

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

**MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ**  
**MR. JUSTICE MUSHIR ALAM**  
**MR. JUSTICE UMAR ATA BANDIAL**

**CIVIL APPEAL NO. 69 OF 2015**

(On appeal from the judgment dated 28.08.2014 of the Lahore High Court, Lahore passed in W.P. No. 20018 of 2014)

Shahbaz Khan alias Tippu and others

Appellants

**Versus**

Learned Special Judge ATC No.3 Lahore  
and others

Respondents

For the appellants

Raja Muhammad Ibrahim Satti, Sr. ASC  
Ch. Irshad Ullah Chattha, ASC

For respondent No.2

Mr. Waqar Hasan Mir, ASC

On Court's Notice

Mr. Mudassar Khalid Abbasi, Addl. PG, Pb.  
Mr. Ahmed Raza Gillani, Addl.P.G. Pb.

Date of Hearing

15.09.2015

**JUDGMENT**

**UMAR ATA BANDIAL, J.—** The leave granting order dated 26.01.2015 notes the following questions for the Court's consideration in this appeal:

- “(i) whether the High Court in exercise of writ jurisdiction could have interfered in the Order of the ATC dated 02.07.2014 considering that the order had been passed for valid reasons appearing therein and was within the competence and jurisdiction of the ATC; and
- (ii) whether the principles of law enunciated in the case titled Ahmed Jan Vs. Nasrullah and others (2012 SCMR 59) and the case titled Bashir

Ahmed Vs. Muhammad Siddique and others  
(PLD 2009 SC 11) were adhered to by the High  
Court."

2. Briefly the facts of the case are that on 26.03.2014, FIR No. 247 of 2014 was lodged with Police Station Harbanspura, District Lahore for offences under Sections 302, 324, 148, 149, PPC read with Section 7 of the Anti-Terrorism Act, 1997 ("**ATA**"). The complainant Muhammad Ashraf states in the FIR that his sister Mst. Shabana alongwith her husband Muhammad Ijaz and their children reside in the house belonging to her father-in-law Mehraj Din situated in Fatehgarh, Harbanspura, Lahore. Mehraj Din's daughter Mst. Saira Bibi and her husband Muhammad Jahangir have fraudulently got the said house transferred to the name of Mst. Saira Bibi. In civil litigation Mehraj Din has obtained an injunctive order against the said transfer. On 25.03.2014 at 09:30 p.m. Mst. Saira Bibi, her husband Muhammad Jahangir, his brother Muhamad Saleem Shahzad, two gunmen Yousaf and Shahbaz and four unknown armed persons came to the said house for securing its possession from Mst. Shabana and her husband. Mst. Shabana informed her father Muhammad Umer on the phone who alongwith his four sons Muhammad Akram, Muhammad Razaqat, Ali Raza and Muhammad Ashraf, the complainant, reached Mst. Shabana's house to attempt a settlement between the two sides. Other relatives of Mst Shabana were also present at the house. During the discussion Mst. Saira Bibi and her side suddenly abandoned the reconciliation process. Thereupon the two armed gunmen Yousaf and Shahbaz and the accompanying four unknown armed

persons opened indiscriminate firing on the complainant party. In the attack the complainant's father Muhammad Umer and his three brothers Muhammad Akram, Rafaqat Ali and Ali Raza were killed and two of his cousins Muhammad Kashif and Muhammad Kamran were injured. Mst. Saira Bibi's husband, Muhammad Jahangir, also got killed in the indiscriminate shooting. According to the site plan of the occurrence, all the five deceased were killed at different locations on the street outside the disputed house. A private complaint was filed by the appellants' side about the said occurrence but that was dismissed by the competent Court. The said decision remains unchallenged by the appellants.

3. Learned counsel for the appellants has forcefully contended that the learned High Court's judgment dated 28.08.2014 is wrong in reversing the learned Anti Terrorism Court ("**ATC**") judgment dated 02.07.2014 that had sent the case for trial by a learned Sessions Court exercising ordinary criminal jurisdiction. The alleged occurrence was triggered by a civil dispute between the complainant party and the accused party. Both sides have suffered loss of life and injuries in the ensuing fight. The cause of the occurrence is a private property dispute and not a design by the accused party to intimidate or overawe the public or to create a sense of fear or insecurity in the society within the meaning of Section 6(1)(b) of ATA. In a case where a sense of fear or insecurity in society follows as a by-product of a privately motivated crime, this Court has in the case of **Bashir Ahmed vs. Muhammad Siddique** (PLD 2009 SC 11) held that the commission of such offences have no nexus with the

object of ATA and fall outside the statutory definition of terrorism. Moreover, it is argued that if the selection of the competent Court to try the offences in this case is postponed to a decision taken by the learned ATC after recording of evidence, then the appellants shall suffer double jeopardy contrary to the guarantee under Article 12 of the Constitution. In case the learned ATC concludes on the basis of evidence recorded during trial that it lacks jurisdiction to try the offences alleged in the present case, the appellants shall be made to suffer the rigours of a *de novo* trial before the learned Sessions Court.

