

IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Amjad Ali Bohio

Special Cr. Anti-Terrorism Jail Appeal No.115 of 2022

Appellant:- Mir Salman Abro son of GhulamSarwarAbro through Mr. Haq Nawaz Talpur, Advocate.

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

Complainant:-Zeeshan Mustafa Lashari through Mr. Ghulam Mustafa Mahesar, advocate.

Special Cr. Anti-Terrorism Jail Appeal No.123 of 2022

Appellant:- Imran Ali son of Muhammad Boota through M/s. AyazHussainTunio and Pervez Ahmed Memon, Advocates.

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

Complainant:- Zeeshan Mustafa Lashari through Mr. SalahuddinPanhwar, advocate.

Special Cr. Anti-Terrorism Jail Appeal No.124 of 2022

Appellant:- Maqbool Ahmed son of Niaz Muhammad Brohi through M/s.AyazHussainTunio and Pervez Ahmed Memon, Advocates.

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

Complainant:- Zeeshan Mustafa Lashari through Mr. SalahuddinPanhwar, advocate.

Special Cr. Anti-Terrorism Jail Appeal No.125 of 2022

Appellant:- Muhammad Rashid son of Muhammad Rafiquethrough M/s.AyazHussainTunio and Pervez Ahmed Memon, Advocates.

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

Complainant:- Zeeshan Mustafa Lashari through Mr. SalahuddinPanhwar, advocate.

Special Cr. Anti-Terrorism Jail Appeal No.126 of 2022

Appellant:- YaseenJamali son of KhudaBuxJamalithrough M/s. AyazHussainTunio and Pervez Ahmed Memon, Advocates.

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

Complainant:- Zeeshan Mustafa Lashari through Mr. SalahuddinPanhwar, advocate.

Date of hearing:- 07.08.2023

Date of judgment:- 10.08.2023

JUDGMENT

AMJAD ALI BOHIO, J:-Through this judgment we intend to decide above mentioned special anti terrorism appeals arising out of judgmentspassed by Special Judge ATC-VII Karachi in crime No. 235/2014 registered at PS Darakhshan under sections 302, 324, 427, and 34 of the Pakistan Penal Code (PPC), read in conjunction with Section 7 of the Anti-Terrorism Act, 1997. Through the impugned judgments, the appellants were convicted and sentenced in the following manner:

- i. Appellant Salman Abro S/o GhulamSarwarAbroconvicted for offence U/S302 PPC for commission of Qatl-I-Amd of deceased Suleman Mustafa and sentenced to suffer R.I for life and to pay fine of Rs. 1,00,000/- (One Hundred Thousands)”, in case of default to suffer S.I for six months each. He was also convinced for offence U/S 324 of Pakistan Penal Codefor attempting to commit qatl-i-amd and thereby causing injuries to private security guard Ali GhulamBugti and sentenced him to suffer R.I for ten years with fine of Rs. 100,000/- (One Hundred Thouands) and in case of failure to pay the fine amount, accused shall suffer S.I for six months. He was further convinced for offence U/S 427 of PPC

R/W Section 34 PPC for causing damage at the house / bungalow of complainant Zeeshan Mustafa and sentenced to suffer R.I for two years and to pay fine amount of Rs. 50,000/- (Fifty Thousands) and in case of failure to pay the fine to suffer S.I for six months.

- ii. Appellants Imran Ali, Maqbool Ahmed Brohi, Muhammad Rashid and YaseenJamali were also convicted for above offences in similar manner with similar sentences as that of main accused Salman Abro with their roles as abettors under sections 109 and 113 PPC.

All the sentences awarded to the appellants/accused were ordered to run concurrently with benefit of section 382-B Cr. P.C.

