

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

**PRESENT:**

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

**J.P. Nos.233 & 234/2015, J.P. Nos.620 & 621/2019  
and J.P. Nos.408 & 409/2021**

[Against the judgment dated 13.09.2012 passed by the Lahore High Court, Lahore in Crl.A Nos.106, 221-J and 222-J of 2007 & CSR No.45-T of 2007 and judgment dated 13.09.2012 in Crl.A.Nos.847, 848, 948 of 2005 and MR No.15-T of 2005]

<b>Javed Iqbal</b>	(in J.Ps.233 & 234/2015)	
<b>Sain Muhammad Riaz</b>	(in J.Ps.620 & 621/2019)	
<b>Nadeem Wali</b>	(in J.Ps.408 & 409/2021)	...Petitioner(s)
<b>Versus</b>		
<b>The State</b>	(in all cases)	...Respondent(s)

For the petitioner	:	
(in J.Ps.233 & 234/2015)		Mr. Sikandar Zulqarnain Saleem, ASC (via video link from Lahore)

(in J.Ps.620 & 621/2019)		Nemo.
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(in J.Ps.408 & 409/2021)	:	Mr. Salman Safdar, ASC
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For the Complainant	:	
(in J.Ps.233/2015 & in J.P. 409/2021)		Asad Mehmood s/o complainant

(in J.Ps.408 & 409/2021)		Father and brother of Abdul Rehman-deceased
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For the State	:	Mr. Irfan Zia, DPG Punjab
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Date of Hearing	:	26 March 2024
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**JUDGMENT**

**Jamal Khan Mandokhail, J.-** All the captioned petitions have nexus, therefore, are being disposed of through this consolidated judgment.

**J.P. Nos. 234/15, J.P. No. 620/19 & J.P. No. 408/21:**

2. Facts in brief as alleged in the FIR are that the complainant was informed by his Driver Suleman Khan and Muhammad Naeem that his son namely Haseeb Ahmed was abducted by Nadeem Wali, Javed Iqbal and two unknown persons on gun point. Subsequently, the complainant received a call from abductors on

landline, asking an amount of ten million rupee to be deposited in the account of Tahir Rasheed and Chohan in London, for the release of his son and threatened the complainant of dire consequences, in case the needful was not done. The complainant received another call from the abductors, whereafter, he reported the matter to the police, and an FIR bearing No. 55 was registered on 04.02.2001, under section 365-A, 34, 109 of the Pakistan Penal Code ("**PPC**") at Police Station Civil Lines, Lahore. Subsequently, section 7 of the Anti Terrorism Act, 1997 ("**ATA of 1997**") was also added while submitting report under section 173, Code of Criminal Procedure ("**Cr.P.C.**") before the Special Judge, Anti-Terrorism Court No. IV, Lahore (**Trial Court**).

3. The Trial Court on conclusion of trial, convicted petitioners Nadeem Wali, Javed Iqbal and Muhammad Riaz under section 7 of the ATA of 1997 and sentenced Nadeem Wali to death, whereas, Javed Iqbal and Muhammad Riaz were sentenced to imprisonment for life, with benefit of section 382-B, Cr.P.C. On appeal, a Division Bench of the Lahore High Court, Lahore, through the impugned judgment, dismissed the criminal appeals, however, sentence of Nadeem Wali was converted from death to imprisonment for life, with benefit of section 382-B Cr.P.C. The murder reference was answered in the negative, hence, these petitions for leave to appeal.

4. Arguments heard and have perused the record. The prosecution, in order to bring home guilt of the petitioners, produced the complainant as PW2, Suleman Khan, driver of the complainant as PW3 and abductee Haseeb Ahmed as PW10. The complainant reiterated the contents of the FIR. The eyewitness, who appeared as PW2, narrated the manner in which Haseeb Ahmed was abducted at the hands of the petitioners. It is the case of the prosecution that on 06.02.2001 early in the morning, a raid was conducted at the house of petitioner Muhammad Riaz in village Sathe, Kalar Kahar, District Chakwal. Exchange of firing took place between the petitioners and the raiding party. Three police officials were done to death. Petitioner Nadeem Wali made his escape good, however, he was arrested subsequently. Petitioners Javed Iqbal and Muhammad Riaz were arrested from

the spot. With regard to the murder of three police officials during the raid upon the house of petitioner Muhammad Riaz is concerned, separate FIR No. 18 was registered against them and were tried separately. Fortunately, the abductee Haseeb Ahmed, who was present in the house, was recovered safely, as a result of the raid. He in his court statement disclosed the facts regarding his abduction and recovery and corroborates the statements of the prosecution's witnesses. The prosecution's case further gets strength from the circumstantial evidence, hence, the involvement of the petitioners in the case of abduction of the abductee for ransom simplicitor stands established. On the basis of facts and material available on the record, the Courts below have reached a correct conclusion with regard to abduction of Haseeb Ahmed.