4. On the other hand, learned counsel for the complainant who is fully supported by the Additional Prosecutor General, has defended the impugned judgment of the High Court that orders trial of offences in the present case by the learned ATC. He explains that the crime committed in the occurrence has certain shocking features: *prima facie*, the killing of five unarmed persons including one person belonging to the appellants' side, is the result of random and unchecked firing by the appellants' gunmen. The deceased were not killed within the confines of the disputed house but on a public street lined by private houses. The deaths were not committed by parties to the dispute but by six gunmen who acted callously and ruthlessly in executing their instructions. The attributed private object of the crime is far exceeded by the scale and enormity of the heinous acts committed in the occurrence. More importantly, the residents of the locality were directly exposed to the sight, noise and commission of the offences. He adds that it is natural and

inevitable that the incident has grossly intimidated such residents and instilled insecurity and fear amongst them.

5. We have heard the learned counsel for the parties and have perused the record of the case carefully.

6. The jurisdiction of a learned ATC for taking cognizance and conducting trial of offences is to be initially determined on a tentative assessment of the prosecution material that is presented before a learned trial court. At the pre-trial stage the relevant record for the consideration of the said question is the police report under section 173 Cr. P.C and the investigation materials attached thereto. Section 6 of ATA furnishes the statutory criteria for selecting a case for trial by a learned ATC under Section 12 of ATA. In the context of the present case, causing death or committing grievous violence [Section 6 (2)(a) and (b) ATA] are actions that would amount to the commission of "terrorism" if the same also involved, *inter alia*, the following elements laid down in Section 6 (1)(b) of ATA:

**"6. Terrorism.--** (1) In this Act, "terrorism" means the use or threat of action where:

(a) the action falls within the meaning of sub- section (2); and

(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or a foreign government or population or an international organization or create a sense of fear or insecurity in society; or..."

7. It is clear from a textual reading of Section 6 of ATA that an action categorized in sub-section (2) thereof constitutes the offence of terrorism when according to Section 6 (1)(b) *ibid* it is "designed" to, *inter alia*, intimidate or overawe the public or to

create a sense of fear or insecurity in society. Therefore, the three ingredients of the offence of terrorism under Section 6(1)(a) and (b) of ATA are firstly, taking of action specified in Section 6 (2) of ATA; secondly, that action is committed with design, intention and *mens rea*; and thirdly, it has the impact of causing intimidation, awe, fear and insecurity in the public or society. In relation to the above mentioned elements of the offence of terrorism, the following features of the present case are relevant for determining whether or not the case involves commission of that offence for its trial by a learned ATC. Firstly, the place of occurrence where five persons have been killed is spread over different spots on a public street in the locality of the disputed house. There are houses along both sides of this street where members of the public reside. Secondly, the five murders are a result of unchecked and random shooting that hit the fleeing victims in front of different houses on the street. Indiscriminate firing is also indicated by the death of a member of the accused party, Muhammad Jahangir. Thirdly, the persons attributed lethal firing by the prosecution are neither alleged to nor personally nurture the stated private motive narrated in the FIR. They are gunmen on a job impervious to the consequences of their actions. Fourthly, the occurrence took place within the sight and the earshot of the persons from the public who reside in the locality.

8. There is no doubt that the brutal killing of five unarmed persons on a public street would have stricken panic, fear and insecurity among the residents in the locality. However, because of the motive of a family dispute given in the FIR, there is

a challenge that the required third element of “design,” intention or *mens rea* to commit terrorism is lacking in the present case. This element of the offence of terrorism has been treated as the pivotal criterion for ascertaining the jurisdiction of a learned ATC in the two judgments referred in the leave granting order: namely **Bashir Ahmed vs. Muhammad Siddique** (PLD 2009 SC 11) and **Ahmed Jan vs. Nasrullah** (2012 SCMR 59). The judgment in **Ahmed Jan**’s case *ibid* endorses the law enunciated in **Bashir Ahmed**’s case *ibid* to the effect that under Section 6(1)(b) of ATA a design that is intention or *mens rea* of an accused to cause the prescribed public or social reaction to an action specified in Section 6(2) of ATA is essential for the commission of the offence of terrorism.

