

60/22

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**AFR**  
**CRIMINAL MISCELLANEOUS APPLICATION NO.1581 OF 2021 IN/AND**  
**CRIMINAL APPEAL NO.193 OF 2020 AND CRIMINAL APPEALS NO.194 AND**  
**195 OF 2020**

(Compromise)

(Against the judgment dated 20.06.2018 passed by the High Court, Sindh, Sukkur Bench in Criminal Appeal Nos. D-36/2011, D-132/2017, D-133/2017)

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| 1. | Muneer Malik and Nadeem Ahmed<br>Vs. The State through P.G. Sindh | In CrI.M.A.1581/2021<br>& CrI.A.193/2020 |
| 2. | Munir Malik Vs. The State through<br>P.G. Sindh                   | In CrI.A.194/2020                        |
| 3. | Nadeem Ahmed Vs. The State<br>through P.G. Sindh                  | In CrI.A.195/2020                        |

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

Barrister Umer Aslam, ASC  
Raja Muhammad Rizwan Satti, ASC  
Ch. Akhtar Ali, AOR  
(In all cases)

For the State:

Mr. Zafar Ahmed Khan, Addl. P.G. Sindh

Date of Hearing:

11.05.2022

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Appellants Muneer Ahmed @ Muneer Malik and Nadeem Ahmed along with two co-accused (*who were declared proclaimed absconders and were tried in absentia*) were tried by the Anti Terrorism Court, Khairpur Mirs, pursuant to case registered vide Crime Nos. 35/2007, 37/2007 & 38/2007 under Sections 302/324/34 PPC read with Section 7 of the Anti Terrorism Act, 1997 and 13(e) of the Arms Ordinance for committing murder of Bashir Ahmed and Chiraguddin,

father and cousin of the complainant and for causing injuries to Muneer Ahmed and Khalil Rehman, brother and cousin of the complainant.

2. The facts of the case as given in the complaint lodged by the complainant are as under:-

"Complaint is that I am driver of Tractor. Yesterday at night time there arose exchange of some harsh words between us and Muhammad Amin Malik and others over the issue of children, on that Muhammad Amin Malik and others said that they will see us. Today at morning time I and my deceased father Bashir Ahmed, brother Munir Ahmed and cousin Khalil Rehman, after completing the work at land, were going back, when we reached at bus stop Behlani, there at about 2.15 hours of noon, my deceased cousin Chiraghuddin son of Ghulam Muhammad also joined us. There we found accused. They were Muhammad Amin son of Muhammad Ashraf Malik, who was having MP-5 rifle in his hand, (2) Munir Ahmed son of Muhammad Ashraf Malik who was having Kalashnikov in his hand, (3) Nadeem son of Muhammad Ashraf Malik who was having T.T. pistol in his hand, (4) Bashir Ahmed son of Muhammad Ashraf who was having T.T. pistol in his hand. Soon after their arrival accused Muhammad Amin malik said that today we will not be spared. After saying so, accused Muhammad Amin Malik made direct fires with his rifle upon Chiraghuddin with intention to commit his murder. Those fires hit him at his chest, on that he raised cries and fell down on the ground. Accused Munir Ahmed Malik fired burst of Kalashnikov upon my father Bashir Ahmed who also raised cries and fell down on the ground. Accused Nadeem, Muhammad Amin, Munir Ahmed and Bashir Ahmed fired with their respective weapons upon my brother Munir Ahmed and cousin Khalil Rehman with intention to commit their murder. They by raising cries fell down on the ground. Then I and above said injured raised cries, on our cries and fire shot reports Umerdin Shaikh, Abdul Sattar Shaikh, Nawab Shaikh, Ashiq Ali Shaikh and other co-villagers came from hotel and shops. They also saw the accused persons making fires. Then all the four accused making fires went away to their houses by raising slogans. We and all the witnesses found that my father Bashir Ahmed and cousin Chiraghuddin had died after sustaining fire shot injuries. My brother Munir Ahmed and cousin Khalil Rehman were found lying in injured condition. We brought the injured at Behlani Hospital for immediate treatment. I left the witnesses over the dead bodies of both the deceased for security purpose and then myself proceeded there from. Now I have appeared and state that above named accused on account of their annoyance over issue of children in furtherance of their common intention have committed murder of my father Bashir Ahmed and cousin Chiraghuddin and have caused injuries to my brother Munir Ahmed and cousin Khalil Rehman."

