

Present:

CRIMINAL APPEALS NO.443, 444 AND 445 OF 2019

Abrar Ahmad Farooq (CrI.A.443/19)
 Iftikhar Ahmad (CrI.A.444/19)
 Muhammad Tufail (CrI.A.445/19) ... Appellants

The State (Crl.As.443&444/19)				
Iftikhar Ahmad etc (Crl.A.445/19)	Respondents

For the appellants (in CrI.As.443 & 444/19)	:	Mr. Basharat Ullah Khan, ASC Syed Rifaqat Hussain Shah, AOR
For complainant (in CrI.As.443&444/19 also Appellant in CrI.A.445/19)	:	Agha Muhammad Ali, ASC
For the State	:	Mr. Irfan Zia, Addl. PG. Pb.
Date of hearing	:	18.04.2024

Naeem Akhtar Afghan, J. On the basis of statement of Muhammad Tufail son of Muhammad Akram (Complainant/PW-1), FIR No.52 was registered with Police Station ('**PS**') Attock at 9:30 am on 13.02.2009 u/s 302/34 of the Pakistan Penal Code, 1908 ('**PPC**').

2. As per contents of FIR No.52/2009 PS City Attock, the father Muhammad Akram and brother Muhammad Azmat of complainant/PW-1 were in custody in District Jail Attock in FIR No.432/2008 PS Saddar, Hasanabdal, u/s 302/452/148 and 149 PPC which was registered by Tariq son of Muhammad Nawazish while he, his brothers Muhammad Afzal and Muhammad Gulzar, his mother Mst. Razia Bibi, Mst. Ulfat Bibi (wife of his brother Muhammad Azmat) and Mst. Qursia Bibi (wife of his brother Muhammad Afzal) were on bail; the trial

proceedings were fixed for 13.02.2009 in the Court of learned Additional Session Judge, Attock; his father Muhammad Akram and brother Muhammad Azmat were brought in custody to the trial Court from District Jail Attock by Shaukat Hayat Sub-Inspector and other police officials; they had also reached the Court premises to attend the trial proceedings; the case was called; at about 9:30 am when he alongwith his brothers Muhammad Afzal and Muhammad Gulzar, his mother Mst. Razia Bibi and his sisters-in-law Mst. Ulfat Bibi and Qursia Bibi reached in the *Verandah* of the Court, his father Muhammad Akram and brother Muhammad Azmat were brought hand-cuffed by Shaukat Hayat Sub-Inspector, Muhammad Kamran Constable, Jalal-ud-Din Constable, Muhammad Imran Constable and Zulfiqar Ahmed Constable; they were being taken towards the Court room; when they reached the stairs of *Verandah*, suddenly the complainant party of FIR No.432/2008 i.e. Iftikhar Ahmad (armed with .30 bore pistol), Abrar Ahmad Farooq (armed with .30 bore pistol) and Ali Arif (armed with .30 bore pistol) appeared and started indiscriminate firing; after receiving fire shots, his father Muhammad Akram and brother Muhammad Azmat fell down; his father Muhammad Akram succumbed to the injuries on the spot while his brother Muhammad Azmat was taken to the hospital being seriously injured but he also succumbed to the injuries on his way to the hospital; the police officials overpowered the accused Iftikhar Ahmad and Abrar Ahmad Farooq on the spot alongwith their firearms; while taking advantage of '*rush*' accused Ali Arif succeeded in fleeing.

Motive of the occurrence was mentioned as land dispute and previous enmity.

3. In pursuance of above FIR investigation was conducted. On completion of investigation, the investigating officer submitted report u/s 173 Cr.P.C. against accused Abrar Ahmad Farooq and Iftikhar Ahmad while declaring accused Ali Arif innocent.

4. Feeling aggrieved of declaring accused Ali Arif as innocent by the Investigating Officer and due to non-inclusion of the provisions of Anti-Terrorism Act, 1997 ('**ATA**') in the FIR, the complainant/PW-1 submitted written complaint dated 18.09.2009 (Ex.PD) before the Special Judge, Anti-Terrorism Court Rawalpindi on 14.10.2009 u/s 302/34 PPC r/w section 7 ATA against accused Iftikhar Ahmad, Abrar Ahmad Farooq and Ali Arif.