9. In order to assess whether the offences committed in the present case qualify for trial by a learned ATC it would be useful to first comprehend the matrix of facts and legal reasoning given in **Bashir Ahmed**’s case *ibid*. Very briefly the complainant party in that case was attacked in their motorcars while crossing the *haveilli* of Naseem @ Mithoo in Village Fatoowala, Sharaqpur Sharif. The accused party suddenly emerged from the said *haveilli* and fired indiscriminately at the complainant party, killing four and injuring one of its members. Thereafter the assailants escaped while doing aerial firing creating terror and insecurity in the locality. The motive of the occurrence as stated in the FIR is a blood feud between the parties. Considering the provisions of Section 6(1)(b) of ATA, this Court concluded that previous enmity and private vendetta had triggered the occurrence in the case. It

could therefore not be implied that the offences in question were committed with a design or intention to spread fear and insecurity in society or to intimidate the public. The analysis of Section 6 of ATA undertaken in **Basharat Ali vs. Special Judge, Anti-Terrorism Lahore Court-II** (PLD 2004 Lahore 199) was approved to hold that fear and insecurity in the society which results as a byproduct or an unintended consequence of a private crime falls outside the pale of the offence of terrorism under the ATA. It is only when such a reaction by the public and consequence on society is intended by the perpetrator of the offence that an offence of terrorism can, *prima facie*, be said to have been committed. In the facts of that case it was held that because a private blood feud had precipitated the occurrence, therefore, the case fell outside the purview of the ATA.

10. The view taken in **Bashir Ahmed's** case *ibid* receives support from the seminal judgment by the full Court in **Mehram Ali vs. Federation of Pakistan** (PLD 1998 SC 1445). The following observations on the subject of jurisdiction of an ATC established under the ATA are made by the full Court:

“Offences mentioned in the schedule should have nexus with the object of the Act and the offences covered by sections 6, 7 and 8 thereof. It may be stated that section 6 defines terrorist acts, section 7 provides punishment for such acts, and section 8 prohibits acts intended or likely to stir up sectarian hatred mentioned in clauses (a) to (d) thereof. If an offence included in the Schedule has no nexus with the above sections, in that event notification including



such an offence to that extent will be *ultra vires*."

Nexus with the object of ATA and the offences covered in Sections 6, 7 and 8 thereof is a pre-requisite for offences being tried by a learned ATC. To elucidate the point, the judgment in Mehram Ali's case *ibid* goes on to explain that if a murder is committed "solely" on account of personal enmity, such murder will have no nexus with the above mentioned provisions of the ATA and will not be triable under the said Act. The other authorities quoted in Bashir Ahmed's case *ibid* include Bashir Ahmed vs. Naveed Iqbal (PLD 2001 SC 521) and Muhammad Mushtaq vs. Muhammad Ashiq (PLD 2002 SC 841) emphasize the importance of motive for constituting the offence of terrorism but the decisions turn on other grounds. The first of these precedents derives support from the repealed definition of terrorism that required the use of bombs, dynamite or other explosive substances as an essential ingredient for the commission of the said offence. The use of the said substances is no longer a necessary ingredient of the said offence under Section 6(2) of ATA. The judgment in the second precedent considers *mens rea* as significant for the commission of terrorism but treats the impact of the overt acts and surrounding circumstances in a case as an indication of the object of the crime.

11. Primarily, the rule laid down in Bashir Ahmed's case *ibid* requiring the ascertainment of the design, intention and *mens rea* of an act for establishing the jurisdiction of a learned ATC rests on *dicta* given in Mehram Ali's case *ibid*. However,

Bashir Ahmed's case *ibid* does not consider the ways and means by which the design, intention or *mens rea*, for an act of terrorism, requiring in essence the proof of an assailant's state of mind, should be ascertained by a Court of law. Whether the Court should mechanically consider the motive alleged by a complainant in the FIR to be decisive or should it also scrutinize other aspects of an occurrence to assess if the culprits had any design, intention or *mens rea* to commit a terrorist act?

12. In most cases, the nature of the offences, the manner of their commission and the surrounding circumstances demonstrate the motive given in the FIR. However, that is not always the case. When offences are committed by persons with impunity disregarding the consequence or impact of their overt action, the private motive or enmity disclosed in the FIR cannot be presumed to capture their true intent and purpose. In such cases, it is plain that action taken and offences committed are not instigated "solely" by the private motive alleged in the FIR. It is settled law that intention, motive or *mens rea* refer to the state of mind of an offender. It is equally well established that a state of mind cannot be proven by positive evidence or by direct proof. The intention of an accused for committing an offence is to be gathered from his overt acts and expression. It has been held in the case of State vs. Ataulah Khan Mangal (PLD 1967 SC 78) that an accused person "must be deemed to have intended the natural and inevitable consequences of his action." Thus apart from the overt acts of the accused, the injuries caused by him or consequences ensuing from his actions and the surrounding

