

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.13 of 2025

Appellants : i. Abdullah Khan S/o Gul Asghar
ii. Sajid Ali S/o Dost Ali Khan
through Ms. Anum Salman Jamali,
Advocate

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

Date of Hearing : 11.12.2025

Date of Short Order: 11.12.2025

JUDGMENT

Amjad Ali Sahito, J. Through the instant appeal, the appellants have impugned the Judgment dated 15.03.2025 passed by the learned Judge, Anti-Terrorism Court No.IV, Karachi in Special Case No.108/2024 under FIR No.357/2023 U/s 353, 324, 411, 34 PPC R/w Section 7 ATA, 1997, Special Case No.108-A/2024 under FIR No.358/2024 U/s 23(i)(A) SAA, 2013 and Special Case No.108-B/2024 under FIR No.359/2024 U/s 23(i)(A) SAA, 2013, all crimes were registered at PS Gizri, Karachi; whereby both the appellants were convicted and sentenced as under:

- a. *Accused Abdullah Khan S/o Gul Asghar and Sajid Ali S/o Dost Ali Khan are found guilty for the offences u/s 353/324/34 PPC R/w Section 6(2)(n) punishable under section 7(1)(h) ATA 1997, they are convicted and sentenced to suffer imprisonment for five years, each, and fine of Rs:10,000/- (Rupees Ten thousand) each, in case of default of payment of fine, they shall further suffer imprisonment for three months, each.*
- b. *Accused Abdullah Khan S/o Gul Asghar and Sajid Ali S/o Dost Ali Khan are found guilty for the offences punishable u/s 23(i)(A) of Sindh Arms Act 2013, they are convicted and sentenced to suffer imprisonment for three years and fine of*

Rs.5000/- (Rupees Five thousand), in case of default in payment of fine, they shall further suffer imprisonment for two months.

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, brief facts of the case are that on 12.10.2023, complainant SIP Anjum Shahzad of PS Gizri Karachi alongwith his subordinate staff namely PC Zahid Ali, DPC Syed Muhsin and another patrolling party on motorcycle PC Atta Hussain and PC Raja Hassan were on patrolling duty in the area. During patrolling at about 0150 hours they reached behind SKBZ College near vacant plot Main Khayaban-e-Rahat DHA Phase-VI, Karachi, where a motorcycle emerged from Rahat Commercial side, police party signaled to stop but two suspects boarded on a red color 125 motorcycle No.KKI-3585 accelerated the motorcycle and started firing upon them with intent to kill and deterred them to perform their lawful duties. In retaliation and self-defense the complainant himself fired upon them which hit the pillion seated suspect who sustained gunshots in his right leg on knee, motorcycle and the motorcycle riders and another fell down. Police party apprehended injured suspect. On enquiry injured person disclosed his name as Abdullah Khan s/o Asghar while other suspect disclosed his name as Sajid Ali s/o Dost Ali Khan. Police party recovered from right hand of accused Abdullah Khan's possession one 30 bore pistol, without number, alongwith magazine loaded with two live bullets and one bullet chamber loaded. On his personal search, from right side pocket of his pant three keypad mobile phones, one black colour Nokia, black colour VigoTel, and black colour Q-Mobile phone were recovered. while police party recovered from possession of accused Sajid Ali, one 9 mm pistol, without number, along with magazine loaded with two live bullets and one bullet chamber loaded. On his personal search, from right side Pocket of his pant two mobile phones, light green Infinix touch mobile phone, and black colour Techno Canon touch mob one black colour, keypad Nokia mobile phone and cash of Rs.200/- was recovered. On

demand of license of pistols accused persons failed to produce the same. After completion of legal formalities accused alongwith recovered case properties were brought at police station where instant FIRs were lodged against above named accused persons.

3. After formal investigation, charge was framed on 04.10.2024 at Ex-04 against both the accused to which they pleaded not guilty and claimed to be tried. Their pleas were recorded at Ex-04/A and Ex-04/B.

