

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.14 of 2024

Appellant : i. Anwar S/o Shahid
ii. Dost Muhammad @ Munna S/o
Alam Khan
through Ms. Anum Salman Jamali,
Advocate

Respondent : For State
Mr. Mumtaz Ali Shah, A.P.G.

Date of Hearing : 24.11.2025

Date of Order : 24.11.2025

JUDGMENT

Amjad Ali Sahito, J. Through the instant appeal, the appellants have impugned the Judgment dated 30.10.2023 passed by the learned Judge, Anti-Terrorism Court No.VIII, Karachi in Special Case Nos.514/2022 & 514-A/2022 under FIRs No.284/2022 U/s 392, 397, 353, 324, 34 PPC R/w Section 7 ATA, 1997 and 285/2022 U/s 23(i)(a) SAA, 2013 both registered at PS SITE-B, Karachi; whereby both the appellants were convicted U/s 353 PPC and sentenced them to suffer R.I. for 01 year and to pay fine amount of Rs.5000/- each and in default of payment of fine, they shall undergo S.I. for one month. They were also convicted U/s 324 PPC and sentenced to suffer R.I. for 05 years. They were further convicted U/s 392 PPC and sentenced to suffer R.I. for 03 years and to pay fine amount of Rs.5000/- each and in default of payment, they shall undergo S.I. for one month. They were convicted U/s 397 PPC to suffer R.I. for 07 years. They were convicted U/s 7(b) ATA to suffer R.I. for 10 years. However, appellant Anwar was further convicted U/s 337F(iii) PPC for causing injury of Jura-e-Ghair Jaifah Mutahlima to PW Yasir

Hameed to pay Daman of Rs.50000/- and to remain in jail for two years for said offence. In case of default in payment of Daman amount, he shall remain in jail for S.I. till Daman amount is paid. He was also convicted U/s 23(i)(a) SAA and sentenced to R.I. for three years. 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 appellants.

2. Concisely, the facts of the case are that on 18.08.2022 complainant Muhammad Khalil stated that he was sleeping at his house situated at Kala Khan Hotel SITE area Karachi where at about 06.00 a.m. his workers Munawar, Zafar, Muhammad Uzair and Yasir Hameed opened the hotel. In the meantime, noise of firing coming from hotel therefore he came down and saw that his employee Yasir Hameed was lying injured and two dacoits were also present. In the meantime, police mobile of PS SITE-B reached there headed by SIP Khadim Hussain alongwith staff. Subsequently, accused persons started firing upon the police party with intention to commit their Qatl-e-Amd and deterred them to perform their lawful duties. Police party also fired in their defense and as such, they sustained bullet injury on his left leg and fell down on ground whereas other accused managed to escape away from window of hotel. Upon inquiry the injured accused disclosed his name to be Anwar son of Shahid while disclosing name of absconding accused as Munna. SIP Khadim Hussain recovered one 9 mm pistol without number loaded with two live bullets in magazine. On personal search of accused, three mobile phones and cash Rs.2800/- were recovered which were snatched by accused persons from workers. On further search of accused Anwar, Nokia keypad mobile and CNIC from left side pocket of pant were also recovered. However, accused failed to produce license of his pistol. SIP Khadim Hussain sent the injured accused so also injured worker Yasir Hameed to Civil Hospital for treatment in Chippa Ambulance. The accused could not produce registration papers of motorcycle-125 bearing NO.KMV-2700 which was seized U/s 550 Cr.P.C. Thereafter, SIP Khadim Hussain made PC Sajjad Hussain and Muhammad Khalil as mashirs and prepared

memo of arrest and recovery. Hence, the instant FIRs were registered.

3. After completing the investigation, charge was framed at Ex.07, to which accused pleaded not guilty and claimed to be tried vide their pleas at Ex.7/A to Ex.7/B.

