

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.170 of 2023

Appellants : i. Muhammad Asghar S/o Muhammad Ziarat Gul
ii. Muhammad Muzammil @ Javed S/o Islam Khan @ Nazeer through Mr. Habib-ur-Rehman Jiskani, Advocate

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

Date of Hearing : 09.12.2025

Date of Judgement: _____.12.2025

JUDGMENT

Amjad Ali Sahito, J. Through the instant appeal, appellants have impugned the Judgment dated 12.09.2023 passed by the learned Judge, Anti-Terrorism Court No.XIII, Karachi in Special Case No.281/2023 under Crime No.215/2023 U/s 324, 353, 186, 34 PPC R/w Section 7 ATA, 1997, Special Case No. 281-A/2023 under Crime No.216/2023 U/s 23(i)(A) SAA, 2013 and Special Case No.281-B/2023 under Crime No.217/2023 U/s 23(i)(A) SAA, 2013, all crimes were registered at PS Boat Basin, Karachi South; whereby both the appellants were convicted for the offence punishable under section 324 PPC and sentenced them to suffer R.I. for ten years each and to pay fine of Rs.50,000/- each and in case of default in payment of fine, they shall further suffer R.I for six months each. They were also convicted for the offence punishable under section 353 PPC and sentenced them to suffer R.I. for two years each. Appellant Mohammad Asghar was also convicted for the offence punishable under Section 23 (i)(A) of Sindh Arms Act, 2013 and sentenced

him to suffer R.I for seven years and to pay the fine of Rs.20,000/- and in case of default in payment of fine, he shall suffer further R.I for two months. Appellant Muhammad Muzammil @ Javed was also convicted for the offence punishable under Section 23(i)A of Sindh Arms Act, 2013 and sentenced him to suffer R.I. for seven years and to pay the fine of Rs.20,000/- and in case of default in payment of fine, he shall suffer further R.I for two months. Both the appellants were also convicted for the offence punishable under Section 7(h) of ATA, 1997 and sentence them to suffer R.I. for ten years each and to pay fine of Rs.50,000/- each and in case of default in payment of fine, they shall suffer further R.I. for six months each. The whole property of the abovenamed appellants was forfeited to the Government. 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 brief facts of the case are that on 19.04.2023 at 0430 hours, complainant ASI Faisal Ahmed Laghari lodged the FIR for encounter at PS Boat Basin against the accused by alleging therein that he alongwith his staff namely ASI Shakeel Ahmed, PC Muneer Ahmed, PC Mohammad Ayoub, PC Asim Khan and DPC Junaid Raees duly armed with official weapons under the entry No.48 left PS in police mobile bearing No. SPC-561, for prevention of offences, when they reached at main Khayaban-e-Sahil in front of Sunrise Apartment, Block-1 Clifton for patrolling. At about 0025 hours, when they saw two suspected persons boarded on one motorcycle and were coming from Hyper Star; as such, complainant party gave signal to stop but upon seeing the police party, they fell down from the motorcycle and made direct firing with their respective weapons upon the police party by deterring them from performing their lawful duties with intention to commit their murder, in retaliation, police party also made firing in their defence, resultantly, both the accused persons sustained firearm injuries and fell down, therefore, they apprehended the accused persons. Due to non-cooperation of private persons, he made mashirs to ASI Shakeel Ahmed and PC Muneer Ahmed and interrogated the

accused persons and made their personal search. On inquiry, the injured persons disclosed his name as Mohammad Asghar son of Ziarat Gul, who sustained firearm injury at below his right side knee, who was armed with 30 bore pistol rubbed number alongwith its magazine contained one live bullet, besides one old Techno keypad mobile phone and cash of Rs.500/- while other injured accused disclosed his name as Javed son of Nazeer, who received firearm injury at his right side knee and during his personal search; found one 30 bore pistol alongwith its magazine contained 02 live bullets, besides that one wallet with cash of Rs.650/- and one old OnePlus touch screen mobile phone in sky colour as well as one Motorolla touch screen mobile phone in black body were also secured. The accused persons failed to produce the license of the recovered pistols. Thereafter, the injured accused were sent to Jinnah hospital and police party returned back to PS where the instant FIRs were registered.

3. After formal investigation, charge was framed against the accused persons at Ex.04, to which they pleaded not guilty and claimed to be tried vide their pleas at Ex.04/A & 04/B.

