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

CRIMINAL APPEALS NO. 400, 401 AND 402 OF 2019
(Against the judgment dated 13.05.2019 passed by the High Court of Sindh, Karachi in Special Cr. ATA Nos. 19/2013, 24/2013, 25/2013, Criminal Revision No. 40/2014 and Conf. Case No. 01/2013)

Nawab Siraj Ali & Nawab Sajjad Ali — In Crl.A.400/2019
Ghulam Murtaza — In Crl.A.401/2019
Shahrukh Jatoi — In Crl.A.402/2019
...Appellant(s)

Versus

The State through A.G. Sindh

...Respondent(s)
(In all cases)

For the Appellant(s): Mr. Mahmood Akhtar Qureshi, ASC
(In Crl.A.400/2019)

Syed Muhammad Farhad Tirmazi, ASC
Syed Rifaqat Hussain Shah, AOR
(In Crl.A.401/2019)

Sardar M. Latif Khan Khosa, Sr. ASC
Syed Rifaqat Hussain Shah, AOR
(Assisted by Ms. Suzain Jehan Khan, A.H.C.)
(In Crl.A.402/2019)

For the Complainant(s): Mr. Muhammad Amir Malik, ASC
(In all cases)

For the State: Dr. Faiz-ul-Hassan Shah, P.G. Sindh
Mr. Zafar Ahmed Khan, Addl.P.G. Sindh
Mr. Fauzi Zafar, Addl.A.G. Sindh

Date of Hearing: 18.10.2022

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Appellants Nawab Siraj Ali, Nawab Sajjad Ali, Ghulam Murtaza and Shahrukh Jatoi were tried by the learned Anti Terrorism Court No. III, Karachi, pursuant to a case registered

vide FIR No. 591/2012 dated 25.12.2012 under Sections 302/34 PPC at Police Station Darakhshan, Karachi for committing murder of Shahzaib, son of the complainant. During the course of investigation, Sections 354/109 PPC read with Section 7 of the Anti Terrorism Act, 1997 were added and subsequently, report under Sections 173 Cr.P.C was submitted for the offences under Sections 302/354/109/34 PPC read with Section 7 of the Anti Terrorism Act, 1997. Appellant Shahrukh Jatoi was also tried under Section 13(e) of the Pakistan Arms Ordinance, 1965 for possessing a pistol and four cartridges without license. The prosecution story as narrated by the learned Trial Court reads as under:-

> "Briefly, the facts of the case, as have come on record, are that in the intervening night of 24th and 25th December, 2012 at about 1215 hours, accused Ghulam Murtaza Lashari, cook of accused Nawab Siraj Ali Talpur and Nawab Sajjad Ali Talpur, assaulted Miss Maha with intent to outrage her modesty at the door of her flat situated at Country Club Apartment, Phase V, DHA, Karachi, when she had just returned after attending Valima reception of her sister Mrs. Paresha. Accused Nawab Siraj Ali Talpur, Nawab Sajjad Ali Talpur and their cook Ghulam Murtaza Lashari were her front door neighbours. On coming to know about the misbehavior of accused with her sister, deceased Shahzaib quarreled with the accused at the ground floor reception of the Country Club Apartment. Meanwhile his father complainant Orangzaib Khan along with his wife Mrs. Ambreen reached there and tried to cool down the situation, but the accused insisted that they would not be satisfied unless accused Ghulam Murtaza Lashari was allowed to slap the deceased. However, the complainant directed the deceased to tender apology which he did, but the accused were not satisfied. In order to avert the untoward situation, the complainant asked the deceased to leave the place. As soon as the deceased left the place in his car, accused Shahrukh Jatoi took out and brandished his pistol, made fires in air and loudly declared that he was Shahrukh Jatoi son of Sikandar Ali Jatoi and that he will kill the accused. Thereafter, all the four accused proceeded from there in a silver colour Toyota car of accused Shahrukh Jatoi. Apprehending evil designs of the accused, two friends of the deceased namely Mohammad Shah and Mohammad Ahmed Zuberi followed the deceased in their car; while parents of the deceased went to the flat of accused Nawab Siraj Ali Talpur and Nawab Sajjad Ali Talpur to talk to their father Nawab Imdad Ali Talpur. The accused intercepted the deceased near Bungalow No.44/1/1-A at Khayaban-e-Behria. Accused Shahrukh Jatoi and Nawab Siraj Ali Talpur had pistols and they made fires upon the deceased while accused Nawab Sajjad Ali Talpur and Ghulam Murtaza Lashari instigated them. P.Ws Mohammad Shah and Mohammad Ahmed Zuberi, who had also reached there and had witnessed the incident, took the deceased to Ziauddin hospital in their car and telephoned the complainant to reach the hospital while he and his wife were talking to Nawab Imdad Ali Talpur at his flat. However, the deceased died before reaching the hospital."