3. The learned Trial Court vide its judgment dated 02.04.2011 convicted the appellants as under:-

- (i) **Under Section 302/34 PPC**  
Convicted and sentenced to suffer rigorous imprisonment for life for two times with payment of compensation amounting to Rs.200,000/- each to be paid to the legal heirs of both deceased or in default whereof to further suffer RI for a period of six months each.
- (ii) **Under Sections 324/34 PPC**  
Convicted and sentenced to suffer RI for a period of seven years and also to pay a fine of Rs.10,000/- each or in default thereof to further undergo SI for two months more.
- (iii) **Under Section 7 of the ATA, 1997**  
To suffer rigorous imprisonment for life for two times and to pay fine of Rs.200,000/- each or in default thereof to further undergo RI for one year.
- (iv) **Under Section 13(e) of the Arms Ordinance**  
To suffer RI for a period of seven years each and to pay a fine of Rs.5000/- each or in default whereof to further undergo SI for one month each.

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

4. In appeal, the learned High Court of Sindh, vide its judgment dated 20.06.2018, maintained the conviction and sentences recorded by the learned Trial Court. Being aggrieved by the impugned judgment of the High Court, the appellants filed Criminal Petition Nos. 877, 878 & 879/2018 wherein leave was granted and Criminal Appeal Nos. 193, 194 & 195/2020 have arisen out of the same. During the pendency of these appeals, Criminal Miscellaneous Application No. 1581/2021 was filed for acquittal of the appellants on the ground that the parties have entered into compromise and as such the legal heirs of the deceased have pardoned the appellants in the name of Allah Almighty. This Court vide order dated 07.12.2021 sought report from the learned Sessions Judge, Nowshero Feroz, to ascertain the factum of compromise between the legal heirs of the deceased along with the injured witnesses in order to verify the genuineness of the compromise as claimed by the appellants. The Sessions Judge was also directed to confirm as to whether the deceased is survived by any minor legal heir and, if so, whether the

interest of the minors has been fully secured and safeguarded. The report has since been received, which shows that the deceased Bashir Ahmed was survived by three sons and four daughters including one minor daughter whereas the deceased Chiraguddin was survived by a widow, three sons including a minor son aged 16 years and two daughters including a minor daughter aged 14 years. The report states that a compromise has been affected between the parties and the same has been made voluntarily without any duress or coercion. The legal heirs of the deceased have forgiven the appellants in the name of Allah Almighty and have waived their right of Qisas and Diyat and they do not want to receive any Badl-e-Sulah or compensation. So far as the interest of three minors is concerned, a land measuring 00-39 ½ ghuntas out of Survey Nos. 62 and 65 situated in Deh Behlani has been transferred in the name of the three minors. However, since the market value of the land was around Rs.800,000/- to 10,00,000/- whereas the diyat share amount of minor legal heirs was Rs.18,24,328.39/-, therefore, a notice was issued to the appellants to deposit the amount of the minors as per their due share. In response to the notice, the requisite amount has been deposited with the Accountant of the Sessions Court. In this view of the matter, the interest of the minors has been safeguarded. The injured witnesses have also confirmed the factum of compromise with the appellants and extended no objection if the appellants are acquitted on the basis of such compromise.

5. During the course of proceedings before this Court, learned counsel for the appellants contended that the occurrence has taken place over a petty issue arising out of quarrel between children, which has taken place in open land and as the same is the outcome of personal vendetta, therefore, provision of Section 7 of the Anti Terrorism Act is not applicable in the present case. Contends that so far as the remaining conviction and sentences under the provisions of 302/324/34 PPC is concerned, the legal heirs of both the deceased along with the injured witnesses have affected a compromise and have settled the matter, as such, the appellants deserve to be acquitted of

the charge. Contends that so far as the conviction of the appellants under Section 13(e) of the Arms Ordinance is concerned, the recovery was affected from open place, which is otherwise joint one, such recovery is inadmissible in nature, hence, it is totally artificial, doubtful and flimsy and is liable to be set aside.

6. On the other hand, learned Law Officer contended that no doubt the compromise has been affected between the parties but fear and insecurity was sensed by the members of the society due to the act of the appellants, therefore, the appellants were rightly convicted under Section 7 of the Anti Terrorism Act, which cannot be compounded.