5. After recording preliminary statements of complainant, witnesses Muhammad Afzal and Muhammad Gulzar on 19.10.2009, the nominated accused

were summoned to face trial for the offences u/s 302/34 PPC and section 7 (a) ATA.

6. On commencement of trial proceedings on the basis of complaint, all the three accused were read over charge u/s 302/34 PPC r/w section 7(a) ATA by the learned Judge, Anti-Terrorism Court-III, Rawalpindi & Islamabad Capital Territory ('the Trial Court').

7. The Trial Court recorded examination-in-chief of the complainant as PW-1 and of Muhammad Afzal as PW-2 on 06.11.2010. Before their cross-examination by the learned defence counsel, the accused Iftikhar Ahmad fled from police custody on 21.01.2011 when he was being taken to the Court of Area Magistrate for production in FIR No.38/2011 registered u/s 13(e) of the Arms Ordinance, 1965. He was declared proclaimed offender by the trial Court and his perpetual arrest warrants were also issued. A separate case u/s 223 and 224 PPC was also registered against Abdul Waiz, Sub-Inspector and other police officials.

8. The trial proceedings continued against accused Ali Arif and Abrar Ahmad Farooq. The statements of prosecution witnesses were recorded by the Trial Court. On conclusion of the trial proceedings against accused Ali Arif and Abrar Ahmad Farooq, the Trial Court acquitted accused Ali Arif and awarded conviction and sentence to accused Abrar Ahmad Farooq as follows vide judgment dated 16.03.2011:

"U/s 302(b) PPC. as Tazir and sentenced to **Death** on Two Counts subject to confirmation by the Hon'ble Lahore High Court, Rawalpindi Bench. The convict Abrar Ahmad shall also be liable to pay Rs.6,00,000/- (Six lac) on two counts as compensation to the legal heirs of the deceased as required U/S 544-A of the Cr.P.C. and in default thereof he shall have to undergo Simple Imprisonment of Six Months on each default. He shall be hanged by neck, till he is dead.

U/S 7(a) of the Anti Terrorism Act, 1997 and sentenced to **Death** on Two Counts subject to confirmation by the Hon'ble Lahore High Court, Rawalpindi Bench. The convict Abrar Ahmad shall also be liable to pay Rs.6,00,000/- (Six lac) as fine on two counts and in default thereof he shall have to undergo Simple Imprisonment of One Year on each default. He shall be hanged by neck, till he is dead."

9. Accused Iftikhar Ahmad was arrested by the police on 28.03.2011 whereafter he was put on trial. At the trial he was read over the amended charge dated 12.04.2011 u/s 302/34 PPC r/w section 7(a) ATA. Separate charge u/s 21-L ATA was also read over to accused Iftikhar Ahmad.

Accused Iftikhar Ahmad did not plead guilty to both the above charges and claimed trial.

10. On conclusion of the trial proceedings, the accused Iftikhar Ahmad was awarded conviction and sentence by the trial Court as follows vide judgment dated 19.04.2011:

'U/S 302(b)/34 PPC as Tazir and sentenced to **Death** on Two Counts subject to confirmation by the Hon'ble Lahore High Court, Rawalpindi Bench. The convict Iftikhar Ahmad shall also be liable to pay Rs.6,00,000/- (Six Lac) on two counts as compensation to the legal heirs of the deceased as required U/S 544-A of the Cr.P.C. and in default thereof he shall have to undergo Simple Imprisonment of Six Months on each default. He shall be hanged by neck, till he is dead.

U/S 7(a) of the Anti Terrorism Act, 1997 and sentenced to **Death** on Two Counts subject to confirmation by the Hon'ble Lahore High Court, Rawalpindi Bench. The convict Iftikhar Ahmad shall also be liable to pay Rs.6,00,000/- (Six Lac) as fine on two counts and in default thereof he shall have to undergo Simple Imprisonment of One Year on each default. He shall be hanged by neck, till he is dead.

U/S 21-L of Anti Terrorism Act, 1997 and sentenced to undergo R.I. for **Five Years.**"

11. The convict Abrar Ahmad Farooq challenged his conviction and sentence by filing Criminal Appeal No.104-T/2011 before the Rawalpindi Bench of Lahore High Court (**'the Appellate Court'**). Capital Sentence Reference No.4-T/2011 was also forwarded by the Trial Court to the Appellate Court for confirmation or otherwise of the death sentence of the convict Abrar Ahmad Farooq.

