IN THE HIGH COURT OF SINDH AT KARACHI

Present : Omar Sial, J
Muhammad Hasan (Akber), J

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Spl. Cr. Anti-Terrorism Appeal No. 136 of 2024
[Fahad Yousuf & another vs. The State]

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Spl. Cr. Anti-Terrorism Appeal No. 137 of 2024
[Sherullah vs. The State]

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Spl. Cr. Anti-Terrorism Appeal No. 139 of 2024
[Bin Yameen Yousuf vs. The State]

Mr. Abid Akram, Advocate for appellants in Spl. Cr. Anti-Terrorism Appeals No. 136 & 139 of 2024 a/w appellants.

Syed Samiullah Soomro, Advocate for appellant in Spl. Cr. Anti-Terrorism Appeal No. 137 of 2024 a/w appellant.

Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.

Dates of hearing : 24th & 26th March, 2025

Date of Judgment: 07th April, 2025

JUDGMENT

Omar Sial, J: On 08.12.2022, a joint team comprising revenue and police officials visited the Deh Thoming area to remove illegal encroachments. A large mob consisting of three to four hundred persons resisted the team, and a fire was shot, which injured an accompanying police officer, P.C. Jinsar. Fahad Yousuf, Bin Yameen Yousuf, Wali Muhammad, Sherullah, and others were identified as being a part of the mob. F.I.R. No. 1669 of 2022 was registered under sections 427, 353, 341, 324, 186, 147, 148, 149, and 34 of the P.P.C., read with section 7 of the Anti-Terrorism Act, 1997, at the Site Super Highway police station in Karachi.

2. The appellants pleaded not guilty and claimed a trial. At trial the prosecution examined - Dr. Syed Muhammad Hussain (a doctor who treated the injured constable); Ali Nawaz (revenue officer and the complainant); Mohammad Mashood Alam (eyewitness and fire brigade personnel); Inspector Liaquat Ali (eyewitness); P.C. Jinsar Ali (the injured constable); Inspector Rana Sarfaraz Ali (investigating officer). S.I. Manzoor Ahmed (the F.I.R. scribe), A.S.I Shabbir Ahmed (eyewitness and witness to the arrest of Sherullah), and Abdul Haq (the revenue officer). The appellants professed innocence in their respective section 342 Cr.P.C. statements.

3. At the end of the trial, the learned 2nd ATC, Karachi convicted and sentenced the appellants on 29.11.2024 to five years imprisonment for offences under section 353 and 34 P.P.C., read with section 7(h) of the ATA 1997, and five years imprisonment for an offence under section 6(2)(n) of the ATA 1997.

4. We have heard the learned counsels for the appellants and the learned Additional Prosecutor General. Our observations and findings are as follows.

5. The policeman who got injured and whose reports were produced at trial was P.C. Jinsar Ali, whereas Ali Nawaz, the complainant, testified that it was P.C. Hubdar who was injured. This was perhaps a typographical error; however, Jinsar's claim at trial that his Section 161 Cr.P.C. statement was recorded on 12.12.2022, while the investigating officer asserted that he had recorded Jinsar’s statement on 10.01.2023, did adversely impact the prosecution's case.

6. At trial, Ali Nawaz identified the four appellants as being “*part of the same illegal assembled crowd*.” They were allegedly armed with weapons; however, no recovery was effected from them. It remained unexplained how the complainant identified the appellants by their names when he conceded in his testimony that he had seen the accused for the first time at the time of the

incident. The F.I.R. says that the complainant was told later who the accused were. The eyewitness, Inspector Liaquat Ali, stated at trial that he became aware of the accused's names after the F.I.R. had been registered. No identification parade was held for the revenue and police officials to identify the accused as being the same people who instigated the mob. This was an important step to take as the investigating officer of the case acknowledged that none of the accused had a crime record and that he had collected the call data records of the accused and had found that Wali Muhammad, Bin Yameen and Fahad Yousuf were nowhere near the place of incident when the incident is said to have occurred.