circumstances of the case are all relevant to ascertain the design intention or *mens rea* that instigated the offences committed. These principles are enunciated in **Zahid Imran vs. The State** (PLD 2006 SC 109) and **Pehlwan vs. Crown** (1969 SCMR 641). Intention is presumed when the nature of the act committed and the circumstances in which it is committed are reasonably susceptible to one interpretation. In such event, the rule of evidence that the natural and inevitable consequences of a person's act are deemed to have been intended by him is applicable: **Jane Alam vs. The State** (PLD 1965 SC 640). In **Muhammad Mushtaq vs. The State** (PLD 2002 SC 841) the inevitable consequence of an act was considered as its design. Four persons were killed to settle a blood feud while they were on their way for a Court hearing at the nearby District Courts, Lahore. This Court observed that the learned ATC was the competent trial forum in the case:

"7. It would thus appear that ordinary crimes are not to be dealt with under the Act. A physical harm to the victim is not the sole criterion to determine the question of terrorism. What is to be seen is the psychological effect produced by the violent action or with the potential of producing such an effect on the society as a whole or a section thereof. There may be a death or injury caused in the process. Thus where a criminal act is designed to create a sense of fear or insecurity in the minds of the general public disturbing even tempo of life and tranquility of the society, the same may be treated to be a terrorist act. There may be just a few killings, random or targeted, resorted to with single-mindedness of purpose. But nevertheless the impact of the same may be to terrorize thousands of people by creating a panic or fear in their minds".

8. In the present case, we, *prima facie*, find that the occurrence took place during the peak hours of the day on the busy Court Road near the District Courts, Lahore, wherein four persons while on their way to attend the Court were allegedly murdered by the use of kalashnikovs. The cumulative fall-out of the occurrence as to the time, place and manner of the act created a sense of the fear and insecurity in society. The case was, therefore, triable by the Anti-Terrorism court established under the said Act ...”

13. When wanton overt acts committed by an accused lead to horrendous consequences then the motive given in the FIR merely indicates the background. The presumption that the natural and inevitable consequences of the acts of an accused are deemed to be intended, provides a reliable touchstone for gathering the design, intention or *mens rea* of an assailant in the context of Section 6(1)(b) of ATA.

14. Indeed neither Mehram Ali's case nor Bashir Ahmed's case *ibid* have confined judicial recourse solely to the motive disclosed in the FIR for ascertaining the *mens rea* for the offence of terrorism. For the existence or otherwise of *mens rea* of the said offence, a Court of law may rightfully interpret the different aspects of a prosecution case noted above in order to ascertain the design behind the acts committed by an assailant. In the present case the assailants who committed the brutal acts of causing the death of five persons had no personal grouse against their victims. *Prima facie*, they executed the instructions given by the other accused. This was done with impunity because doing the job was material and not the consequence and impact of their overt action. A dispute about the possession of a family house thus exploded disproportionately to a scale depicting wanton ruthlessness and impunity in the multiple killing of

victims in a public place inhabited by public residents. To our minds, the motive of a domestic family property dispute is merely the spark that triggered the occurrence, or metaphorically, the fire. The rule that the accused in the present case are deemed to intend the natural and inevitable consequences of action taken is apt and accurate in depicting their design, intention and *mens rea*. The three ingredients under Section 6 of ATA that constitute the offence of terrorism are *prima facie* available in the present case.

15. Therefore, the approach in the impugned judgment to interpret overt acts of the accused and the surrounding circumstances of the case in order to ascertain whether the case falls within the ambit of the ATA, is justified. Equally, the reliance placed by the learned ATC solely on the motive disclosed in the FIR No. 247 of 2014 lodged by the complainant in the case adopts a course meant for simple cases wherein the motive disclosed in the FIR is duly demonstrated by the other criteria for ascertainment of *mens rea*.

16. The learned counsel for the appellants has expressed the apprehension that a re-trial of the appellants would automatically follow if the learned ATC concluded during or after the recording of evidence that a scheduled offence is not made out. The anxiety expressed is completely misplaced because Section 23 of ATA expressly provides that a Court having jurisdiction under the Cr.P.C. 1898 "to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence." Accordingly, the trial of the offence resumes from the stage at which it was transferred by the learned ATC.

17. The foregoing are the reasons of our short order of even date which is reproduced herein-below:

"We have heard the arguments of learned ASCs for the parties as well as the learned Law Officers. For the reasons to be recorded separately, this Civil Appeal is dismissed."

**Chief Justice**

**Judge**

**Judge**

Islamabad  
15.09.2015  
Naseer /\*

**APPROVED FOR REPORTING**