5. It is important to mention here that the FIR was registered under section 365-A PPC, however, after investigation, report under section 173, Cr.P.C. was submitted before the Anti-Terrorism Court No. IV, Lahore ("**ATC**"). After conclusion of the trial, the petitioners were convicted and sentenced under section 7 of the ATA of 1997. The only question for consideration left in the case FIR No. 55, registered regarding abduction of the abductee, is whether the petitioners were liable to be tried and convicted under the provisions of the ATA of 1997. It is, therefore, necessary to consider as to whether every abduction or kidnapping for ransom is a terrorism? The purpose of enacting the ATA of 1997 as provided in its Preamble, is for the prevention of terrorism, sectarian violence, and for speedy trial of heinous offences and matters ancillary thereto. The word "terrorism" has been defined in section 6(1) of the ATA of 1997, which means the use or threat of action, which falls within the meaning of sub-section (2) of section 6 of the ATA of 1997 and:

(a) ---

(b) *the use or threat to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or a foreign government or population or an international organization or create a sense of fear or insecurity in society; or*

- (c) *the use of threat is made for the purpose of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies:*

*Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.*

To constitute an offence of a terrorism, it is necessary that; firstly, the action must fall within the ambit of sub-section (2) of section 6 of the ATA of 1997; and secondly, the intent, motivation, object, design and purpose behind the said act has any nexus with the ingredients of clauses (b) and (c) of section 6(1) of the ATA of 1997. To formulate an opinion whether or not such offence is an act of terrorism, the allegations made in the FIR, material collected during the investigation and the evidence available on the record have to be considered on the touchstone of section 6 of the ATA of 1997, as a whole. In the absence of any of the ingredients of section 6 of the ATA of 1997, any action, irrespective of its heinousness, causing terror or creating sense of fear and insecurity in the society, does not fall within the ambit of terrorism.

6. It is important to mention here that under section 13 of the ATA of 1997, the Federal Government or the Provincial Government may establish one or more Anti-Terrorism Courts, for the purpose of providing for the speedy trial of the cases of the Third Schedule offences. The special court is assigned with the power to try offences falling under the ATA of 1997 as well as heinous offences, which otherwise do not fall within the definition of terrorism, but is/are part of the Third Schedule. For making any offence triable by an ATC other than the offences falling under the ATA of 1997, it is for the government to declare any offence as a heinous offence and to include it in the Third Schedule, to be tried by the ATC, only for the purpose of speedy trial. In exercise of such power, the government has categorized certain offences as heinous,

which were included in the Third Schedule to the ATA of 1997 through Entry No. 4 Act II of 2005. The relevant portion of the Third Schedule is reproduced herein below:

**THE THIRD SCHEDULE**

1. –
2. –
3. –
4. *Without prejudice to the generality of the above paragraphs, the Antiterrorism Court to the exclusion of any other Court shall try the offences relating to the following, namely:--*
  - (i) *Abduction or kidnapping for ransom;*
  - (ii) –
  - (iii) –
  - (iv) –
  - (v) –

7. Pursuant to Entry No.4, the offence of abduction or kidnapping for ransom was included in the Third Schedule to the ATA of 1997 and is made triable by the ATC, to the exclusion of any other court. Section 13 of the Act provides dual power to the ATC i.e., to try the offences falling under the ATA of 1997 and try heinous offences, which otherwise do not fall within the definition of a terrorism, but included in the Third Schedule to the ATA of 1997 by the government. It is important to mention here that the action involving kidnapping for ransom, hostage-taking or hijacking is an offence under clause (e) of sub-section (2) of section 6 of the ATA of 1997, if it establishes that such action falls within the meaning of sub-section (1) of section (6) of the ATA of 1997. If kidnapping for ransom, hostage-taking or hijacking is done with intent, design, purpose, or object of terrorism, the same shall fall within the meaning of subsection (1) of section 6 and is an offence under subsection (2)(e) of section 6 of the ATA of 1997, triable exclusively by the ATC and punishable under section 7(e) of the ATA of 1997. If there is no intent, object, purpose or design of

terrorism in committing an act of abduction or kidnapping for ransom, it shall not be an act of a terrorism within the meaning of subsection (1) of section 6 of the ATA of 1997. Thus, in absence of an element of a terrorism, an act of abduction or kidnapping for ransom for personal vendetta shall constitute an offence under section 365-A PPC. However, in view of heinousness of such act, it is exclusively triable by the ATC, only for the purpose of its speedy trial, but the accused shall be charged under the relevant provision of law, instead of charging him under any of the provisions of the ATA of 1997. This Court in Ghulam Hussain<sup>1</sup>, has resolved this issue in Paragraph No. 13 of the judgment, relevant portion whereof is reproduced herein below:

*“...For the purpose 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 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....”  
**(Emphasis supplied)***

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<sup>1</sup> PLD 2020 SC 61

8. In the case in hand, the complainant in the FIR and in his statement recorded on Oath before the Trial Court, has simply alleged that his son was abducted for ransom. The record reflects that there was merely a demand of a ransom. Neither the complainant nor the prosecution witnesses have taken a stance that the action of the petitioners was with the intent, object, purpose or design of a terrorism. There is nothing on the record, connecting the petitioners in any manner with terrorist activities or having any link or nexus with any terrorist organization in order to bring such act of the petitioners within the ambit of terrorism, as defined in section 6(1) of the ATA of 1997. The record makes it clear that the act of the petitioners was for their personal vendetta, hence, it was an ordinary case of abduction or kidnapping for ransom, which falls within the ambit of section 365-A PPC. However, because of its heinousness and after its inclusion in the Third Schedule to the ATA of 1997, it is triable by the ATC, to the exclusion of any other court. The *fora* below have erred in law by considering the action of the petitioners as an act of terrorism, without keeping in mind that there was no element necessary to constitute an act of terrorism, in the facts and circumstances of this case. Under such circumstances, the *fora* below were wrong in convicting and sentencing the petitioners under section 7(e) of the ATA of 1997, instead of convicting and sentencing them under section 365-A PPC. Since, punishment for both the offences is same, therefore, no prejudice would be caused to either of the parties, if the charge is altered.

Thus, in view of the above, the jail petitions are dismissed with the modification that the charge framed against the petitioners under the provisions of the ATA of 1997 is altered to that of section 365-A PPC. As discussed in the preceding paragraphs that the prosecution has succeeded in proving its case against the petitioners for committing an ordinary offence of kidnapping for ransom, therefore, their convictions under section 7(e) of the ATA of 1997 are converted into section 365-A PPC, and

their sentenced to suffer imprisonment for life each with a benefit of section 382-B, Cr.P.C. are maintained.

**J.P. Nos. 233/15, J.P. No. 621/19 & J.P. 409/21:**

9. These jail petitions emanates from FIR No. 18 dated 06.02.2001, offence under sections 302, 324, 353, 34 PPC read with section 7 of the ATA of 1997, registered at Police Station Kallar Kahar, District Chakwal. This FIR was an offshoot of FIR No. 55 of 2001 got registered at Police Station Civil Lines, Lahore, pursuant to which a raid was conducted at the house of Muhammad Riaz on an information that the abductee was being held therein. During the raid, the police party overpowered Muhammad Riaz and Javed Iqbal, but Nadeem Wali started firing with a pistol 30 bore, as a result whereof, Muhammad Ashraf, SI, Muhammad Ramzan, SI and Abdul Rehman, Constable No. 80 died at the spot. Nadeem Wali succeeded in fleeing from the spot, however, subsequently, he was arrested. The abductee was safely recovered from the said house. On completion of investigation, a report under section 173 Cr.P.C. was submitted before the Special Judge, Anti-Terrorism Court No. IV, Lahore (**Trial Court**) for the purpose of trial along with the trial of the referred connected FIR.

10. Upon conclusion of trial, the Trial Court convicted and sentenced the petitioners under section 7(a) of the ATA of 1997 read with sections 302(b)/34 PPC and sentenced Nadeem Wali to death on three counts, whereas, sentenced Javed Iqbal and Muhammad Riaz to imprisonment for life on three counts. They were also convicted and sentenced for a period of ten years R.I. each under sections 7(b) and (h) of the ATA of 1997, read with sections 324/34 PPC, to R.I. for 10 years and 5 years each respectively. On appeal, a Division Bench of the High Court dismissed the criminal appeals of the petitioners with modification by converting the sentence of death of petitioner Nadeem Wali to imprisonment for life awarded to him by the Trial Court under section 7(e) of the ATA of 1997, read with section 302(b) PPC, in view of a compromise arrived at between him and the legal heirs of



deceased policemen to the extent of offence under section 302(b) PPC. The sentences were ordered to run concurrently, with benefit of section 382-B Cr.P.C. to all the petitioners. The murder reference was answered in the negative, hence, these petitions for leave to appeal.

