

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. 129 of 2024
[Muhammad Aqib & another vs. The State]

Spl. Cr. Anti-Terrorism Appeal No. 134 of 2024
[Muhammad Mehboob vs. The State]

Appellant : Muhammad Aqib
through Mr. Shahrukh Shahnawaz,
Advocate.

Appellant : Muhammad Mehboob
through Mr. Habib-ur-Rehman
Jiskani, Advocate.

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

Date of Hearing : 17.04.2025

Date of Decision : 05.05.2025

JUDGMENT

Omar Sial, J: A police party of the PIB police station, led by Inspector Syed Hasnain Raza, was on routine patrol on 23.02.2024 when it received information that four men wanted in extortion cases were standing outside a specific school. The police party reached the identified spot and apprehended three of the four men while the fourth managed to escape. The apprehended persons were identified as Aqib, Bilal, and Mehboob. A rifle and one grenade were recovered from Aqib's possession. One 9mm pistol and one grenade were recovered from Bilal's possession. One 0.30 bore pistol was retrieved from Mehboob. The Bomb Disposal Squad was summoned, and they

defused the two recovered grenades. The following FIRs were registered:

- (a) F.I.R. No. 94 of 2024 under sections 4 and 5 of the Explosive Substances Act, 1908, read with section 7 of the Anti-Terrorism Act, 1997.
- (b) F.I.R. No. 96 of 2024 under sections 4 and 5 of the Explosive Substances Act, 1908, read with section 7 of the Anti-Terrorism Act, 1997.
- (c) F.I.R. No. 95, 97, and 98 of 2024 under section 23(1)(a) of the Sindh Arms Act, 2013.

2. The three accused pleaded not guilty and claimed to be tried. At trial, the prosecution examined: Kashif Ali (the Bomb Disposal Squad official); Inspector Syed Hasnain Raza (the complainant); A.S.I. Mohammad Nadeem (the maalkhana incharge); S.I. Mumtaz Ali (the witness to the arrest and recovery) and Inspector Aijaz Hussain Awan (the investigating officer). The accused professed innocence in their respective section 342 Cr.P.C. statements.

3. At the end of the trial, on 31.10.2024, the learned Anti-Terrorism Court No. 20 at Karachi convicted and sentenced the accused as follows:

- (a) Mohammad Aqib and Bilal were convicted of an offence under section 6(2)(ee) of the ATA 1997, punishable under section 7(1)(ff) of the ATA 1997, and sentenced to fourteen years in prison.
- (b) Mohammad Aqib, Bilal, and Mohammad Mehboob were also convicted of an offence under section 23(1)(a) of the Sindh Arms Act, 2013, and sentenced to five years in prison.

4. Mohammad Aqib and Bilal have filed Special Anti-Terrorism Jail Appeal No. 129 of 2024, challenging their convictions and sentences, while Mohammad Mehboob has filed Special Anti-Terrorism Appeal No. 134 of 2024, challenging his conviction and sentence under the Sindh Arms Act, 2013.

5. We have heard the learned counsels for the appellants and the learned Additional Prosecutor General. For the sake of brevity, their respective arguments are not being reproduced but are reflected in our findings and observations below. It would be pertinent to mention that the learned counsel for Mohammad Mehboob did not want to argue on merits but requested that the sentence already undergone by Mehboob be treated as his final sentence. Learned counsel for the remaining accused wished that he be heard on the merits.

6. It is the prosecution's case that when arrested on 23.02.2024, the following weapons were recovered from them (as recorded in the memo of arrest and recovery):

- (a) From Bilal: a black 9 mm pistol without a number with "Stoger Cougar 8000-F" inscribed.
- (b) From Aqib: one black color rifle 223 with M-16 Cal 30 Bore Semi Auto Special Mini Pistol Winehesier" and "Colt" inscribed on it.
- (c) From Mehboob: one 0.30 silver colored pistol without a number.