12. The convict Iftikhar Ahmad also challenged his conviction and sentence by filing Criminal Appeal No.27-J/2011 before the Appellate Court. Capital Sentence Reference No.6-T/2011 was also forwarded by the Trial Court to the Appellate Court for confirmation or otherwise of the death sentence of the convict Iftikhar Ahmad.

13. The acquittal of accused Ali Arif by the Trial Court was not challenged by the complainant/legal heirs of deceased.

14. Criminal Appeal No.27-J/2011 (filed by the convict Iftikhar Ahmad) and Capital Sentence Reference No.6-T/2011 were decided as follows by the Appellate Court vide judgment dated 03.02.2016:

"For the above reasons, penalty of death is altered into **imprisonment for life**; benefit of Section 382-B Cr.P.C. shall be extended to the appellant and all the sentences shall run concurrently. Amount of compensation/fine and consequences in case of default are kept intact. **Capital Sentence Reference No.6-T of 2011** is answered in **NEGATIVE** and death sentence awarded to the appellant is **NOT CONFIRMED.**

15. Criminal Appeal No.104-T/2011 (filed by the convict Abrar Ahmad Farooq) and Capital Sentence Reference No.4-T/2011 were decided as follows by the Appellate Court vide judgment dated 03.02.2016:

“Consequently, **Crl. Appeal No.104-T of 2011 fails.** The appellant has been reckless as he preferred to settle score on his own instead of seeking justice from the Court by relying upon the majesty of law. The deceased were yet to receive a guilty verdict as they were confronting the charge of homicide under the presumption of innocence and as such there is no mitigation to benefit him. Resultantly, death penalty on all counts is confirmed. Amount of compensation/fine is kept intact. **Capital Sentence Reference No.04-T of 2011** is answered in **POSITIVE** and death sentence is **CONFIRMED.**

16. The convict Abrar Ahmad Farooq filed Jail Petition for Leave to Appeal No.164/2016 before this Court against the judgment passed by the Appellate Court.

The convict Iftikhar Ahmad filed Jail Petition for Leave to Appeal No.347/2016 before this Court against the judgment passed by the Appellate Court.

The complainant also filed Criminal Petition for leave to Appeal No.349/2016 before this Court for enhancement of sentence of imprisonment for life of the convict Iftikhar Ahmad to death penalty.

17. Leave to appeal was granted by this Court in all the above three petitions vide order dated 23.10.2019. The office assigned Criminal Appeal No.443/2019 to Jail Petition No.164/2016 (filed by the convict Abrar Ahmad Farooq), Criminal Appeal No.444/2019 to Jail Petition No.347/2016 (filed by convict Iftikhar Ahmad) and Criminal Appeal No.445/2019 to Criminal Petition No.349/2016 (filed by the complainant for enhancement of sentence of convict Iftikhar Ahmad).

18. Learned counsel for the appellants did not press Crl. Appeal No.104-T of 2011 for acquittal of appellant Abrar Ahmad Farooq and pressed the same for reduction of his death penalty to imprisonment for life on the grounds that the death sentence of appellant Iftikhar Ahmad has already been reduced to imprisonment for life by the Appellate Court and the motive of the occurrence was revenge killing. In support of his contention, learned counsel relied upon the case of ***‘Muhammad Shabbir v. the State’***¹.

19. Learned counsel for the appellants pressed Criminal Appeal No.27-J/2011 for acquittal of appellant Iftikhar Ahmad on the grounds that he was falsely implicated by fabrication at the behest of the complainant/PW-1; he was not

¹ 2020 SCMR 1206

present at the place of occurrence; no firearm was recovered from him during investigation and the prosecution has failed to prove the charge against him beyond reasonable doubt.

20. Learned counsel for the appellants further contended that motive of the occurrence, which had taken place in the court premises, was personal vendetta, therefore due to entry No.4 (iii) in the Third Schedule of ATA, the trial Court had the jurisdiction for trial of the appellants but there was no occasion for the Trial Court to award conviction and sentence to the appellants u/s 7(a) ATA as there was no design or purpose of the offence as mentioned in clause (b) or (c) of sub-section (1) of section 6 ATA. In support of his contention learned counsel for the appellants relied upon the cases of '**Farooq Ahmed v. the State**'² and '**Ghulam Hussain v. the State**'³.