4. In order to prove its case, the prosecution examined PW-1 ASI Faisal Ahmed Laghari (complainant of these cases) at Ex. 05, who produced roznamcha entries, attested copy of list of arms and ammunition of Kott Register, memo of arrest of accused, recovery and sketch of recovered case property, FIR Nos. 215/2023, 216/2023 & 217/2023 and memo of inspection of place of incident & its sketch at Ex.05/A to 05/L. PW-02 PC Mohammad Muneer Jatt (eyewitness mashir) at Ex.06. Statement submitted by learned APG for State to give up the PW/PC-Mohammad Ayoub, and placed on record at Ex.07. PW-03 ASI Malik Arshad Awan at Ex.08, who produced entry of book No.19 at Ex.08/A. Statement submitted by learned APG for State to give up the PWs/ASI-Shakeel, PC-Asim and DPC-Junaid and kept on record at Ex.09. PW-04 ASI Zahid Iqbal Akazai at Ex.10, who produced the attested copy of duty list, referral letter of police for checkup and treatment of both the accused persons, emergency medical slips of accused and roznamcha entry at

Ex.10/A to 10/E. Statement submitted by learned APG for State to give up the PW/PC-Mohsin Iftekhar, and placed on record at Ex.11. PW-05 Dr. Sikandar Azam Memon at Ex.12, who produced the medico-legal-certificates of accused persons at Ex.12/A to 12/C. PW-06 SIO/Inspector Nisar Ahmed Lodhi at Ex.13, who produced the roznamcha entries, memo of inspection of place of incident and its sketch, four colour photographs of place of incident, letter duly addressed to AIGP Forensic Division Sindh Karachi for FSL report of the weapons, which was recovered from accused so also weapon/9mm pistol of police, FSL/Ballistics report of weapons, copy of letters duly addressed to Incharge CRO Korangi Karachi for CRO record of accused persons, CRO reports of accused persons, report of NADRA regarding the actual name of accused Javed, letter duly addressed to I/C Sindh Forensic Laboratory Sindh for DNA of clothes of accused persons and their respective reports at Ex.13/A to 13/Q respectively. Thereafter, the learned APG closed his side vide statement at Ex.14.

5. Statement of accused persons Muhammad Asghar and Muhammad Muzammil @ Javed U/s 342 Cr.P.C. was recorded at Ex.15 & 16 respectively, to which accused denied all allegations of prosecution and also stated that they are innocent and have falsely been implicated in these cases by police due to enmity. Accused Muhammad Asghar stated that he was arrested by police from Jinnah Port, while accused Muhammad Muzammil @ Javed stated that police arrested him from house and involved in these cases. They also stated that nothing was recovered from their possession but police foisted the weapons upon them due to enmity. However, neither they examined themselves on oath nor examined defence witnesses.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellants as stated above vide judgment dated 12.09.2023 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. He further submits that the alleged recovery of weapon has been foisted upon accused by the police with mala fide intent and ulterior motives; that the accused Asghar was arrested from Jinnah Port and accused Muzammil was arrested from his house, but they have falsely been shown arrested in the instant FIRs. Lastly, he prays for the acquittal of the appellants.

8. He further argued that as per the jail roll, appellant Muhammad Asghar has already undergone 2 years, 4 months and 26 days of his substantive sentence (excluding remission) and has earned 6 months and 18 days remission, making a total of **2 years, 11 months and 14 days served**. Whereas, appellant Muhammad Muzammil has undergone 2 years 4 months and 26 days (excluding remission) and earned 6 months and 18 days remission, amounting to a total of **2 years, 11 months and 14 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. He, therefore, stated that he 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 Addl. Prosecutor General, Sindh, fully supported the impugned judgment and stated that the appellants were arrested from the spot, rendering them not entitled to acquittal. However, 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 Addl. Prosecutor General, Sindh and have

minutely examined the material available on record with their able assistance.

11. Upon perusal of the record, it emerges that on the date of the incident, i.e., 19.04.2023, the complainant, ASI Faisal Ahmed Laghari, along with other police officials was on routine patrol duty. When the police party reached Main Khayaban-e-Sahil, they observed two individuals riding a motorcycle in a suspicious manner and accordingly signaled them to stop. However, upon noticing the police presence, the suspects fell from the motorcycle and immediately opened straight fire upon the police party, thereby attempting to deter them from discharging their lawful functions and with the intent to commit murder. In self-defense, the police personnel returned fire, resulting in firearm injuries to both suspects, who then fell to the ground and were apprehended.

12. Thereafter, a personal search of both accused was conducted. From accused Asghar, the police allegedly recovered a 30-bore pistol with a magazine containing one live round, an old Techno keypad mobile phone, and cash amounting to Rs. 500/-. From accused Muhammad Muzammil, the recoveries included a 30-bore pistol with a magazine containing two live rounds, a wallet containing Rs. 650/-, an old sky-blue OnePlus touchscreen mobile phone, and a black Motorola touchscreen mobile phone.