7. The above weapons were sent for ballistics examination on 24.02.2024. The laboratory reported that the pistol ostensibly recovered from Bilal was not in working condition. The pistol sketch made by the arresting officer does not have "Stoger Cougar 8000-F" written on it; instead, it is "Made as Turkey Imported by Stoger". The report does not contain the identification marks present on the rifle recovered from Aqib. The investigating officer acknowledged the endorsement of the cover letter under which the weapons were sent to the ballistics laboratory. The endorsement states that when the rifle packet was opened, a 0.30 pistol came out. The arresting officer at trial also admitted that the pistol said to have been recovered from Mehboob had words written on it, but that the memo of recovery does not contain such words. Doubt was therefore created whether the weapons recovered were the same as the ones sent for ballistic examination and then produced at trial.

While we have not given it much weight, it is still noteworthy that the appellants produced screengrabs showing that a mainstream television channel had telecast a press conference showing an over-exuberant S.S.P. with ostensibly the entire recovery lying unsealed in front of him. The prosecution could not prove its case beyond a reasonable doubt regarding the recovery of arms. On the contrary, shades of malafide are evident.

8. The prosecution's case regarding the possession of grenades is that the Bomb Disposal Unit was informed at 0340 hours on 23.02.2024 that two grenades had been seized. A.S.I. Kashif Ali (the BDU official) went to the place of arrest and recovery five minutes after receiving the information. Kashif reported that he diffused two brown RGD-1 type hand grenades. One grenade had 386/125-81 written at its bottom, while the other had no legible markings. The description of the recovered grenades matches the description given by the BDU official in his report. In addition, the grenades were equipped with detonators and detonating assemblies. We find the ocular and documentary evidence consistent in this regard. Learned counsel for Mohammad Aqib argued that the claimed recovery could not be trusted as the officer who effected recovery said that he separately sealed the grenades upon recovery while the BDU expert testified that the grenades were given to him by the Inspector Syed Hasnain Raza on the spot and that it was he, Kashif Ali, who had then defused the grenades and sealed them in plastic bottles. We do not consider the contradiction in the time of sealing material enough to upset the impugned judgment.

9. An aspect of the case that neither of the appellants' counsel has argued, yet, to do justice, we have analysed it nonetheless. Based on the evidence produced at trial, we notice that 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.”

10. 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. According to the prosecution's story, the appellants were arrested from a deserted place in the middle of the night. The design and intent of the appellants to hold the grenades were not established at trial. Even though the police claimed that the appellants had the grenades for extorting people, no evidence was produced at trial to corroborate or support such an allegation.

11. An error that crept into the sentencing portion of the impugned judgment was that Mohammad Aqib and Bilal were only sentenced under the terrorism legislation (apart from the sentence under section 23(1)(a) Sindh Arms Act, 2013). If they are acquitted of the terrorism charge, they would go scot-free. This would not be appropriate to the extent of the explosives recovery. Learned Additional Prosecutor General conceded that in the circumstances of the case and in light of the evidence produced at trial, it would have been more appropriate that they were convicted and sentenced under section 5 of the Explosive Substances Act, 1908. We are inclined to concur with the learned Additional Prosecutor General.

12. The jail roll shows that had the appellants been entitled to remissions (which had not been granted to them because of the terrorism conviction), they would have completed four years and one month of the sentences awarded to them. The learned Additional Prosecutor General agrees that, looking at the case holistically, we believe that the prosecution did not prove an offence of terrorism and that the sentence already undergone by them should be an appropriate punishment.

13. Given the above discussion, we conclude as follows:

- (a) Bilal and Aqib are acquitted of the charge of terrorism but are convicted of an offence under section 5 of the Explosive Substances Act, 1908. They will be entitled to remissions. The sentence awarded to the appellants is reduced to the time they have already spent in jail. This will include the time due to the default in payment of a fine.
- (b) Due to our observations concerning the recovery of arms, the appellants are acquitted of the charge for the safer administration of justice.

Both appeals stand disposed of in the above terms.

JUDGE

JUDGE