

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Khadim Hussain Tunio

Mr. Justice Amjad Ali Sahito

Spl. Crl. Anti-Terrorism Appeal No.24 of 2023

Spl. Crl. Anti-Terrorism Appeal No.25 of 2023

Appellant : Muhammad Owais @ Tapi S/o Hakeem
is present and produced by the jail
authorities.

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

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 appeals, the appellant has impugned the Judgment dated 15.02.2023 passed by the learned Judge, Anti-Terrorism Court No.IV, Karachi in Special Case Nos.167/2022 & 167-A/2022 under FIRs No.243/2022 U/s 353, 324, 34 PPC R/w Section 7 ATA, 1997 and 244/2023 U/s 23(i)(A) SAA, 2013 both registered at PS New Karachi; whereby the appellant was convicted U/s 353/324 PPC R/w Section 6(2)(n) punishable under Section 7(1)(h) ATA, 1997 and sentenced him to suffer imprisonment for five years and fine of Rs.10,000/- and in default of payment of fine, he shall further suffer imprisonment for one month. He was also convicted U/s 23(i)(a) SAA and sentenced him to suffer imprisonment for three years and fine of Rs.5000/- and in case of default in payment, he shall further suffer imprisonment for one month. 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 14.03.2022, complainant SIP Sheikh Ismail of PS New Karachi along with his subordinate staff was on patrolling duty in the area. During

patrolling, at about 0250 hours, police party tried to apprehend two suspects sitting on a motorcycle inside Sunday Car Bazar ground, sector 11/D New Karachi; however, upon seeing police party, they started firing upon the police with intent to kill them and avert them from performing their lawful duty. In retaliation and self defence police party also made firing. In result of encounter one suspect sustained gunshot injury on his right thigh and fell down and was subsequently apprehended by the police, while his companion managed to escape from the scene on motorcycle. Apprehended accused disclosed his name as Owais @ Tapi son of Hakeem Khan; however, from his possession, one 30 bore pistol silver colour alongwith empty magazine and pulled chamber. On his personal search, thirteen packets of heroin in a white colour polythene bag were recovered from right side pocket of his qameez/shirt while cash Rs. 4500/- was also recovered from his left side pocket. Accused further disclosed name of his companion who fled away from the scene as Junaid son of Yousuf. Accused failed to produce license of recovered weapon. After completing legal formalities, the instant FIR was lodged.

3. After completing the investigation, a joint charge was framed at Ex.4, to which accused pleaded not guilty and claimed to be tried vide his plea at Ex.4/A.

4. In order to prove the charges against the accused, the prosecution has examined PW-01 complainant SIP Shaikh Ismail of New Karachi PS was examined at Ex.07. He produced departure entry No. 44 of PS New Karachi at Ex. 07/A, memo of arrest and recovery at Ex. 07/B, police letter at Ex. 07/C, carbon copies of FIR No.243/2022 and 244/2022 at Ex. 07/D and Ex. 07/E, qaimi entries at Ex. 07/E and Ex. 07/G, photocopy of register-19 at Ex. 07/H and memo of site inspection along with site plan at Ex. 07/I and Ex. 07/J. PW. 02, HC Moinuddin, head moharar of PS New Karachi was examined at Ex.08. He produced duty roaster at Ex. 08/A and photocopy of register-19 at Ex. 08/B. PW. 03, PC Abdullah, Koth sentry of PS New Karachi was examined at Ex.09. He produced attested photocopy of koth register at Ex.09/A and entry No.42 of PS New Karachi at Ex. 09/B. PW.04, Dr. Usman Hashmi, MLO Abbasi Shaheed Hospital, Karachi was examined at Ex.10. He produced MLC bearing No. 2047/2022 at Ex.10/A, final MLC report at Ex.10/B and emergency slip of Abbasi Shaheed Hospital at Ex. 10/C. On 24.12.2022, learned APG for the State, filed application u/s 540 Cr.P.C at Ex.11, for examination of SIP Imdad

Abbasi and PC Jalaluddin, as they were important witnesses. After hearing both the parties, application was allowed. PW-05 HC Muhammad Naeem of New Karachi who shifted injured suspect to hospital was examined at Ex.12. He produced arrival entry of PS New Karachi at Ex. 12/A. PW 06, SIP Imdad Ali of PS Bilal Colony was examined at Ex.13. He produced memo of arrest and recovery of accused Junaid s/o Muhammad Yousuf at Ex. 13/A. PW-07, PC Aamir of PS New Karachi, mashir of memo of arrest and recovery and memo of site inspection was examined. PW. 08, Inspector Sardar Ahmed Abbasi of Iqbal Market PS, investigating officer of this case, was examined at Ex.15, he produced entry bearing No.41 of authorization of Investigation and departure from PS Iqbal Market at Ex.15/A, arrival entry bearing No.40 of PS New Karachi at Ex.15/B, colour photocopy of photographs of place of incident (four in number) at Ex.15/C, arrival entry of PS Iqbal Market Ex.15/D, letters addressed to Incharge FSL for examination and report of weapon and police mobile at Ex.15/E and Ex. 15/F, FSL report of weapon and police mobile at Ex.15/G and Ex.15/H, CRO report of accused Owais @ Tapi at Ex.15/I, arrival entry No.50 of PS Bilal Colony at Ex.15/J and CRO report of accused Junaid at Ex.15/K. Thereafter, the learned APG closed the side vide his statement at Ex.16.