11. The prosecution produced PW5, PW9, PW10 and PW12 as witnesses, who were the members of the raiding party. The witnesses in their court's statements, narrated the whole incident in a confidence inspiring manner, while raising their fingers towards the petitioners with their specific roles. The abductee was successfully and safely recovered from the house, as a result of the raid, as such he was an independent eyewitness. His statement complements the statement of the eyewitnesses. The learned defence counsel despite thorough and lengthy cross examination, could not extract anything favourable to the petitioners nor could shatter the confidence of the witnesses. An identification parade for the identification of petitioner Nadeem Wali was held by a Judicial Magistrate, who appeared as PW6. He confirms the fact that the witnesses have correctly identified the petitioner Nadeem Wali while ascribing him the role of firing at the deceased policemen. After his arrest Nadeem Wali got recovered a 30 bore pistol, used in the offence, which was sent to the forensic expert for its analysis. The empties secured from the place of the occurrence were already despatched to the Forensic Science Laboratory, which after adopting due process, found that the empties had been fired from the said pistol. The circumstantial evidence further supported and strengthened the prosecution case. Under such circumstances, we are of the view that the prosecution has successfully proved its case against the petitioners beyond reasonable doubt.

12. However, It is to be considered whether the act of the petitioners falls within the ambit of terrorism? Admittedly, the incident occurred on account of a raid upon a house which at the relevant time was in possession of the petitioners. The purpose of the raiding party was to recover the abductee from the clutches of the petitioners. The facts and circumstances of the case do not

establish the intent, object, design or purpose of the petitioners to do an act of terrorism. The reaction shown by the petitioners was to avoid their arrest, hence, in retaliation, started firing. Though, their such act of firing was illegal, but there was no intention or preparation to commit murder, in order to overawe or intimidate the police officials, who were the members of the raiding party. Besides, the occurrence took place in the house and there is no evidence to prove the presence of general public, therefore, the element of sense of fear or insecurity in the society is also lacking. Thus, the action of the petitioners by committing murder of the police officials, in the given circumstances, does not fall within the ambit of provision of section 6(1) of the ATA of 1997. In absence of any ingredient of terrorism, the petitioners could not have been convicted and sentenced under the provisions of the ATA of 1997. Since the prosecution has succeeded in proving the commission of *qatl e amd* against the petitioners, therefore, their action falls within the provisions of section 302 PPC. The Courts below have failed to appreciate this important aspect of the case, hence, came to a wrong conclusion to such extent.

Thus, in view of the above, these jail petitions are disposed of with the following modification in the impugned judgment:

- (i) The jail petitions are dismissed with the modification that the convictions and sentences awarded to Javed Iqbal, Sain Muhammad Riaz and Nadeem Wali (petitioners in J.P. Nos. 233/2015, 621/2019 and 409/2021) by the High Court and the Trial Court through judgments dated 13.09.2012 and 23.12.2006, under sections 7(a), 7(b) and 7(h) of the Anti Terrorism Act, 1997 are set aside and they are acquitted of the charge to that extent.
- (ii) As far as conviction and sentence awarded to the petitioner Nadeem Wali on three counts under section 302(b)/34 PPC are concerned, the legal heirs of the deceased have compromised the matter and pardoned him. A report in this behalf has been received from the Trial Court, confirming the factum of compromise,

upon which there is no objection. Consequently, the conviction and sentence of the petitioner Nadeem Wali under section 302(b)/34 PPC awarded by the High Court and the Trial Court through judgments dated 13.09.2012 and 23.12.2006 are set aside and he is acquitted of the charge. The conviction awarded to him by the courts below under section 324 PPC is upheld and his sentence is reduced to that he has already undergone. Jail petition No. 409 of 2021 is converted into appeal and is partly allowed to the extent of section 302(b)/34 PPC.

- (iii) Jail Petitions No. 233 of 2015 and 621 of 2019 are dismissed. The convictions and sentences of petitioners Javed Iqbal and Sain Muhammad Riaz under sections 302(b)/34 and 324 PPC, awarded by the *fora* below vide judgments dated 13.09.2012 and 23.12.2006 are maintained.
- (iv) The sentences of all the convicts/petitioners shall run concurrently with benefit of section 382-B, Cr.P.C.

Judge

Judge

Islamabad  
26 March 2024  
*K.Anees and Waqas L.C.*

Judge

**Approved for Reporting**