

**IN THE HIGH COURT OF SINDH AT KARACHI***Present: Ahmed Ali M. Shaikh, CJ and Omar Sial, J*

Crl. Revision Application No. 174 of 2020

Banal v. The State &amp; others

Khawaja Muhammad Azeem, Advocate for applicant.

Mr. Abrar Ali Khichi, Addl.P.G.

Mr. Abdul Hafeez Sandhu, Advocate for respondent No.2.

Date of order : 11<sup>th</sup> February, 2021**ORDER**

Omar Sial, J: Syed Imdadullah Shah on 9-10-2016 lodged F.I.R. No. 543 of 2016 under sections 302, 324 and 34 P.P.C. read with section 7 of the Anti-Terrorism Act 1997 at the Gulshan-e-Iqbal police station. He recorded therein that his cousin Atiqullah along with Azizullah were riding their motorcycle when they were signaled to stop by two police officials, namely, Banal and Zafar Abbas. The motorcyclists did not stop and resultantly the police officials opened fire on them causing the death of Atiqullah and injuries to Azizullah.

2. Banal moved an application before the learned Anti-Terrorism Court No.13 at Karachi under section 23 of the Anti-Terrorism Act, 1997 praying that the case be transferred to an ordinary court as an offence of terrorism was not made out on the facts of the case. The learned trial court on 12-9-2020 dismissed the application. It is this order of the learned trial court that has been impugned through these proceedings.

3. We have heard the learned counsel for the parties as well as the learned Addl. P.G. Our observations are as follows.

4. We notice from the impugned order that the learned trial court may not have been assisted properly and that the judgment of the Honorable Supreme Court in **Ghulam Hussain and others vs The State (PLD 2020 SC 61)** was not brought to its notice. In paragraph 16 of the said judgment the Honorable Supreme Court has held as follows:

*“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.”*

5. We do not find that it can be said based on the evidence collected that the action of the accused was with the design, purpose and intent to commit a terrorist act. We therefore set aside the impugned order and direct that the case be transferred to an ordinary court having jurisdiction.

JUDGE

CHIEF JUSTICE