

IN THE HIGH COURT OF SINDH, KARACHI.

Before:

Mr. Justice Omar Sial.

Mr. Justice Miran Muhammad Shah.

Spl. CrI. Anti-Terrorism Appeal No.98 of 2023

Appellant : Muhammad Hashim son of Muhammad Nisar.
Through Mr. Mahmood A.K. Shirwany, advocate

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

(2). Spl. CrI. Anti-Terrorism Appeal No.99 of 2023

Appellant : Muhammad Hashim son of Muhammad Nisar.
Through Mr. Mahmood A.K. Shirwany, advocate

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

(3). Spl. CrI. Anti-Terrorism Appeal No.100 of 2023

Appellant : Muhammad Hashim son of Muhammad Nisar.
Through Mr. Mahmood A.K. Shirwany, advocate

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

Date of hearing : **29.10.2025.**

Date of Judgment : **___11.2025.**

J_U_D_G_M_E_N_T

Miran Muhammad Shah, J:- Through these Special Criminal Anti-Terrorism Appeals, the appellant namely Muhammad Hashim son of Muhammad Nisar, has called into question the Judgments dated 31.05.2023, passed by the learned Judge, Anti-Terrorism Court No.VI, Karachi in Special Case No.B-456(vi) of 2015, arising out of Crime/F.I.R No. **29 of 2015** for offences under Sections **324, 353/34 PPC** read with Section 7 of the Anti-Terrorism Act, 1997; Special Case No.B-457(vi) of 2015 arising out of Crime FIR No.30 of 2015 for offence under Section 23(i)-A Sindh Arms Act, 2013 and Special Case No.B-458(vi) of 2015 arising out of Crime/FIR No.31 of 2015, for offences under Sections 302, 109, 34 PPC read with section 7 Anti-Terrorism Act, 1997, all Special Cases (*Re: The State Vs. Muhammad Hashim alias Qari*) respectively all FIRs registered at police station North Nazimabad, Karachi.

2. The brief facts of the prosecution case are that on 18.02.2015 at about

0835 hours, near Al-Kareem Centre, Block-E, North Nazimabad, Karachi, a police mobile during the patrolling in the area saw two persons firing at the occupant of Car No.AYY 635, when the police intervened, the assailants also opened fire on police party. After an exchange of firing, one assailant Muhammad Hashim alias Qari was arrested on the spot with an unlicensed 30-bore pistol loaded with four cartridges and two empty magazines. His accomplice escaped on a motorcycle and the accused identified him as Khalid. The two victims, Kareem Hashwani and his driver Muhammad Nawaz died at the spot.

3. Three First Information Reports (FIRs) were registered at police station on the same day. FIR No.29 of 2015 under Sections 353, 324, 34 PPC for the assault on police (registered at 0935 hours), FIR No.30 of 2015 under Section 23(1)(a) of Sindh Arms Act, 2013 for the unlicensed pistol and ammunition seized from the accused (registered at 0945 hours) and FIR No.31 of 2015 under Section 302, 34 PPC read with Section 7 Anti-Terrorism Act, 1997, (registered at 1250 hours) for the murders of Kareem Hashwani and Muhammad Nawaz. FIRs No. 29 and 30 were lodged by SIP Syed Idress Pasha while FIR No.31 of 2015 was lodged by Syed Amir Rehman.

4. After completion of the investigation, the Investigating officers submitted charge sheets against the appellant/accused in the instant cases before the learned Administrative Judge Anti-Terrorism Courts, Karachi Division, from where the cases were transferred by this Court to the Anti-Terrorism Court-VI, Karachi for trial of the appellant/accused, in accordance with law.

5. After completing the investigation, the police submitted the charge sheet against the appellant/accused. The trial Court, after completing the requisite formalities, framed consolidated charges against the appellant/accused, to which he pleaded not guilty and claimed to be tried. All three cases were amalgamated under section 21-M of Anti-Terrorism Act, 1997 vide order dated: 05.11.2015 with the case No.B-458 of 2015 treated as the leading case.

