

30/79

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Justice Jamal Khan Mandokhail
Justice Syed Hasan Azhar Rizvi
Justice Musarrat Hilali

Crl.P.L.A.354-L/2016

[Against the judgment dated 25.02.2016 passed by the Lahore High Court,
Lahore in Crl.A.432/2014]

Hasnain Salim @ Sunny

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s) : Mr. Aurang Zaib Marf, ASC
Syed Rifaqat Hussain Shah, AOR
For the State : Mirza Abid Majeed, DPG Punjab
Date of Hearing : 16 May 2024

ORDER

Jamal Khan Mandokhail, J.- For the reasons to be recorded separately, by majority of two to one (syed Hasan Azhar Rizvi, J. dissenting), this petition is converted into an appeal and is partly allowed. The conviction and sentence awarded to the petitioner under section 7 (c) of the Anti-Terrorism Act, 1997 is set-aside. However, the conviction and sentence awarded to the petitioner under section 336-B, PPC through the impugned judgment dated 25.02.2016 passed by Lahore High Court and that of the Trial Court dated 15.02.2014 are maintained.

sd/-
sd/-
sd/-

Islamabad

16th of May 2024

Syed Farhan Ali

[Signature]

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Jamal Khan Mandokhail
Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali

DJ/AFR

Criminal Petition No. 354-L of 2016

(Against the judgment dated 25.02.2016 of the
Lahore High Court, Lahore passed in CrI. Appeal
No. 432/2014)

Hasnain Salim @ Sunny

Petitioner

Versus

The State

Respondent

For the Petitioner

: Mr. Aurang Zaib Marl, ASC
Syed Rifaqat Hussain Shah, AOR

For the State

: Mirza Abid Majeed, DPG Punjab

Date of Hearing

: 16.05.2024

ORDER

Jamal Khan Mandokhail, J. Facts in brief are that the petitioner was arrested pursuant to FIR No. 179 dated 11.09.2013 registered under sections 336-B/337-L, PPC and 6 & 7 of Anti-Terrorism Act, 1997 at Police Station Dolat Nagar, District Gujrat. The petitioner was convicted and sentenced under sections 336-B, 336 read with 337-R, PPC and 7(c) of Anti-Terrorism Act, 1997 ('ATA') by the Judge, Anti-Terrorism Court-I, Gujranwala ('Trial Court'). The judgment of the Trial Court was challenged before the High Court, which was dismissed by means of the impugned judgment, hence, this petition.

2. Arguments heard and have perused the record. The allegation against the petitioner was that he threw acid upon the victim, who is a sister of the complainant. The prosecution witnesses supported the contentions of the complainant and established contents of the FIR to the extent of throwing acid upon

the victim. The courts below after going through the record, have reached a correct conclusion that the prosecution has succeeded in proving its case. The conviction and sentence awarded to the petitioner under section 336-B and 337-L, PPC are just and proper, hence, the same are maintainable. All the sentences shall run concurrently with benefit of section 382-B, Cr. P.C. Thus, no interference in the judgment impugned to such extent is warranted.

3. As far as the conviction and sentence awarded to the petitioner under sections 7(c) of the ATA is concerned, it is important to mention here that the use of coercive substance falls under section 336-B, PPC, however, keeping in view of its gravity it has been included in 3rd Schedule to the ATA for the purpose of expeditious trial. In case, it is proved that the offence/the said act is done with an intention to commit terrorism and the allegation is proved against accused, he shall be convicted under section 7 of the ATA. In case the prosecution fails to prove the allegation of terrorism, but otherwise succeeds in establishing its case, in such a scenario, the case shall still be tried by the Special Judge, ATA, and the accused shall be convicted under the normal offence of the PPC, instead of convicting and sentencing him under sections 7 of the ATA. Reliance in this behalf has been placed on *Ghulam Hussain vs. the State*.¹ The instant bench has reaffirmed the said view recently in the cases of *Imtiaz Latif, etc v. The State*² and *Javed Iqbal v. The State*³.

4. In the present case, though the complainant in his FIR has alleged that the act of the petitioner has created fear and panic in the area, but such fact has not been established by the

¹ PLD 2020 SC 61

² 2024 SCMR 1069

³ 2024 SCP 195

prosecution. Even, the complainant did not level the allegation of terrorism against the petitioner. The facts and circumstances of the case lead us to a conclusion that it was a matter between the petitioner and the victim, which does not fall within the definition of section 6 of the ATA. The courts below have erred by not considering this aspect of the case in the light of the Ghulam Hussain's case (*supra*) and have wrongly considered the act of the petitioner as an act of terrorism. Under such circumstances, the conviction and sentence awarded to the petitioner under section 7 (c) of the ATA is not sustainable.

These are the reasons of our short order of even date, which is as follows:

'For the reasons to be recorded separately, by majority of two to one (Syed Hasan Azhar Rizvi, J, dissenting), this petition is converted into an appeal and is partly allowed. The conviction and sentence awarded to the petitioner under section 7(c) of the Anti-Terrorism Act, 1997 is set aside. However, the conviction and sentence awarded to the petitioner under section 336-B, PPC through the impugned judgment dated 25.02.2016 passed by the Lahore High Court and that of the Trial Court dated 15.02.2014 are maintained.'

