

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE OMAR SIAL
MR. JUSTICE SHAMSUDDIN ABBASI.

<><><>

Spl. Criminal Anti-Terrorism Jail Appeal No.100 of 2024
Spl. Criminal Anti-Terrorism Jail Appeal No.119 of 2024

Appellants 1. Bismillah son of Asghar Jokhio.
2. Abdul Hakeem son of Ahmed Ali
@ Muhammad Ali.
Through Ms. Anum Salman Jamali, Advocate.

Respondent The State.
Through Mr. Muhammad Iqbal Awan, Addl.
Advocate General (Sindh).

Date of hearing **04.05.2026**

Date of Judgment **06.05.2026**

<><><>

JUDGMENT

Shamsuddin Abbasi, J:- Bismillah son of Asghar Jokhio being juvenile offender and Abdul Hakeem son of Ahmed Ali @ Muhammad Ali, appellants, were tried by the learned Anti-Terrorism Court No.III, Karachi, in Special Case No.377-C of 2023 and Special Case No.377 of 2023 (FIR No.205 of 2023) registered at Police Station Memon Goth , Karachi, for offences under Sections 302, 324, 353 and 34 PPC read with Section 7 of Anti-Terrorism Act, 1997 and Special Cases No.377-A of 2023 (FIR No.206 of 2023) and 377-B of 2023 (FIR No.207 of 2023) registered at Police Station Memon Goth, Karachi, for offences under Section 23(1)(a) of Sindh Arms Act, 2013. By separate judgments both dated 18.07.2024 they were convicted under Section 302(b), PPC, and sentenced to imprisonment for life besides awarding other sentences under Section 7 of Anti-Terrorism Act, 1997 read with Section 324, 353 and under the Sindh Arms Act, 2013. All the sentences were ordered to run concurrently and the benefit in terms of Section 382-B, Cr.P.C. was extended to them.

2. Short but relevant facts of the case are that on 15.06.2023 a police party of P.S. Memon Goth, headed by HC Noor Hassan, was on routine patrol duty. It was about 7:20 pm while present at Main Road, Darsano Channo, HC Noor Hassan received telephonic information from PC Muhammad Imran that three armed persons in suspicious circumstances are committing

robbery near Al-Shifa Clinic, Moro Goth. Acting upon such information, the police party proceeded to the pointed place and upon arrival signaled the suspects to stop. Instead of complying, the accused persons resorted to straight firing upon the police party with intent to kill and to deter them from performing their lawful duties. As a result, PC Muhammad Imran sustained a firearm injury on his chest and a passerby namely Muhammad Azam Khaskheli also received firearm injury. In self-defence, the police personnel HC Noor Hassan and PC Faisal retaliated and due to their firing in self defence one accused namely Muhammad Hanif received bullet injuries and died at the spot while the remaining accused, Abdul Hakeem and Bismillah, were apprehended at the scene. From each of them, a 30-bore pistol was recovered, which they possessed without license. Thereafter, SIP Talib Hussain reached the place of occurrence, shifted the injured persons and the dead body to the hospital. The police seized the motorcycle of the accused and also secured crime empties from the scene of offence. Subsequently, HC Noor Hassan lodged FIRs under the relevant provisions of law.

3. Following investigation, challans were submitted before the competent Court. A joint trial was ordered under Section 21-M of the Anti-Terrorism Act, 1997. Upon framing of charge, the appellants pleaded not guilty and claimed trial. The prosecution examined its witnesses and after closure of evidence, the appellants were examined under Section 342, Cr.P.C., wherein they denied the allegations, claimed false implication and produced defence evidence, but did not examine themselves on oath under Section 340(2), Cr.P.C.

4. At the very outset, learned counsel for the appellants forcefully argued that the provisions of the Anti-Terrorism Act, 1997 are not attracted to the facts and circumstances of the present case placing reliance on the case of *Ghulam Hussain and others v The State and others* (PLD 2020 SC 61). The learned Additional Prosecutor General, Sindh, conceded to the said legal position and did not controvert the contention so raised. He further submitted that the deceased PC Muhammad Imran was not in police uniform at the relevant time and in view thereof recorded his no objection to the setting aside of the conviction and sentences awarded to the appellants under the provisions of the Anti-Terrorism Act, 1997 relying upon the case reported as 2025 SCMR 905.

5. We have heard the learned counsel for the parties, given our anxious consideration to their submissions and also perused the entire material available before us with their able assistance.

6. To substantiate an act of terrorism falling under Section 6 of Anti-Terrorism Act, 1997 (The Act), the object, design or purpose behind the said act (offence) is also to be established so as to justify a conviction under Section 7 of the Act. If an accused is simultaneously convicted for offences under the Pakistan Penal Code, Sindh Arms Act and the Anti-Terrorism Act, 1997, it may in appropriate cases raise serious questions in relation to the constitutional safeguard embodied in Article 13 of the Constitution thereby making it incumbent upon the prosecution to first and foremost establish the requisite "object" or "intent" so as to bring the act within the ambit of terrorism. In the absence of such foundational proof conviction under Section 7 of the Anti-Terrorism Act would not be legally sustainable particularly where the accused is otherwise convicted under general criminal law statutes.