4. In order to prove the charges against the accused persons, PW-1 SIP Khadim Hussain at Ex.8, who produced departure entry No.56 at Ex.08/A, mashirnama of arrest and recovery at Ex.08/B, refer letter at Ex.08/C, statement U/s 154 Cr.P.C. at Ex.08/D, memo of recovery of empties and blood stained earth at Ex.08/E, FIR of main case at Ex.08/F, FIR of offshoot case U/s 23(1)(a) of SAA, 2013, entries of FIRs at Ex.08/H and Ex.08/I, memo of recovery of official weapon at Ex.08/J, memo of visit of wardat at Ex.08/K and refer letter at Ex.08/L. PW-02 PC Sajjad Hussain was examined at Ex.09. PW-03 ASI Muhammad Ali at Ex.10, who produced departure entry at Ex.10/A, MLC of accused Anwar Ali at Ex.10/B, MLC of injured Yasir Hameed at Ex.10/C and arrival entry at Ex.10/D. PW-04 PC Nasir Irfan was examined at Ex.11. PW-05 Dr. Muhammad Asad at Ex.12, who produced final medical certificate of injured Yasir Hameed at Ex.12/A and final medical certificate of injured accused Anwar at Ex.12/B. Learned APG filed an application for giving up PWs DPC Nazeer Ahmed and PC Shaheen Abbas at Ex.13. PW-06 Complainant Muhammad Khalil was examined at Ex.14. PW-07 ASI Asghar Mehmood at Ex.15, who produced copy of register No.19 at Ex.15/A, copy of Koth register at Ex.15/B and learned APG filed an application for calling PW Sadaqat. Learned APG filed an application for giving up PW PC Nadeem Khan at Ex.16. PW-08 PI Inam Illahi was examined at Ex.17, who produced copy of entry in which investigation was entrusted at Ex.17/A, departure entry at Ex.17/B, arrival entry at Ex.17/C, memo of imaginary arrest of accused Dost Muhammad at Ex.17/D, entry regarding taken the custody of accused at Ex.17/E, CRO of accused Dost Muhammad at Ex.17/F, notice U/s 160 Cr.P.C. at Ex.17/G, entry at Ex.17/H and order of public prosecutor at Ex.17/I. PW-09 Yasir Hameed was examined at Ex.18, PW-10 Sadaqat Mehboob at Ex.19, PW-11 Muhammad Munawar at

Ex.20. PW-12 PI/I.O. Zulfiqar Ali Channa was examined at Ex.21, who produced departure entry NO.08 at Ex.21/A, arrival entry at Ex.21/B, Sketch of place of wardat at Ex.21/C, photographs of place of incident on 05 pages at Ex.21/D, arrival entry at Ex.21/E, arrival entry of PS Defence at Ex.21/F, letter addressed to Incharge PSL at Ex.21/G, FSL report at Ex.21/H, letter addressed to Incharge FSL for official weapon at Ex.21/J, letter addressed to chemical examiner at Ex.21/K, report of chemical examiner at Ex.21/L, letter addressed to Incharge CRO at Ex.21/M, CRO report of accused Anwar at Ex.21/N, letter addressed to ETO for verification of motorcycle at Ex.21/O and report of ETO at Ex.21/P. Thereafter learned APG closed the side of prosecution vide her statement at Ex.22.

5. The statement of accused persons was recorded under section 342 of Cr.P.C. at Ex.23 to Ex.24, to which accused Anwar stated that he was arrested near PS SITE-B and police demanded bribe and on his refusal, they involved him in these cases. Thereafter, police injured him at PS and took him to hospital. Whereas, accused Dost Muhammad stated that he was arrested by PS SITE-B and subsequently involved him in this case. However, neither the appellants examined them on oath nor showed their willingness to produce any witness in their 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 30.10.2023 which has been impugned before this Court in the instant Appeal.

7. Learned counsel for the appellants contends that the appellants are innocent and have been falsely implicated in the instant case; that the impugned judgment is contrary to law and facts; that the learned trial Court has misappreciated the evidence, resulting in the wrongful conviction of the appellants; and that material contradictions in the testimonies of the prosecution witnesses create serious doubt with respect to the prosecution case. She further submits that the alleged recovery has been foisted upon accused Anwar by the police with mala fide intent and ulterior motives. She asserts that, in fact, accused

Anwar was initially arrested by the SITE Police, and after his arrest he was subjected to injury by the police commonly referred to as “half fry” and thereafter falsely implicated in the present case. She, therefore, prays for the acquittal of the appellants.

8. She further argued that as per the jail roll, appellant Anwar has already undergone 3 years, 2 months and 16 days of his substantive sentence (excluding remission) and has earned 6 months and 18 days remission, making a total of **3 years, 9 months and 4 days served**. Appellant Dost Muhammad @ Munna has undergone 3 years and 27 days (excluding remission) and earned 7 months and 18 days remission, amounting to a total of **3 years, 8 months and 15 days served**. Learned counsel further submitted that the appellants are the sole breadwinners of their respective families and have already undergone a substantial portion of their sentence. She, therefore, stated that she would not press the appeal on merits, provided that if acquittal is not feasible, the sentence of the appellants 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 appellants were arrested from the spot, rendering them not entitled to acquittal. However, upon being confronted with the fact that certain prosecution witnesses were examined by the learned trial Court in the absence of defence counsel, he conceded the point and stated that the matter may appropriately be remanded for cross-examination of those witnesses. Notwithstanding, he reluctantly agreed to consider the proposal advanced by learned counsel for the appellants.

