

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Omar Sial

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Spl. CrI. Anti-Terrorism Jail Appeal No.28 of 2024

Appellants : i. Mehtab Ali S/o Muhammad Ali
ii. Farman Ali S/o Muhammad Arif
through Mr. Qadir Hussain Khan, Advocate

State : through Mr. Muhammad Iqbal Awan, Addl.
Prosecutor General Sindh.

Date of Hearing : 09.09.2025

Date of Order : 16.09.2025

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J – The Appellants have filed the instant Spl. CrI. Anti-Terrorism Jail Appeal on being aggrieved and dissatisfied with the Judgment dated 09.01.2024 passed by learned Judge, Anti-Terrorism Court No.XIX, Karachi [**Trial Court**] in (1) Special Case No.16/2023 under FIR No.798/2022 U/s 397/353/324/34 PPC R/w 7 of ATA, 1997 and (2) Special Case No.16-A/2023 under FIR No. 799/2022 U/s 23(i)(a) SAA, 2013 both registered at PS Korangi, Karachi; whereby they were convicted and sentenced as under:

ACCUSED MEHTAB ALI

(a) Convicted u/s 397/34 PPC and sentenced to undergo RI for 07 seven years and fine Rs. 20,000/- in case of default of payment he shall further undergo SI for three month.

(b) Convicted u/s (h) of ATA, 1997 read with section 353 PPC and sentenced to undergo RI for (02) two years and fine of Rs. 20,000/- in case of default of payment, he shall further undergo SI for (03) three months.

(c) Convicted u/s 7 (b) ATA, 1997 read with section 324 PPC and sentenced to undergo RI for (05) five years and fine of Rs. 20,000/- in case of default of payment, he shall further undergo SI for (06) six months.

(d) Convicted u/s 23 (1)A Sindh Arms Act, 2013 and sentenced to suffer RI for (05) five years and fine of Rs. 20,000/- In case of default of payment, he shall further undergo SI for (03) three months. The sentenced awarded to him shall run concurrently, the benefit of section 382 (b) Cr.P.C is extended to him

ACCUSED FARMAN ALI

(a) Convicted u/s 397/34 PPC and sentenced to undergo RI for (07) seven years and fine Rs.20,000/- in case of default of payment he shall further undergo SI for three months.

(b) Convicted u/s 7 (h) of ATA, 1997 read with section 353 PPC and sentenced to undergo RI for (02) two years and fine of Rs.20,000/- In case of default of payment, he shall further undergo SI for (03) three months.

(c) Convicted u/s 7 (i)(b) ATA, 1997 read with section 324 PPC and sentenced to undergo RI for (05) five years and fine of Rs. 20,000/- In case of default of payment, he shall further undergo S.I. for (06) six months. The sentenced awarded to him shall run concurrently, the benefit of section 382 (b) Cr.P.C is extended to him.

2. Brief facts of the prosecution case are that on 28.12.2022 the complainant Muhammad Zahoor was going towards his house by foot when he reached at Sarfraz Pilot School near Tayyaba Masjid Zaman Town Karachi, at about 0300 hours, three culprits came to him on motorcycle, took out the pistol and committed robbery from the complainant, in the meantime police party headed by SIP Muhammad Sarwar of PS Korangi who was on patrolling duty along with his subordinate staff HC Malik Amir, PC Manzoor and PC Ghulam Farooque arrived there in police mobile bearing No SPB-505 and noticed three persons were committing robbery from Ghulam Farceque and recovered one 30 bore pistol rubbed number loaded magazine containing two live bullets and one in its chamber. SIP conducted personal search of accused Farman Ali and recovered one mobile phone, one wallet containing amount of Rs.3000/- and one CNIC colored copy in the name of Zahoor son of Nasiruddin which were

robbed from complainant Zahoor. Accused Mehtab could not produce valid license of recovered pistol. SIP secured empties from the spot and sealed the case property at spot under memo of arrest and recovery in presence of mashirs Muhammad Zahoor and PC Ghulam Farooque.