2. The prosecution's case is that complainant namely Zeeshan Mustafa Lashari got recorded his statement under Section 154 of the Criminal Procedure Code stating that instant incident took place on 08.05.2014 when he along with his brother-in-law Raheemuddin, mother Mst. Erum Naz, and employee Riazat Ali (also known as Joji), were sitting on the balcony of their house that at around 0200 hours, a group of six persons arrived in a black Vigo vehicle with registration number CU-2900 which was stopped in front of their bungalow. Out of these persons, three were armed with Kalashnikovs who started firing at the main gate and then entered inside the bungalow. This resulted in causing of firearm injuries to the security guard Ali Ghulam Bugti and Suleman Mustafa (complainant's brother). In retaliation the complainant and the security guard fired shots using their licensed weapons which resulted in accused Salman Abro and his gunman sustaining firearm injuries. After closure of firing the complainant along with his mother took his injured brother and the security guard to South City Hospital. But his brother succumbed to injuries while the security guard was injured having sustained firearm injuries on his leg. The complainant and

his family then took his brother's body to Jinnah Postgraduate Medical Centre (JPMC) for autopsy. The complainant further mentioned that his deceased brother had informed him that a few days before the incident, there had been harsh argument between him and accused Salman Abro over car crossing issue and therefore the complainant alleged that the accused Salman Abro, Zaheer Ahmed Rind and four other unidentified individuals committed the aforementioned offences.

4. During investigation, Senior Investigation Officer/Police Inspector Muhammad Mubeen inspected of the scene of the incident and collected incriminating materials. He subsequently arrested the appellant Salman Abro at Ziauddin Hospital and also seized the vehicle that was used in the commission of the offense. Identification parade was conducted before the Magistrate on May 12, 2014, during which eyewitnesses identified the appellants/accused Maqbool Ahmed, Imran Ali, Muhammad Rashid, and Yaseen Jamali.

5. After usual investigation, the Investigating Officer (I.O.) submitted report under section 173 of the Criminal Procedure Code. During trial, the appellant/accused Salman Abro was declared as juvenile and as such separate trial proceedings as per Juvenile Justice System Ordinance, 2000 were carried out against him. His case was assigned the Special Case No. 02(vii) of 2016. Likewise separate trial commenced for adult accused persons.

6. Trial court formally framed charges against the appellant/accused Salman Abro in Special Case No. 02(vii) of 2016. Simultaneously, the remaining appellants/accused were dealt with under Special Case No. 01(vii) of 2016 on February 19, 2015, as documented in Exhibit 03. In response, accused Salman Abro pleaded not guilty and claimed trial, as indicated in Exhibit 04. The remaining appellants/accused also pleaded not guilty and claimed trial, as noted in their respective pleas recorded from Exhibits 03 to 07.

7. To prove the charge during trial, the prosecution examined 18 witnesses in Special Case No. 02(vii) of 2016 and 20 witnesses in Special Case No. 01(vii) of 2016. Subsequently application under section 540 Cr. P.C. was filed on behalf of the appellants/accused for recalling and re-examining PWAli Ghulam being injured witness in the case.

8. The appellants/accused after closure of prosecution evidence have refuted the allegations against them in their statements recorded under section 342 of the Criminal Procedure Code. Additionally they have produced certain documents in their defense. Subsequently, the appellants/accused involved in Special Case No. 01(vii) of 2016 got recorded their statements on oaths documented in Exhibits 48 to 51. They also produced co-accused Mir Salman Abro's testimony as Exhibit 52 in their defense. In a similar manner the appellant/accused Salman Abro examined himself on oath recorded as Exhibit 44. Furthermore, he examined co-accused Maqbool Ahmed Brohi, Imran Ali Arain, Yaseen Jamali and Muhammad Yaseen Gujjar in his defense, as evidenced by Exhibits 45 to 48 respectively.

9. After hearing the parties, trial court delivered its verdict on May 17, 2022 which resulted in the conviction and sentencing of the appellants/accused as mentioned above. As a consequence of impugned judgments, these appeals have been filed.

10. While the aforementioned appeals were pending, the legal heirs of the deceased, injured witness and the appellants jointly submitted applications for compromise. These applications stated that the parties had reached a mutual agreement for compromise. To verify the authenticity of this compromise, the compromise applications were forwarded to the trial court as per the order on May 15, 2023. The purpose of sending them to the trial court was to conduct a thorough

inquiry, following all necessary procedures, in order to establish the credibility of the compromise reached between the parties.

