

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Spl. CrI. A.T. Appeal No.15 of 2020

Date	Order with signature of Judge
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Present: *Mr. Justice Nazar Akbar*
Mr. Justice Zulfiqar Ahmad Khan

Appellant No.1 : Shahnawaz
Appellant No.2 : Syed Tehseen
through M/s. Mushtaq Ahmed &
Raja Hassan Nawaz, Advocates.

Versus

Respondent : The State
through Mr. Hussain Bux Baloch,
Additional Prosecutor General.

Date of hearing : **24.12.2020**
Date of Decision : **30.12.2020**

J U D G M E N T

NAZAR AKBAR, J.- The instant appeal is directed against the judgment dated **25.01.2020** passed by the learned Judge, ATC Court No.XVII, Karachi in Special Case No.33/2006, arising out of FIR No.141/2003 under Section 302/109/34 PPC registered at P.S Chakiwara, Karachi, whereby appellants, Shahnawaz son of Abdul Razaq and Syed Tehseen son of Syed Naseeruddin were convicted and sentenced as under:-

Under Section 302(b) P.P.C to suffer life imprisonment as (Tazir) & to pay Rs.200,000/- (Two Lacs) each to the legal heirs of both the deceased by way of compensation u/s 544-A Cr.P.C and in default of payment thereof, further undergo S.I for six months.

Under Section 7(1)(a) of Anti-Terrorism Act 1997 to suffer life imprisonment.

All the sentences shall run concurrently and benefit of Section 382(B) Cr.P.C is given to both the accused.

2. Learned counsel for the appellant has contended that the conviction of the appellant by the trial Court under Section 7(1)(a) of the Anti-Terrorism Act, 1997 (ATA 1997) is contrary to the facts and law for the simple reason that the provision of **Section 6(2)(n)** of ATA,

1997 was wrongly invoked on the ground that victim Abdul Aleem was a police officer. He has referred to Section 6(2)(n) of ATA, 1997. It is reproduced below:-

6. Terrorism.- (1).....

(2) An “action” shall fall within the meaning of sub-section (1) if it:.....

(n) involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant.

He has contended that out of two victims, one was serving in the police department but at the time of incident, he was neither in police uniform nor he was on official duty and, therefore, the provisions of **Section 6(2)(n)** of ATA, 1997 were not attracted. He has also referred to the evidence of PW-09/I.O Syed Waqar Ali, who in his cross-examination has deposed as under:-

“It is correct to suggest that at the time of incident Abdul Aleem was serving in CID police. At the time of incident he was no(t) in police uniform but was on duty. I have not produced any such entry through my evidence that deceased H.C Abdul Aleem was on duty on the day of incident. it is a fact that it is not mentioned in the challan that he was on duty.”

Learned counsel for the appellants in support of his contention has placed reliance on the following case-laws of Hon'ble Supreme Court:-

- i. Waris Ali and 5 others vs. The State (**2017 SCMR 1572**);
- ii. Tahir Mehmood @ Achoo Vs. The State and another (**2018 SCMR 169**).
- iii. Nazar Hussain and another vs. The State (**PLD 2010 SC 1021**).

His other contention is that both the appellants are in jail for more than 15 years without remission and remission was not included in their period of imprisonment only on the ground that they were sentenced to suffer life imprisonment on two counts including the one under **Section 7(1)(a)** of ATA, 1997. He has contended that in

case this court holds that the conviction under ATA, 1997 was not lawful and sets it aside the appellants need not to contest their conviction under Section **302(b) PPC** since they have already completed the terms of imprisonment for 15 years. In support of his contention that life sentence mean imprisonment for 15 years without remission, learned counsel has relied on the case of Nazar Hussain and another ..Vs.. The Sate (**PLD 2010 SC 1021**).

3. Learned Additional P.G after going through the above quoted piece of evidence has admitted that it was not proof of the fact that victim was on duty at the time of incident. On the strength of case law he conceded to the proposition that in view of the evidence, the provision of **Section 6(2)(n)** were not attracted in this case and, therefore, he does not support the conviction of appellant under Section 7(1) (a) of the ATA, 1997. However, he has contended that the offence under Section 302 PPC was made out.

