IN THE HIGH COURT OF SINDH, AT KARACHI

BEFORE:
MR. JUSTICE OMAR SIAL
MR. JUSTICE MUHAMMAD HASAN (AKBER)

Special Criminal Anti-Terrorism
Jail Appeals No.36 of 2023 and 37 of 2023

Appellant:	Muhammad Ikram through, Barrister Huma Sodher and Ms. Moeen Bano Sodhar, Advocates.
Respondent:	The State, through Mr. Iqbal Awan, Additional Prosecutor General
Date of hearing:	09.04.2025
Date of decision:	05.05.2025

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- The Appellant has challenged the consolidated Judgment dated 15.11.2022 (impugned Judgment) passed by the learned Anti-Terrorist Court No.I, Karachi Division, in Special Case No.527 & 527-A of 2021, arising out of FIR Nos. 431 & 432 of 2021 registered at P.S. Mochko Karachi, whereby the appellant Muhammad Ikram was convicted under Section 265-H(2) Cr.P.C. and sentenced to undergo rigorous imprisonment for 10 years with fine of Rs.50,000/= for the offence punishable under Section 7(b) of Anti-Terrorism Act, 1997, in case of non-payment of fine, he was ordered to suffer S.I. for 06 months more; R.I. for 10 years with fine of Rs.50,000/= for offence punishable under Section 324, PPC and in default of payment of fine appellant was also ordered to suffer S.I. for 06 months more; R.I. for 05 years with fine of Rs.20,000/= under Section 7(h) of ATA, 1997 and in case of default in payment of fine he shall suffer S.I. for 03 months more; R.I. for 02 years under Section 353, PPC with fine of Rs.20,000/= and in case of non-payment of fine he shall suffer S.I. for 02 months more; R.I. for 05 years under Section 23(i)(a) of Sindh Arms Act, 2013 with fine of Rs.50,000/= and in case of default in payment of fine the appellant was ordered to suffer S.I. for 03 months more. All the sentences were ordered to run concurrently and the benefit of Section 382-B, Cr.P.C. has also been extended to the appellant.

2. Since both the cases have been decided through a consolidated Judgment by the learned trial Court, the present two appeals are also being decided through this consolidated Judgment. After arguing the appeals at some length, learned counsel for the appellant states on instructions that, she would not press the instant appeals, if this Court reduces the sentence, awarded to the appellant, to a reasonable period as deem fit and proper, in view of the fact that since no one from the police side was injured whereas the appellant himself sustained one bullet injury and he is the sole supporter of his family. Such a proposal is not disputed by learned Additional Prosecutor General.

3. Heard and perused the record.

4. Case against the appellant is that on 23.10.2021 at 0135 hours, the police party saw a Toyota vehicle without number plate going towards Hawksbay Road side which was signalled to stop, out of which four culprits came out and started firing upon police which was retaliated by counter firing from police side. Resultantly, the appellant sustained bullet injury on his leg, who was apprehended, while the remaining three fled away. From appellant's possession, one 30 bore pistol and three live bullets were recovered. The vehicle was found to be stolen from jurisdiction of PS Shah Faisal Colony and such FIR 742/2021 was already registered. The appellant, after preparation of memo of arrest, was shifted to hospital in Chippa ambulance, hence the above two FIRs were registered against the appellant and the three-absconding accused. On completion of investigation, a report under section 173 Cr.P.C. was submitted before the learned Special Judge, Anti-Terrorism Court No.I, Karachi Division (Trial Court) for the purpose of trial along with the trial of the referred connected FIR, which convicted the appellant in the terms as detailed in the preceding paragraph.

5. With respect to the offence of Terrorism, the Honourable Supreme Court in the case of '*Ghulam Hussain v. The State*' PLD 2020 SC 61, has observed at Paragraph No.13 of its Judgment in the following terms:

> "...For the purpose of further clarity on this issue it is explained for the benefit of all concerned that the cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-Terrorism Act, 1997 are cases of those heinous offences which do not per se constitute the offence of terrorism but such cases are to be tried by an Anti-Terrorism Court because of their inclusion in the Third Schedule. It is also clarified that in such cases of heinous offences mentioned in entry No. 4 of the said Schedule an Anti-Terrorism Court can pass a punishment for the said offence and not for committing the

offence of terrorism. It may be pertinent to mention here that the offence of abduction or kidnapping for ransom under section 365 - A, P.P.C. is included in entry No. 4 of the Third Schedule and kidnapping for ransom is also one of the actions specified in section 7(e) of the Anti Terrorism Act, 1997. Abduction or kidnapping for ransom is a heinous offence but the scheme of the Anti-Terrorism Act, 1997 shows that an ordinary case of abduction or kidnapping for ransom under section 365- A, P.P.C. is merely triable by an Anti-Terrorism Court if kidnapping for ransom is committed with the design or purpose mentioned in clauses (b) or (c) of subsection (1) of section 6 of the Anti-Terrorism Act, 1997 then such offence amounts to terrorism attracting section 7(e) of that Act. In the former case the convicted person is to be convicted and sentenced only for the offence under section 365 -A, P.P.C. whereas in the latter case the convicted person is to be convicted both for the offence under section 365 -A, P.P.C. as well as for the offence under section 7(e) of the Anti-Terrorism Act, 1997...." (Emphasis supplied)

6. The above principles were also followed in '*Javed Iqbal and others v. The State*' 2024 SCMR 1437, in a case of kidnapping for ransom, wherein while discussing the scope of 'Terrorism', it was observed that:

"5…..To constitute an offence of a terrorism, it is necessary that; firstly, the action must fall within the ambit of subsection (2) of section 6 of the ATA of 1997; and secondly, the intent, motivation, object, design and purpose behind the said act has any nexus with the ingredients of clauses (b) and (c) of section 6(1) of the ATA of 1997. To formulate an opinion whether or not such offence is an act of terrorism, the allegations made in the FIR, material collected during the investigation and the evidence available on the record have to be considered on the touchstone of section 6 of the ATA of 1997, as a whole. In the absence of any of the ingredients of section 6 of the ATA of 1997, any action, irrespective of its heinousness, causing terror or creating sense of fear and insecurity in the society, does not fall within the ambit of terrorism.

