IN THE HIGH COURT OF SINDH AT KARACHI

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

SPL. CR. ANTI TERRORISM APPEAL NO. 78 OF 2024

Appellants	:	1. Kamran s/o Fakhruddin 2. Asif s/o Mohiuddin through Mr. Shakeel Ahmed, Advocate
Respondent	:	The State through Mr. Ali Haider Saleem, Additional Prosecutor General Sindh
Date of Hearing	:	26.05.2025
Date of Decision	:	04.06.2025

JUDGMENT

Omar Sial, J.: The appellants were nominated as accused in a case arising out of F.I.R. No. 327 of 2023 registered under sections 353, 324, and 34 P.P.C. at Police Station Pakistan Bazar. The case against the appellants is that on 16.09.2023, a police party on regular patrol received information regarding presence of four dacoits inside the street of Iqra School near Akbar Shaheed Chowk, Sector 14-A, Orangi Town. When at about 1845 hours, police party reached at the pointed place, they saw four persons on two motorcycles were available there in suspicious condition. Complainant signaled them to stop for checking purpose, but instead of stopping, one of the accused who was seated on back seat of motor cycle started firing on police party. Police party also retaliated firing in their defence, all

accused fell down from motorcycles. In the meantime, people gathered there started beating the accused and as a result two dacoits died on the spot and present appellants were arrested in injured condition and from their possession robbed mobile phone/cash were recovered. One pistol was also recovered from accused who died at the spot.

2. After a full dress trial, the learned A.T.C. No. 9 at Karachi convicted the appellants and sentenced them to suffer one year RI for an offence under section 324 P.P.C. They were further sentenced to six months for an offence under Section 353 PPC. They were further convicted under Section 7(1)(b) of ATA 1997 and sentenced for two years RI. Benefit of Section 382-B Cr.P.C. was also extended.

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. **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. In the current case, no evidence was produced at trial to establish that the ingredients of section 6(1)(b) or (c) were satisfied. The only reference to insecurity was made by the complainant in his testimony. No witness was produced at trial to prove the alleged insecurity. 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. We have no qualms in concluding that the prosecution failed to justify a section 7 ATA conviction. The same is accordingly set aside.

7. The case against the appellants falling outside the ambit of terrorism would mean he would be entitled to section 382-B remissions. A jail roll was called for that showed that the appellants had completed 2 years of the sentence awarded to them. After reviewing the record and confirming that the appellants had no previous crime record, the learned Additional

Prosecutor General conceded that the sentence already undergone by the appellants would be an appropriate punishment. While considering the request made by the appellants, we have also considered that the appellants, remorseful and repentant for what they had done, wish to spend the rest of their life as law-abiding citizens. Their admission has saved the time and money of the State. The jail authorities have reported that their conduct in jail has been satisfactory. We have also considered that the learned Additional Prosecutor General, on behalf of the State, very correctly and wisely, does not object to a reasonable reduction in sentence.

8. Given the above, the appeal is allowed only to the extent of the conviction with respect to section 7 of the ATA 1997. The convictions and sentences awarded to the appellants for the offenses under the Penal Code are upheld; however, the sentences awarded to the appellants are reduced to the period they have already undergone. The appellants may be released if not required in any other custody case.

9. The appeal stands disposed of in the above terms.

JUDGE

JUDGE