

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-82 of 20219

PRESENT:

Mr. Justice Zafar Ahmed Rajput,  
Mr. Justice Shamsuddin Abbasi,

Appellant : Barkat Ali Sundrani, through Mr. Habibullah G. Ghouri, Advocate.

Respondent : The State, through Mr. Mohammad Noonari, Deputy Prosecutor General.

Date of hearing : 18-02-2020.

Date of Judgment : 25.02.2020.

J U D G M E N T .

SHAMSUDDIN ABBASI, J.- Appellant/accused Barkat Ali Sundrani through the instant appeal has challenged the judgment dated 29.11.2019, passed by the learned Incharge Judge, Anti-Terrorism Court, Shikarpur, in Special Case No.32/2019 (Re: The State v. Barkat & others) emanating from Crime No.12/2014, registered at Police Station Dilawar Marfani, District Shikarpur, for offence under Sections 302, 311, 337-H(2), 148, 149, PPC read with Section 6/7 of the Anti-Terrorism Act, 1997, whereby he was convicted and sentenced as under:-

- (a) Under Section 302(b), PPC r/w section 149, PPC to suffer imprisonment for life and to pay Rs.300,000/- (Three Lacs) to the legal heirs of deceased Mst. Bakhtawar as compensation u/s 544-A, Cr.P.C, in case of default in payment or recovery thereof to suffer R.I. imprisonment for six months more.
- (b) Under Section 337-H(2), PPC r/w Section 149, PPC to suffer imprisonment for three months and to pay fine of Rs.10,000/- (Ten thousand), in case of default in payment thereof to suffer R.I. for one month more.
- (c) Under Section 148, PPC r/w Section 149, PPC to suffer imprisonment for three years and to pay fine of Rs.10,000/- (Ten thousand), in default thereof to suffer R.I. for one month more.

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(d) Under Section 7(a) of Anti-Terrorism Act 1997 to suffer imprisonment for life and to pay fine of Rs.100,000/- (one lac), in default thereof to suffer R.I. for three months more.

2. According to the case of prosecution, on 29.12.2014 SIP Abdul Jabbar Shar while being on patrolling along with his staff heard fire shot coming from Village Ismail Sundrani, went to the said village, where they found six persons coming out from the house of one Mohammad Ali; the police party identified those persons to be 1) Jamsher, 2) Shabir, both sons of Ali Sher, 3) Barkat Ali, 4) Aziz, 5) Shoukat, and 6) Liaquat, all four sons of Mohammad Ali, by caste Sundrani, residents of Village Ismail Sundrani, Taluka Garhi Yasin, armed with Kalashnikovs, who on seeing the police party made aerial firing and fled away towards jungle side. The police party entered in the house of Mohammad Ali and found many persons available there, out of whom two ladies, namely, Mst. Sonari wife of Sohbat and Mst. Gardoli wife of Tajal Sundrani disclosed that the above-named accused persons have killed Mst. Bakhtawar wife of Jamsher Sundrani on the allegation of 'Karap' with one Mondar Sundarni and the dead body was lying inside the room. Police entered the room, checked the injuries on the dead body, which were bleeding and died then they took the dead body to Taluka Hospital Garhi Yasin for postmortem. After that, SIP Abdul Jabbar Shar returned to police station and lodged FIR, alleging that the lady Mst. Bakhtawar Sundrani was killed by the above-named accused persons on the allegation of "Kari".

3. After usual investigation, the case was challaned u/s 512, Cr.P.C before the learned Anti-Terrorism Court, Shikarpur, showing all the accused persons as absconders. Subsequently, on 31.08.2019 appellant/accused Barkat Ali was arrested and sent up to face trial.



4. The learned trial Court framed charge against the appellant/accused and proceeded with the trial, during which prosecution examined in all 09 witnesses, including alleged eye-witnesses Mst. Sonari and Mst. Gardoli and on conclusion of trial, the appellant/accused has been convicted and sentenced, as mentioned in para-1 *supra*.

