IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Justice Muhammad Hasan (Akber)

Spl. Cr. Anti-Terrorism Jail Appeal No.15 of 2024
[Shakeel vs. The State]

For Appellant	:	Mr. Habib-ur-Rehman Jiskani, Advocate
For Respondent	:	Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh
Date of Hearing	:	08.04.2025
Date of Decision	:	05.05.2025

J U D G M E N T

Omar Sial, J.: Shakeel was convicted and sentenced for five years imprisonment and a Rs. 20,000 fine for offences under section 324 P.P.C. read with section 7 of the Anti-Terrorism Act, 1997. He was also convicted and sentenced to one year imprisonment for an offence under section 353 PPC. He was further convicted and sentenced for five years imprisonment and a fine of Rs.20,000 for an offence under section 23(1)(a) of the Sindh Arms Act, 2013. The conviction and sentence was handed down to him by the learned ATC Court No. 20 at Karachi on 22.11.2023.

2. F.I.R. No. 136 of 2022 was registered on 10.02.2022 on the complaint of A.S.I. Nasir Jamal of the Zaman Town police station. A.S.I. Jamal reported that during routine patrol led by him, two persons on a motorcycle were signalled to stop but instead of stopping the passenger on the rear seat of the motorcycle fired upon the police. As is always the case with such encounters, no person from the police or any police vehicle was hit or damaged by the accused; however, once

again, as is always the case, the police managed to shoot at and injure the left knee of the accused. The injured accused, who was identified as the appellant was arrested and F.I.R. No. 136 and 137 of 2022 registered against him.

3. The appellant pleaded not guilty and claimed to be tried. The conviction and sentences detailed in the first paragraph above were given to him at the end of the trial.

4. The learned counsel for the appellant submitted that he will not argue the appeal on merits but that the sentence already undergone by the appellant may be treated as his final sentence.

5. We have heard the learned counsel for the appellant and have also gone re-appraised the evidence. Our findings and observations are as follows.

6. An area of the case we have looked at closely is whether evidence was produced at trial sufficient to prove that a terrorism offence took place. It would be apt to reproduce our observations in a recently decided case (Spl. Cr. Anti-Terrorism Appeal No. 136 of 2024), which are equally applicable in the present case.

> *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.*"

7. 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. It is pertinent to mention that none of the witnesses testified that fear and insecurity spread in the area due to the incident, nor was the appellant confronted with the relevant questions in this regard when his section 342 Cr.P.C. statement was 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. We conclude that in the current case an offence punishable under section 7 of the ATA 1997 was not established by the prosecution. The appellant is therefore acquitted of that charge.

8. To consider the request of the appellant that the time he has already spent in jail was treated as his final sentence, we called for the jail role of the accused to be computed on the presumption that he had been entitled to section 382-B Cr.P.C. remissions. The jail roll shows that had the appellant been given remissions, he would have completed three years and three months of his sentence. The appellant does not have a previous crime record; the one alleged fire he made did not hit anybody; keeping in mind the circumstances of the case we have also given weight to the appellant's argument that he had

been arrested earlier and that he was intentionally shot by the police on the knee to permanently disable him. We have also considered that by not arguing on merits the appellant has saved the time of the court. He appears to be genuinely remorseful and repentant of what he has done. We have also considered that he is a poor and young man who wants to live his life respectably.

9. The learned Additional Prosecutor General after going through the record agreed that the requisite evidence to establish a terrorism offence was not produced at trial. He also gave his no-objection if the three years and three months that the appellant has remained in jail be treated as his final sentence.

Give the above:

(a) The appellant is acquitted of the conviction and sentence under section 7 of the ATA 1997.

(b) The appellant has already completed his sentence for the section 353 P.P.C. and does not want to contest on merits; hence, the conviction and sentence for that offence is upheld.

(c) The conviction of the appellant for offences under section 324 and section 23(1)(a) Sindh Arns Act, 2013 is upheld. However, the sentence is reduced to the term the appellant has already spent in jail. This will include the imprisonment in lieu of fine.

(d) The appellant may be released forthwith if not required in any other custody case.

JUDGE

JUDGE