

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Khadim Hussain Tunio
Mr. Justice Amjad Ali Sahito

Spl. Crl. Anti-Terrorism Jail Appeal No.37 of 2024

Appellant : Imran S/o Ibrahim is present and produced in custody by the jail authorities.

Respondent : For State
Mr. Muhammad Iqbal Awan, Addl. P.G., Sindh

Date of Hearing : 01.12.2025

Date of Short Order: 01.12.2025

J U D G M E N T

Amjad Ali Sahito, J.- Through the instant appeal, the appellant has impugned the Judgment dated 13.01.2024 passed by the learned Judge, Anti-Terrorism Court No.XIII, Karachi in Special Case Nos.436/2023 & 436-A/2023 under FIRs No.219/2023 U/s 324, 353, 186 PPC R/w Section 7 ATA, 1997 and 220/2023 U/s 23(i)(A) SAA, 2013 both registered at PS Chakiwara, Karachi; whereby the appellant was convicted U/s 324 PPC and sentenced him to suffer R.I. for 10 years and to pay fine of Rs.50,000/- and in default of payment of fine, he shall further undergo R.I. for six months. He was also convicted U/s 353 PPC and sentenced him to suffer R.I. for 02 years. He was also convicted U/s 23(i)(a) SAA and sentenced to R.I. for seven years and to pay fine of Rs.20,000/- and in case of default in payment, he shall further undergo R.I. for two months. He was also convicted U/s 7(h) ATA to suffer R.I. for 10 years and to pay fine of Rs.50,000/- and in default of payment of fine, he shall further undergo R.I. for six months. All the above said sentences were ordered to run concurrently and the benefit of Section 382-B Cr.P.C. was also extended to the appellant.

2. Precisely, brief facts of the prosecution case are that on 06.10.2023 at 0230 hours, complainant ASI Sanaullah lodged the FIR for encounter took place in between police and accused within the jurisdiction of PS-Chakiwarah, wherein it has been alleged by the complainant that he alongwith his subordinate staff namely PC-Zubair Khan, PC-Sahibdino and PC-Abdul Qadeer were busy in patrolling for prevention of crimes in police mobile bearing No.SPE-125-III. However, while on patrolling duty, the complainant received spy information that one suspected person duly armed with weapons is sitting on footpath at main Chakiwarah road near Sahara Petrol pump, Lyari Karachi under suspicious condition for the commission of an offence. Upon receiving such information, he alongwith his subordinate staff reached at the pointed place at about 2320 hours and saw the accused; however, upon seeing the police party, the accused made direct firing upon them with intention to commit their murder and in retaliation, police also made firing in their defence. As a result thereof, accused sustained firearm injury, which hit to his leg and fell down, thereafter, police arrested the present accused who disclosed his name as Imran and recovered one unlicensed 30 bore silver body pistol with wooden handle, without number alongwith its magazine containing two live bullets in presence of mashirs. The accused failed to produce the license of the recovered pistol. Complainant called the Crime Scene Unit through wireless message, who reached there and recovered three empties of 30 bore pistol and one empty of 9 mm pistol and obtained the sample of blood stick and handed-over the certificate and thereafter sealed the property separately at the spot. Nothing was recovered from the further personal search of arrested accused except wearing apparel and after that he alongwith his subordinate staff shifted the injured accused to Civil Hospital for treatment. Thereafter, they returned back to police station, where he lodged the instant FIRs.

3. After completing the investigation, charge was framed at Ex.5, to which accused pleaded not guilty and claimed to be tried vide his plea at Ex.5/A.

4. In order to prove the charges against the accused, the prosecution has examined as many as five PWs. PW-01 WHC-Raheel Baig at Ex.07. He produced the attested copy of entry of Book No.19 at Ex.07/A. Statement submitted by learned APG for State to give up the PWs/PC-Shahzada and PC-Ghulam Ali, which is placed on record at Ex.08. PW-02 ASI Sanaullah Niazi (complainant in these cases/crimes)

at Ex.09. He produced roznamcha entries, entry of Kott Register, duty register patrolling parties, memo of arrest of accused and recovery, referral letter FIR accused for treatment of accused, FIR Nos. 219/2023 & 220/2023, information slip of emergency Department of Civil Hospital for treatment of accused and memo of inspection of place of incident and its sketch at Exs.09/A to 09/N. PW-03 PC Sahabdino Shar (eyewitness in these cases/crimes) at Ex.10. Statement submitted by learned APG for State to give up the PWs/PC-Ayaz Ahmed and PC-Zubair, which is kept on record at Ex.11. PW-04 Dr. Gulzar Ali Solangi at Ex.12. He produced the provisional and final medico-legal-certificates of accused Imran at Ex.12/A to 12/B. PW-05 SIO/Inspector Syed Anwar Hussain at Ex.13. He produced the roznamcha entries, Photographs of place of incident, letter duly addressed to AIGP-Forensic Division Sindh Karachi for FSL report of the weapons, which were recovered from accused and weapon of police and its report, letter duly addressed to I/C. Sindh Forensic DNA & Serology Laboratory ICCBS Jamia Karachi for report of blood samples of accused and its report, letter duly addressed to I/C. CRMS, District Kemari Karachi for CRO & photo finger of accused and reports at Ex.13/A & 13/0. Thereafter, the learned APG closed the side vide his statement at Ex.14.

