

**IN THE HIGH COURT OF SINDH AT KARACHI****Present:****Mr. Justice Omar Sial****Mr. Justice Miran Muhammad Shah****Special Criminal Anti Terrorism****Appeals No. 165 & 166 of 2023****[Ahsan Ellahi vs. The State]**

Appellant : through Mr. Muhammad Farooq, Advocate.

Respondent : The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General/Mr. Rana Khalid Hussain, Special Prosecutor Rangers

Court assisted by: Mr. Salim Nasir (Research Officer)

Date of hearing : 16-10-2025

Date of Judgment: 09-12-2025

**JUDGMENT**

**Omar Sial, J.:** The Appellant has filed the instant Special Criminal Anti-Terrorism Appeals, being aggrieved and dissatisfied with the Judgment dated 20.09.2023, passed by the learned Judge, Anti-Terrorism Court No. V, Karachi [Trial Court], in Special Case No.255/2019 and Special Case No. 255-A/2019 under FIRs No. 190/2019, 191/2019 u/s 397/353/324/302/34 PPC, read with Section 7 of the Anti-Terrorism Act, 1997 and 23(i)/A Sindh Arms Act, 2013, registered at PS Ferozabad, Karachi. By the said Judgment, the Appellant was convicted and sentenced as follows:

- (i) For an offence u/s 302(b) P.P.C., sentenced to suffer imprisonment for life as Tazir
- (ii) For an offence u/s 7(i)(a) of Anti Terrorism Act, 1997, sentenced to suffer imprisonment for life
- (iii) For an offence u/s 397 P.P.C., sentenced to suffer rigorous imprisonment for ten years.

- (iv) For an offence u/s 353 P.P.C., sentenced to suffer rigorous imprisonment for two years
- (v) For an offence u/s 324 P.P.C., sentenced to suffer rigorous imprisonment for ten years
- (vi) For an offence u/s 7(i)(b) of ATA, 1997 rigorous imprisonment for ten years.
- (vii) For an offence u/s 23(1)(a) of the Sindh Arms Act, 2013, sentenced to suffer rigorous imprisonment for seven years.
- (viii) Various amounts of fines and compensation were also imposed upon him.

2. Brief facts of the prosecution case, as reflected by the contents of the FIR No.190/2019, are that on 18.03.2019 at 2340 hours, A.S.I. Muhammad Rahim recorded the statement of the complainant, Inspector Muhammad Qabil u/s 154 Cr.P.C. Qabil stated that he was performing his duty in PSL security on 18.03.2019, when at about 2235 hours, two young men on a red-coloured 125 motorcycle were seen robbing members of the public at a traffic light. On seeing this, the complainant, along with other Pakistan Rangers officials, attempted to apprehend the said culprits, but the boys opened fire on the Rangers party, in which firing, Lance Naik Muhammad Tariq was injured, and a member of the public, Mohammad Rab Nawaz, who was sitting in his vehicle, was shot in the head and subsequently died. In the retaliatory gunfire, one of the two boys was hit and fell, while the other managed to escape. The injured accused, identified as Ahsan Illahi (the appellant herein), was arrested, and a pistol was recovered from his possession. The motorcycle on which the accused was riding was found to have been stolen earlier with a fake Government number plate. Empties discharged from various types of weapons and a bag containing stolen mobile phones and wallets were also recovered. A fake identification card was also recovered, falsely indicating that the appellant was a police official.