13. Further examination of the record reveals that both PW-1, Complainant ASI Faisal Ahmed Laghari, and PW-2, PC Muhammad Muneer Jatt (eyewitness), stated in their depositions that upon seeing the police, the accused initiated straight firing, prompting the police party to return fire. Notably, however, no bullet marks were found on the police mobile, nor did any police official sustain any injury. The incident took place at about 02:15 a.m., and no source of light was available at the scene. None of the police officials deposed that the accused were identified in the light of any bulb or illumination.

14. The distance between the accused and the police party during the encounter was approximately 14 to 15 feet. PW-2 PC

Muneer fired eight rounds from his pistol, and PW-3 PC Muhammad Ayoob fired seven rounds from his pistol; however, each accused received only a single firearm injury on or below the knee. Despite the alleged indiscriminate firing by these officials, no other injuries were noted.

15. PW-1, ASI Faisal Ahmed, further stated that all police officials were armed with ammunition; however, the remaining five officials did not discharge a single round. He also admitted that he did not collect blood-stained earth from the place of occurrence to corroborate the alleged encounter.

16. The memo of site inspection (Exh. 05/C) reflects that the incident occurred between 19.04.2023 at 0215 hours to 0400 hours. Conversely, PW-5, Dr. Sikander, deposed that at about 02:48 a.m., the police from PS Boat Basin brought a letter for the medical examination and treatment of injured / accused Muhammad Asghar and Javid. If the injured were indeed present at the hospital at 02:48 a.m., it is inconceivable how the memo of the place of incident could have been prepared between 0215 hours to 0400 hours. PW-1, ASI Faisal Ahmed, also deposed that after the incident, he called for a second police mobile, which arrived within 10 to 15 minutes and was headed by ASI Zahid Iqbal.

17. The matter does not conclude here. PW-4, ASI Zahid Iqbal, further deposed that on 19.04.2023, at approximately 02:00 a.m., he received information from the police control and was directed to proceed to the place of occurrence where the alleged encounter had taken place. Acting upon said information, he reached the pointed location at about 02:15 a.m., where he observed both accused lying in an injured condition, while ASI Faisal along with his team was present at the spot. Conversely, the complainant, ASI Faisal, claimed that the encounter between the accused and the police party occurred at 02:15 a.m. This discrepancy suggests that PW-4, ASI Zahid, received information from the police control even before the time the incident is stated to have occurred.

18. Moreover, the plea of both accused persons is that they were apprehended from different locations and, after a fabricated or “half-fried” encounter, were falsely implicated in the present case. When the learned APG was confronted with these inconsistencies, he was unable to offer a satisfactory explanation; however, he submitted that he would have no objection if the sentence already undergone were considered sufficient.

19. With respect to the recovery of the 30-bore pistols, PW-1, ASI Faisal Ahmed, conceded during cross-examination that “*It is correct that no private person has been shown as mashir...The accused persons tried to run towards Hyperstar.*” In circumstances where the presence of private persons in the vicinity is admitted, it was reasonably expected that the police should have associated independent and impartial witnesses during the search, recovery, and arrest proceedings so as to enhance the credibility of the police action and to uphold public confidence.

20. 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 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.

21. 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. Accordingly, the sentence awarded under Section 7(h) of the Anti-Terrorism Act, 1997, through the impugned judgment, is hereby set aside.

22. Additionally, the learned trial court erred in convicting the appellants under Sections 324 & 353 PPC. In the instant case, it is the appellants 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 324 PPC to suffer R.I. for ten years and pay fine of Rs.50,000/- and in case of default of payment, they shall undergo R.I. for six months each. They were also convicted U/s 353 PPC and sentenced them to suffer R.I. for two years each. Since in the absence of evidence indicating that the appellants repeated firearm shots at the police party, therefore, the provisions of Section 324, PPC, are not met. Accordingly, the conviction under this section is liable to be set aside.

23. In view of the discussion made hereinabove regarding the plea for reduction of sentence, and considering the proposal advanced by learned counsel for the appellants seeking reduction of the sentence to the period already undergone, we are of the opinion that the present matter warrants a departure from the ordinary practice of determining the quantum of sentence. The Jail Roll dated 04.10.2025 reflects that the appellants have physically served a period of two years, four months, and twenty-six days, and have earned remission amounting to six months and eighteen days up to 04.10.2025. Thus, including remission,

the appellants have remained in custody for more than three years.

24. In such circumstances, and in our considered view, the ends of justice both in terms of deterrence and reformation would be adequately met if the sentence awarded to the appellants is reduced to the period already undergone by them. Accordingly, the sentences awarded to the appellants are hereby modified and reduced to the extent of the period they have already served, which shall be deemed to include the remaining portion of their substantive sentence. Consequently, the instant appeal is dismissed, subject to the modification that the sentence, including the fine, stands reduced to the period already undergone.

25. The appeal is accordingly disposed of, with a direction to the office to issue release writs in favour of the appellants, if they are not required in any other custody case.

JUDGE

JUDGE

Kamran/PS*