5. The statement of accused Imran under section 342 Cr.P.C was recorded at Ex.15 wherein he denied all the allegations of prosecution and also stated that he is innocent and has been falsely implicated in these cases. He also stated that all the PWs have been deposed falsely. He also stated that police arrested him, nothing was recovered from his possession at the time of his arrest but police foisted the weapon upon him. However, he did not make statement on oath nor produce any witness in his defence.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellant as stated above vide judgment dated 13.01.2024 which has been impugned before this Court in the instant Appeal.

7. Appellant Imran is present and stated that he is innocent and has been falsely implicated in these cases; that material contradictions in the testimonies of the prosecution witnesses create serious doubt with respect to the prosecution case. He further submits that the

alleged recovery has been foisted upon him by the police with mala fide intent and ulterior motives. He, therefore, prays for his acquittal.

8. He further argued that as per the jail roll, he has served out more the seven years including fine amount. He submitted that he is the sole breadwinner of his family and has already undergone a substantial portion of his sentence. He, therefore, stated that he would not press the appeal on merits, provided that if acquittal is not feasible, his sentence may be reduced to the period already undergone and the fine amount may also be waived.

9. Conversely, the learned Assistant Prosecutor General, Sindh, fully supported the impugned judgment and maintained that the appellant was arrested from the spot, rendering him not entitled to acquittal. However, he reluctantly agreed to consider the proposal advanced by learned counsel for the appellant.

10. We have heard the learned counsel for the appellant as well as learned Assistant Prosecutor General, Sindh and have minutely examined the material available on record with their able assistance.

11. Upon scrutiny of the record, it transpires that on 06.10.2023 at approximately 0230 hours, an encounter allegedly took place between the police party and the present appellant within the jurisdiction of Police Station Chakiwarah. The complainant, ASI Sanaullah, deposed that he, along with his subordinate staff, was on routine patrol when he received credible spy information that a suspicious armed person was seated on the footpath at Main Chakiwarah Road near Sahara Petrol Pump, Lyari, Karachi, ostensibly preparing to commit an offence. Acting upon such information, the police party proceeded to the identified location where they found the accused present. It is alleged that upon noticing the police party, the accused opened direct fire with the intent to kill. The police retaliated in self-defence, during which the accused sustained a firearm injury to his leg and fell to the ground. He was thereafter apprehended and disclosed his name as Imran. Upon conducting his personal search, the police recovered a 30-bore silver-coloured pistol with a wooden handle, bearing no serial number, along with a magazine containing two live rounds.

12. Examination of the record further reveals that both PW-2, Complainant ASI Sanaullah, and PW-3, PC Sahabdino, stated in their depositions that upon seeing the police, the accused initiated straight

firing, whereafter the police party also returned fire. However, it is noteworthy that no bullet marks were found on the police mobile, nor did any police official sustain any injury. PW-3, PC Sahabdino, further deposed that upon their arrival at the pointed location, the accused fired directly at the police party, whereupon Complainant ASI Sanaullah instructed him to return fire. Consequently, he fired one shot with his 9 mm pistol, which struck the accused on his right leg below the knee, after which the accused surrendered.

13. Conversely, PW-4, Dr. Gulzar Ali, testified in his examination-in-chief that on 05.10.2023 at about 11:56 p.m., the police of PS Chakiwarah brought one injured accused, Imran, to Civil Hospital Karachi. Upon medical examination, he was found to have a firearm lacerated wound of entry measuring 0.5 cm in diameter over the posterior aspect of the right leg, with no blackening or charring, and margins inverted. He also sustained a firearm lacerated wound of exit measuring 1 cm in diameter over the interior aspect of the right leg.

14. The term “over the posterior aspect of the right leg” medically denotes the back portion of the right lower leg. Similarly, the term “over the interior aspect of the right leg” refers to the inner anatomical compartment of the leg or thigh, encompassing particular muscles, bones, nerves, and blood vessels.

15. The medical evidence clearly demonstrates that the firearm injury was a through-and-through wound with no signs of close-range discharge such as blackening or charring. This scientific finding contradicts any assertion of a close encounter or direct confrontation between the parties. The injury pattern is fully consistent with a shot fired from a distance, thereby weakening the prosecution’s allegation of intentional and direct assault at close quarters. Furthermore, the nature, size, and characteristics of the wounds align strictly with accidental or distant firing, thereby casting serious doubt on the prosecution’s claim regarding the manner and proximity of the incident. Thus, the ocular account is contradicted by the medical evidence with respect to the number and nature of injuries allegedly sustained by the accused. Reliance is placed on the judgments reported as **2019 SCMR 1045** (Muhammad Shafi alias Kuddoo vs. The State and others) and **2019 SCMR 1306**(Mansab Ali vs. The State).