4. On the above submissions of learned counsel for the appellant and in view of no objection from the prosecution side when this case was heard on 23.12.2020 we adjourned it for next day and called Jail Roll of the appellants in respect of their confinement in Crime No.141/2003 of P.S Chakiwara, Karachi. Jail Roll received next day was only in respect of appellant **Syed Muhammad Tehseen @ Rashid** and Jail Roll of appellant Shahnawaz could not be provided on the ground that custody of said appellant was transferred to Central Prison Hyderabad. It has now been received from Central Prison Hyderabad. According to Jail Roll appellant Muhammad Tehseen was admitted to Central Prison, Karachi on **18.6.2005** in two cases i.e (1) Crime No.285/2005, 286/2005 under Section 302(b)/34 PPC r/w Section 7(a) ATA, 197 in which he was convicted and **sentenced to Death** and (2) Crime No.141/2003 (the present

FIR) and he has awarded life sentence and so far he in jail for a period of **15 years, 6 months and 6 days** of imprisonment in crime No.141/2003. He has not been given benefit of Section 382(b) Cr.P.C. by the jail authorities on the ground that he has been awarded death sentence in crime No.285/2005. According to Jail Roll dated **23.12.2020** the appellant Muhammad Tahseen has preferred appeal against the award of death sentenced to him in **Crime No.285/2005** before the Hon'ble Supreme Court and it is pending. The Jail Roll in respect of appellant No.1 Shahnawaz, who was shifted to Central Prison and Correctional Facility, Hyderabad on **29.7.2020** shows that in Crime No.141/2003 he is in jail for **17 years, 3 months and 13 days** until 23.12.2020.

5. In the case of Tahir Mehmood (**2018 SCMR 169**) the Hon'ble Supreme Court has been pleased to set aside the conviction under Section 7(1)(a) of the ATA Act, 1997 by looking to the facts of the case in which the victim police constable at the relevant time was serving in the police department, however, evidence has come to the effect that the deceased at the time of incident was posted as Guard of Police Lockup and he was not on patrolling duty as claimed by the prosecution and, therefore, keeping in view the evidence on record, it was held that at the relevant time, the deceased victim was not on duty and therefore, provisions of section 6(2)(n) of ATA, 1997 were not attracted. In the case of Tahir Mehmood, the Hon'ble Supreme Court while relying on the judgment of Waris Khan has been pleased to hold as under:-

12. In view of the above inferences drawn, and the conclusion reached at, we are of the considered view that section 7, A.T.A. is not attracted at all and also for the reasons that the view held in the recent judgment in the case of Waris Ali and others v. The State (2017 SCMR 1572), the conviction and sentence of the appellant under the above provision of law was bad in law and not

sustainable. Similarly, no question arose that the deceased was prevented from discharging his official duty therefore, the conviction of the appellant under sections 353 and 186, P.P.C. is equally not tenable under the law. Accordingly, the convictions and sentences awarded to the appellant under section 7, A.T.A. and under sections 353 and 186, P.P.C. are set aside and he is acquitted of these charges.

Keeping in view the two rival theories of the prosecution and the defence and after holding that both the parties have suppressed material facts from the Court and also for the reasons that after drawing the above inferences and reaching at a 3rd probable story, **we are again of the considered view that in the matter of sentence, the Court is essentially required to exercise judicial care and caution, therefore, the death sentence awarded to the appellant under section 302(b), P.P.C. does not seem justified.** Thus, the same is reduced to life imprisonment with benefit of section 382-B, Cr.P.C. Equally the compensation amount of Rs. 5,00,000/- is reduced to Rs. 1,00,000/- or in default of payment thereof, he shall suffer six months' S.I.

