

IN THE HIGH COURT OF SINDH AT KARACHI

Present : Omar Sial, J
Muhammad Hasan (Akber), J

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Spl. Cr. Anti-Terrorism Jail Appeal No. 58 of 2023
[Sain Bux @ Zakhmi Chandio & another vs. The State]

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Spl. Cr. Anti-Terrorism Jail Appeal No. 62 of 2023
[Asad Abbasi vs. The State]

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Mr. Habib-ur-Rehman Jiskani, Advocate for appellants in both appeals.

Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.

Date of hearing : 9th April, 2025

Date of Decision : 5th May, 2025

JUDGMENT

Omar Sial, J. The appellants Sain Bux alias Zakhmi Chandio, Abdul Razzaq, and Asad Abbasi were nominated as accused in a case arising out of F.I.R. No. 1571 of 2021 registered under sections 392, 397, and 34 P.P.C. read with section 7 of the ATA 1997. They were also nominated as accused in F.I.R. No. 1572 of 2021 for offences under sections 353, 324, 186, and 34 P.P.C. read with section 7 ATA 1997. Appellants Asad Abbasi and Sain Bux alias Zakhmi Chandio were also accused in F.I.R. Nos. 1573 and 1574, respectively, of 2021 under section 23(1)(a) of the Sindh Arms Act, 2013.

2. The case against the appellants is that on 27.09.2021, one Moin was going home on his motorcycle when four people riding two motorcycles intercepted and deprived Moin of his cell phone and money. A police party of the Shah Latif Town was passing by, and Moin told them what had happened. Moin, along with the police party, chased the accused. The accused,

instead of stopping, opened fire on the police party. None of the police was injured, but the police managed to injure one of the accused, later identified as Asad Abbasi. In addition, the two appellants were also arrested. The fourth accused, later identified as Rashid, managed to escape.

3. After a full dress trial, on 22.03.2023, the learned A.T.C. No. 2 at Karachi convicted the appellants and sentenced them to three years for an offence under section 392 P.P.C.; five years for an offence under section 6(2)(m) punishable under section 7(h) of the ATA 1997; five years each for offences under section 6(2)(n) punishable under section 7(h) ATA 1997; Sain Bux and Asad Abbasi were also sentenced to five years each for an offence under section 23(1)(a) of the Sindh Arms Act 2013.

4. 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.

5. 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.

6. **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.”

7. 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 the section 6 and section 7 ATA convictions. The same are accordingly set aside.

8. 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 appellant Sain Bux had completed nine years and one month and appellants Abdul Razzaq and Asad Abbasi had completed nine years and five months of the sentence awarded to them. After reviewing the record, the learned Additional Prosecutor General conceded that the sentence already undergone by the appellants would be an appropriate punishment. While considering the request made by the appellants, we have also considered that the appellants, remorseful and repentant for what they had done, wish to spend the rest of their lives as law-abiding citizens. Their admission has saved the time and money of the State. The jail authorities have reported that their conduct in jail has been satisfactory. We have also considered that the learned Additional Prosecutor General, on behalf of the

State, very correctly and wisely, does not object to a reasonable reduction in sentence.

9. Given the above, the appeals are allowed only to the extent of the conviction for sections 6 and 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; however, the sentences awarded to the appellants are reduced to the period they have already undergone. This will also include imprisonment instead of a fine. The appellants may be released if not required in any other custody case.

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

JUDGE

JUDGE