IN THE HIGH COURT OF SINDH AT KARACHI

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

Spl. Cr. Anti-Terrorism Appeal No. 94 of 2023
Spl. Cr. Anti-Terrorism Appeal No. 95 of 2023
[Ali vs. The State]

Appellant	:	through Mr. Muhammad Yousif Advocate.
The State	:	through Ms. Hina Assistant Prosecutor General, Sindh.
Date of Hearing	:	21.04.2025
Date of Decision	:	05.05.2025

J U D G M E N T

Omar Sial, J.: A police party led by S.I. Syed Hasnain Raza was on routine patrol and snap checking of vehicles on 06.09.2022, when it signalled a car to stop. There were five people inside the car who all opened fire on the police party. The police fired in retaliation and killed two out of the five accused, while another two managed to escape. The appellant Ali was apprehended with an unlicensed pistol in an injured condition. F.I.R. No. 856 of 2022 was registered under sections 353, 324, 427, 411, and 34 P.P.C., read with section 7 of the Anti-Terrorism Act, 1997. F.I.R. No. 857 of 2022 was also registered for an offence under section 23(1)(a) of the Sindh Arms Act, 2013.

2. After a full-dress trial, on 17.04.2023, the learned Ant-Terrorism Court No. 8 at Karachi convicted and sentenced the appellant as follows:

(i) Five years for an offence under section 324 P.P.C.

(ii) One year for an offence under section 353 P.P.C.

(iii) Ten years for an offence under section 7(b) of the ATA 1997.

(iv) Six months for an offence under section 427 P.P.C.

(v) Three years for an offence under section 23(i)(a) of Sindh Arms Act, 2013.

3. The learned counsel for the appellant submitted that the case against the appellant was not one of terrorism and that he would not argue the case on merits; however, he requested that the sentence already undergone by the appellant be treated as their final sentence.

4. We have heard the learned counsel for the appellant and the learned Assistant Prosecution General. Our findings and observations after re-appraising the evidence are as follows.

5. **In Ghulam Hussain vs The State (PLD 2020 SC 61),** the Supreme Court 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, <u>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</u>. 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."

6. In the current case, no evidence was produced at trial to establish that the ingredients of section 6(1)(b) or (c) were satisfied. No witness was called at trial to prove the alleged insecurity. It is also evident from the very facts of the case that no design or intent was established for the offence to be categorized as a terrorism offence. An on-the-spot occurrence took place, which was not pre-planned or premeditated. We also find it unusual that none of the police party was hit by the alleged indiscriminate firing of five persons, but the police still managed to kill two persons in the car and injure the third. Insufficient evidence was led at trial to establish a charge under the terrorism legislation. The conviction and sentence under section 7 of the ATA 1997 is thus set aside.

7. The case against the appellant falling outside the ambit of terrorism would mean he would be entitled to section 382-B remissions. A jail roll was called for that showed that the appellant had completed eight years and one month of the sentence awarded to him. We find ourselves unable to reduce the sentence for an offence under section 324 P.P.C. i.e. five years due to the past criminal record of the appellant. F.I.Rs have been registered against him in seven police stations of Karachi.

8. Given the above, the appeals are allowed only to the extent of the conviction for section 7 of the ATA 1997. The convictions and sentences awarded to the appellant for the offenses under the Penal Code and the Sindh Arms Act, 2013 are upheld. The appellant may be released once he completes his five year sentence for which he will also be entitled to remissions.

9. The appeals stand disposed of in the above terms.

JUDGE

JUDGE