6. In the case of Nazar Hussain, a Full Bench of Hon'be Supreme Court has approved policy of remission as not violative of **Article 25** of the constitution, therefore, denial of remission to the convict under ATA, 1997 in para **23(3)** of the judgment was also approved, it is reproduced below:-

23. In the light of the observations quoted in the preceding paragraphs, the Court concluded and directed as follows:-

"(1).....

(2).....

(3) The convict-prisoners who are granted the benefit of section 382-B, Cr.P.C., shall be entitled to remissions granted by any authority in their post-sentence detention or during their pre-sentence detention in connection with such offence. However, the same shall not be available to the convicts of offences under the National Accountability Bureau Ordinance, 1999, **Anti-terrorism Act, 1997**, the offence of karo kari, etc, where the law itself prohibits the same;

(4)

However, in the same judgment the Hon'ble Supreme Court while referring to the Remissions Rules frame under the Prisons Act, 1894 has held that a life imprisonment would mean 25 years' rigorous imprisonment and every lifer shall undergo a maximum of 15 years substantive life. He has relied on para-29 of the judgment in the case of Nazar Hussain (supra). Para-29 is reproduced below:-

29.....
 Till the break up of the One Unit, the grant of remissions was being regulated by the West Pakistan Prisons (Remissions and Sentences) Rules 1965. However, after the creation of four Provinces, the Government decided to issue a Jail Manual to be followed in all the four Provinces. As the prisons Department was a Provincial subject, the Federal Government in a meeting of the Inspector Generals of Prisons/Directors of Prisons of all the Provinces held on 12th of April, 1976, advised the Provincial Governments to adopt the Draft Manual as Rules to bring about uniformity in this domain. **With previous sanction of the Federal Government, the Jail Manual was adopted to be called the Pakistan Prison Rules. Chapter 6 of those Rules pertains to the grant of remissions.** The Chapter comprises of Rules defining certain expressions: explaining the remission system (Rule 199), classifies the nature of remissions i.e. ordinary or special (Rule 200), cases in which no ordinary remission is earned (Rule 201) and exclusion of persons from grant of remissions if he/she is convicted of an offence after admission into a prison (Rule 202). **Rule 140 lays down that imprisonment for life will mean 25 years' rigorous imprisonment and every life prisoner shall undergo a minimum of 15 years of substantive sentence of imprisonment.** It also stipulates that the cases of lifers shall be referred to the Provincial Government after they have served out 15 years of substantive imprisonment for consideration with reference to section 401 of the Code of Criminal Procedure. Rule 215 provides for remissions on account of education. Similarly, Rule 216 is relatable to special remissions to be granted by the Superintendent of Prisons, Inspector-General of Police, Provincial Government and Federal Government. The law on remissions both in Pakistan and India puts a limit on the total remissions that can be availed of by a convict undergoing life sentence. Rule 217 of Pakistan Prison Rules reads as follows: -

"Rule 217.--(i) The total remission, both ordinary and special awarded to a prisoner under these Rules (other than remission for donating blood awarded under rule 212, surgical sterilization under rule 213 and for passing an examination

under rule 215) shall not exceed one-third of his sentence:

Provided that Government may, on the recommendation of the Inspector-General, grant remissions beyond the one-third limit in very exceptional and deserving cases.

(ii) Remission, both ordinary and special, earned by a lifer convict shall be so much that a sentence of imprisonment for life is not shortened to a period of imprisonment less than 15 years."

7. The case of the appellant on facts and law is squarely covered by the judgment of Supreme Court in case of Tahir Mehmood (supra). We, therefore, keeping in view of the evidence on record hold that the conviction and sentence of the appellants under **Section 7(1)(a)** of the ATA, 1997 was bad in law and not sustainable, therefore, it is set aside. We have already discussed the status of the appellants as convicted prisoner in **Crime No.141/2003** of P.S. Chakiwara, Karachi in para-4 above. Consequently only sentence under Section 302(b) PPC is maintained. The appellants shall entitle to the benefit of **Section 382-B Cr.P.C.**

JUDGE

JUDGE

Ayaz Gul