3. ASI Sohail Ahmed Ghori was called from police station, the ambulance was also called, therefore, the injured accused Mehtab was shifted to Jinnah Hospital for his treatment through ASI Sohail Ahmed. Thereafter, SIP came back at police station accompanied with Muhammad Zahoor, PC Ghulam Farooque and HC Malik Amir along with the incriminating articles recovered from the possession of accused persons and lodged the FIR on the complaint of complainant Muhammad Zahoor against accused persons as mentioned above and another FIR was lodged by the complainant SIP Ghulam Sarwar u/s 23 (1)(a) SAA, 2013 against accused Mehtab Ali.
4. After registration of FIRs, the investigation was handed over to SIP/IO Ghulam Shabir Dahiri, who conducted the investigation and afterwards the investigation was transferred to PI Qurban Hussain Abbasi who after necessary formalities submitted the charge sheet in the Court of law before Administrative Judge ATC Karachi Division at Karachi having jurisdiction.
5. A formal charge was framed against accused persons to which they pleaded not guilty and claimed to be tried at Ex.03 and their pleas vide Ex. 03/A & 03/B.
6. The prosecution, in order to prove its case, examined as many as 07 Prosecution Witnesses (PWs) and exhibited various documents and other items. Thereafter, statements of accused persons were recorded u/s 342 Cr.P.C in main case vide Ex.16 to 17 whereby they denied the

allegations of the prosecution levelled against them and stated that they are innocent and have been booked falsely with malafide intention in this case. However, they did not examine themselves on oath nor led defense evidence in their support. Accused Farman Ali further stated that he was arrested from Nasir Jump Welding shop. Statement of accused Mehtab Ali U/s 342 Cr.P.C. was also recorded in Spl. Case No.16-A/2023 wherein he denied the allegations of the prosecution and stated that he is innocent and booked falsely with malafide intention in this case. However, he did not examine himself on oath nor led any evidence in his defense. Lastly, he prayed for justice. The learned trial Court, after hearing the parties and appraisal of the evidence, convicted and sentenced both the appellants vide Judgment dated 09.01.2024.

7. We have heard the learned counsel for the appellants as well as the learned Addl. P.G. and with their assistance meticulously perused the record.
8. Learned counsel for the appellants does not press the instant appeal on merits and requests that the appellants may be released on the ground that they have served out a major portion of sentence. He further submits that the impugned order suffers with infirmity in sentencing awarded under the Anti-Terrorism Act, 1997. We have noticed that the trial Court has convicted the appellant Mehtab Ali U/s 397/34 PPC for the offence of committing dacoit and sentenced R.I. for two years, U/s 7(h) ATA, 1997 read with section 353 PPC and sentenced for R.I, two years, 7(i)(b) ATA, 1997 read with Section 324 PPC and sentenced R.I, for five years so also convicted U/s 23(1)(A) Sindh Arms Act, 2013 and sentenced to suffer R.I. for five years. Similarly, accused Farman Ali was convicted U/s 397/34 PPC for the offence of committing dacoit and sentenced R.I. for two years, U/s 7(h) ATA, 1997 read with section 353

PPC and sentenced R.I, for five years. We have further noted that conviction and sentence awarded under various provisions of PPC, 1860 i.e. Section 353 and Section 324 PPC, 1860 while reading with Section 7 ATA. No doubt, the trial Court is empowered to sentence under the ATA in case existential ingredients of terrorism as defined in Section 6 ATA are attracted and in its absence the Anti-Terrorism Court is empowered to try the cases as per the given schedule of offence(s) in the schedule attached with the ATA and pass any order stipulated in the relevant statutes be that as it may PPC, Explosive Substance Act, 1908 or any other statute having penal provisions. However, we have observed that such ingredients of Section 6 ATA are absent and thus reading penal provisions i.e. Section 7 ATA are not attracted. Therefore, the sentence cannot be sustained or read out with Section 7 ATA in view of the dictum laid down by Larger Bench of the Supreme Court of Pakistan reported in the case of ***Ghulam Hussain vs. The State (PLD 2020 SC 61)***.

9. In view of the above discussion, the impugned Order dated 09.01.2024 is maintained with modification that the conviction and sentence awarded to the Appellants are not to be considered or read under sections 7(h) or 7(i)(b) of ATA, 1997. Accordingly, the instant Special Criminal Anti-Terrorism Jail Appeal is dismissed; however, while taking lenient view, we reduce the sentence of the appellants to the period already undergone in custody. The Appellants shall be released unless they are not wanted in any other custody case.
10. The instant Special Criminal Anti-Terrorism Appeal stands dismissed in the above terms.

JUDGE

JUDGE