3. The appellant pleaded not guilty and claimed a trial. At trial, the prosecution examined eleven witnesses. **PW-1 Rangers Inspector**

**Muhammad Qabil** was the complainant. **PW-2 Muhammad Arif** was an eyewitness to the incident and a colleague of the deceased Rab Nawaz. **PW-3 A.S.I. Azam Mirza** was the first police responder to the information that a shooting had occurred. **PW-4 Faisal Usman** was a person who had been robbed of his mobile phone shortly before the shooting occurred. **PW-5 S.I.P. Muhammad Rahim** was present at the place of the incident and assisted in the arrest of the accused and recovery of various items. **PW-6 P.C. Abdul Hameed** was the police officer who was informed that Rab Nawaz had died and who inspected the dead body and handed it over to its relatives. **PW-7, Dr. Aijaz Ahmed**, was the doctor who performed the postmortem. **PW-8 Ali Raza** was a person who had been earlier robbed by the accused. **PW-9 Lance Naik Tariq Mehmood** was an eyewitness. **PW-10 H.C. Shahid Hussain** was the police officer who took the injured appellant to the hospital. **PW-11 Inspector Muhammad Baqir** was the investigating officer of the case. In his section 342 Cr.P.C. statement, the appellant professed innocence and denied any wrongdoing. At the end of the trial, the appellant was found guilty as charged and was sentenced as elaborated in the first paragraph above.

4. We have heard the appellant's learned counsel, the learned Additional Prosecutor General, and the Special Prosecutor Rangers, and, with their assistance, have reappraised the evidence. Our findings and observations are as follows.

5. The date, time, and place of the occurrence and the manner in which it unfolded stand fully corroborated by all the prosecution witnesses. They have been consistent with their statements and have harmoniously supported each other. No material discrepancy or contradiction crept into their testimonies. The appellant was caught on the spot, injured. Members of the public came forward and recovered their robbed belongings from the bag that the appellant had on his motorcycle. The public, the police, or the Pakistan Rangers had absolutely no reason to suggest any prior enmity, ill will, or ulterior motive to falsely implicate the appellant in such a grave offence, and no reason emerges from our evaluation

of the evidence. The medical evidence also provides strong corroboration of the ocular account, particularly about the date, time, and manner of occurrence. The exchange of fire between the law enforcement officials and the robbers was consistently confirmed by all witnesses, whose testimonies are in complete harmony and free from material contradictions. The collection of seven 30-bore pistol empties, three 9mm pistol empties, six SMG empties, four G-3 rifle empties, and blood-stained earth, and the recovery of a red Honda 125 motorcycle from the crime scene, and the subsequent seizure and sealing of these items on the spot, further substantiate the occurrence of the encounter at the stated place and time. The section 161 Cr.P.C. statements of all witnesses have been recorded promptly. Some of the empties fired from a 0.30 bore pistol, which were collected from the spot, were confirmed to have been fired from the pistol that was recovered on the spot from the appellant's possession.

6. PW-4 Faisal Usman, himself a victim of the robbery, also verified the occurrence on the alleged date, at the alleged place, and at the alleged time. He corroborated the exchange of fire between the law enforcement personnel and the two-armed robbers, during which a Rangers official and a passerby sustained bullet injuries. He testified that the robbers, including the appellant and his absconding co-accused, were armed with pistols and had robbed him. He identified the appellant during the trial. He identified all his valuables and cards, which had been robbed shortly before by the appellant and his accomplice. An identification parade was not necessary as the appellant was arrested on the spot. His evidence strongly supports and corroborates the complainant's version in all material particulars. PW-8 Ali Raza testified on similar lines to Faisal Usman. However, Ali recognized the valuables the appellant and his colleague had stolen after they were recovered from the accused. He had identified the accused as one of the robbers from a photograph that was shown to him.

7. We have no qualms in concluding that the prosecution successfully proved its case against the appellant. An area we have analysed closely is the sentence given to the appellant, i.e., whether the incident fell within the ambit of the terrorism legislation and whether an offence under section 302(b) P.P.C. occurred. What exactly constitutes terrorism has been open to debate for many years, but it was authoritatively defined by the Supreme Court 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, however 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.”*

8. 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 called 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. An on-the-spot occurrence occurred, not pre-planned or premeditated. The prosecution was unable to prove that the incident fell within the ambit of the terrorism legislation.