6. To prove its case, the prosecution examined nine (09) witnesses. **PW No.1, SIP Muhammad Waris** was examined at Ex.05, he has produced memo of blood samples seized by Police Insp. (P.I) Hameedullah at Ex. 05/A, **PW No.2, Amir Rheman Syed** was examined at Ex.08, he has

produced his statement under Section 154 Cr.P.C and F.I.R No: 31 of 2015 at Ex.08/A and 08/B respectively. **PW No.3, SIP Syed Idrees Pasha** was examined at Ex. 09, he has produced Roznamcha entry No: 65, memo of arrest and recovery, FIRs Nos. 29 & 30 of 2015 along with Qaimi entries, memo of arrest by SIP Abdul Hakeem and memo of inspection of place of incident at Exh.09/A to 09/H respectively. **PW No.4, SIP Sheeraz Iqbal** was examined at Ex. 10, he has produced memo of inspection and seizure of vehicle/Car bearing registration No.AYY-635, at Ex.10/A. **PW No.5, Noshad Ali** was examined at Ex.11, he has produced memos of inspection of dead bodies along with inquest reports at Ex. 11/A to 11/D respectively, **PW No.6, MLO/Dr. Abid Haroon** was examined at Ex.13, he produced two letters in number, given to him by SIP Abdul Hakeem, MLC No.1113 of 2015, PM No.138 of 2015 along with cause of death certificate of deceased Karim Abdul Muhammad, MLC No.1112 of 2015 and P.M No.139 of 2015 along with cause of death certificate of deceased Muhammad Nawaz at Ex.13/A to 13/H respectively. **PW No.7, PC Mubashar Jawed** was examined at Ex.16, **PW No.8, ASI Muhammad Mushtaq** was examined at Ex.17, he has produced order of SHO for deputing him as well conversant of deceased SIP Abdul Hakeem (now died) at Ex.17/A. **PW No.09, Inspector Hameedullah Khan Niazi** was examined at Ex.20, he has produced roznamcha entries No.20 and 22, order of SSP for assigning him for investigation of the case, sketch of place of incident, letters addressed to the incharge FSL for examination of the said car as well as its reports and also letter to incharge CRO for its report at Ex.18/A to 18/K respectively. Thereafter, the learned APG for the State closed side of the prosecution at Ex.19 on 06.03.2025.

7. After recording the statement of the appellant/accused under Section 342 Cr.P.C and hearing final arguments, the learned trial Court vide Judgment dated 31.05.2023, convicted and sentenced the appellant/accused as follows: Under Section 7(1)(a) of the Anti-Terrorism Act, 1997 read with section 302(b) PPC to death for the murder of Kareem Hashwani and to death under section 302(b) PPC for the murder of Muhammad Nawaz with the direction that he be hanged by the neck until dead. The appellant/accused was also directed under Section 544-A Cr.P.C to pay Rs.20,00,000/- each as compensation to the legal heirs of both deceased persons and in default of payment to undergo six months simple

imprisonment for each. Further under Section 7(b) of the Anti-Terrorism Act, 1997 he was sentenced to ten (10) years Rigorous Imprisonment and a fine of Rs.100,000/-, in default whereof he would suffer six months imprisonment; under Section 324 PPC to seven (07) years Rigorous Imprisonment and a fine of Rs.100,000/- in default six months imprisonment; and under Section 353 PPC to one (01) year's Rigorous Imprisonment and a fine of Rs.10,000/- and in default three months' imprisonment. All substantive sentences were ordered to run concurrently and the appellant/accused was extended the benefit of section 382-B Cr.P.C. The case of the proclaimed offender accused Khalid and Moulvi Rasheed were kept on dormant file, to be activated upon their arrest and production before the learned trial Court.

8. The learned counsel for the appellant/accused submits that the appellant is innocent and has been falsely implicated with mala fide intentions. He argues that the trial court failed to properly appreciate the evidence, as the prosecution witnesses did not support the case, which is riddled with lacunas, contradictions, and material improvements. It is contended that the trial court wrongly shifted the burden of proof onto the appellant, whereas the prosecution failed to discharge its own burden. The evidence, particularly the cross-examinations, contains serious contradictions rendering the witnesses unreliable, yet the trial court ignored these defects and denied the appellant the benefit of doubt. Counsel submits that the trial court misread and over-read the evidence, resulting in a miscarriage of justice. He argues that the impugned judgment is based on misappreciation of facts, lacks legal justification, and relies on the quantity rather than the quality of evidence. He further submits that the trial court failed to apply judicial mind and convicted the appellant without any cogent or incriminating material on record. According to counsel, the judgment is arbitrary, contrary to settled principles of criminal justice, and therefore liable to be set aside, with the appellant acquitted of all charges.