2. On 07.03.2013, formal charge was framed against the appellants to which they pleaded not guilty and claimed trial. In order to prove its case, the prosecution produced as many as 23 witnesses. In their statements recorded under Section 342 Cr.P.C, the appellants pleaded their innocence and refuted all the allegations leveled against them. They did not make statements on oath under Section 340(2) Cr.P.C in disproof of allegations leveled against them. However, they produced five witnesses in their defence. The learned Trial Court vide its judgment dated 07.06.2013 convicted and sentenced the appellants as under:-

1) **Under Section 7(a) ATA read with Sections 302/109/34 PPC**
Sentenced appellants Shahrukh Jatoi and Nawab Siraj Ali Talpur to death while appellants Ghulam Murtaza Lashari and Nawab Sajjad Ali Talpur were sentenced to imprisonment for life.

All the appellants were directed to pay Rs.500,000/- each to the legal heirs of the deceased or in default whereof to further undergo imprisonment for two years.

2) **Under Section 13(e) of the Arms Ordinance**
Appellant Shahrukh Jatoi was sentenced to rigorous imprisonment for three years.

3) **Under Section 354 PPC**
Appellant Ghulam Murtaza Lashari was sentenced to imprisonment for one year in addition to sentence of imprisonment for life. His sentence in two counts was directed to run concurrently.

Benefit of Section 382-B Cr.P.C. was also given to appellants Shahrukh Jatoi, Nawab Sajjad Ali Talpur and Ghulam Murtaza Lashari.

3. The appellants being aggrieved by the judgment of the learned Trial Court dated 07.06.2013, challenged the same through Special Criminal ATA Nos. 19, 24 and 25/2013 whereas Criminal Revision No. 40/2014 was filed by the complainant before the High Court of Sindh, Karachi. The learned Trial Court also filed Reference under Section 374 Cr.P.C., which was sent for confirmation of the sentence of death passed against the above-said two appellants. During the course of proceedings

before the learned High Court, the above-said appeals were decided vide order dated 28.11.2017 wherein it was held that the motive behind the occurrence relates to personal vendetta, therefore, the application of Section 6 of the Anti Terrorism Act, 1997, was not justified, hence, it was ordered that conviction and sentence recorded under Section 7 of the Anti Terrorism Act is not sustainable while sending the matter to the court of plenary jurisdiction for *de novo* trial. The said order of the High Court was challenged by civil society before this Court through Criminal Petition Nos. 119-K/2017, 1-K & 2-K/2018. Leave to appeal was granted by this Court on 13.01.2018, hence, Criminal Appeal Nos. 1-K to 3-K/2018 had arisen out of the leave granting order. Thereafter, this Court vide order dated 01.02.2018 converted these Criminal Appeals into Suo Motu Case No. 01/2018 while exercising jurisdiction under Article 184(3) of the Constitution and decided it in the manner as disclosed below:-

> "These appeals are converted into a Suo Motu Case under Article 184(3) of the Constitution with a direction to the office to assign a number thereto as such.
>
> 2. For reasons to be recorded later the case is disposed of with the following orders:
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> i) The common judgment passed by a learned Division Bench of the High Court of Sindh, Karachi on 28.11.2017 in Special Criminal ATA No.19 of 2013, Special Criminal ATA No.24 of 2013, Special Criminal ATA No.25 of 2013, Criminal Revision Application No.40 of 2014 and Confirmation Case No.1 of 2013 is set aside.
>
> ii) The order passed by the said Court in the above mentioned matters remanding the relevant criminal case to a court of ordinary jurisdiction for a *de novo* trial as well as all the post-remand proceedings before the trial court are also set aside.
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> iii) Special Criminal ATA No.19 of 2013, Special Criminal ATA No.24 of 2013, Special Criminal ATA No.25 of 2013, Criminal Revision Application No.40 of 2014 and Confirmation Case No.1 of 2013 shall be deemed to be pending before the High Court of Sindh, Karachi and the same shall be finally decided on their merits at the Court's earliest convenience, preferably within a period of two months by another bench of the High Court to be constituted by the Chief Justice of the Court.

iv) The accused persons convicted in the relevant criminal case by an Anti-Terrorism Court are ordered to be retaken into custody as their admission to bail during the post-remand proceedings was nullity in the eyes of law. Our order dated 13.1.2018 putting the names of the accused on the ECL shall continue to hold the field till the time the main matters remanded to the High Court are finally disposed of."

