

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, C.J.

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CRIMINAL MISCELLANEOUS APPLICATIONS NO. 365-L/2020**  
**AND 96-L/2021 IN/AND JAIL PETITION NO.491 OF 2017**

*(Compromise – Against the judgment dated 17.05.2017 of the Lahore High Court, Lahore passed in Capital Sentence Reference No.29-T/2014 and Criminal Appeal No.1506/2014)*

Muhammad Akram

...Applicant(s)/Petitioner(s)

**Versus**

The State

...Respondent(s)

For the Applicant(s)/  
Petitioner(s):

Mr. Qamar Pervaiz Zia, ASC  
Mian Ghulam Hussain, AOR

For the State:

Mr. Muhammad Jaffar, Addl.P.G. Punjab

Date of Hearing:

07.10.2021

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Petitioner Muhammad Akram was tried by the learned Anti Terrorism Court-II, Gujranwala, pursuant to case registered vide FIR No. 280/2013 dated 26.06.2013 offence under Sections 302/324/353/337-D PPC read with Section 6/7 of the Anti Terrorism Act, 1997, at Police Station Khiyali, District Gujranwala. As per the contents of the crime report the petitioner has committed the murder of Mst. Sidra Nazir, his wife, and caused firearm injuries to Umar Farooq, Constable. The learned Trial Court after framing the charge found the allegation against the petitioner to be true and vide judgment dated 03.07.2014 convicted and sentenced the petitioner as under:-

(i) **Under Section 353 PPC**

Awarded sentence for imprisonment of 02 years RI alongwith fine of Rs.2000/-, in case of default to further undergo six months SI.

- (ii) **Under Section 337-D PPC**  
Awarded sentence for imprisonment of 05 years RI alongwith payment of Arsh which shall be 1/3<sup>rd</sup> of Diyat of schedule of that year to be paid to Umar Farooq injured PW.
- (iii) **Under Section 324 PPC**  
Awarded sentence for imprisonment of 05 years RI alongwith fine of Rs.25000/-, in case of default to further undergo six months SI.
- (iv) **Under Section 302(b) PPC**  
Awarded sentence of death.
- (v) **Under Section 7 of the Anti Terrorism Act, 1997**  
Awarded sentence of death alongwith fine of Rs.25000/- or in default thereof to further undergo six months SI.

All the sentences were directed to run concurrently. Benefit of Section 382-B Cr.P.C. was also extended.

2. The judgment of the Trial Court was assailed before the learned High Court in appeal which was adjudicated upon by the learned Division Bench of the Lahore High Court and while maintaining the conviction under substantive offence under Section 302(b) PPC and Section 7(a) of the Anti Terrorism Act, 1997, it reduced the sentence of death into imprisonment for life, however, as the learned Trial Court had not directed for payment of compensation while awarding sentence under Section 302(b) PPC, it also directed for payment of compensation amounting to Rs.100,000/- to the legal heirs of the deceased under Section 544-A Cr.P.C. or in default thereof to further undergo SI for six months. All the other sentences were, however, maintained and ordered to run concurrently. Benefit of Section 382-B Cr.P.C was also extended to the petitioner.

3. The facts of the case as given in the judgment of the learned Trial Court are as under:-

"Succinctly, the facts of the case enumerated in the complaint are that Sifat Hussain ASI, Police Station Khiyali on 26.06.2013 got lodged complaint Exh.PA on basis of which FIR Exh.PA/1 was registered by Abdul Hameed HC (PW1) that on 26.06.2013 at about 2.05 PM, Hanif Hussain ASI alongwith Muhammad Younas HC, Umar Farooq, Muhammad Arif constables armed with SMG rifles, Tehseen Raza constable armed with SMG, Muhammad Yousaf PQR, Rehana Kausar lady constable in a case FIR No.251/13 dated 13.06.2013 u/s 380 PPC registered at Police Station Khiyali, against accused under arrest namely Mst. Sidhra

