offence u/s 24 Sindh Arms Act, 2013, However, the sentence of five years imposed on the appellant is modified and reduced to the period of imprisonment already served. This shall also include imprisonment in default of payment of the fine. Cr. Jail Appeal No.D-3/2023 also stands disposed of in above terms.

17. Given the above:

- (a) Cr. Jail Appeal No.D-14 of 2022 is allowed to the extent of the conviction and sentence awarded under the Anti-Terrorism Act.
- (b) Cr. Jail Appeal No.D-03 of 2023 is dismissed subject to the modification of the sentence given in paragraph 16 above.
- (c) Misc Application No.264/2025 is allowed.
- (d) Misc. Application No.265/2025 is allowed.
- (e) The appellant in Cr. Jail Appeal No.D-14/2022 is acquitted u/s 345(6) Cr.P.C. he may therefore be released forthwith if not required in any other custody case.
- (f) The appellant may be released forthwith in Cr. Jail Appeal No.D-03 of 2023 upon completion of his modified sentence if he is not required in any other case.



JUDGE

Asghar Altaf/P.A


JUDGE