21. Learned counsel for the complainant stated that the prosecution has proved the charge against both the appellants beyond reasonable doubt; in view of unshaken and confidence inspiring testimony of eye witnesses duly corroborated by circumstantial evidence and in absence of any mitigating circumstance, both the appellants are liable to be awarded normal penalty of death for committing murder of father and brother of the complainant in court premises being hand-cuffed/in police custody. Learned counsel for the complainant relied upon the case of '**Hamid Mukhtar Shah v. Muhammad Azam**'⁴.

22. While opposing the appeals of the convicts and supporting the appeal of the complainant for enhancement of sentence of the appellant Iftikhar Ahmad, learned Additional PG contended that all the prosecution witnesses remained consistent and were not shaken during cross-examination; both the appellants were over powered by the police at the place of occurrence with crime weapons in respect whereof positive report of firearm expert has come on record; there are no extenuating circumstances to award lessor sentence to the appellants; on the basis of sufficient incriminating evidence, both the appellants deserve capital sentence.

23. After hearing learned counsel for the appellants, learned counsel for the complainant and learned Additional PG, we have perused the available record which transpires that while cross-examining eye witnesses, it was the plea of the appellant Abrar Ahmad Farooq that the murder of Muhammad Akram and Muhammad Azmat was committed by the appellant Iftikhar Ahmad; at the time of occurrence he was present inside the Court room as prosecution witness and

² 2020 SCMR 78

³ PLD 2020 SC 61

⁴ 2005 SCMR 427

acquitted co-accused Ali Arif (his maternal uncle) was not present at the place of occurrence.

24. The postmortem report of deceased Muhammad Akram reveals that he had received three fire shots having entry wound on anterior of chest with exit on back midline, entry wound on vertex with exit on left side of neck, entry wound on interior abdominal wall near umbilicus with exit on back near midline.

The postmortem report of Muhammad Azmat reveals that he had received two fire shots having entry wound on front of chest midline with exit on back midline and entry wound on back of right ear with exit on left side of neck.

25. Statements of the eye witnesses and witnesses to the recovery memos reveal that seven crime empties of .30 bore (C1 to C7) were recovered from the place of occurrence; one pistol of .30 bore (P1) and one short pistol (*carbine*) of 12 bore were recovered from the appellant Iftikhar Ahmad on the spot while two pistols of .30 bore (P2 and P3) were recovered from the appellant Abrar Ahmad Farooq on the spot.

26. The report of the firearm expert confirms that six crime empties of .30 bore (C1 to C6) were fired from P2 i.e. pistol of .30 bore recovered from the appellant Abrar Ahmad Farooq.

27. The report of the firearm expert erroneously mentions that crime empty of 12 bore marked as C7 was fired from pistol of .30 bore marked as P1 (recovered from appellant Iftikhar Ahmad). In the early part of his report, the firearm expert has mentioned C7 as crime empty of .30 bore and he has not mentioned about any crime empty of 12 bore as C7. More so over, a cartridge of 12 bore cannot be fired from a pistol of .30 bore. In this regard no explanation has been offered by the prosecution before the trial Court, before the Appellate Court and before this Court.

28. Due to the above discrepancy in the report of firearm expert, even if the same is kept out of consideration to the extent of appellant Iftikhar Ahmad, it does not improve his case as all the eye witnesses of the occurrence, whose presence at the place of occurrence has not been disputed/denied by the defence, have fully implicated him in the occurrence with the role of firing upon both the deceased with the appellant Abrar Ahmad Farooq. Both the appellants were overpowered/arrested on the spot by the police with crime weapons. The evidence on record proves that both the appellants committed murder of deceased by firing in furtherance of common intention.

29. The statements of complainant/PW-1 and PW-2 Muhammad Afzal have rightly been disbelieved by the trial Court as well as by the Appellate Court to the extent of acquitted accused Ali Arif as he had proved his plea of *alibi* during investigation as well as at the trial. His presence at the place of occurrence with the appellants has not been supported by the police witnesses who were accompanying both the deceased at the time of occurrence.