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. Sections 302/324/34 PPC is genuine, and (ii) whether Section 7 of the Anti Terrorism Act 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 legal heirs of both the deceased along with injured witnesses has been affected, which fact is reported to be genuine by the learned Sessions Judge while making his report dated 12.01.2022. So far as the interest of three minors is concerned, a land measuring 00-39 ½ ghuntas out of Survey Nos. 62 and 65 situated in Deh Behlani has been transferred in the name of the three minors. However, since the market value of the land was around Rs.800,000/- to 10,00,000/- while the diyat share amount of minor legal heirs was Rs.18,24,328.39/-, therefore, pursuant to a notice issued to the appellants to deposit the amount of the minors as per their due share, the requisite amount has been deposited with the Accountant of the Sessions Court. Therefore, the interest of the minors has been safeguarded. Hence, it can safely be said that the compromise between the parties is genuine. So far as the question as to whether the provision of Section 7 of the Anti Terrorism Act

is applicable in the given circumstances, the perusal of record clearly reflects that the occurrence took place over scuffle between the children and the appellants had no specific motive to create terror or insecurity among the society coupled with the fact that it was not pre-meditated rather ultimately resulted into the instant occurrence. In Ghulam Hussain Vs. The State (PLD 2020 SC 61), a five members' bench of this Court has categorically held as under:-

"Thus, it is no longer the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualifies to be termed as terrorism or not but it is now the intent and motivation behind the action which would be determinative of the issue irrespective of the fact whether any fear and insecurity was actually created or not. After this amendment in section 6 an action can now be termed as terrorism if the use or threat of that action is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect, etc. or if such action is designed to create a sense of fear or insecurity in the society or the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause, etc. Now 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."

**(Underlined to lay emphasis)**

8. In Muhammad Akram Vs. The State (2022 SCMR 18), the accused murdered his wife (*who was accused of theft in a criminal case*) under the impulses of 'ghairat' while she was being taken to Court in a police vehicle. He was subsequently convicted under Section 302(b) PPC read with Section 7 of the Anti Terrorism Act and was sentenced to imprisonment for life. During the pendency of his appeal before this Court, the parties compromised. This Court while setting aside the conviction of the accused under Section 7 of the Anti Terrorism Act by holding that he committed murder due to a very specific reason of 'ghairat', which cannot be termed as terrorism, accepted the compromise and acquitted him of the charge of murder. 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 read with 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 accused under Section 7 of the Anti Terrorism Act on the ground that murder was committed due to personal act and the accused/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. The accused 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 accused 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 provision of Section 7 of the Anti Terrorism Act is not attracted in the present case as the occurrence was the result of personal vendetta, therefore, the conviction and sentence recorded under Section 7 of the Anti Terrorism Act is set aside. So far as the conviction of the appellants under Section 13(e) of the Arms Ordinance is concerned, we have noted that recovery memo and site plan reveal that on 27.05.2007 accused persons while in Police custody jointly led to the recovery of weapons of offence i.e. one Kalashnikov and a T.T. Pistol from a fish pond of one Muhammad Hanif Malik, which in all eventualities is an open place. Nothing has been mentioned as to which of the appellant had first led to the recovery or pointed out the place of recovery and in absence of the same, joint recovery of weapons of offence is of no evidentiary value. Furthermore, the record shows that eight empties of Kalashnikov and six

empties of T.T. pistol were recovered from the scene of occurrence on the same day i.e. 17.05.2007 through recovery memo but the said crime empties were neither kept in safe custody nor sent to Chemical Examiner immediately after recovery. The weapons of offence and the crime empties were jointly sent to the office of Chemical Examiner after a delay of more than two months i.e. on 13.07.2007 for which no plausible explanation has been given by the prosecution. In these circumstances, the recoveries are inadmissible in evidence and cannot be relied upon to sustain conviction of the appellants. We, therefore, set aside the conviction of the appellants under Section 13(e) of the Arms Ordinance.

9. For what has been discussed above, Criminal Miscellaneous Applications No. 1581/2021 and Criminal Appeal Nos. 193, 194 & 195/2020 are allowed and the impugned judgment is set aside. The appellants are acquitted of the charge of murders and of causing injuries to injured witnesses. They shall be released from jail forthwith unless detained/required in any other case.

Islamabad, the

11<sup>th</sup> of May, 2022

Not Approved For Reporting

Khurram