7. The Assistant Commissioner and the Mukhtiarkar, who admittedly were leading the anti-encroachment operation, were not made witnesses in the case. In fact, no witness was cited from the anti-encroachment team. Their absence at trial without explanation would raise the presumption under Article 129 of the Qanoon-e-Shahadat Order, 1984, that if they had appeared at trial, they would not have supported the prosecution's case. Their presence would also have explained whether the competent authority had duly authorized the anti-encroachment drive and the land on which the operation took place was indeed State land.

8. Mohammad Mashood Alam (eyewitness) did not mention that the mob had resorted to firing, while the other eyewitness, Inspector Liaquat Ali, blamed the entire mob for firing on the demolishing team. Inspector Liaquat Ali acknowledged that "*firing was coming from persons who were part of the mob, but I had personally not seen any culprit doing firing.*" The injured policeman, Jinsar Ali, blamed the entire mob for firing and acknowledged that "*it is correct to suggest that I had personally not seen the persons who were firing"*. A.S.I Shabbir Ahmed testified, "*I cannot specifically identify the culprits who had resorted to the firing as a large number of people had gathered.*" The complainant Ali Nawaz testified that "*it is incorrect to suggest*

that the persons available in the mob were not armed, and that some persons also resorted to firing and as a result of which one constable received firearm injury."

9. The entire investigation conducted in this case was exposed to doubt when the investigating officer admitted at trial that "*it is correct to suggest that earlier, on the directions of the concerned D.I.G., one investigation team in the present crime was constituted.*" He professed ignorance of any further steps taken by the investigation team in the matter. From a mob of up to three hundred persons, the four accused were singled out, and no effort was made to identify and arrest other accused. These four accused individuals presented documents at trial to demonstrate that their legally and lawfully owned properties were being subjected to the anti-encroachment drive, and that a civil case with restraining orders had also been filed when an attempt was made to remove encroachments. Due to a weak investigation, the prosecution's claim that resistance was offered to a lawful action remained unsubstantiated. Of course, that would not mean that even if it was unlawful, the appellants or anybody else had the right to shoot at government officials; however, no evidence was presented at trial to specifically identify any of the accused as resorting to shooting that injured P.C. Jinsar.

10. There is another aspect of the case that we have reevaluated. Whether a terrorism offence was even made out? The learned trial court in this regard has made a presumption. The court held that, since the prosecution's case was that a large, agitated mob had gathered to prevent government officials from performing their allegedly lawful duties, a fear of insecurity spread in the area, and thus a terrorism offence was established. We have come across several cases involving simple spontaneous police shoot-outs, which have been categorized and held as terrorism cases. We respectfully and with humility hold a different view. A judge must decide based on the evidence available to them. In this case, no evidence

was presented to support the charge of terrorism. The Section 6 (1) requirements of the ATA 1997, which enable Section 6(2) offences to be classified as "terrorism" offences, were not established through evidence. A charge of terrorism is a severe charge, and absolute certainty on strict benchmarks should be ensured before a person is convicted for such an offence. Courts must ensure that the requirements of Section 6(1) of the ATA 1997 are satisfied through cogent, confidence-inspiring, and trustworthy evidence. It would be dangerous and detrimental to the image of the country if courts base the existence of the offence on a presumption, which very well may be true but has not been proved in court. The only presumption permitted by the ATA is in Section 27-A, which was not applicable in the present case. When each of the actions listed in section 6(2) is deemed to be standalone terrorism, the number of criminal cases in Pakistan drastically increases, even though what has been committed is a Pakistan Penal Code crime. Learned courts seized of terrorism offences are encouraged to revisit the Supreme Court decision in the **Ghulam Hussain vs The State (PLD 2020 SC 61)** case. It provides authoritative guidance on the interpretation of what constitutes terrorism. Needless to say, all courts are bound by the Supreme Court's judgments on questions of law. The Supreme Court in this case held:

> “*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."