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

11. Upon examination of the record, it transpires that on 18.08.2025 at approximately 06:15 a.m., a police party headed

by SIP Khadim Hussain was on routine patrol when they received information that a dacoity was in progress at Kala Khan Hotel, situated within the jurisdiction of Police Station SITE-B. Acting upon such information, the police party proceeded to the location of the incident, where they observed two individuals inside the hotel engaged in the commission of robbery. Upon noticing the police, one of the accused, namely Anwar, opened fire on the police party, thereby prompting the police to return fire in self-defence.

12. During the said encounter, accused Dost Muhammad succeeded in fleeing from the scene, whereas accused Anwar was apprehended on the spot in an injured condition. The allegations against accused Anwar further include that he also fired upon one of the hotel's labourers. A 9mm pistol and two mobile phones were recovered from his possession. The complainant, Muhammad Khalil, stated in the FIR that on the same day he was resting on the upper portion of the hotel, while three workers, including Yasir Hameed, were present on the ground floor opening the hotel, when he suddenly heard gunfire. Upon coming downstairs, he observed that his worker Yasir was lying injured due to firearm injuries. Meanwhile, the police party arrived at the scene, resulting in the arrest of one injured accused, while the other managed to escape.

13. Upon further perusal of the record, it is evident that the learned trial Court framed the charge by informing the accused persons that on 18.08.2025 between 06:00 p.m. and 06:15 p.m., they had allegedly snatched three mobile phones and cash amounting to Rs. 2,800/- from the workers, thereby committing a cognizable offence. However, the record and the testimony of the prosecution witnesses clearly reflect that the incident occurred in the morning, specifically at 06:15 a.m. This appears to be a typographical error, yet the entire charge mentions the time as 06:00 p.m. to 06:15 p.m., contrary to the evidence on record.

14. From perusal of record it reflects that the duty hours of PW-1, SIP Khadim Hussain, were from 08:00 p.m. to 08:00 a.m. He claims to have reported for duty at 08:00 p.m.; however, no relevant entry was made in the police station roznamcha. During cross-examination, he further admitted that no departure entry was mentioned either in the memo of arrest and recovery or in the FIR. He further stated that he received spy information at about 06:00 a.m. The distance between the place where information was received and the alleged place of incident is approximately half a kilometer, while the distance between the police party and the accused was about 20 paces.

15. He deposed that the accused had allegedly detained one labourer in their custody, resulting in an encounter during which accused Anwar sustained a firearm injury caused by PC Asghar. Notably, no bullet struck the police mobile, nor did any police personnel sustain injuries. Both the complainant and the police witnesses admitted that the allegedly recovered mobile phones/robbed property were neither sealed nor produced in sealed condition before the Court. The complainant also failed to disclose the description of the said mobile phones, and the recovered devices were found in broken condition. PW-1 further admitted that a CCTV camera was installed near the hotel but he did not secure any CCTV footage. He also conceded that no blood-stained clothes were collected. The police party admitted that although a hotel was present at the spot, no bullet marks were found on its walls.

16. The prosecution examined PC Sajjad to corroborate the complainant's version, but his testimony contained material improvements. He stated that at about 06:00 a.m., SIP Khadim Hussain received information that a dacoity was taking place at Kala Khan Hotel, and the police reached the spot at about 06:30 a.m. According to him, upon seeing the police party the accused opened fire, and the police retaliated. As a result, one culprit managed to escape while another sustained an injury to his right leg and later disclosed his name as Anwar. He also claimed that one private person received injuries. In cross-examination, he admitted that the distance between the police and the accused

was only 20 paces and that the encounter lasted 2-3 minutes; however, no police personnel received even a minor injury, nor were any bullet impacts found on the police mobile. The accused Anwar alleged that after his arrest, the police inflicted injuries upon him ("half-fried"). PW Sajjad also admitted during cross-examination that no entry was made regarding the deposit of the recovered pistol or the alleged robbed property in the malakhana.

17. The prosecution also examined ASI Muhammad Ali, who is admittedly not an eyewitness. He only stated that while he was on duty at the police station, he received information that one accused had been arrested during the commission of a robbery.

18. The principal witness of the prosecution, the complainant Muhammad Khalil (PW-06), stated that he was sleeping in the upper portion of the hotel while three other staff members were working when the accused committed the robbery. Significantly, his evidence was recorded in the absence of the learned Advocates, which is a clear violation of Section 353, Cr.P.C. Likewise, the testimony of injured witness Yasir Hameed was also recorded in the absence of counsel. He deposed that at about 06:30 a.m., two dacoits arrived on a motorcycle; one of them was armed with a loaded pistol. They pointed the pistol at the staff and snatched their mobile phones. In the meantime, two police constables arrived at the scene, followed shortly thereafter by the SITE police mobile.

