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. 184 of 2023
[Nisar & another vs. The State]

Appellants	:	through Mr. Muhammad Yousif , Advocate
The State	:	through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh
Date of Hearing	:	09.04.2025
Date of Decision	:	05.05.2025

J U D G M E N T

Omar Sial, J.: The appellants were nominated as accused in a case arising out of F.I.R. No. 45 of 2022 registered under sections 397, 353, 324, 186, and 34 P.P.C. Each was also charged in F.I.R. Nos. 46 and 47 of 2022 registered under section 23(1)(a) of the Sindh Arms Act, 2013. The case against the appellants is that on 26.01.2022, the appellants, during a mugging incident, shot at and injured a man and also shot at a police party that had intervened. The firing caused no damage to life or property, of the police but the police managed to shoot and injure the legs of both appellants. One unlicensed pistol was also recovered from each appellant.

2. After a full-dress trial, on 28.09.2023 the learned A.T.C. No. 6 at Karachi convicted the appellants and sentenced them to three years for offences under section 392 P.P.C.; seven years for an offence under section 324 P.P.C. and 397 P.P.C.; one year for an offence under section 337-F(iii) and ten years for an offence under section 7(1)(b); one year for an offence under section 353 P.P.C.; seven years for an offence under section 23(1)(a) of the Sindh Arms Act, 2013.

3. The learned counsel for the appellants submitted that the case against the appellants 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 appellants be treated as their final sentence.

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

5. We have concentrated on whether a terrorism offence was established in light of the evidence led at trial. It would facilitate reference to reproduce the reason which swayed the learned trial court to hold that the incident fell within the ambit of terrorism. The learned trial court observed that: “Sub-section 3 of section 6 of ATA, 1997 provides that the use or threat of use of any action falling within sub-section (2), which involves the use of a firearm, explosive or any other weapon is terrorism whether or not sub-section (1)(c) is satisfied.“ We respectfully and with humility hold a different view. What constitutes terrorism has been described in much detail 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. Needless to say, the judgments of the Supreme Court on points of law are binding on all. In the current case, no evidence was produced at trial to establish that the ingredients of section 6(1)(b) (even if it were to be assumed that use of firearms would be terrorism irrespective of what is contained in section 6(1)(c) were satisfied). No witness was produced 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. We have no qualms in concluding that the prosecution failed to justify a section 7 ATA conviction. The same is accordingly set aside.

7. The case against the appellants falling outside the ambit of terrorism would mean they would be entitled to section 382-B remissions. A jail roll was called for that showed that the appellants had completed ten years, eleven months, and twelve days, i.e., they had finished their sentence for the convictions they received for the Pakistan Penal Code and the Sindh Arms Act offences. After reviewing the record and confirming that the appellants had no previous crime record, the learned Additional Prosecutor General conceded that the sentence already undergone by the appellants would be an appropriate punishment.

8. Given the above, the appeal is allowed only to the extent of the conviction for section 7 of the ATA 1997. The convictions and sentences awarded to the appellants for the offenses under the Penal Code and the Sindh Arms Act, 2013 are upheld. They would be entitled to section 382-B Cr.P.C. remissions, and the sentences would run concurrently. The appellants may be released after the jail authorities confirm their sentences are complete and that the appellants are not required in any other custody case.

9. The appeal stands disposed of in the above terms.

JUDGE

JUDGE