4. In order to prove its cases, the prosecution has examined PW-01 Dr. Muhammad Areeb Bakhai, MLO of JPMC Karachi. He produced police letter at Ex-05/A, MLC of accused Abdullah Khan at Ex-05/B. PW-02 PC Altaf Hussain of Gizri PS, was examined at Ex-07. He produced roznamcha entry No.50 at Ex-07/A, attested photocopy of Koth register entry at Ex-07/B. Learned APG for the State gave up PW Atta Hussain as he was formal witness vide statement dated: 20.11.2024 at. Ex-08. PW-03 ASI Nadeem Mumtaz of Gizri PS, was examined at Ex-09. He produced roznamcha entry No.44, 63 and 12 at Ex-09/A, Ex-09/B and Ex-09/C, memo of site inspection at Ex-09/D. PW-04 PC Zahid Ali of Gizri PS was examined at Ex-10. He produced roznamcha entry No. 42 at Ex-10/A, memo of arrest, recovery and seizure at Ex-10/B, memo of seizure of blood swabs at Ex-10/C, memo of site inspection along with sketch of site plan at Ex-10/D and Ex-10/E. PW-05, HC Muhammad Mujtaba of PS Gizri examined at Ex-11. He produced attested photocopy of entry of mallkhana at Ex-11/A, and attested photocopy of entry of Register-19 at Ex-11/B. PW-06 Manzoor Ahmed S/o Abdul Rasheed, R/o, Al-Imran Centre near Jahangir Park, Saddar, Karachi, was examined at Ex-12. PW-07, HC Muhammad Fahad of PS Gizri was examined at Ex-13. He produced duty roaster at Ex-13/A. PW-08, SIP Rashid-ur-Rehman of PS Gizri was examined at Ex-14. He produced CSI Form-II at Ex-17/A, daily diary at Ex-14/B. PW-09, PC Faiz Muhammad of PS Gizri was examined at Ex-15 as mushir of memo of handing over bloodstained clothes of accused. PW-10 Muhammad Zahid S/o Muhammad Ramzan, rickshaw driver, R/o Khudadad Colony,

Tariq road, Karachi, was examined at Ex-16. He produced photocopy of FIR bearing N.658/2023 of PS Ferozabad at Ex-16/A. PW-11, SIP Anjum Shehzad of PS Gizri was examined at Ex-17. He produced carbon copies of FIRs bearing NO.357/2023, 358/2023 and 359/2023 along with their Qaimi entries at Ex-17/A to Ex-17/F. PW-12 Inspector Zafar Iqbal SIO of PS Nabi Bux was examined at Ex-18/A. He produced Roznamcha Entries No. 12, 26, 28 and 30 at Ex-18/A to Ex-18/D, coloured photographs of place of incident at Ex-18/E, roznamcha entries No.34, 40 and 44 at Ex-18/F to Ex-18/H, road certificate at Ex.18/I, letter addressed to AIGP Forensic Division for FSL examination at Ex-18/J, FSL report along with photographs of weapons at Ex-18/K, letter addressed to CMO, Administrator, Civil hospital, Karachi at Ex-18/L, Ex-18/N and its report at Ex-18/O, letter addressed to Incharge CIA/CRO Karachi, at Ex-18/P and CRO reports at Ex-18/Q and Ex-18/R, letter addressed to Excise and Taxation Officer at Ex-18/S, along with report of vehicle bearing No. KKI-3585 Ex-18/T, photographs of DNA swabs samples taken by CSU at Ex-18/U. Learned APG for the State closed the prosecution evidence vide statement at Ex-19.

5. Statements u/s 342 Cr.P.C of both the accused persons were recorded at Ex-20 and Ex-21, in which they denied the prosecution evidence. The accused in their statements recorded u/s 342 Cr.P.C. claimed their innocence and pleaded that on 10.10.2023 when they were returning from their duty of security guard, their motorcycle was hit by a rickshaw and they fell down. Their motorcycle was damaged. Altercation took place in between them and the rickshaw driver in the meanwhile police patrolling party reached there and taken them to PS and caused gunshot injuries to accused Abdullah and falsely implicated them in these cases.

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 15.03.2023 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 of weapon has been foisted upon accused by the police with mala fide intent and ulterior motives; that the appellants were returning from duty when their bike was hit by a rikshaw; as a result thereof, an altercation ensued between them and the rickshaw driver. In the meantime, a police patrolling party arrived at the spot, took them to the police station, inflicted gunshot injuries upon accused Abdullah, and falsely implicated them in the present cases.

8. She further argued that as per the jail roll, both the appellants have already undergone 2 years, 1 months and 6 days of their substantive sentence (excluding remission). 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 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 reflects that on the date of incident, i.e., 12.10.2023, the complainant SIP Anjum Shahzad of Police Station Gizri, Karachi, along with his subordinate staff was performing patrolling duty in the area. During patrolling, at about 0150 hours, when the police party reached behind SKBZ College near a vacant plot on Main Khayaban-e-Rahat, DHA Phase-VI, Karachi, a motorcycle came from the side of Rahat Commercial. The police party signaled the riders to stop; however, they accelerated the motorcycle and opened fire upon the police party with intent to kill and to deter them from performing their lawful duties. In retaliation and self-defense, the complainant party fired at the suspects, as a result of which the pillion-rider sustained firearm injuries. Consequently, the motorcycle skidded and both riders fell down. The police party apprehended the injured suspect.