7. The scope and applicability of Section 6 of the Anti-Terrorism Act, 1997 has repeatedly been dilated upon by the Hon'ble apex Court and the consistent view is that the acts enumerated in Section 6(2), if committed with the design, motive or intent to intimidate the government, public at large, or a section thereof or where the material collected by the prosecution indicates that such objective is achieved or emerges as an offshoot of such activity would fall within the definition of "terrorism" and be triable by the Special Courts constituted under the Act. It is further well-settled that the determining factor is the motive, design or purpose behind the act rather than its consequential impact.

8. In the present case, the allegation against the appellants is that upon being signaled to stop by the police party they resorted to indiscriminate firing as a result whereof one police official sustained firearm injuries and subsequently died while a passerby also sustained injuries and in retaliatory firing one of the assailants died on the spot whereas the remaining two were apprehended along with unlicensed arms. It is the prosecution case that such occurrence created a sense of fear and insecurity in the locality. However, a careful scrutiny of the mode, manner and surrounding

circumstances of the occurrence does not indicate any premeditated design or objective to create terror or panic in the public at large. The incident as borne out from the record appears to be a sudden encounter situation occurring at about 7:20 pm. where the primary objective of the appellants was to evade arrest rather than to spread terror among the public. It is now a settled principle of law that mere gravity, brutality or heinousness of an offence by itself does not bring a case within the ambit of "terrorism". This principle has been authoritatively reaffirmed by the larger Bench of the Hon'ble Supreme Court of Pakistan in *Ghulam Hussain and others v. The State and others* (PLD 2020 SC 61), wherein it has been held as under:-

"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 clause (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".

9. Based on the peculiar facts and circumstances of the case and the view taken by the Hon'ble apex Court in the case (supra), we are of the view that present case does not fall within the meanings of Section 6, punishable under Section 7 of the Act. The conviction and sentences awarded to the appellants under the provisions of Section 7 of the Act, are, thus, not sustainable in the eyes of law.

10. Coming to the conviction and sentences awarded to the appellants under Sections 302, 324, 353 and 34, PPC as well as Section 24 of the Sindh Arms Act, 2013, it may be observed that the prosecution has produced ocular evidence which stands duly corroborated by circumstantial evidence in shape of recovery of unlicensed arms from the appellants. A careful scrutiny of the testimony of the complainant as well as other prosecution witnesses

shows that they have not only consistently identified the appellants but have also duly attributed their specific roles in the commission of the offence. The manner and mode of occurrence have been narrated by them in a consistent and coherent manner remaining unshaken despite lengthy cross-examination. Nothing material could be extracted from their testimony to discredit their version. Their evidence has rightly been found reliable by the learned trial Court. Mere fact that the witnesses belong to the police department does not, by itself, render their testimony doubtful or inadmissible. It is well-settled that the evidence of police officials stands on the same footing as that of private witnesses unless it is shown through cogent evidence that they were actuated by malice, ill-will, or previous enmity against the accused. In the present case, no such motive or animus has been established on record. It is also a settled principle of law that police officials are competent witnesses and their testimony cannot be discarded merely on the ground of their official status. Where their presence at the place of occurrence is satisfactorily explained and stands natural in the circumstances of the case, their evidence, if confidence-inspiring and consistent, is sufficient to sustain conviction even in the absence of independent corroboration. Reliance in this regard may be placed on the case of *Muhammad Mushtaq and another v. The State* (2008 SCMR 742), wherein the Hon'ble Supreme Court has held that the testimony of police officials, if otherwise reliable, cannot be disbelieved merely due to their official capacity.

11. In view of the foregoing analysis and upon reappraisal of the entire evidence with due care and caution, we are of the considered view that the prosecution has successfully established the charges against the appellants under Sections 302, 324, 353 read with Section 34, PPC as well as Section 24 of the Sindh Arms Act, 2013. It is further significant to note that learned counsel for the appellants at the time of arguments has not pressed the appeal on merits insofar as the findings of conviction under the aforesaid provisions are concerned and has restricted her arguments primarily to the question of applicability of the Anti-Terrorism Act, 1997. In these circumstances, the findings recorded by the learned trial Court on merits of the case remain un-assailed and have not been effectively challenged through any substantive legal or factual argument. Consequently, no exception can be taken to the impugned judgment to the extent of

convictions and sentences recorded under the general criminal law and Sindh Arms Act. Consequently, the appeals are partly allowed to the extent that the conviction and sentences awarded to the appellants under the provisions of the Anti-Terrorism Act, 1997 are hereby set aside and the appellants are acquitted of such charges. However, the convictions and sentences awarded to the appellants under Sections 302, 324, 353 read with Section 34, PPC as well as Section 24 of the Sindh Arms Act, 2013 are maintained being based on cogent, reliable and confidence inspiring evidence.

12. Subject to the above modifications, Special Criminal Anti-Terrorism Jail Appeals No.100 and 119 of 2024 stand disposed of accordingly. The appellants shall be entitled to the benefit of Section 382-B, Cr.P.C. and all admissible remissions in accordance with law.

JUDGE

JUDGE

Naeem /PA