30. The trial as well as the Appellate Courts have believed the statements of complainant/PW-1 and PW-2 against the appellants as same have fully been supported/corroborated by Shaukat Hayat Sub-Inspector (produced as CW1 against both the appellants), Zulfiqar Ali Constable (produced as CW2 against both the appellants), Muhammad Kamran Constable (produced as CW3 against appellant Abrar Ahmad Farooq and as CW12 against appellant Iftikhar Ahmad), Jalal-ud-Din Constable (produced as CW5 against appellant Abrar Ahmad Farooq and as CW6 against appellant Iftikhar Ahmad) and Muhammad Imran Constable (produced as CW4 against appellant Arbar Ahmad Farooq and as CW3 against appellant Iftikhar Ahmad) who were bringing both the deceased to the Court room for trial proceedings from lock-up (*bakhshi khana*) of the Court premises of the Sessions Court Attock.

31. According to the settled principles, the police officials are as good witnesses as any other private witness. In absence of any animus, their testimony can be relied upon if they remained un-shattered during cross-examination. Reference in this regard is made to the cases of '*Salah-ud-din v. the State*'⁵, '*Qari Muhammad Ishaq Ghazi v. the State*'⁶, '*Zulfiqar alias Zulfa v. the State*'⁷, '*Liaquat Ali v. the State*'⁸, '*Ali Taj v. the State*'⁹ and '*Nazeer Ahmed v. the State*'¹⁰.

32. In the instant case record does not reveal of any animosity or ill-will on the part of the police officials to falsely implicate the appellants. All the police officials who had appeared at the trial as eye witnesses of the occurrence have fully incriminated both the appellants with role of firing upon both the deceased in the *verandah* of the court premises when they, being hand-cuffed, were on their way to the court room in police custody to attend the trial proceedings. All the police officials appearing as eye witnesses at the trial remained un-shattered despite lengthy cross-examination by the learned defence counsel. Hence, there is no reason to doubt veracity of their testimony as eye witnesses of the occurrence.

⁵ 2010 SCMR 1962

⁶ 2019 SCMR 1646

⁷ 2021 SCMR 531

⁸ 2022 SCMR 1097

⁹ 2023 SCMR 900

¹⁰ 2023 SCMR 1299

33. On re-appraisal of the evidence available on record, we have no hesitation to conclude that the prosecution has proved the charge against both the appellants beyond reasonable doubt. The confidence inspiring testimony of all the eye witnesses of the occurrence is duly corroborated by the medico legal evidence, crime empties recovered from the place of occurrence, blood stains collected from the place of occurrence, crime weapons recovered from both the appellants when they were over powered by the police soon after the occurrence and positive report of the firearm expert to the extent of firearm recovered from the appellant Abrar Ahmad Farooq.

34. With regard to the conviction and sentence awarded to the appellants u/s 7(a) ATA, it is observed that in the instant case the motive of the occurrence was personal vendetta i.e. previous enmity due to murder of Muhammad Nawazish (father of both the appellants) in respect whereof FIR No.432 of 2008 was lodged with PS Saddar Hasanabdal against the complainant/PW-1, deceased Muhammad Akram, deceased Muhammad Azmat and others. There is nothing on record to show that while making firing upon the deceased in the Court premises, the appellants wanted to create fear or terror or insecurity in or around the Court premises.

35. Offence of firing or use of explosives by any device, including bomb blast in the Court premises has been specified in entry No.4(iii) of the Third Schedule to ATA as a '*Scheduled Offence*'. In absence of any motive or design to create fear or terror or insecurity as mentioned in clauses (b) or (c) of sub-section (1) of section 6 ATA, the cases of Scheduled Offences specified in entry No.4 of the Third Schedule to ATA, being heinous offences, are to be tried by an Anti-Terrorism Court for speedy trial and in such cases, Anti-Terrorism Court can award punishment for the said offence and not for committing the offence of terrorism.

