

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial

Mr. Justice Muhammad Hassan (Akber)

Spl. Cr. Anti-Terrorism Appeal No. 169 of 2023

[Muhammad Iqbal vs. The State]

Spl. Cr. Anti-Terrorism Jail Appeal No. 199 of 2023

Spl. Cr. Anti-Terrorism Jail Appeal No. 200 of 2023

[Usman Shah vs. The State]

Appellant : Muhammad Iqbal
Through M/s. Abid Mehmood Arain
& Waqar Alam Abbasi, Advocates

Appellant : Usman Shah
Through Mr. Nadeem Ahmed Azar,
Advocate

Respondent : The State
through Mr. Muhammad Iqbal
Awan, Additional Prosecutor
General Sindh

Date of Hearing : 16.04.2025

Date of Decision : 05.05.2025

JUDGMENT

Omar Sial, J.: The prosecution's case is as follows: On 29.04.2022, Qasim Hussain Shah and a friend were deprived of their mobile phones and cash by three people riding a motorcycle. Qasim claimed that he had an eSIM installed on his phone, so he tracked his snatched phone on his friend's phone. Qasim, along with police personnel, reached the house, which was identified as the one where the stolen phone was. The door was opened upon being knocked, but the people inside opened fire on the visitors. A police constable sustained a firearm injury. All the accused, except Usman Shah, managed to escape. Usman told the police that the names of his companions who managed to escape were Gul and Iqbal. Iqbal was also subsequently arrested. F.I.R. No. 205 of 2022 was registered

under sections 353, 324, 392, and 34 P.P.C., read with section 7 of the Anti-Terrorism Act 1997. A pistol was also recovered from Usman Shah when he was arrested, thus F.I.R. No. 206 of 2022 was registered under section 23(1)(a) of the Sindh Arms Act, 2013.

2. Both the accused pleaded not guilty and claimed to be tried. After a full dress trial the learned Anti-Terrorism Court No. VII at Karachi convicted and sentenced the appellants as follows:

Ten years for an offence under section 7(1)(c) ATA 1997;

Five years for an offence under section 7(1)(h) ATA 1997;

Five years for an offence under section 23(1)(a) Sindh Arms Act 2013 was also given to Usman Shah.

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

The case against Usman Shah

4. Usman Shah's counsel submitted that a terrorism offence was not made out; thus, the sentences under the anti-terrorism legislation cannot be sustained. For the conviction and sentence under the arms legislation, counsel submitted that he would not argue on the merits, but requested that the sentence be reduced to the one already undergone by Usman Shah.

5. We have concentrated on whether a terrorism offence was established in light of the evidence led at trial. What constitutes terrorism has been explained 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, 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.”

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) or (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 A.T.A. conviction. The same are therefore set aside. It is also pertinent to mention that neither appellant was convicted and sentenced for a Pakistan Penal Code offence, i.e., section 353 and 324 P.P.C.

7. The case against the appellants falling outside the ambit of terrorism would mean they would be entitled to section 382-B remissions. The jail roll showed that Usman Shah had completed 10 years 5 months. After reviewing the record, the learned Additional Prosecutor General conceded that the sentence already undergone by the appellants would be an appropriate punishment.

The case against Mohammad Iqbal

8. The evidence against Mohammad Iqbal was that Usman Shah took his name after Usman's arrest. No other material evidence came on record against Mohammad Iqbal. Iqbal was allegedly one of the accused who had run away. No description of the accused who managed to escape was given in the F.I.R. or the subsequent police statements recorded by the witnesses. No identification parade was held after Iqbal's arrest to enable the witnesses to confirm that he was indeed the person who had run away. The injured P.C. Nadir could not identify the person who had shot at him. P.C. Nadir gave a different sequence of events than the other witnesses on how he got injured. No discovery was made upon the lead of Mohammad Iqbal. The statement of the co-accused in such circumstances would not be sufficient for conviction. As we have mentioned above, an offence under the terrorism legislation was not established. The appeal filed by Mohammad Iqbal is allowed and he is acquitted of the charge. He may be released if not required in any other custody case.

9. To conclude:

1. Spl. Cr. Anti-Terrorism Appeal No. 169 of 2023 filed by Mohammad Iqbal is allowed.
2. Spl. Cr. Anti-Terrorism Jail Appeal No. 199 of 2023 filed by Usman Shah is allowed.
3. Spl. Cr. Anti-Terrorism Jail Appeal No. 200 of 2023 filed by Usman Shah is dismissed, subject to the modification in sentence elaborated upon in paragraph 7 above.

JUDGE

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