11. Subsequently, the trial court conducted the required inquiry and submitted the following report:

- “1. That reports regarding legal heirs of deceased namely Suleman Mustafa S/o Ghulam Mustafa Lashari was called from SHO P.S Darakhshan, Karachi, Mukhtiarkar Civil Lines Sub-Division South, Karachi and NADRA Regional Head Office, Karachi. Further, notice regarding compounding of the offence with legal heirs of above named deceased published in newspaper and also called legal heirs of deceased for recording their Statements on oath.
2. That during course of inquiry, the Statements of Zeeshan Mustafa (Complainant/Brother of deceased), Ghulam Mustafa Lashari (Father of deceased), Mst. Iram Naz (Mother of deceased), Ume Laila (Sister of deceased), Komal Mustafa (Sister of deceased), Sidra Zahid (Sister of deceased), Ume Farwa (Sister of deceased) and Ali Ghulam (injured) were recorded on 17.06.2023 at Ex. No. 01 to Ex. No. 08. Wherein, the above named legal heirs of deceased deposed that they have entered into compromise with the convicted persons and they have pardoned/forgiven the convicted persons in the name of Almighty Allah and have waived their right of Qisas and Diyat and there is no pressure upon them to effect this compromise.
3. The SHO P.S Darakhshan vide letter dated 19.06.2023 submitted report through SIP Faiz Ali which is taken on record at Ex.09 and the following persons have been shown to be legal heirs of deceased persons.

Sr. No.	Name of legal heirs of deceased Suleman Mustafa	Relationship with deceased	Age
1	Ghulam Mustafa Lashari S/o Raheem Bux Khan	Father	63 Years
2	Mst. IramNaz W/o Ghulam Mustafa Lashari	Mother	58 Years
3	Zeeshan Mustafa S/o Ghulam Mustafa Lashari	Brother	41 Years
4	Ume Laila D/o Ghulam Mustafa Lashari	Sister	39 Years

5	Komal Mustafa D/o Ghulam Mustafa Lashari	Sister	35 Years
6	Sidra Zahid D/o Ghulam Mustafa Lashari	Sister	33 Years
7	Ume Farwa D/o Ghulam Mustafa Lashari	Sister	31 Years

4. The Mukhtiarkar Civil Lines Sub-Division South, Karachi vide letter No.MUKH/C.L/S.DIV/SOUTH/576/2023, Karachi, of dated 20-06-2023 submitted report which is taken on record at Ex.10 and the following persons have been shown to be legal heirs of deceased Suleman Mustafa.

Sr. No.	Name of legal heirs of deceased Suleman Mustafa	Relationship with deceased	Age
1	Ghulam Mustafa Lashari S/o Raheem Bux Khan	Father	63 Years
2	Mst. IramNaz W/o Ghulam Mustafa Lashari	Mother	58 Years
3	Zeeshan Mustafa S/o Ghulam Mustafa Lashari	Brother	41 Years
4	Ume Laila D/o Ghulam Mustafa Lashari	Sister	39 Years
5	Komal Mustafa D/o Ghulam Mustafa Lashari	Sister	35 Years
6	Sidra Zahid D/o Ghulam Mustafa Lashari	Sister	33 Years
7	Ume Farwa D/o Ghulam Mustafa Lashari	Sister	31 Years

5. The Assistant Director, NADRA, Regional Head Office, Karachi vide letter No. NADRA/ CNIC/VER/C/R.B/2054 dated 21-06-2023 which is taken on record at Ex. 11 and has reported that as per NADRA database the following family members are registered/linked with the provided CNIC No. 41306-9940671-7 in respect of Suleman Mustafa are as under:-

Sr. No.	Name of legal heirs of deceased Suleman Mustafa	Relationship with deceased	Age
1	Ghulam Mustafa Lashari S/o Raheem Bux Khan	Father	63 Years
2	Mst. IramNaz W/o Ghulam Mustafa Lashari	Mother	58 Years
3	Zeeshan Mustafa S/o Ghulam Mustafa Lashari	Brother	41 Years
4	Ume Laila D/o Ghulam Mustafa Lashari	Sister	39 Years
5	Komal Mustafa D/o Ghulam Mustafa Lashari	Sister	35 Years
6	Sidra Zahid D/o Ghulam Mustafa Lashari	Sister	33

			Years
7	Ume Farwa D/o Ghulam Mustafa Lashari	Sister	31 Years

6. The notice was published in newspaper Daily Koshish, Hyderabad dated 24.06.2023, copy whereof has been submitted by the counsel for accused persons which is taken on record at Ex.12.