16. The appellant has further submits that Section 7 of the Anti-Terrorism Act, 1997, is not attracted in the present case, as the police have wrongly applied the Anti-Terrorism provisions to an offence that was, at best, an ordinary crime motivated by personal gain. It is contended that the learned trial court erred in convicting the appellant under Sections 324 and 353, PPC. It is an admitted position that no member of the police party sustained any injury that could justify invoking Sections 6 or 7 of the Anti-Terrorism Act. In *Ghulam Hussain and others v. The State and others* (PLD 2020 SC 61), the Hon'ble Supreme Court held that even heinous offences specified under Entry No. 4 of Schedule III to the Anti-Terrorism Act do not, by themselves, constitute terrorism. The Court clarified that mere shock, horror, dread, or disgust generated in society does not transform a private crime into an act of terrorism; terrorism is a distinct concept that entails commission of an offence with the design or objective of destabilizing the Government, disturbing public order, or targeting a section of society to achieve political, ideological, or religious ends.

17. In the present matter, there is no material on record to indicate that the accused acted with any objective to destabilize the Government, create public disorder, or cause harm to any segment of society on account of political, ideological, or religious motivations. It is a settled proposition of law that only an offender who commits a scheduled offence with the intention of striking terror among the general public, or any section thereof, falls within the ambit and jurisdiction of the Anti-Terrorism Court.

18. In the instant case, the police party purportedly received spy information that an individual, allegedly armed with a weapon, was seated on a footpath with the intention of committing a crime. It is a well-established principle of law that intention lies within the mind of a person and cannot be conclusively ascertained by human beings; only the Almighty Allah knows what is in a person's mind. Furthermore, the spy merely informed the police that the individual was armed, but did not disclose whether the pistol was held in his hand or concealed within the folds of his shalwar. Thus, the narrative put forth by the police does not appeal to a prudent mind, as it is improbable that a person intending to commit an offence would sit openly on a footpath while visibly holding or concealing a pistol in such a manner. Moreover, according to the police version, the accused was merely sitting on the footpath and had not committed any offence

prior to the alleged encounter in which he sustained injuries. Hence, Section 7(h) of the Anti-Terrorism Act, 1997, is not attracted in the present case. Accordingly, the conviction and sentence awarded under Section 7(h) of the Anti-Terrorism Act, 1997, through the impugned judgment, are hereby set aside.

19. It is further contended that the appellant was convicted by the learned Trial Court for the offence punishable under Section 324, P.P.C., and sentenced to ten years' rigorous imprisonment along with a fine of Rs.50,000/-, and in default of payment of fine, to further undergo six months' rigorous imprisonment. However, there is no cogent or reliable evidence available on record to establish that the appellant repeated any firearm shots towards the police party, nor is there any evidence that any member of the raiding party sustained a firearm injury, nor that any bullet struck the police mobile. Consequently, the essential ingredients of the offence defined under Section 324, P.P.C., are not met. Therefore, the conviction of the appellant under Section 324, P.P.C., and the sentence of ten years' imprisonment awarded thereunder, are unsustainable in law and are hereby set aside.

20. Insofar as the recovery of the 30-bore pistol is concerned, PW-5, Inspector Syed Anwaar Hussain, deposed that he had forwarded the case property to the Forensic Science Laboratory (FSL) and subsequently received a positive report. However, PW-2, ASI Sanaullah, the complainant in Crime No. 219/2023, conceded during cross-examination that *"It is correct that the place where we received spy information is a thickly populated area and there is a petrol pump. It is correct that from the place of receiving spy information to the place of incident there are hotels, shops, and houses."* In such circumstances, where the presence of private persons in the vicinity is admitted, it was reasonably expected that the police should have associated independent witnesses during search, recovery, and arrest proceedings in order to lend credence to the police action and to maintain public confidence.

21. With regard to the appellant's request for reduction of sentence to the period already undergone, it is observed that the appellant has remained incarcerated for a considerable duration and appears to have learnt a lesson, having suffered sufficiently during the pendency of proceedings since the date of his arrest. Consequently, while extending

leniency, the instant Criminal Appeal is **dismissed**; however, the sentence awarded, including the fine, is modified and reduced to the period already undergone by the appellant.

22. The appeal was disposed of through a short order dated 01.12.2025, with a direction to the office to issue a release writ in favour of the appellant, if he is not required in any other case. The present judgment is in continuation of, and in conformity with, the said short order.

23. These constitute the reasons for our short order dated 01.12.2025.

JUDGE

JUDGE