Reference in the above regard is made to the case of '**Amjad Ali v. the State**'¹¹ wherein it has been held as follows:

"The last aspect of this case highlighted in the leave granting order is as to whether the courts below were justified in convicting and sentencing the appellants for an offence under section 7(a) of the Anti-Terrorism Act, 1997 or not. We note in that context that a mere firing at one's personal enemy in the backdrop of a private vendetta or design does not ipso fact bring the case within the purview of section 6 of the Anti-Terrorism Act, 1997 so as to brand the action as terrorism. There was no 'design' or 'object' contemplated by section 6 of the Anti-Terrorism Act, 1997 involved in the case in hand. We further note that by virtue of item No.4(ii) of the Third Schedule to the Anti-Terrorism Act, 1997 a case becomes triable by an Anti-Terrorism Court if use of firearms or explosive, etc. in a mosque, imambargah, church, temple or any other place of

¹¹ PLD 2017 SC 661

worship is involved in the case. That entry in the Third Schedule only makes such a case triable by an Anti-Terrorism Court but such a case does not ipso facto become a case of terrorism for the purposes of recording convictions and sentences under section 6 read with section 7 of the Anti-Terrorism Act, 1997. The case in hand had, thus, rightly been tried by an Anti-Terrorism Court but the said Court could not have convicted and sentenced the appellants for an offence under section 7(a) of the Anti-Terrorism Act, 1997 as it had separately convicted and sentenced the appellants for the offences of murder, etc. committed as ordinary crimes."

Reference is also made to the case of '**Farooq Ahmed**' (relied upon by the learned counsel for the appellants) wherein it has been held as follows:

"Section 6 read with section 7 of ATA, 1997 would not be attracted if the murder is committed to avenge private enmity. The 3rd Schedule to ATA, 1997 provides list of scheduled offences that are triable by the Special Court to the exclusion of any other Court. By an amendment in 2005 the Anti-Terrorism Courts were conferred jurisdiction to try an accused for firing or for the use of explosives by any device including bomb blast in the Court premises. The inclusion in the scheduled offences only extended the jurisdiction upon the Anti-Terrorism court to try such an accused. However, in order to convict him under section 7 of the ATA, 1997 his act must fall within the scope of section 6 of the Act. As has already been found that since the petitioner had statedly committed the murder to avenge murder committed by the deceased his action would not fall within the definition of terrorism under section 6 of ATA, 1997. There was no design to create fear or terror or insecurity in the Court premises. In this view of the matter the petitioner's conviction under section 7 of the Anti-Terrorism Act cannot be sustained and the same is therefore, set aside."

Similarly in the case of '**Ghulam Hussain**' (relied upon by the learned counsel for the appellants) it has been held as follows:

"A careful reading of the Third Schedule shows that an Anti-Terrorism Court has been conferred jurisdiction not only to try all those offences which attract the definition of terrorism provided by the Act but also some other specified cases involving heinous offences which do not fall in the said definition of terrorism. For such latter category of cases it was provided that although those offences may not constitute terrorism yet such offences may be tried by an Anti-Terrorism Court for speedy trial of such heinous offences. This distinction between cases of terrorism and cases of specified heinous offences not amounting to terrorism but triable by an Anti-Terrorism Court has already been recognized by this Court in the cases of Farooq Ahmed v. State and another (2020 SCMR 78), Amjad Ali and others v. The State (PLD 2017 SC 661) and Muhammad Bilal v. The State and others (2019 SCMR 1362). It has been clarified by this Court in those cases that such specified heinous offences are only to be tried by an Anti-Terrorism Court and that court can punish the person committing such specified heinous offences only for commission of those offences and not for committing terrorism because such offences do not constitute terrorism. For the purposes of further clarity on this issue it is explained for the benefit of all concerned that the cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-Terrorism Act, 1997 are cases of those heinous offences which do not per se constitute the offence of terrorism but such cases are to be tried by an Anti-Terrorism Court because of their inclusion in the Third Schedule.