9. On the other hand, the learned Additional Prosecutor General, Sindh opposed the instant Special Criminal Anti-Terrorism Appeals on the ground that the Investigating Officer had explained the delay in sending the articles to the FSL. He further submits that in absence of evidence of tampering, such delay does not affect the reliability of the positive report. He further

submits that the safe custody of the recovery was established through documentary evidence, showing that the pistol and spent bullet casings were sealed at the spot and received in proper condition by the concern department for examination. He completely denied the defence allegations and stated that no major contradictions existed in the evidence of the PWs. In fact, the material evidence remained un-shattered. In support, the learned Additional Prosecutor relied on precedent of the Hon'ble Superior Courts report as 2011 SCMR 1046 and 2022 YLR Note 97. Therefore, he prayed for the dismissal of the instant Special Criminal Anti-Terrorism Appeals.

10. We have heard the learned counsel for the appellants as well as learned Additional Prosecutor General, Sindh for the State and have perused the entire material available on record with their assistance. At the first instance, I shall deal with Special Criminal Anti-Terrorism Appeal No.100 of 2023 arising out of FIR No.31 of 2015, registered under Section 302, 109 and 34 PPC read with section 7 Anti-Terrorism Act, 1997. Since the punishment awarded in this matter is the death sentence to the accused and section 302(b) PPC has been applied, this case may be considered as the main case, while the rest of the cases would be discussed, thereafter. In the impugned judgment, the learned trial Court has consolidated the judgment and joint charge was framed to which the accused pleaded not guilty. The evidence came on record has fully implicated the present applicant/accused, as he was apprehended at the spot in the presence of eye-witnesses, who actually witnessed the commission of the offence of the murder in front of their eyes. They also testified that the accused had made firing upon the police party also, which was on routine patrolling duty. The delay in obtaining FSL report has been well-explained by the Investigation Officer of the case, as such delay does not indicate any tampering with the evidence. In fact, the report is positive. The failure of the prosecution or the patrolling police party to associate private witnesses, as argued, does not apply due to circumstances faced by the public in the city of Karachi these days, where private persons are often reluctant to get involved in such cases especially, those of a heinous nature. There is a plethora of case law that the evidence of police officials is confidence-inspiring if it remained un-shattered. In the present case, the accused in his statement has neither produced any evidence nor stated anything on oath. Mere allegations that the PWs were inimical towards the accused or that he is a Hafiz Quran and

was picked up by police in Sultanabad, do not weaken the credibility of the prosecution's case. The medical evidence has also supported the prosecution. It has been stated that there were seven firearm injuries on the deceased Kareem Hashwani and six firearms injuries of a different nature on the deceased Muhammad Nawaz. Rigor mortis was present in both bodies and the cause of death was declared as unnatural caused, due to firearm injuries to the chest, arms and shoulders. While the cross-examination remained confined to the size of the bullet. The testimony of the Medico-Legal Officer remained unshattered. The presence of the present appellant/accused at the spot is undeniable, as he was apprehended from there. He along with his absconding accomplices, made fire shots upon both the deceased and also fired upon the police vehicle, as deposed by the witnesses examined. The case law produced by the learned counsel for the appellant/accused is not relevant. In fact, some of the case law has been cited only for the purpose of seeking a reduction of the sentence, without denying that the incident took place. There may indeed be delays in obtaining the FSL and medical reports, which could potentially be a ground for claiming the benefit of doubt. The counsel for the appellant has seriously questioned the motive for the murder; however, no strong motive is reflected in the statement of the appellant/accused either, except for the use of the term 'inimical', for which no evidence is provided, nor are any specific reasons for the enmity mentioned. The counsel for the appellant/accused further pleaded for mitigating circumstances based on the above arguments.