5. Mr. Habibullah G. Ghouri, learned Counsel for the appellant, instead of arguing the appeal on merits, has mainly assailed the impugned judgment on the point of jurisdiction of the learned Anti-Terrorism Court and has contended that the alleged offence did not attract the provisions of Anti-Terrorism Act, 1997, as the prosecution has completely failed to prove the motive i.e. "Karap" of the alleged offence. He has further contended that every offence of murder under the allegation of "Karo-Kari" is not triable by the Special Anti-Terrorism Court, therefore, the entire exercise of holding trial against the appellant before the learned Anti-Terrorism Court is illegal. In support of his contentions, he has placed reliance on the case reported as *Khuda-e-Noor v. The State* (PLD 2016 SC 195).

6. Mr. Mohammad Noonari, learned Deputy Prosecutor General, conceded to the above contentions of learned Counsel for the appellant and has not supported the impugned judgment.

7. We have heard the learned Counsel for the parties and have carefully perused the record.

8. It is an admitted position on record that the appellant has been tried by the Special Anti-Terrorism Court and apart from sentencing him for the offence of murder, he has also been convicted and sentenced to imprisonment for life for offence under Section 7(a) of the Anti-Terrorism Act, 1997. Since, the learned Counsel for the appellant has argued the

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matter on the point of jurisdiction of Anti-Terrorism Court, therefore, we deem it appropriate not to delve into the merits of the case. We have also taken guidance from the invaluable observations of Hon'ble Supreme Court recorded in the case of *Khuda-e-Noor* (supra) relied upon by learned Counsel for the appellant, in which it has been held that:-

*"for holding that all cases of honour killing attracted the definition of "terrorism" the High Court had only relied upon the provisions of section 6(2)(g) of the Anti-Terrorism Act, 1997 without appreciating that by virtue of the provisions of section 6 of the Anti-Terrorism Act, 1997 any action falling within any of the categories of cases mentioned in subsection (2) of section 6 of the Anti-Terrorism Act, 1997 could not be accepted or termed as "terrorism" unless the said action, was accompanied by a "design" or "purpose" specified in section 6(1)(b) or (c) of the said Act. If the interpretation of section 6(2)(g) of the Anti-Terrorism Act, 1997 advanced by the High Court of Balochistan, Quetta in the said judgment were to be accepted as correct then all cases of a person taking the law in his own hands are to be declared or accepted as cases of terrorism but that surely was not the intention of the legislature. The provisions of section 6 of the Anti-Terrorism Act, 1997 which define "terrorism" clearly show that the said section is divided into two main parts, i.e. the first part contained in section 6(1)(b) and (c) of the said Act dealing with the mens rea mentioning the "design" or the "purpose" behind an action and the second part falling in section 6(2) of the said Act specifying the action which, if coupled with the mens rea mentioned above, would constitute the offence of "terrorism"*

9. On perusal of the record, we find that in the instant case though the motive shown by the two alleged eyewitnesses of the incident, namely, Mst. Sonari and Mst. Gardoli was "Karap", but the same does not appear to have been fully established during trial. Even otherwise, we may observe here that the motive shown behind the murder of deceased Mst. Bakhtawar was not sufficient to change the character of the offence, which was nothing but a private offence committed in the privacy of a home with no design or purpose contemplated by Section 6(1)(b) or (c) of the Anti-Terrorism Act, 1997. We have also gone through the FIR, which also lacks the particulars in regard to allegations attracting the jurisdiction of an Anti-Terrorism Court. We are, therefore, clear in our mind that the allegations leveled against the appellant and the co-accused in the instant case did not attract the jurisdiction of Special Court constituted under the Anti-

Terrorism Act, 1997 and the entire exercise of holding trial and passing judgment of conviction and sentence against the appellant by the learned Judge, Anti-Terrorism Court, Shikarpur was illegal.

10. In view of above facts, circumstances and reasons, this appeal is allowed, the impugned judgment dated 29.11.2019 is set aside and the matter is remanded to the learned Incharge Judge, Anti-Terrorism Court, Shikarpur, with directions to return the challan and other relevant case papers to the I.O./SHO concerned to present the same before the ordinary Court having jurisdiction, for holding the trial against the appellant/accused afresh and to conclude the same as early as possible, as the offence pertains to the year 2014.

Qazi Tahir PA