12. Thereafter, a personal search of both accused was conducted. From the possession of accused Abdullah, one 30 bore pistol without number, along with a magazine containing two live bullets and one bullet chambered, was recovered. On his personal search, three keypad mobile phones, one black Nokia, one black VigoTel, and one black Q-Mobile, were recovered from the right pocket of his trousers. Similarly, from the possession of accused Sajid Ali, one 9 mm pistol without number, along with a magazine loaded with two live bullets and one bullet chambered, was recovered. On his personal search, two touch-screen mobile phones, one light green Infinix and one black Techno Canon, as well as one black keypad Nokia mobile phone and cash were recovered from the right pocket of his trousers. Upon demand, both accused persons failed to produce any valid license for the recovered pistols.

13. Further examination of the record reveals that PW-11 SIP Anjum Shahzad/complainant has deposed in his cross-examination that "*The culprits covered about 15-20 paces when the incident started. No bullet hit to the motorcycle, the bullet only hit the accused who was sitting on rear seat. I was the only who fired upon the accused. I made two fires on accused persons.*"

Since the patrolling party claimed that upon given signalled by the police party, the suspects made firing upon them and in retaliation thereof, police also fired upon them and such firing was continued for about 01/02 minutes; however, during such indiscriminate firing, notably, no bullet marks were found on the police mobile, nor did any police official sustain any injury. Further, the incident took place at about 01:50 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. During cross-examination, the complainant admitted that at the time the incident commenced, the accused had covered a distance of approximately 15–20 paces; however, he simultaneously claimed that the firing was carried out from a distance of 10–12 feet. Despite this assertion, no bloodstains were collected from the place of incident, which casts serious doubt upon the alleged occurrence of the incident or the claim of a police encounter between the accused and the police party.

15. It is noteworthy that PW-4, PC Zahid Ali, disclosed in his deposition that at about 01:50 a.m., while the police party reached near SKBZ College, they noticed a motorcycle bearing registration No. KKI-3585 crossing their path. Finding the occupants suspicious, SIP Anjum Shahzad signalled them to stop; however, instead of complying, they allegedly accelerated the motorcycle and resorted to firing upon the police party. PW-4 did not state that the police party started checking on the road. Rather, he deposed that after crossing them, the motorcyclists were signalled to stop, whereupon they allegedly started firing. According to his testimony, the accused persons were riding a Honda 125 motorcycle.

16. The complainant, SIP Anjum Shahzad, further deposed that the injured accused was shifted to JPMC for medical treatment. Contrarily, PW-3, Nadeem Mumtaz, stated that he was posted as ASI at Police Station Gizri and that SIP Anjum Shahzad informed him that a police encounter had taken place, resulting in injuries to one accused, Abdullah, and directed him to proceed to JPMC

for further proceedings. He further stated that upon reaching JPMC, he found injured Abdullah, who had sustained a bullet injury to his right leg. PW-4, PC Zahid Dino Panwar, deposed that SIP Anjum Shahzad called HC Fahad, who shifted the accused to JPMC. However, during cross-examination, PW-4 admitted that he did not go to the hospital and voluntarily stated that HC Fahad and other police officials had gone to JPMC, Karachi.

17. PW-2, PC Altaf Hussain, deposed that on 11.10.2023, while he was posted as sentry at Koth, he handed over one 9-mm pistol along with ten rounds to SIP Anjum Shahzad, out of which two rounds were allegedly used in the incident. On the other hand, the police party, including SIP Anjum Shahzad, maintained that the accused first resorted to firing upon them, and in retaliation, the police party also opened fire, as a result whereof the accused, who was seated on the rear of the motorcycle, sustained injuries. PW-4, PC Zahid Ali, specifically deposed that in retaliation, SIP Anjum Shahzad fired shots which hit the accused on his right leg. However, conspicuously, nowhere in the evidence has SIP Anjum Shahzad himself stated that he fired two rounds at the accused persons.

18. Moreover, the plea of both accused persons is that they were returning from their duty of security guard when their motorcycle was hit by a rickshaw and they fell down. Their motorcycle was damaged and as such, an altercation took place and in the meanwhile, police patrolling party reached there and taken them to PS and caused gunshot injuries to accused Abdullah and thereafter falsely implicated both of them in these cases. 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 sentences already undergone were considered sufficient.

19. 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.

20. 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(1)(h) of the Anti-Terrorism Act, 1997, through the impugned judgment, is hereby set aside.

21. Additionally, the learned trial court erred in convicting the appellants under Sections 324 PPC. In the instant case, it is the appellant Abdullah 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 Sections 324, 353, 34 PPC to suffer imprisonment for five years and pay fine of Rs.10,000/- each and in case of default of payment, they shall undergo imprisonment for three months 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.

22. 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 24.11.2025 reflects that the appellants have physically served a period of two years, one month, and twenty-four days upto 27.11.2025, which becomes a substantial portion of their total sentence.

23. 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.

24. The appeal was disposed of through a short order dated 11.12.2025, with a direction to the office to issue a release writ in favour of the appellants, if they are not required in any other case. The present judgment is in continuation of, and in conformity with, the said short order.

25. These constitute the reasons for our short order dated 11.12.2025.

JUDGE

JUDGE