11. Before diverging towards the conclusion and the case law in support of the conclusion, we would like to put in our observations on the sentence of the death penalty, its repercussions and its pros and cons for society at large. The death penalty debate centers on arguments for its use, including retribution, closure for victims' families, and crime prevention, and arguments against it, which cite its potential for error (irreversibility), racial bias, lack of proven deterrence, and moral objections that it is cruel or a violation of human rights. The debate is complex and involves legal, ethical, and practical considerations, with many countries increasingly opting for life imprisonment as an alternative. *Arguments in favor of death penalty*

- a). Retribution: Some believe that those who commit murder have forfeited their own right to life and that the death penalty is a just punishment for

the taking of another's life.

b) Closure for victims' families: Proponents argue it provides a sense of justice and finality for the families of victims.

c) Incapacitation: Executing a convicted murderer ensures they cannot commit further crimes, either in prison or if they were to be released.

d) Deterrence: Some argue that the threat of the death penalty deters others from committing similar crimes, though this is a heavily debated point.

Arguments against death penalty

a) Irreversible error: The justice system is not flawless, and there is the irreversible risk of executing an innocent person.

b) Lack of proven deterrence: Many studies have shown that the death penalty is no more effective at deterring crime than long-term imprisonment.

c) Racial and socioeconomic bias: The application of the death penalty can be influenced by factors such as race and the quality of legal representation, leading to systemic bias.

d) Moral and ethical objections: Opponents argue that capital punishment is a violation of the right to life and that state-sanctioned killing is inherently immoral, regardless of the crime committed.

e) Cost: The death penalty process, with its lengthy appeals, can be more expensive than life imprisonment.

f) Cruel and unusual punishment: Some consider the death penalty to be a form of torture and a cruel and unusual punishment.

14. In support of our observations on the death penalty, we rely upon the following case laws i.e. 2024 SCMR 1474, (ii) 2014 SCMR 1034, (iii) 2013 SCMR 1582, (iv) PLD 2025 S.C 425 and (v) PLD 2013 S.C 793, reproducing the relevant portions that are applicable to the present case:-

2024 SCMR Page 1474,

In the cases of 'Hassan V. The State and Sikandar Hayat V. The State' it has been laid down by this Court that in a case where a convict sentenced to death undergoes period of custody equal to or more than a full term of imprisonment for life during the pendency of his judicial remedy against his conviction and sentence of death, the principle of 'expectancy of life' may be considered as a relevant factor along with other circumstances for reducing his sentence of death to imprisonment for life.

2014 SCMR Page 1034,

21. A single mitigating circumstance, available in a particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment No clear guideline, in this regard can be laid down because facts and circumstances of one

case differ from the other, however, it becomes the essential obligation of the Judge in awarding one or the other sentence to apply his judicial mind with a deep thought to the facts of a particular case. If the Judge/Judges entertain some doubt, albeit not sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows. So it is better to respect the human life, as far as possible, rather to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed.

2013 SCMR Page 1582,

“I am conscious of the fact that this Court is not a clearing house or a corrective forum to revise the sentences passed by competent Court in criminal cases. It is certainly not the function of this Court to interfere and tinker with legal sentences so awarded. However, if the sentence is found to have been measured fancifully in breach of recognized principles of natural justice, this Court, in the interest of justice and fair-play, must intervene.’

15. In such circumstances, such pleadings of the appellant/accused can be considered at this stage, and his death sentence may be converted into life imprisonment (25) years. Since he has already been given the benefit of doubt of Section 382-B Cr.P.C, and the convictions in the connected offshoot cases have also been proved against the present appellant/accused, the sentence shall run concurrently. Accordingly, the judgment of the present appellant/accused in Spl. Criminal Anti-Terrorism Appeals No.98 and 99 of 2023 is upheld, whereas the conviction in Special Criminal Appeals No.100 of 2023 is partially upheld and is converted into life imprisonment.

15. The instant Special Criminal Anti-Terrorism Appeals stand disposed of in the above terms.

JUDGE

JUDGE

Manthar Brohi.