

## IN THE HIGH COURT OF SINDH AT KARACHI

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

**Spl. Cr. Anti-Terrorism Appeal No.110 of 2024**  
**[Fazal Hussain @ Bachine vs. The State]**

Appellant	:	through Mr. Mamoon A.K. Shirwany, Advocate
For Respondent	:	Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh
Date of Hearing	:	22.04.2025
Date of Decision	:	05.05.2025

### **J U D G M E N T**

**Omar Sial, J:** Police Constable Rameez Shah, in an injured condition, recorded a section 154 Cr.P.C. statement at 2:00 a.m. on 05.06.2021 at the Civil Hospital, Karachi. Rameez stated that while he and another constable, Faizan, were on motorcycle patrol duty, they received information about the whereabouts of a drug peddler named Fazal who had charas. The two constables reached the identified spot and attempted to arrest Fazal. Fazal summoned some people, who came and beat the two constables and prevented them from arresting Fazal. The two constables had to be saved from the wrath of the people who had gathered by additional police personnel. In the ruckus, a fire was also shot, which hit an unidentified person. F.I.R. No. 539 of 2021 was registered under sections 353, 324, 427, 147, 148, 149, 337-A(i), 337-L(ii), 337-F(vi) P.P.C., read with section 7 of the Anti-Terrorism Act, 1997, at the Rizvia Society police station.

2. Appellant Fazal Hussain along with co-accused Sheeraz @ Kakar, Pervaiz Khan, Ahsanullah @ Paro, Nasir Khan, Mujahid, Abdul Malik, Jumma Khan @ Kala and juvenile accused Majid alias Maju were sent up to face trial. Learned A.T.C. No.7 Karachi after completing trial vide judgment dated 27.08.2024, convicted the appellant for five years for the offence under section 7(h) ATA 1997 and remaining accused were acquitted.

3. We have heard the learned counsel for the appellant and the learned Additional Prosecutor General. Our observations and findings are as follows.

4. What exactly transpired on the night of 04.06.2021 is shrouded in mystery. The record reflects that a botched and perhaps even an unlawful action was conducted by the two police constables, Rameez and Faizan, which led to them being beaten by a mob of people. It was established at trial that the two constables were not even in police uniform when they were beaten. The two constables attempted to pick up a person without any evidence that he had committed an offence or was in possession of charas. The allegation appears to be an afterthought. The appellant Fazal Hussain is not even accused of throwing stones at the two constables; instead, it is alleged that he said something to the mob of people in a language that neither Rameez nor Faizan understands. It is also pertinent to point out that before the registration of the F.I.R. against the appellant, an F.I.R., being 538 of 2021, was registered against the two constables for the murder of a person by firing. The pistol found at the spot had been issued to Constable Rameez, and the empties recovered from the spot had also been fired from the same pistol. It seems to us that F.I.R. No. 539 of 2021 may have been registered as a counterblast. It also puts into doubt the prosecution's narration of events as they had unfolded. Were the constables beaten because they had just killed a person?

5. The prosecution's case is that both the injured constables were taken to the Civil Hospital from the place of occurrence. It was 2:00 a.m. when Constable Rameez had recorded a statement under section 154 Cr.P.C., i.e., after being medically examined. Doubt is created when we note that it was not until 8:45 a.m. that Constable Faizan was examined. No explanation for this contradiction took place. This is surprising because the prosecution's case is that it was Faizan who had been more seriously injured.

6. Another aspect of the case that we find unusual is that, though Constable Rameez recorded the statement under section 154 Cr.P.C., S.I. Mohammad Asif registered the F.I.R. on behalf of the State. Although Rameez claimed that the appellant Fazal was a notorious drug peddler, it was admitted at trial that no crime record pertaining to Fazal had been produced by the police.

7. A.S.I. Syed Nasir Abbas Naqvi only saw that it was a person identified as Usman Khalil who was beating the two constables. This witness, who was the first responder to the news that the constables were being beaten, did not identify the appellant at trial. Another eyewitness to the aftermath, i.e., P.C. Mohammad Idrees Niazi, admitted that in the section 161 Cr.P.C. statement he had recorded, he had not named anyone but Samiullah. At trial, however, the witness admitted that he could not even identify Samiullah from the accused present in court. Yet another eyewitness, i.e., H.C. Wahid Ahmed, acknowledged that he had recorded his section 161 Cr.P.C. statement after three months of the incident and that he had not mentioned in it that he could recognize the accused if he saw them. He also admitted that the police showed him a photo of the appellant and that he had not seen who had beaten the constables.

8. No evidence was produced at trial to establish that the conditions specified in section 6(1)(b) or (c) of the ATA 1997 were fulfilled. No evidence was produced to show that the

design and intent of the appellant was to overawe the Government functionaries or create insecurity and fear in the area.

9. Given the above, we conclude that the prosecution not only failed to prove a case under the terrorism legislation but also failed to prove its case under the Pakistan Penal Code against the appellant beyond reasonable doubt. The appeal is allowed, and the impugned judgment is set aside. The appellant is acquitted of the charge. He may be released forthwith if not required in any other custody case.

JUDGE

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