19. The prosecution further examined the Medico-Legal Officer, Dr. Muhammad Asad (PW-05), who stated that the accused had a firearm entry wound measuring 0.5 cm x 0.5 cm with inverted margins over the left lower leg, without blackening or charring. He also observed another wound on the left lower lateral side with exposed and fractured bone. Conversely, PW-1 SIP Khadim Hussain testified that the accused sustained a firearm injury on his right leg and was found lying injured inside the hotel. SIP Khadim Hussain did not mention any fracture or exposed bone. 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).

20. Upon perusal of the record, it is evident that although the police claim to have received information through a spy, the most material witness to the incident is PW-9, Yasir Hameed, who is both an eyewitness and an injured witness. He categorically deposed that two police constables arrived at the spot after witnessing the dacoits and that the SITE police mobile also reached there, thereby contradicting the version advanced by the police party. Furthermore, PW-1, SIP Khadim Hussain, admitted during cross-examination that although he reported for duty at 8:00 p.m., he did not make any arrival entry in the roznamcha. The police party allegedly received information at 6:00 a.m. and reached the place of incident at about 6:15 a.m.; however, it is highly improbable that, after committing the robbery, the accused persons would still be present at the scene. Thus, the narrative put forth by the police does not appeal to a prudent mind.

21. Learned counsel for the appellants has further argued 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 appellants under Sections 324 and 397, 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.

22. In the present case, there is no evidence whatsoever to suggest that the accused acted with any objective to destabilize the Government, disturb society, or harm any segment thereof in pursuit of political, ideological, or religious motives. Furthermore, only an offender who commits a scheduled offence with the intention to strike terror in the people or in a section of the people falls within the jurisdiction of the Anti-Terrorism Court. Robbery does not fall within the scheduled offences attracting the jurisdiction of the Anti-Terrorism Court. Accordingly, the sentence awarded under Section 7(b) of the Anti-Terrorism Act, 1997, through the impugned judgment, is hereby set aside.

23. Additionally, the learned trial court erred in convicting the appellants under Sections 324 and 397, PPC. In the instant case, it is the appellant Anwar who sustained firearm injury at the hands of the police party. So far the plea raised by learned counsel for the appellants that appellants were convicted by the learned trial Court for an offence under Section 392 PPC to suffer R.I. for three years and pay fine of Rs.5000/- and in case of default of payment, they shall undergo S.I. for one month. Appellant Anwar was also convicted for an offence under Section 337-F(iii) for causing injury to PW Yasir Hameed so also pay Daman amount of Rs.50000/- and to remain in jail until the Daman amount is paid. She further contended that both the appellants were also convicted for an offence under Section 397 PPC to suffer R.I. for seven years, hence, on cause of robbery both the appellants were convicted twice for the same offence. A bare reading of Section 392 provides that whoever commits robbery shall be punished with imprisonment for a terms which shall not be less than three years and not more than 10 years whereas Section 397 PPC provides if at the time of committing robbery or dacoity, the offender uses a deadly weapon, or causes or attempts to cause death or grievous hurt, they shall be punished with imprisonment for a term not less than seven years. Admittedly, the appellants were convicted by the learned trial Court for committing robbery for three years and accused

Anwar was convicted also for causing hurt/injury to PW Yasir Hameed for an offence under Section 337-F(iii) PPC and the accused Dost Muhammad alias Munna has not caused any injury to injured person and simultaneously both the accused were convicted for the same offence twice a time hence, it seems that the punishment awarded under Section 397 PPC is too harsh which is set aside. However, there is no evidence that he repeated any firearm shots towards injured witness Yasir Hameed; thus, the ingredients of Section 324, PPC, are not fulfilled. The trial court further convicted appellant Anwar under Sections 392 and 337-F(iii), PPC. However, the conviction awarded under Sections 397 and 324, PPC, for seven years' imprisonment is not sustainable and is accordingly set aside.

24. In view of the proposal advanced by the learned counsel for the appellants for reduction of the sentence to the period already undergone, the sentences awarded to the appellants are hereby modified and reduced to the period they have already served, which shall be deemed to include the remaining portion of the sentence. Consequently, the instant appeal is dismissed with the modification that the sentence, including the fine, stands reduced to the period already undergone.

25. The conviction of appellant Anwar under Section 337-F(iii), PPC, is maintained to the extent of Daman. However, the Daman amount is reduced from Rs. 50,000/- to Rs. 25,000/-, which shall be paid to the injured, Yasir Hameed.

26. The appeal is disposed of with direction to the office to issue release warrants for the appellants, if they are not required in any other case. However, the release warrant of appellant Anwar s/o Shahid shall not be issued until he deposits the reduced Daman amount of Rs. 25,000/-.

27. The instant appeal is disposed of in the above terms.

JUDGE

JUDGE