# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

*Before:*
*Mr. Justice Amjad Ali Bohio, J.*
*Mr. Justice Khalid Hussain Shahani, J.*

Spl. Atni-Terrorism Jail Appeal No. D-08 of 2024
&
Spl. Atni-Terrorism Jail Appeal No. D-09 of 2024

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| Appellants | : | 1) Mazhar Ali s/o Ghulam Qambar, Solangi<br>2) Rizwan Ali s/o Qamaruddin Solangi<br>*Through* Mr. Noor Hassan Malik, Advocate |
| The State | : | *Through* Mr. Muhammad Ali Ansari, Addl. P.G |
| Date of Hearing | : | 14.01.2026 |
| Date of short order | : | 14.01.2026 |
| Reasons recorded on | : | 16.01.2026 |

## J U D G M E N T

***KHALID HUSSAIN SHAHANI, J.—*** Appellants Mazhar Ali and Rizwan Ali, assailed the judgment dated 17.01.2024 passed by the learned Special Judge, Anti-Terrorism Court, Khairpur in Special Case No.26 of 2022 arising out of Crime No.52 of 2022, Police Station Sobhodero, whereby both appellants were convicted for offences under Sections 324, 353, 34 PPC and Section 7 of the Anti-Terrorism Act, 1997 and sentenced to various concurrent terms of imprisonment and fine with the benefit of Section 382-B CrPC.

2. According to the FIR lodged by Sub-Inspector Ghulam Mustafa, on 16.07.2022 a police party on patrol received spy information near Bindi curve that the appellants and others, wanted in a kidnapping for ransom case, were present in a banana garden near Bindi Motayo; on reaching there at about 0600 hours, four armed persons, including the appellants, allegedly fired straight at the police with intent to kill and deter them, whereafter a 10 to 12 minutes encounter ensued and the accused escaped, leaving behind various empties of 12-bore and pistol allegedly recovered and sealed on the spot by police mashirs, both of whom were police officials.

3. After investigation by two investigating officers, challan was submitted, charge was framed under Sections 324, 353, 34 PPC read with

Section 7 ATA, 1997, four police witnesses were examined, the appellants denied the allegations in their statements under Section 342 Cr.P.C, led no defence evidence, and were convicted by the trial court.

4. Learned counsel for the appellants argued that this was, at best, a simple police encounter case in which no one from either side received even a single injury and no accused was arrested at the spot, rendering the encounter story inherently doubtful. It was contended that all witnesses are police officials, no independent mashir was associated despite alleged recovery from a public place near a link road at daybreak in violation of Section 103 Cr.P.C, that the empties and the forensic report had been managed, and that the arrest effected five days later via a document titled "memo of imaginary arrest" itself exposed the fictitious nature of the proceedings. Counsel further urged that Section 7 ATA, 1997 was wrongly applied as there was no evidence of panic, terror or insecurity in the public and the investigating officer expressly admitted that no such terror or insecurity was caused; that no weapon was recovered from the appellants and the forensic report only proved that some empties were fired at some time without linking them to the appellants; and that material contradictions, improbabilities and gaps in the chain of custody entitled the appellants to acquittal on benefit of doubt, relying inter alia on (PLD 1996 SC 67), (PLD 2020 SC 61), (1995 SCMR 1345) and (2017 SCMR 2002).

5. The learned Additional Prosecutor General for the State supported the impugned judgment, maintaining that the police witnesses consistently proved the date, time, place and manner of occurrence and the recovery of empties, and that their testimony could not be discarded merely because they were police officials. He contended that Section 103 Cr.P.C did not apply as this was not a formal search but an incidental recovery after an encounter, that the forensic report provided strong corroboration, and that the appellants' bare

denials under Section 342 Cr.P.C, unsupported by any defence, were insufficient to dislodge a prosecution case proved beyond reasonable doubt.

6. Reiterating the settled principles that the prosecution must prove its case beyond reasonable doubt and that even a single reasonable doubt entitles the accused to acquittal as of right, the Court undertook a reappraisal of the entire record. It first noted a material contradiction regarding prior knowledge and identification: the complainant (PW-1) claimed the accused were known to him with full parentage prior to the incident, whereas PW-2 admitted he did not know the accused previously but nonetheless purported to identify them by name and weapon at about 100 paces around 0600 hours in a banana garden, which the Court found to strain credulity and to reflect suggestive rather than independent identification. The Court further observed that both PW-1 and PW-2 admitted that, despite a 10 to 12 minutes exchange of some 33 rounds at about 100 paces by both sides with lethal firearms, no person on either side sustained any injury and not even the police mobile was hit, a scenario the Court considered ballistically and physically highly improbable, thereby casting serious doubt on the genuineness of the alleged encounter. The first investigating officer (PW-3) admitted that when he inspected the place of wardat about three and a half hours later, nothing was recovered from the spot and only "invisible" footprints were seen, which provided no tangible link to any accused. The second investigating officer (PW-4) admitted that the SSP's order did not mention Section 7 ATA, that he examined no witness after applying Section 7, and crucially that no act of panic, terror or sense of insecurity was created in this case; he also admitted he did not check the case property.