I appended my dissenting reasons

Islamabad
16th May, 2024
Rizwan
16/5/24

JUDGMENT

SYED HASAN AZHAR RIZVI: I have had the privilege of going through the majority judgment authored by my learned brother Jamal Khan Mandokhail, J. I with due respect, find myself in disagreement with the same for the facts and reasons mentioned herein below.

2. Perusal of the material available on the record reveals that the allegations against the petitioner are that on 11.09.2013, at approximately 1:45 PM, Naila Shahid, the complainant's sister, a 9th-grade student, was returning to home from her school. As Naila Shahid entered on the street, accused, Hasnain Saleem alias Sunny (the **petitioner**), approached/appeared on a motorcycle, grappled with her, unveiled her face, and threw acid on her face. As a result, Naila Shahid sustained burns to her face, neck, and body. A surgical examination revealed disfigurement of her left face and eye, leading to the loss of sight in her left eye.

3. The incident occurred in broad daylight. The petitioner is the sole individual named in the FIR and is known to be well-acquainted with the complainant. Therefore, there is no question of mistaken identity. Additionally, the accused was identified by the victim, Naila Shahid, who testified as a witness before the trial court.

4. The ocular account has been corroborated by the medical evidence which was furnished by Dr. Bushra Rehman (PW-5).

5. The bottle containing acid, which the petitioner used, was recovered based on his disclosure and taken into possession vide recovery memo (Exh. PB). The report from the Punjab Forensic Science Agency also validates that the liquid recovered from the

bottle contained a small quantity of acid. This independent evidence supports the allegations against the petitioner in the case.

6. Acid attacks limit the fundamental freedoms enjoyed by a person such as right to life, healthcare, education, freedom to movement, enjoyment of highest attainable standard of physical and mental health, among various others.

7. The Anti-Terrorism Act of 1997 ("**ATA**") has been enacted with the purpose of preventing terrorism and sectarian violence. This legislation provides a comprehensive legal framework to address and mitigate acts of terrorism, ensuring national security and public safety. The Preamble to the said Act reads as follows:

"Whereas it is expedient to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto; It is hereby enacted as follows:-----"

8. Section 12 of ATA confers jurisdiction on the Anti-Terrorism Courts. It is reproduced herein-below for the sake of convenience;

12. Jurisdiction of Anti-terrorism Court: (1)
Notwithstanding anything contained in the Code or in any other law, a scheduled offence committed in an area in a Province or the Islamabad Capital Territory shall be triable only by the Anti-terrorism Court exercising territorial jurisdiction in relation to such area."

Section 2(t) of ATA defines a scheduled offence in the following terms:

"Scheduled offence" means an offence as set out in the Third Schedule."

The said third schedule contains following offences;

THE THIRD SCHEDULE (Scheduled Offences)

[See section 2(t)]

1. Any act of terrorism within the meaning of this Act including those offences which may be added or amended in accordance with the provisions of section 34 of this Act.
2. Any other offence punishable under this Act.
3. Any attempt to commit, or aid or abetment of, or any conspiracy to commit, any of the aforesaid offences.
4. Without prejudice to the generality of the above paragraphs, the Anti-terrorism Court to the exclusion of any other Court shall try the offences relating to the following, namely:-
 - (i) Abduction or kidnapping for ransom;
 - (ii) 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; or
(iii) Firing or use of explosive by any device, including bomb blast in the court premises; or
(iv) Hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance; and
(v) Unlawful possession of an explosive substance or abetment for such an offence under the Explosive Substances Act, 1908 (VI of 1908).

(EMPHASIS ADDED)

The aforementioned clause 4 (iv) of the schedule annexed to the ATA demonstrates that if a corrosive substance causes hurt, then it is triable by Anti-Terrorism Courts. By virtue of Section 12, the Anti-terrorism Court has jurisdiction to try the scheduled offence.

9. Acid attacks can sometimes be classified under the meaning of terrorism, depending on the context and intent behind the act. If an acid attack is intended to create widespread fear or panic among a population, it could be seen as an act of terrorism, as terrorism is often defined by the intent to intimidate or coerce a civilian population. Additionally, if the attack is motivated by political, ideological, or religious beliefs and aims to further these objectives through violence or the threat of violence, it could be classified as terrorism. The broader impact on societal order and security is another factor; if an attack disrupts public order, causes significant fear, and undermines confidence in security institutions, it may be seen as an act of terrorism. However, not all acid attacks are classified as such, as many are criminal acts motivated by personal vendettas or domestic disputes. The classification depends on the specific circumstances, motives, and broader impact of the attack. In the present case, record reveals that criminal act of the petitioner was not motivated by personal vendettas or domestic disputes rather he intended to instill fear in the society.