6. It is important to mention here that under section 13 of the ATA of 1997, the Federal Government or the Provincial Government may establish one or more Anti-Terrorism Courts, for the purpose of providing for the speedy trial of the cases of the Third Schedule offences. The special court is assigned with the power to try offences falling under the ATA of 1997 as well as heinous offences, which otherwise do not fall within the definition of terrorism, but is/are part of the Third Schedule. For making any offence triable by an ATC other than the offences falling under the ATA of 1997, it is for the government to declare any offence as a heinous offence and to include it in the Third Schedule, to be tried by the ATC, only for the purpose of speedy trial. In exercise of such power, the government has categorized certain offences as heinous, which were included in the Third Schedule to the ATA of 1997 through Entry No. 4 Act II of 2005. ….."

"7. Pursuant to Entry No.4, the offence of abduction or kidnapping for ransom was included in the Third Schedule to the ATA of 1997 and is made triable by the ATC, to the exclusion of any other court. Section 13 of the Act provides dual power to the ATC i.e., to try the offences falling under the ATA of 1997 and try heinous offences, which otherwise do not fall within the definition of a terrorism, but included in the Third Schedule to the ATA of 1997 by the government. It is important to mention here that the action involving

kidnapping for ransom, hostage-taking or hijacking is an offence under clause (e) of subsection (2) of section 6 of the ATA of 1997, if it establishes that such action falls within the meaning of subsection (1) of section (6) of the ATA of 1997. If kidnapping for ransom, hostage-taking or hijacking is done with intent, design, purpose, or object of terrorism, the same shall fall within the meaning of subsection (1) of section 6 and is an offence under subsection (2)(e) of section 6 of the ATA of 1997, triable exclusively by the ATC and punishable under section 7(e) of the ATA of 1997. If there is no intent, object, purpose or design of terrorism in committing an act of abduction or kidnapping for ransom, it shall not be an act of a terrorism within the meaning of subsection (1) of section 6 of the ATA of 1997. Thus, in absence of an element of a terrorism, an act of abduction or kidnapping for ransom for personal vendetta shall constitute an offence under section 365-A, P.P.C. However, in view of heinousness of such act, it is exclusively triable by the ATC, only for the purpose of its speedy trial, but the accused shall be charged under the relevant provision of law, instead of charging him under any of the provisions of the ATA of 1997."

7. The events in the present case are not based upon some pre-meditated attack on the police party, but the same was a spontaneous attack of stopping of the vehicle by police, neither any empty shell fired by the appellant has been recovered nor anyone from the police party was injured, whereas the appellant himself suffered a bullet injury in his leg. Applying the principles settled in the above two reported Judgement of the Supreme Court to the facts of the present case, case under section 7 of the Act 1997 is not spelled out against the appellant.

8. It is also to be considered that the ***Quantum of punishment*** is not only discretion of the Court, which has to be exercised while considering the circumstances of the case, but also is an independent aspect of Criminal Administration of Justice which, too, requires to be done keeping the concept of ***punishment*** in view. Since, the appellant is not pressing captioned appeals on merits but seeking reduction of sentence, therefore, I would examine the legality of such plea. Conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation so as to bring peace which could only be achieved either by keeping evils away (criminals inside jail) or strengthening the society by reforming the guilty. There are certain offences, the punishment whereof is with phrase "**not less than**" while there are other which are with phrase "**may extend upto**". Thus, it is quite obvious and clear that the law itself has categorized the offences in *two* categories regarding quantum of punishment. For one category the Courts are empowered to award *any* sentence while in *other* category the discretion has been limited by use of the phrase **'not less than'.** Such difference itself is indicative that the Courts have to appreciate certain circumstances before setting quantum of punishment in *first* category which appear to be dealing with those offences, the guilty whereof may be given an opportunity of "**reformation**"

by awarding less punishment which how low-so-ever, may be, will be legal. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family/dependents too. A reformed person will not only be a better brick for society but may also be helpful for future by properly raising his dependents. Since, the remaining offences wherein the appellant has been convicted fall within the category of offences ***'may extend upto'***; the appellant has suffered bullet injury and no one form the police party was injured and appellant claims himself to be sole bread earner; these are circumstances which justify reduction in sentence.

9. Given the above, the appeals are allowed only to the extent of the terrorism conviction. The convictions and sentences awarded under the Penal Code and the Sindh Arms Act, 2013 are upheld. As per the jail roll received from the Senior Superintendent, Central Prison Karachi dated 09.04.2025, appellant Muhammad Ikram has already served total sentence of 11 years 07 months and 08 days (including remissions). The appellant has completed his sentence. He may be released if not required in any other custody case.

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