7. Referring to the three-pronged test laid down in *Ghulam Hussain v. The State* (PLD 2020 SC 61), the Court highlighted that, beyond *actus reus* and *mens rea*, the design or purpose of the act must be to strike terror amongst

the people, coerce the government or advance a specified ideological, political or religious cause in order to qualify as terrorism under Section 6 ATA. Applying this test, it held that the record disclosed no evidence of any terror or panic caused to the public. The alleged incident occurred in an isolated banana garden at about 0600 hours, no public witness from the locality was examined, the investigating officer expressly admitted that no panic, terror or sense of insecurity was created, and even the SSP's order described the case only under Sections 324 and 353 PPC without reference to Section 7 ATA. The trial court, in convicting under Section 7 ATA, was found to have proceeded on the erroneous assumption that firing at police personnel automatically attracted ATA without addressing the mandatory element of design or purpose to terrorize the public as explicated in *Ghulam Hussain*, rendering the ATA conviction legally unsustainable.

8. On Section 103 Cr.P.C, the Court held that the recovery in this case was from a place, namely the ground in the banana garden near a link road, and not from the person of any accused, as all accused had allegedly escaped, thereby squarely attracting Section 103 Cr.P.C which is relatable to the place and not to the person as clarified in *Muhammad Azam v. The State* (PLD 1996 SC 67). Despite the area being near a link road at a time when daylight was approaching, no private mashir was associated; instead, both mashirs were subordinate police officials, and the mashirnama contained only a vague assertion of efforts to secure private mashirs without details of whom, where and why they were unavailable, which the Court considered a material breach of the safeguard of Section 103 designed to ensure transparency and prevent foisting of fake recoveries. It also noted the discrepancy between the 10 twelve-bore empties allegedly recovered as per FIR and only 6 twelve-bore empties received by the forensic laboratory, leaving 4 unaccounted for, and the non-examination of PC Shahmeer Ali, the bearer who transported the case

property to the laboratory, creating an unexplained break in the chain of custody. In the absence of any recovery of weapons from the appellants and any comparative ballistic matching, the forensic report was held to merely establish that certain empties were fired at some unspecified time and place, without identifying by whom or in what incident, and thus could not by itself link the appellants to the alleged offence, particularly in light of authority such as *Zahir Yousaf v. State* (2017 SCMR 2002) and recent High Court pronouncements that forensic evidence without a properly connected weapon and an unbroken chain of custody is inconclusive for conviction.

9. The Court attached considerable significance to the arrest memo dated 21.07.2022, prepared at Ghulam Muhammad Shah Hospital, Gambat, five days after the incident, which was expressly titled a "Memo of Imaginary Arrest", noting that such terminology in an official document suggests a purely paper arrest when the accused are already in custody in another case, a serious illegality which undermines the claim that the appellants were apprehended in consequence of the alleged encounter. The memo also contained an unexplained discrepancy between the time mentioned in the heading (1930 hours) and in the body (1130 hours), reflecting lack of care and casting further doubt on the reliability of the investigation. It further noted that out of eight members of the police party allegedly present, only two (the complainant and HC Nawab Ali) were examined, while six others including PC Waheed Ali, co-mashir whose signatures appear on all key documents, were withheld without explanation, thereby depriving the prosecution of important corroboration and the defence of cross-examination of material witnesses, which strengthened the inference that the prosecution version was not free from doubt.

10. On a holistic appraisal, the Court found that the prosecution case was riddled with multiple serious infirmities: misapplication of Section 7 ATA

without proof of the requisite design to terrorize the public; violation of Section 103 Cr.P.C in a place-based recovery near a public road; the self-described "imaginary" arrest memo prepared when the appellants were already in custody in another case; ballistic improbability of a prolonged exchange of 33 rounds at close range with zero injuries and no vehicle damage; material contradictions regarding prior knowledge and identification; absence of any weapon recovery; significant breaks and discrepancies in the chain of custody and forensic evidence; non-examination of most material police witnesses; and failure of the scene inspection to yield any tangible incriminating material. In light of these circumstances and applying the settled rule that even a single reasonable doubt must be resolved in favour of the accused, the Court held that the prosecution had failed to prove the charge beyond reasonable doubt and that the appellants were entitled to benefit of doubt as a matter of right. Consequently, the appeal was allowed, the impugned judgment dated 17.01.2024 was set aside, and the convictions and sentences of both appellants under Sections 324, 353, 34 PPC and Section 7 ATA, 1997 were quashed; Mazhar Ali and Rizwan Ali were acquitted of all charges and ordered to be released forthwith if not required in any other case, vide short order dated 14.01.2026. These are the detailed reasons thereof.

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