10. In cases concerning heinous crimes such as throwing acid/corrosive substances on school students which leads to permanent disfigurement and blindness and completely ruins their lives, there is a need to take a dynamic approach. This Court in **Noor Muhammad v. State (1999 SCMR 2722)** has also adverted to this aspect of the matter and has observed as under:-

"However, we may observe that the people are losing faith in the dispensation of criminal justice by the ordinary criminal courts for the reason that they either acquit the accused persons on technical grounds or take a lenient view in awarding sentence. It is high time that the Courts should realize that they owe duty to the legal heirs/relations of the victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of offences. One of us (Ajmal Mian, C.J., as he then was) has highlighted this aspect, inter alia in the case of State through the Advocate General Sindh, Karachi v. Farman Hussain and others (PLD 1995 SC 1), relevant portion whereof at page 19 reads as follows:- (3) It is a matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling unsecured. The learned trial Court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice".

11. This Court in the case of **Mirza Shaukat Baig and others v Shahid Jamil and others (PLD 2005 SC 530)** while interpreting the provisions of ATA, 1997 ruled as under:

"The language as employed in the section is unambiguous, plain and simple which hardly requires any scholarly interpretation and is capable enough to meet all kinds of terrorism. Where a criminal act is designed to create a sense of fear or insecurity in the mind of the general public that can only be adjudged by keeping in view the impact of the alleged offence and manner of the commission of alleged offence.

12. This court in **Ghulam Hussain Case (PLD 2020 SC 61)** has comprehensively discussed this issue of applicability of ATA, relevant portion wherefrom is reproduced herein below:-

"13. ... 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, PPC 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, PPC 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, PPC whereas in the latter case the convicted person is to be convicted both for the offence under section 365-A, PPC as well as for the offence under section 7(e) of the Anti-Terrorism Act, 1997....”

In light of this, it can be concluded that although ordinary cases of acid attacks do not fall within ambit of ATA, however, present case is not an ordinary one.

13. In the present case, the petitioner sprinkled acid on face of victim and face, neck, and body of victim Naila Shahid were burnt. This incident terrorized all girls attending schools/colleges situated in the vicinity and accused did not intent to frighten the victim only. It created a sense of insecurity in the young girls attending schools/colleges and sprinkling a dangerous acid on the face of girl surely creates a grave sense of fear in the inhabitants of the area. The act of terrorism is to be seen in peculiar facts and circumstances of each case. If act's effect whether actual, intended or potential, is to create fear and insecurity, etc. in the society at large, it qualifies to be act of terrorism. The Courts have only to see whether the terrorist act was such which would have the tendency to create sense of fear or insecurity in the minds of the people or any section of the society. The venue of the commission of a crime, the time of occurrence, the substance used in causing hurt or death, and the sense of fear or insecurity the act created are the few factors among others to meet the standard of terrorism.

14. It may not be out of place to observe that acid attacks have devastating consequences, particularly for women. These

attacks result in severe pain, permanent disfigurement, infections, blindness, psychological and economic hardships.

15. Throwing acid on a victim's face, resulting in disfigurement and loss of eyesight, is an undeniably horrific and tragic event. Such acts inflict profound sorrow on the victim's family and loved ones while generating fear and insecurity within the community. Moreover, the victims of acid attacks usually are not given any proposals for marriage due to their permanent disfigurement.

16. Given the severity of the situation and its societal impact, the provisions of the Anti-Terrorism Act (ATA) are appropriately invoked. The ATA is specifically designed to address and combat acts of terrorism, encompassing actions that instill terror, fear, and insecurity among the populace. Additionally, invoking the ATA sends a powerful message that such heinous acts will not be tolerated, and the perpetrators will be held accountable to the fullest extent of the law. This measure also reassures the public that authorities are taking decisive action to ensure their safety and security.

17. At this juncture, it is crucial to stress the urgent need to address the growing threat of acid attacks. This serious issue requires immediate and firm action from all sectors of society. These heinous acts cause severe physical and psychological harm to victims and deeply damage our communities. Such crimes are stains on humanity, undermining our values of compassion, respect, and dignity. Acid attacks constitute a grave violation of women's fundamental rights a major public health issue. Such attacks are generally intended not to kill the victims but cause disfigurement, often leading to blindness, hearing loss and the

victims suffering severe physical and mental trauma. Acid attacks also cause social and economic exclusion and victims have limited access to legal recourse, and medical or psychological assistance.

18. In the present case, all the prosecution witnesses have successfully passed the test of lengthy cross-examination by the defense but no material discrepancies have been brought on record. There is nothing on record that may suggest false implication of petitioner. The presence of eyewitnesses at the place of occurrence was also established on the record. The evidence produced by the prosecution is trustworthy and reliable. The prosecution has succeeded to prove its case against petitioner; moreover P.Ws had no motive to falsely implicate the petitioner in this heinous crime.

19. In view of above discussion, I observe that prosecution has produced sufficient incriminating material against the petitioner. High Court in the Impugned judgment has duly considered all aspects of the case, both legal and factual. The impugned judgment is well reasoned and needs no interference.

20. Consequently, for the reasons mentioned above, this petition being devoid of merit is hereby dismissed.


(Syed Hasan Azhar Rizvi)

JUDGE

Islamabad
16th May, 2024
Paras Zafar, LC/-
APPROVED FOR REPORTING

16/9/24