

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

**PRESENT:**

Mr. Justice Muhammad Hashim Khan Kakar  
Mr. Justice Salahuddin Panhwar  
Mr. Justice Ishtiaq Ibrahim

**Cr.A. No.623/2022 in CrI.P.L.A No.867 of 2019**

(Against the judgment dated 30.05.2019 passed in Cr.A No.129-T/2013 with Murder Reference No.01-T/2013, by the Islamabad High Court Islamabad)

***Muhammad Asim***

*...Appellant(s)*

***versus***

***The State etc.***

*...Respondent(s)*

For the Appellant:

Barrister Umer Aslam, ASC along with Dawood Akhtar, brother of appellant.

For the State:

Ms. Chand Bibi DPG

Date of hearing:

24.02.2025

**JUDGMENT**

**ISHTIAQ IBRAHIM, J.-** Tried by learned Judge Special Court (Anti-Terrorism Court), Islamabad (“Trial Court”), in case FIR No.47 dated 01.03.2011, under Sections 302, 34 PPC and Sections 7(a) and 21-I Anti-Terrorism Act, 1997 (“Act of 1997”), registered at Police Station Golra Sharif, Islamabad, Muhammad Asim, the appellant, having been found guilty of committing murder of Gulzar Ahmad constable No.6653 (“deceased”), was convicted and sentenced vide judgment dated 19.12.2013 as below:-

**Under Section 302(b) PPC:-** *To death as Ta'azir subject to its confirmation by the Islamabad High Court Islamabad.*

**Under Section 7(a) of the Act of 1997:-** *To death subject to its confirmation by the Islamabad High Court, Islamabad.*

2. Co-accused Dawood Akhtar, Haroon-ur-Rashid and Israr Ahmad were also convicted and sentenced by the learned trial Court under section 302(b) PPC and section 21-I of the Act of 1997 to undergo rigorous imprisonment for life each, under each offence. All the convicts including the appellant filed Cr.A. No.129-T of 2013,

before the learned Islamabad High Court, Islamabad, whereas, the learned trial Court sent Murder Reference No.01-T of 2013 for confirmation of death sentence of appellant Muhammad Asim. The worthy Islamabad High Court, while dismissing appeal to the extent of the appellant answered the murder reference in the affirmative, however, allowed the same to the extent of the convicts Dawood Akhtar, Israr Ahmed and Haroon-ur-Rashid and acquitted them of the charge vide judgment dated 01.07.2019.

3. Against his conviction and sentences the appellant filed Crl.P.L. No.867 of 2019, before this Court wherein leave was granted, *inter alia*, to examine the entire evidence available on record in the interest of safe administration of criminal justice vide order dated 08.12.2022.

4. The prosecution's case as set forth in the FIR Exh.PC is that on 01.03.2011 Ghulam Abbas ASI (PW.12) along with Khalid Mehmood and Gulzar Ahmad, constables, visited village *Maira Akku* for the purpose of investigation of case FIR No.46 dated 01.03.2011 registered under section 506(ii) and 34 PPC, who after spot inspection of the case (*ibid*) relieved the eyewitnesses, however, he himself along with above named constables went to the house of the accused nominated in the FIR (*ibid*) for the purpose of arrest. On knock at the door of the house of accused, two young persons, whose names were later identified as Haroon and Daud (acquitted co-accused) came out of the house and when Ghulam Abbas ASI (PW.12), asked them qua whereabouts of Muhammad Asim and Israr, both instead of furnishing the requisite information, started altercation with the police officials. In the meantime, Muhammad Hanif Constable No.1462 living in the nearby vicinity as well as Muhammad Asim (appellant) and Israr (acquitted co-accused), duly armed with pistols .30 bore arrived at the spot. Muhammad Asim appellant opened fire at Constable Gulzar Ahmed, as a result, he got hit, fell down and succumbed to injuries. Accused Muhammad Dawood and Muhammad Haroon (acquitted co-accused) were arrested at the spot, however, the appellant along with co-accused Israr made their escape good from the crime spot. Ghulam Abbas ASI informed the Police Station, pursuant whereof, Nusrat Ali SI reached the crime spot along with other police officials and



recorded statement/complaint Exh.PC of Ghulam Akbar ASI on the basis of which FIR Exh.PC/1 was registered against the appellant and acquitted co-accused.

5. On completion of investigation report under section 173 Cr.P.C. was submitted against all the accused before the learned trial Court, where they were formally charge sheeted to which they pleaded not guilty and claimed trial. After closure of the prosecution's evidence statements of the accused were recorded under section 342 Cr.P.C. wherein they denied the prosecution's allegation and professed their innocence. Appellant Muhammad Asim, however, took the plea that of self-defence in his statement under section 342 Cr.P.C. and produced three witnesses in support of his plea whereas Ashfaq Anwar ASI was examined as a Court witness.