*Nazir daughter of Nazir Ahmad (wife of Muhammad Akram accused), caste Arian, R/o Khiyali, Gujranwala were going to be produced before the Illaqa magistrate on an official vehicle No.2461-GAW driven by Shahid Maqbool constable, as soon the vehicle reached in front of office of Zong Mobile phone company because vehicle could not enter in the Police Station building, Mst. Sidhra Nazir was going to be boarded in the official vehicle to be taken to the court of Illaqa Magistrate and complainant was going to take seat in the vehicle, suddenly husband of Sidhra Nazir namely Muhammad Akram complainant of case FIR No.251/13 came while running from the other side of the road from fodder market and took out his pistol from his folder and made firing on his wife namely Sidhra Nazir resulting into serious injuries sustained by Sidhra Nazir and Umar Farooq constable who on sustaining the injuries fell on the ground. Muhammad Akram accused with the help of other police officials was apprehended at the spot alongwith .30 bore pistol and was sent to the Police Station in custody of Muhammad Arif constable. Regarding recovery of pistol .30 bore without having any license by Muhammad Akram, a separate case u/s 13/20/65 Arms Ordinance was registered. The complainant alongwith other police officials took the injured to the hospital on official vehicle where Sidhra Nazir succumbed to the injuries in the hospital while Umar Farooq was provided medical treatment."*

4. *During the pendency of the Jail Petition, Criminal Miscellaneous Application Nos. 365-L/2021 & 96-L/2021 were filed for acquittal of the petitioner on the basis that the compromise has been arrived at between the parties with the intervention of elders of the locality. This Court vide orders dated 11.11.2020 and 16.03.2021 sought report from the learned Sessions Judge, Gujranwala about the genuineness or otherwise of the compromise with a specific direction to ensure that the interest of the minors, if any, be safeguarded. The reports have been received, which show that the deceased Mst. Sidra Nazir was survived by her minor children, namely, (i) Sabir Hussain, (ii) Maryam Bibi, (iii) Zainab Bibi whereas the husband of the deceased Mst. Sidra Nazir was excluded from consideration. The children of the deceased are being brought up by Mst. Zahida Parveen, who was duly appointed by the Court as the Guardian. The reports further show that the guardian of the minor children has entered into a compromise with the petitioner on their behalf and has forgiven him in the name of Allah Almighty and also waived their right of Qisas. The interest of the minors has been safeguarded by purchasing Defence Savings Certificates*

amounting to Rs.28,00,000/- in their names which was equivalent to their shares of Diyat. It is note worthy that the injured PW Umar Farooq, who happens to be a police constable also has forgiven the petitioner by waiving his right to collect Arsh equivalent to 1/3<sup>rd</sup> of Diyat. These Criminal Miscellaneous Applications were earlier fixed on 05.10.2021, however, an opportunity was provided to the learned counsel for the parties to assist the Court on the point whether a compromise can be affected between the parties when the petitioner has been convicted and sentenced under the provision of Section 7 of the Anti Terrorism Act, 1997.

5. Today, during the course of proceedings before this Court, learned counsel for the petitioner contended that the occurrence has taken place as an outcome of personal vendetta and the provisions of Sections 6 and 7 of the Anti Terrorism Act are not applicable. Contends that the petitioner has committed the murder of his wife due to very specific reason that she was arrested in a case of theft and she was being produced for physical remand which could not be tolerated by the petitioner and under the impulses of 'ghairat' he has committed the murder. Contends that the injury caused to the police personnel was not intended to, rather the same was inflicted as per chance with no intent to commit any offence against law enforcing agencies. Lastly, it has been argued that the substantive offence has already been compromised between the parties, therefore, this Court can ignore the provisions of Section 7 of the Anti Terrorism Act especially when the injured PW has forgiven the right of arsh in the name of Allah Almighty.

6. On the other hand, learned Law Officer contended that no doubt the compromise has been affected between the parties but a sense of fear and insecurity was sensed by the members of the society due to act of the petitioner, therefore, the provision of Section 6 of the Anti Terrorism Act punishable under Section 7 thereof was fully applicable and as such the same cannot be ignored when the learned High Court has already taken a lenient view while converting the sentence of death into imprisonment for life.