9. The record reflects that the shooting was sudden. The appellant and his accomplice were robbing people on the road, and when confronted by the Rangers, they opened fire. The retaliatory fire was also heavy, as is indicated by the number of empties gathered from the spot where government-issued weapons had discharged. The death of Rub Nawaz was caused by a bullet that hit him on the head. The post-mortem suggests that the injury he sustained was a pistol injury. It was the two robbers who had pistols. The empties of 0.30 bore pistols collected from the spot, however, were not all fired from the appellant's pistol. This would mean that whether it was the appellant who hit and killed Rub Nawaz or his accomplice could not be conclusively determined. Although Mohammad Arif testified that the accused had shot and killed his friend, Rub Nawaz, he too did not specify whose bullet hit him. We also note that the forensic examination of the vehicle in which Rub Nawaz was sitting and in which he was shot shows that the bullet had entered from the right side of the rear screen. This would suggest that there is a strong possibility that the shooter was not seen. A stray bullet hit Rub Nawaz in the shootout. It cannot be said with certainty that the accused shot at Rub Nawaz with the intention to kill him. They had no reason to do so. It is also important to note that the appellant himself has been shot seven times; thus, the use of excessive force by the law enforcers cannot be conclusively ruled out. Section 300 P.P.C. defines qatal-e-amd as: "whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death, or with the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit *qatl-e-amd*." As we have observed that Rub Nawaz's killing was not intentional, the appellant's case would fall out of section 300. Still, section 301 P.P.C. also categorises an act done that he intended or knew could likely cause death, and while doing such an act, causes the death of a person he did not intend, would also categorise as qatal-e-amd. In our opinion, the act of shooting at the law enforcement personnel and injuring a Pakistan Rangers

official in the shooting was an act that the appellant should have known could cause death; thus, the death of Rub Nawaz, whom the appellant did not intend to kill, would fall within the definition of qatal-e-amd.

10. The Supreme Court in **Bashir Ahmed vs The State (2022 SCMR 1187)** has observed that: *“Any occurrence, though it resulted in an act of homicide, but it was committed without the element of mens rea, premeditation, or ill design, would squarely attract the provision of section 302(c).* In the current case, the element of mens rea, premeditation, or ill design in the death of Rub Nawaz was absent. Additionally, an on-the-spot occurrence took place in which there were two assailants. It cannot be categorically stated which bullet hit Rub Nawaz. The element of common intention was not proved at trial. The appellant himself, being shot seven times, is also meaningful. We are of the view that for the safe administration of justice, it would be just if the conviction under section 302(b) P.P.C. is converted to one under section 302(c) P.P.C. and the sentence for that offence be reduced to fifteen years.

11. The record reveals that two boys were busy robbing people at a traffic light. The Rangers personnel present on duty for a cricket tournament being played then confronted the boys, which confrontation led to a shoot-out. Seven empties from a 0.30 bore pistol were found at the place of the incident, allegedly fired by the two boys, whereas thirteen empties from government-issued weapons were found. The two boys managed to hit one Rangers personnel on his thigh, while the appellant received seven bullet injuries. The appellant is alleged to have also shot and killed one passerby; however, none of the witnesses saw him specifically shoot that passerby. The passerby was hit from behind while sitting on the passenger seat. In a full-throttle shoot-out on a busy road, how the passerby's companion saw the appellant shooting remained doubtful. There is nothing on record that shows that the passerby was not killed by a bullet discharged by the police and Rangers. The shoot-out was neither preplanned nor premeditated; it happened on the

spur of the moment. No design or intent to cause terror was proved. Judging by the injuries sustained by the players in the incident, excessive use of force by the Rangers cannot be conclusively ruled out.

12. To summarise the above.

- (i) The appellant is acquitted of the offences punishable under the terrorism legislation.
- (ii) His conviction under section 302(b) is converted to a conviction under section 302(c) P.P.C.
- (iii) The sentence for the offence under section 302(c) P.P.C. will be fifteen years.
- (iv) The appellant will be entitled to remissions under section 382-B. Cr.P.C.
- (v) The remaining sentences, fines, compensation, and imprisonment instead of fine shall remain the same.

Both these appeals stand disposed of in the above terms.

JUDGE

JUDGE