

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Justice Muhammad Hassan (Akber)

Spl. Cr. Anti-Terrorism Jail Appeal No. 56 of 2023
[Muhammad Ayoub @ Mulla vs. The State]

Spl. Cr. Anti-Terrorism Appeal No. 89 of 2023
[Ashfaq @ Shahnawaz @ Shanoo vs. The State]

Spl. Cr. Anti-Terrorism Appeal No. 90 of 2023
[Ashfaq @ Shahnawaz @ Shanoo vs. The State]

Appellants : through Mr. Ameet Kumar, Advocate.

Respondent : The State
through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General Sindh

Date of Hearing : 16.04.2025

Date of Decision : 05.05.2025

JUDGMENT

Omar Sial, J: A police party led by S.I. Mohammad Zareen Khan was on regular patrol when it received information that two people with weapons and explosives were present in Baghdadi Lane of Lyari. The two suspects were apprehended and identified as Mohammad Ayoub and Ashfaq (the appellants). One grenade and one pistol were each recovered from the two suspects. F.I.R. No. 511 of 2022 was registered on 06.11.2022 under sections 4 and 5 of the Explosives Act 1908 at the Baghdadi police station. F.I.R. No. 512 of 2022 and No. 513 of 2022 were also registered against Mohammad Ayoub and Ashfaq, respectively, for an offence under section 23(1)(a) of the Sindh Arms Act 2013.

2. After a full-dress trial, on 11.03.2023, the learned Anti-Terrorism Court No. 13 at Karachi convicted and sentenced the two appellants to fourteen years for an offence under section 4 of the Explosives Act, 1908. They were also convicted and sentenced to seven years each for an offence under section 23(1)(a) of the Sindh Arms Act, 2013.

3. The learned counsel for the appellants submitted that the case against the appellants was not one of terrorism and that he would not argue the case on merits; however, he requested that the sentence already undergone by the appellants be treated as their final sentence.

4. We have heard the learned counsel for the appellants and the learned Additional Prosecution General. Our findings and observations after re-appraising the evidence are as follows.

5. We notice that although this case is being treated as a terrorism case, no conviction or sentence has been recorded by the learned trial court under any section of the terrorism legislation. Both appellants have been sentenced for offences under the Explosive Substances Act, 1908, and the Sindh Arms Act, 2013. Perhaps this was an inadvertent error on behalf of the learned trial court. Be that as it may, we notice that even otherwise, based on the evidence produced at trial, a terrorism case was not made out. What constitutes terrorism has been described in much detail in **Ghulam Hussain vs The State (PLD 2020 SC 61)**, 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.”

6. Needless to say, the judgments of the Supreme Court on points of law are binding on all. In the current case, no evidence was produced at trial to establish that the ingredients of section 6(1)(b) or (c) were satisfied. 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. Both grenades were without detonators, and even if the appellants wanted to use them, they could not.

7. As mentioned above, the appellants have not been sentenced for a section 6(2)(ee) ATA 1997 but under section 4 of the Explosive Substances Act, 1908. Section 4 of the Act of 1908 comes into play when an explosive is kept to endanger life or property. No evidence was presented at trial to establish the endangering life or property criterion. On the contrary, the grenades being without detonators meant that the appellants could not even endanger life or property. Section 5 of the Explosive Substances Act, 1908, is the provision of law that would be applicable. Section 5 deals with contingencies when an explosive substance is in possession under suspicious circumstances.

8. The case against the appellants falling outside the ambit of terrorism would mean they would be entitled to section 382-B remissions. A jail roll was called for that showed that Mohammad Ayoub had completed seven years, eleven months,

and fourteen days, while Ashfaq had completed eight years, one month and fourteen days. The learned Additional Prosecutor General agrees that looking at the case holistically, he would have no objection if the sentence under section 4 of the Explosive Substances Act, 1908 is converted to a conviction under section 5 of the Act of 1908 and the sentence reduced to the one the appellants have already undergone. This would include the sentence in default in payment of fine. Directions regarding forfeiture of appellant's property are kept intact.

9. Given the above, the appeals are dismissed subject to the modification in sentence as given above. The appellants would be entitled to Section 382-B Cr.P.C. remissions, and the sentences would run concurrently. The appellants may be released after the jail authorities confirm their sentences are complete and that the appellants are not required in any other custody case.

10. The appeals stand disposed of in the above terms.

JUDGE

JUDGE