

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial
Mr. Justice Muhammad Hassan (Akber)

SPL. CR. ANTI TERRORISM APPEAL NO. 69 OF 2023
SPL. CR. ANTI TERRORISM APPEAL NO. 70 OF 2023
(Shafiq Versus the State)

SPL. CR. ANTI TERRORISM APPEAL NO. 74 OF 2023
SPL. CR. ANTI TERRORISM APPEAL NO. 75 OF 2023
(Noor Muhammad Versus the State)
(Shafiq Versus the State)

SPL. CR. ANTI TERRORISM APPEAL NO. 76 OF 2023
(Muhammad Haroon Versus the State)

Appellant	:	Shafiq through Mr. Zahoor Ahmed, Advocate
Appellants	:	Noor Muhammad & Muhammad Haroon through Mr. Zakir Hussain Khaskheli, Advocate
Respondent	:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh
Date of Hearing	:	29.04.2025
Date of Decision	:	05.05.2025

ORDER

Omar Sial, J.: The appellants were nominated as accused in a case arising out of F.I.R. No.674 of 2021 registered under sections 397, 353, 324, 186 and 34 P.P.C. read with Section 337-A(iv) and 7 of ATA 1997. Each was also charged in F.I.R. Nos 675, 676 and 677 of 2021 registered under section 23(1)(a) of the Sindh Arms Act, 2013. The case against the appellants is that

on 27.09.2021 at about 1515 hours the Appellants alongwith their three companions on three motor cycles reached at Iqbal General & Chemical Store, situated in K-Area, Korangi No.5, Karachi where complainant Saqib Hussain along with his brother Haris and salesman of PNG Company Wajid was present. Out of six accused persons four entered inside the shop and two remained outside the shop. They on show of weapons robbed cash amounting Rs.8,50,000/- from drawer of shop, cash Rs.3,50,000/- and mobile phone from Wajid and while they were trying to flee away from there, a police party reached there. On seeing police party, the accused persons opened fire. Police also retaliated firing in their defence, as a result of this encounter, DPC Rana Tasleem received injury on his right thigh. Appellants Noor Muhammad and Haroon also sustained injuries and they along with Appellant Shafiq were arrested at the spot and remaining three accused fled away from there. One unlicensed pistol was also recovered from each appellant.

2. After a full dress trial, the learned A.T.C. No. 2 at Karachi vide Judgment dated 15.04.2023 convicted the appellants and sentenced them to suffer seven years R.I. for offence under section 397 P.P.C., five years R.I. for offences under Section 6(2)(m) punishable under Section 7(H) of ATA 1997 r/w Section 353 PPC, for offence under Section 6(2)(n) punishable under Section 7(H) of ATA 1997 r/w Section 324 PPC and section 23(1)(a) of the Sindh Arms Act, 2013. They were also sentenced

to 4 years for offence under section 337(f) (v) PPC and pay Rs.25000/- jointly as Daman to the injured DPC Tasleem Rana.

3. Both 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 sentences 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. **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. 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 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 all the appellants had completed ten years, four months and 19 days and of the sentence awarded to them. After reviewing the record and confirming that the appellants had no previous crime record, the learned Additional Prosecutor General conceded that the sentences 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.

8. Given the above, all the appeals are allowed only to the extent of the conviction with respect to 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; 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, except payment of Rs.25,000/- jointly as Daman to injured DPC Tasleem Rana. Once, the payment of Daman is made, the appellants may be released if not required in any other custody case.

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

JUDGE

JUDGE