5. The statement of appellant under section 342 Cr.P.C was recorded at Ex.17 wherein he denied all the allegations of prosecution levelled against 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 15.02.2023 which has been impugned before this Court in the instant Appeals.

7. The appellant is produced in custody by jail authorities, he submits that he is innocent and has been falsely implicated in these cases; that the impugned judgment is contrary to law and facts; that the learned trial Court has misappreciated the evidence, resulting in his wrongful conviction; and 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 **already undergone 3 years, 8 months and 13 days of his substantive sentence (excluding remission) and has earned 8 months and 29 days remission, making a total of 4 years, 5 months and 12 days served.** 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 appeals 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 Addl. 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 Addl. 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 14.03.2022 at about 0250 hours, the police party, while on routine patrolling, noticed two individuals in a suspicious condition sitting on a motorcycle within the premises of the Sunday Car Bazaar Ground, Sector 11/D, New Karachi. Considering their conduct to be dubious, the police sought to apprehend them for verification. However, the said persons allegedly opened fire with the intention to kill the police officials and to obstruct them from discharging their lawful duties. The police personnel, in exercise of their right of self-defence, returned fire. As a consequence of the exchange of fire, one suspect sustained a firearm injury on his right thigh, fell to the ground, and was apprehended, whereas the other suspect fled on the motorcycle.

12. From perusal of the record, it is evident that the prosecution's case is replete with contradictions and material improvements. PW-01 SIP Shaikh Ismail deposed that on 13.03.2020, during patrolling at about 02:50 hours, upon reaching Itwar Bazar, Sector 11/D, New Karachi, they observed two persons on a motorcycle who, upon noticing the police party, opened fire on them. In retaliation and in self-defence, he directed his subordinate staff to return fire, resulting in one suspect receiving a gunshot injury while his accomplice managed to escape. Conversely, PW-07 PC Aamir, who was

accompanying the complainant/police party in the mobile, deposed that following the encounter, the accused was apprehended and a 30-bore pistol was recovered from his hand along with an empty magazine, while one bullet was allegedly stuck in the chamber. He further stated that upon inspection of the police mobile by SIP Ismail, it was found that a bullet had struck the front bumper beneath the flasher light. However, PW-01 SIP Shaikh Ismail did not depose in his testimony that any bullet was stuck in the chamber, nor did he state that the police mobile had been hit by a bullet. Such material contradictions and inconsistencies in the testimonies of key witnesses are sufficient to cast a serious doubt on the veracity of the prosecution's version of events.

13. Further, PW-4 Dr. Usman Hashmi, who at the relevant time was posted as the Medico-Legal Officer at Abbasi Shaheed Hospital, deposed that on 14.03.2022 at about 04:40 a.m., an injured person, namely Awais son of Hakeem Khan, aged 26 years, was brought by HC Muhammad Naeem along with a police letter issued by PS New Karachi, with an alleged history of sustaining a firearm injury during a police encounter. Upon examination, he noted the following injuries: **Lacerated firearm wound of entry** measuring 0.5 cm × 0.5 cm on the lateral aspect of the right leg, below the right knee joint, round in shape with inverted margins; and **Lacerated firearm wound of exit** measuring 0.74 cm × 0.7 cm on the medial aspect of the right leg, below the right knee joint, round in shape with everted margins. The medical evidence does not specify whether the bullet struck the leg from the anterior or posterior direction; it merely establishes that the projectile entered from the lateral side and exited from the medial side. Moreover, the size, nature, and characteristics of the wounds are consistent with distant or accidental firing, which raises serious doubt regarding the prosecution's version concerning the manner and proximity of the alleged encounter. Consequently, the medical evidence stands in contradiction to the ocular account, particularly 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).

14. 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.

15. 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 people. Hence, Section 7 (1) (h) of the Anti-Terrorism Act, 1997, is not attracted in the present case. Accordingly, the conviction and sentence awarded under Section 7(1) (h) of the Anti-Terrorism Act, 1997, through the impugned judgment, are hereby set aside.

16. It is further contended that the appellant was convicted U/s 353/324 PPC R/w Section 6(2)(n) punishable under Section 7(1)(h) ATA, 1997 and sentenced him to suffer imprisonment for five years and fine of Rs.10,000/- and in default of payment of fine, he shall further suffer imprisonment for one month. 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 imprisonment for five years awarded thereunder, are unsustainable in law and are hereby set aside.

17. With regard to appellant's request for reduction of his 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 Appeals are **dismissed**; however, the sentence awarded, including the fine, is modified and reduced to the period already undergone by the appellant.

18. The appeals were 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.

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

JUDGE

JUDGE