6. Learned counsel for the appellant argued that at best this was a case to be dealt with under section 302 (c) PPC and not under section 7(a) of the Act of 1997 and 302(b) PPC while taking into consideration statement of the appellant 342 Cr.P.C. in its totality; that co-accused have been acquitted on the same set of evidence, therefore, conviction of the appellant on this score too is not sustainable in the eye of law; that both the courts below have overlooked the self-defence plea of the appellant; that occurrence being nocturnal and the deceased constable not wearing the police uniform at the time of occurrence, the appellant owing to apprehension of his assassination, possibility of the appellant having acted in self-defence is quite appealable to a prudent mind. He lastly submitted that conviction of the appellant under section 7(a) of the Act of 1997 may be set-aside that his conviction from section 302(b) may be converted into section 302(c) PPC and his sentence may be reduced.

7. Conversely, learned DPG while controverting the arguments of learned counsel for the appellant contended that prosecution has established guilt of the appellant beyond reasonable doubt by bringing on record reliable, trustworthy and confidence inspiring evidence and the appellant has failed to establish the plea of self-defence.

8. We have given our anxious consideration to the arguments advanced at the bar and perused the evidence and gone through the impugned judgments.

9. In view of the arguments of learned counsel for the appellant, the first legal question to be answered by us is that whether section 7(a) of the Anti-Terrorism Act, 1997 ("Act of 1997") could be attracted against the appellant keeping in view the mode and manner in which the occurrence has taken place. From the evidence led by the prosecution it has been established that on the day, time and place of occurrence, neither the deceased constable nor complainant Ghulam Abbas ASI was wearing police uniform. FIR No.47 (ibid) in which the appellant his co-accused were nominated has not been exhibited by the prosecution during trial to substantiate the stance of Ghulam Abbas ASI that on the fateful day he while investigating the aforesaid case went to the crime spot. Statement of Nusrat Ali SI (PW.10), who soon after the occurrence, reached the spot and recorded statement/report of Ghulam Abbas ASI is of worth consideration. He states that:-

"When I reached the place of occurrence, no person from the public was present there. The dead body of the deceased was lying at the place of occurrence. It is correct that deceased was not clad in the uniform rather he was wearing dark brown shalwar Qameez. The moment I reached the place of occurrence I started recording the statement of complainant".

The eyewitnesses of FIR No.46 (*supra*), with whom Ghulam Abbas ASI met on the eventful day and after recording their statements relieved them, have not been examined. Undeniably, the appellant and acquitted co-accused are real brothers inter-se and were residing in one and the same house. The appellant in his statement under section 342 Cr.P.C. while admitting his guilt has categorically stated he has acted in self-defence as the deceased constable was not in police uniform and being complete dark he while apprehending his death considering the deceased constable as a hire assassin acted in his self-defence by resorting to firing. The learned High Court in its finding in the impugned judgment



has also reached to the conclusion that prosecution has failed to prove that the deceased constable was in police uniform at the time of occurrence.

10. It is the persistent view of this court that all acts mentioned in sub-section (2) of Section 6 of the Act, if committed with design/motive to intimidate the government, public or a segment of the society, or the evidence collected by prosecution suggests that the aforesaid aim is either achieved or otherwise appears as a by-product of the said terrorist activities, are to be dealt with by the special Courts established under the Act of 1997. The test to determine whether a particular act is terrorism or not? is motivation, object, design and purpose behind such act and not the consequential effect created by such act. True that in this case a police constable has been done to death, but the prosecution has not proved that the deceased constable was in police uniform and was in the line of duty at the time of occurrence. Mere gravity or brutal nature of an offence would not provide a valid yardstick for bringing the same within the meaning of terrorism. This Court in case titled *Ghulam Hussain and others Vs. The State and others* *PLD 2020 Supreme Court 61* has concluded and declared that:

“It is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism

if such actions are taken in furtherance of personal enmity or private vendetta.

11. Keeping in view the peculiar facts and circumstances of the case coupled with the mode and manner of the occurrence, we are fully convinced that it is not the case where the provisions of the Act of 1997 are to be attracted. Accordingly, section 7(a) of the Act of 1997 stands deleted, therefore, conviction and sentence of the appellant recorded thereunder is hereby set-aside.