7. We have heard learned counsel for the parties and gone through the record.

There are two aspects of the case, which need our consideration: (i) whether compromise in the substantive offence i.e. Section 302(b) is genuine, and (ii) whether Section 6 of the Anti Terrorism Act punishable under Section 7 thereof was applicable in the instant case. As far as the first aspect of the case is concerned, there is no denial to this fact that the compromise between the parties has been affected with the intervention of the elders of the locality which fact is reported to be genuine by the learned Sessions Judge while making his report dated 25.11.2020. As far as the interest of the minors is concerned, it is clearly described in the report that Defence Saving Certificates to the tune of Rs.28,00,000/- have been purchased against the name of three minors of the deceased as share of their Diyat, as such the legal formalities of the law are fully adhered to. Hence the law of the land is fully applied as far as the first aspect of the case is concerned. So far as the question as to whether the provisions of Section 6 of the Anti Terrorism Act punishable under Section 7 thereof are applicable in the given circumstances, it is noteworthy that the petitioner had committed the crime due to very specific reason. It is nowhere mentioned that the petitioner is a person of desperate character having any previous antecedents of criminal activities, rather the offence was committed under the impulses of 'ghairat'. The possibility cannot be ruled out that the petitioner could not afford the insult incurred because of the act of his wife and he has lost control and under the impulses of disgrace and humiliation he opted to commit the crime. The injury caused to the police personnel was not in direct conflict with the law enforcing agencies, rather as Mst. Sidra Nazir was in custody of the police constable the injury caused by him could be result of misdirected shot due to heat of passions. In United Kingdom, the framers of the law enacted an Act called "Homicide Act, 1957" in which they have dealt with such like situation under the 'dictum' 'diminished liability'. It is a legal doctrine that absolves an accused person of part of the liability for his criminal act if he suffers from such abnormality of mind as to substantially impair his responsibility in committing or being a party

to an alleged violation, which is committed due to love and affection and injury to reputation. The doctrine of diminished responsibility provides a mitigating defense in cases in which the mental disease or defect is not of such magnitude as to exclude criminal responsibility altogether. It is most frequently asserted in connection with murder cases requiring proof of a particular mental state on the part of the accused. While drawing analogy from said legislation when there is no allegation available on the record that the petitioner intended to cause injury to the police personnel *stricto sensu* and his only aim was to take the life of his wife under the impulses of 'ghairat', the situation has become altogether different. Even otherwise, the learned Trial Court had convicted the petitioner under Sections 337-D & 324 PPC for causing injury on the person of the police personnel and the said injured has also affected a compromise with the petitioner and has forgiven him and has also waived his right to collect Arsh equivalent to 1/3<sup>rd</sup> of Diyat. In the case reported as Ghulam Hussain Vs. The State (PLD 2020 SC 61), this Court has categorically held that only creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, a fallout or an unintended consequence of a private crime and mere shock, horror, dread or disgust created or likely to be created in the society does not transform a private crime into terrorism. In Farooq Ahmed Vs. The State (2020 SCMR 78), the accused had committed murder of a person in the premises of Sessions Court due to previous enmity and was convicted and sentenced under Section 302(b) PPC and Section 7 of the Anti Terrorism Act to death. However, during the pendency of his appeal before this Court, the parties entered into a compromise and this Court while accepting the compromise under Section 302 PPC, set aside the conviction and sentence of the petitioner under Section 7 of the Anti Terrorism Act on the ground that murder was committed due to personal enmity and the petitioner/convict did not want to create fear, insecurity or terror in the society. The same was the case in Dilawar Mehmood Vs. The State (2018 SCMR 593) wherein the murder was committed in a cattle market due to previous enmity and he was convicted and

sentenced to death by the Trial Court under Section 302(b) PPC read with Section 7 of the Anti Terrorism Act, which was reduced to imprisonment for life by the High Court. During the pendency of the jail petition filed by the accused before this Court, the parties entered into a compromise and compounded the offence under Section 302(b) PPC. So far as the conviction and sentence of the petitioner under Section 7(a) of the Anti Terrorism Act is concerned, this Court set aside the same on the ground that the occurrence was the result of previous enmity between the parties, therefore, there was no element of terrorism. In view of the facts and circumstances narrated above, we are of the view that the provisions of Section 6 of the Anti Terrorism Act are not attracted in the present case, therefore, the conviction and sentence recorded under Section 7 of the Anti Terrorism Act is set aside. Now that when the parties have compromised the offence under Sections 302(b)/337-D/324 PPC and we have set aside the conviction and sentence under Section 7 of the Anti Terrorism Act, the only punishment left to the petitioner is under Section 353 PPC, which is not compoundable. However, we have been informed that the petitioner has already undergone the period of his sentence of 2 years RI.

8. For what has been discussed above, Criminal Miscellaneous Applications No. 365-L/2020 & 96-L/2021 are allowed with the result that Jail Petition No. 491/2017 is converted into appeal and partly allowed. The petitioner is acquitted of the charge of murder and of causing injury on the person of Umar Farooq constable. He shall be released from jail forthwith unless detained/required in any other case.

CHIEF JUSTICE

JUDGE

JUDGE

Announced on **08.11.2021** at **Islamabad**.  
Approved For Reporting  
Waqas Naseer