7. That from the Statements of above mentioned legal heirs of deceased person namely Suleman Mustafa, it reflects that they have pardoned the convict appellant persons in the name of Almighty Allah without receiving any compensation. Neither any other person claiming to be legal heirs of the above named deceased persons has come forward in response to publication of notice in newspaper Daily Koshish, Hyderabad nor name of any other legal heirs/persons have come on record in the reports furnished by concerned Mukhtiarkar, SHO P.S Darakhshan, and Assistant Director NADRA Regional Head Office, Karachi. The Statements of above named legal heirs of deceased persons, appears to be voluntary, without any duress and coercion as enquired from them.”

12. The learned counsel representing both parties have argued that all the legal heirs of the deceased Salman Mustafa and the injured Ali Ghulam Bugti on his behalf have pardoned the appellants in the name of Almighty Allah without receiving any form of compensation. Due to such pardon, the appellants have prayed for their acquittal by way of compromise.

13. Upon careful consideration of the inquiry proceedings conducted by the trial court regarding the compromise application, it has been observed that the trial court has collected reports from various sources, including SHO PS Darakhsan, Mukhtiarkar Civil Lines, Sub-Division Karachi, and NADRA Regional Head Office, Karachi. All three sources have unanimously reported that the deceased Suleman Mustafa Lashari has left behind his father Ghulam Mustafa, mother Mst. Erum Naz, brother Zeeshan Mustafa, and sisters Mst. Ummy Laila, Komal Mustafa, Sidra Zahid, and Ummy Furwa. These legal heirs have recorded their

statements before the trial court explicitly stating that they have forgiven the appellants/accused in the name of Almighty Allah willingly and without any external pressure or coercion. They have also waived their right to Qisas and Diyat and have expressed no objection to the acquittal of the appellants based on the compromise. These legal heirs have also attested to the authenticity of their statements through their biometric affidavits submitted to the trial court. Additionally, the injured PW Ali Ghulam also recorded his statement through which he has forgiven the appellants/accused in the name of Almighty Allah and confirmed that his forgiveness was not obtained through any form of pressure or coercion. It may be noted that deceased was unmarried as such under Muslim Law of Inheritance, only his father and mother are his legal heirs and their presence exclude other siblings. However the statements of siblings including that of complainant are also part of record.

14. After viewing the report submitted by the learned Judge of Anti-Terrorism Court No. VII Karachi, it is clear that all legal heirs of the deceased and injured himself have voluntarily chosen to enter into compromise with the appellants, without any influence or coercion. They have relinquished their right of Qisas and Diyat. The trial court, upon evaluating the situation, concluded that the occurrence was a result of personal vendetta or grudge and did not fall within the scope of the Anti-Terrorism Act, 1997, citing the case of Amjad Ali and others v. The State (PLD 2017 SC Page 661) relevant to the facts of the case in hand. We have observed that the appellants were convicted and sentenced for the offences under Sections 302/324/427/113/109 and 34 of the Pakistan Penal Code (PPC), which are compoundable offenses. The legal heirs' willingness to compound the offense, along with their voluntary and un-coerced statements, were found credible by the trial court, drawing reference from the case of Hazir Zaman v. Bakht Zaman

and two others (2015 PCr.LJ. Page 1142). Consequently, this court granted permission to the parties to compound the offences under Section 345(2) and 345(6) of the Code of Criminal Procedure, 1898, in the interest of justice and maintaining relationships.

15. In light of the aforementioned discussion, the applications for compromise are allowed. The convictions and sentences imposed on appellants Mir Suleman Abro, Imran Ali, Maqbool Ahmed, Muhammad Rashid, and Yaseen Jamali by the learned Judge of Anti-Terrorism Court No. VII (Central Prison) in Karachi, dated May 17, 2022, are set-aside on the basis of compromise between the parties. The appellants as a result are acquitted in these cases and are ordered to be released forthwith unless required in any other case.

16. Consequently these appeals are disposed of in view of above terms.

JUDGE

JUDGE