11. In this case, it was not proven that the mob of people had a design "*to coerce, intimidate, or overawe the Government*." On the contrary, the incident developed and unfolded, at best, as a spontaneous reaction to an action which the mob interpreted as an attack on their rightfully held properties. It is pertinent to mention that none of the witnesses testified in this regard, nor were the appellants confronted with the relevant questions when their section 342 Cr.P.C. statements were recorded. Pakistan is not a terrorist country nor a country enveloped by terrorism. Regrettably, when each section 6(2) ATA 1997 offence is treated as terrorism without satisfying the requirements of section 6(1), it adds to a statistic which, to the world at large, reflects the intensity of terrorism in the country. Needless to say, this harms the country's reputation, which in turn affects the country's economy. It is our duty not to let that happen, particularly on an incorrect categorisation of offences. It would be apt to quote out of **Naveed Asghar vs The State (PLD 2021 SC 600)**:

"*Before parting with the judgment, we feel constrained to observe though at the cost of some repetition but for the sake of clarity that in a criminal trial an accused person cannot be convicted on the basis of mere "suspicion" or "probability" unless and until the charge against him is "proved beyond reasonable doubt", a standard of proof required in criminal cases in almost all common law jurisdictions. An accused person cannot be deprived of his*

constitutional right to be dealt with in accordance with law, merely because he is alleged to have committed a gruesome and heinous offence. The zeal to punish an offender even in derogation or violation of the law would blur the distinction between arbitrary decisions and lawful judgments. No doubt, duty of the courts is to administer justice; but this duty is to be performed in accordance with the law and not otherwise. The mandatory requirements of law cannot be ignored by labelling them as technicalities in pursuit of the subjective administration of justice. One guilty person should not be taken to task at the sacrifice of the very basis of a democratic and civilised society, i.e., the rule of law. Tolerating acquittal of some guilty whose guilt is not proved under the law is the price which the society is to pay for the protection of their invaluable constitutional right to be treated in accordance with the law. Otherwise, every person will have to bear peril of being dealt with under the personal whims of the persons sitting in executive or judicial offices, which they in their own wisdom and subjective assessment consider good for the society."

12. Even otherwise, and irrespective of the observations made above, the record reflects that little attention was given to this case by either the prosecution or the investigator. The result is that many loose ends remained, just that. At best, what the trial established was that an angry crowd gathered and that there may have been stones thrown. Whether or not the appellants were members of this crowd was not proved beyond doubt. It was not established that the appellants were armed at the time, even if they were present. Not sufficient evidence was presented to satisfy the stringent test of reasonable doubt. The prosecution was unable to prove that a lawful action was conducted. They failed to prove that fear and insecurity in the area were spread. They failed to demonstrate that the mob had come with a specific intent to create terror. To the contrary, it seems that the raiding party may have acted in breach of a court order. We, however,

do not give any final opinion on this aspect. Suffice it to say that an ill-planned and prematurely executed action, which may or may not have been lawful, caused the incident. It should have been planned, executed, investigated, and prosecuted far better. The court will continue to give weight to the fundamental right to life and liberty of all citizens, and as in the present case, citizens with a clean previous criminal record.

13. The Inspector General of Police (Sindh) and the Prosecutor General, Sindh, shall ensure that investigators and prosecutors are informed of the Ghulam Hussain judgment (supra) and that they closely review the challan in this regard.

14. We have no hesitation in holding that:

(i) A terrorism offence was not proved.

(ii) The prosecution failed to prove its case beyond a reasonable doubt.

(iii) The appeals are allowed. The appellants are acquitted of the charge. They are all on bail, their bail bonds stand cancelled and sureties discharged, which may be returned to their respective depositors upon proper identification.

15. The learned Registrar shall send a copy of this judgment to the learned trial judges with the request to note the observations made in paragraphs 10 to 12 above.

JUDGE

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