It is also clarified that in such cases of heinous offences mentioned in entry No. 4 of the said Schedule an Anti-Terrorism Court can pass a punishment for the said offence and not for committing the offence of terrorism. It may be pertinent to mention here that the offence of abduction or kidnapping for ransom under section 365-A, P.P.C. is included in entry No. 4 of the Third Schedule and kidnapping for ransom is also one of the actions specified in section 7(e) of the Anti-Terrorism Act, 1997. Abduction or kidnapping for ransom is a heinous offence but the scheme of the Anti-Terrorism Act, 1997 shows that an ordinary case of abduction or kidnapping for ransom under section 365-A, P.P.C. is merely triable by an Anti-Terrorism Court but if kidnapping for ransom is committed with the design or purpose mentioned in clauses (b) or (c) of subsection (1) of section 6 of the Anti-Terrorism Act, 1997 then such offence amounts to terrorism attracting section 7(e) of that Act. In the former case the convicted person is to be convicted and sentenced only for the offence under section 365-A, P.P.C. whereas in the latter case the convicted person is to be convicted both for the offence under section 365-A, P.P.C. as well as for the offence under section 7(e) of the Anti-Terrorism Act, 1997. The same may also be said about the other offences mentioned in entry No. 4 of the Third Schedule to the Act pertaining to "Use of firearms or explosives by any device, including bomb blast in a mosque, imambargah, church, temple or any other place of worship, whether or not any hurt or damage is caused thereby", "Firing or use of explosive by any device, including bomb blast in the court premises", "Hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance" and "Unlawful possession of an explosive substance or abetment for such an offence under the Explosive Substances Act, 1908 (VI of 1908)". Such distinction between cases of terrorism and other heinous offences by itself explains and recognizes that all heinous offences, howsoever serious, grave, brutal, gruesome, macabre or shocking, do not ipso facto constitute terrorism which is a species apart".

36. Since the motive of the occurrence in the instant case for the appellants was to avenge the murder of their father and the appellants had no motive or design to create fear or terror or insecurity in the Court premises, therefore, the conviction and sentence awarded to the appellants u/s 7(a) ATA cannot be sustained.

37. For determining the quantum of sentence, each case has to be judged upon its own facts and circumstances. A single mitigating circumstance, available in a particular case, would be sufficient to put a Judge on guard for not awarding the penalty of death but imprisonment for life.

In the instant case the motive of the occurrence for the appellants was to avenge the murder of their father. In number of cases, such motive has been considered as a mitigating circumstance to reduce death penalty to imprisonment for life. In the case of '**Ajun Shah v. the State**'¹² the appellant's motive for the crime to avenge the murder of his father and brother was considered as a

¹² PLD 1967 SC 185

mitigating circumstance by this Court for reducing his death penalty to imprisonment for life.

Similarly in the case of '**Muhammad Shabbir**' (relied upon by learned counsel for the appellants) the reduction of the sentences of the convicts u/s 302(b) PPC from death penalty to imprisonment for life by the appellate Court due to motive of the occurrence being revenge of their father was not interfered by this Court.

38. The case of '**Hamid Mukhtar Shah**' relied upon by learned counsel for the complainant is distinguishable as same is not attracted to the facts and circumstances of the instant case.

For the above reasons:

i) the conviction and sentence of the appellant Abrar Ahmad Farooq u/s 7(a) ATA is set aside. While maintaining his conviction u/s 302(b)/34 PPC, his sentence of death on two counts is reduced/converted to imprisonment for life with benefit of section 382-B Cr.P.C. He shall also be liable to pay compensation of Rs.6,00,000/- (six lac) on two counts to the legal heirs of both the deceased as required u/s 544-A Cr.P.C. and in default thereof to undergo simple imprisonment for six months on each default.

With the above modification, Criminal Appeal No.443/2019 is dismissed.

(ii) the conviction and sentence of the appellant Iftikhar Ahmad u/s 7(a) ATA is set aside. However, his conviction and sentence u/s 302(b)/34 PPC, altered to imprisonment for life by the Appellate Court with benefit of section 382-B Cr.P.C., for payment of compensation of Rs.6,00,000/- (six lac) on two counts to be paid to the legal heirs of both the deceased and in default thereof to undergo simple imprisonment for six months on each default, is upheld. The conviction and sentence of the appellant Iftikhar Ahmad u/s 21-L ATA to suffer five years R.I. is maintained. Both the sentences are ordered to run concurrently.

With the above modification, Criminal Appeal No.444/2019 is dismissed

(iii) Consequent to the above, Criminal Appeal No.445/2019 (filed by the complainant for enhancement of sentence of the appellant Iftikhar Ahmad) is dismissed.

Judge

Judge

Judge

Islamabad:
18.04.2024
(M. Saeed/Zohaib Afzal, LC

APPROVED FOR REPORTING.

Announced in open Court on 29th May, 2024 at Islamabad.

Judge