12. The next legal point for consideration on deletion of section 9(a) of the Act of 1997 whether the case shall be remanded for trial *de novo* by an ordinary court or this court may decide the same? This question has been answered by this Court in case of Waris Ali and 5 others Vs. The State (2017 SCMR 1572) where accused were initially charged u/s 302/324/452/436 P.P.C read with section 148 & 149, P.P.C subsequently, sections 6 and 7 (a) of the Act of 1997 were inserted in the case. The trial Court, *inter alia*, awarded death sentences to the appellants u/s 7(a) of the Act of 1997 which was confirmed by the Lahore High Court in appeals. This Court while deciding appeals, set-aside conviction of the convicts u/s section 7(a) of the Act of 1997 by converting the same to one under section 302(b), P.P.C and reduced their sentence from death to life imprisonment in view of the facts and circumstances of the case. Relevant part of the judgment (*ibid*) is reproduce below:

“Accordingly, the conviction of the appellants under section 7(a) of the Special Act, is set aside and the same is converted to one under section 302(b), P.P.C. however, keeping in view the peculiar circumstances of the case, this Court is influenced by caution and for securing the ends of justice in the matter of sentence because all was not well with the complainant and the Prosecution, the possibility that innocent persons amongst the guilty one were also involved, could not be altogether ruled out, thus, the death sentences awarded to all the appellants are reduced to life imprisonment on the counts mentioned in the impugned judgment but under section 302(b), P.P.C. and the



conviction and sentences awarded to them under section 6 read with section 7 of the Special Act are set aside”.

13. Adverting to merits of the case, the role of firing at the deceased constable has been specifically assigned to the appellant and the appellant has also admitted his guilt in his statement under section 342 Cr.P.C. but by raising the plea of self-defence. Since, the prosecution has failed to prove visit of the deceased constable to the spot in police uniform along with Ghulam Abbas ASI for the purpose of investigation of any case or performance of his official duties; therefore, we are not convinced to believe the prosecution's evidence. In case of *Faiz Vs State (1983 SCMR 76)*, this court has ruled that if the prosecution evidence is disbelieved or rejected, then the statement of accused under section 342 Cr.P.C. is to be accepted in toto. In case of *Sultan Khan Vs Sher Khan (PLD 1991 SC 520)*, this court has reiterated that the same view that statement of accused under section 342 Cr.P.C. is to be considered as a whole unless there is other reliable evidence to show that the exculpatory part of the statement is false. In case of *Shabbir Ahmad (PLD 1995 SC 343)*, it has been held that statement of accused under section 342 Cr.P.C. should not be partly accepted or partly rejected; it must be accepted as a whole or rejected as a whole.

14. In his statement under section 342 Cr.P.C. the appellant has stated that at the time of occurrence there was dark and the deceased constable was not in police uniform; that when he came out from his house at the knock of the deceased, the deceased grappled with him; that he while apprehending his murder fired in his self-defence. Admittedly, no source of light has been taken into possession by the Investigating Officer from the spot. Statement of Ashfaq Anwar ASI (CW1) substantiates version of the appellant that prior to the occurrence the appellant while apprehending threat to his life, had submitted an application to him which is Exh.DC. Statement of Khalid Mehmood DW.3 also substantiates the plea of the appellant. Keeping in view life threat to the appellant, his re-action on the knock at the door of his house

in the darkness by the deceased who was not in police uniform seems quite natural, particularly, when the appellant was already apprehending his assassination. The only consideration for self-defence is that a person threatened with danger of injury should not exceed the limits fixed by the law. This, of course, depends upon reasonable apprehension of danger to the person under the particular circumstances of the case. The reasonableness of the apprehension is a question of fact which depends upon the weapon used, the manner of using it, the nature of assault or other surrounding circumstances. In this case, keeping in view three fire shots on the person of the deceased and fact that the deceased was not holding any weapon, the appellant has exceeded the right of self-defence, therefore, we are not convinced to hold that it is a case where section 302(c ) PPC can be attracted. At the most the above aspects as mitigating circumstance may be considered for reduction of sentence of the appellant from death to life.

15. Accordingly, convictions and sentences of the appellant under sections 7 (a) of the Anti-Terrorism Act, 1997, recorded by the two courts below through the impugned judgments are set-aside. Conviction of the appellant under section 302(b) PPC is maintained, however, his sentence of death is converted into imprisonment for life. The amount of compensation under section 544-A Cr.P.C is reduced from Rs.10 Lac to Rs.2 Lac and in default of payment thereof the appellant shall undergo six months simple imprisonment. Benefit of section 382-B Cr.P.C. is extended to the appellant. Consequently, this appeal stands partially allowed.

16. Above are the reasons of short order of even date.