4. In pursuance of the order passed by this Court and in the light of the guidelines issued by this Court, the matter was taken up by learned Division bench of the High Court of Sindh to decide the *lis* on merits. During the pendency of the aforesaid appeals before the High Court in second round of litigation, Miscellaneous Application No. 6194/2013 in terms of Section 345 Cr.P.C. was filed on behalf of the appellants and the complainant. This application was accompanied by the list of witnesses and affidavits of the legal heirs wherein it was categorically stated that a compromise has been affected between the parties and they have pardoned the appellants in the name of Allah Almighty without any badl-e-sulah and had prayed for acquittal of the appellants for the charge of murder. The learned High Court in order to ascertain the authenticity, veracity and genuineness of the compromise, sent the matter to the learned Trial Court to record the statements of the legal heirs of the deceased and submit a report in this regard after fulfilling all legal requirements. The learned Trial Court in pursuance of the order of the High Court recorded the statements of the legal heirs of the deceased and vide report bearing No. ATC-III/KDIV/389/2014, Karachi, dated 23.09.2014 held that the compromise between the parties is genuine, without any duress or coercion and all the legal heirs of the deceased Shahzeb have forgiven the appellants in the name of Allah Almighty without taking any badl-e-sulah or amount of diyat. The learned High Court also found the compromise between the parties to be genuine, without any coercion or duress and that all the legal heirs have forgiven the appellants in the name of Allah Almighty without undue pressure and even without any consideration of diyat. Ultimately, vide impugned judgment dated 13.05.2019, the learned High Court set aside the conviction of the appellants under Section 302/109/354/34 PPC on the

basis of compromise affected between the parties. As the sentence under Section 7 ATA was not compoundable, the learned High Court maintained the conviction of the appellants under the said provision of law. However, it reduced the punishment awarded to appellants Shahrukh Jatoi and Nawab Siraj Ali Talpur from death to imprisonment for life. The learned High Court also maintained the conviction and sentence of the appellants Ghulam Murtaza Lashari and Nawab Sajjad Ali Talpur under Section 7(a) of the Anti Terrorism Act i.e. imprisonment for life. However, benefit of Section 382-B Cr.P.C. was also extended in favour of the appellants. The appellants being aggrieved by the impugned judgment filed Criminal Petition Nos. 724, 784 & 785/2019 wherein leave was granted by this Court vide order dated 17.09.2019 and the present appeals have arisen thereafter.

5. At the very outset, learned counsel for the appellant Shahrukh Jatoi contended that the occurrence has taken place over a petty issue arising out of quarrel between the deceased and the servant of the appellants. Contends that the same was the outcome of personal dispute, therefore, provision of Section 6 punishable under Section 7 of the Anti Terrorism Act is not applicable in the present case. Contends that so far as conviction and sentences under the provisions of 302/109/34 PPC is concerned, the legal heirs of the deceased have pardoned the appellants in the name of Allah Almighty and have settled the matter, as such, the appellants deserve to be acquitted of the charge of terrorism being not attracted. Contends that so far as the conviction of the appellant under Section 13(e) of the Arms Ordinance is concerned, the recovery was planted on the appellant, therefore, the same may be set aside. In support of the arguments, learned counsel relied upon Ghulam Hussain Vs. The State (PLD 2020 SC 61), Muhammad Akram Vs. The State (2022 SCMR 18) & Muneer Malik Vs. The State (2022 SCMR 1491). Learned counsel for the appellants in connected criminal appeals have adopted the arguments of learned counsel for the appellant Shahrukh Jatoi.

6. Learned Prosecutor General Sindh assisted by learned counsel for the complainant has supported the stance taken by the learned counsel for the appellants. It has very frankly been admitted by them that the present case does not fall within the ambit of 'terrorism' in view of the law laid down by this Court in the case of Ghulam Hussain Vs. The State (PLD 2020 SC 61), therefore, they have no objection if these appeals are allowed and the appellants are acquitted of the charge.

7. We have heard learned counsel for the parties at some length and have perused the relevant case law on the subject.

8. There is no denial to this fact that the instant matter regarding murder of Shahzeb was initiated vide FIR No. 591/2012 dated 25.12.2012 under Sections 302/34 PPC lodged at Police Station Darakhshan, Karachi, with an allegation that the appellants have committed murder of Shahzeb, son of the complainant with a motive of quarrel, which took place in Country club on previous night. A bare perusal of the crime report clearly reflects that the instant occurrence had taken place within the local limits of Police Station Darakhshan because of scuffle amongst youth in Country club at 2330 hours on 24.12.2012. However, the same was patched up but later on after the lapse of 20 minutes, it was disclosed that the son of the complainant was done to death as a result of firearm injuries inflicted by the appellants before this Court. Primarily, while lodging the crime report, provisions of Anti Terrorism Act were not placed. However, at a belated stage, the said occurrence was considered a case falling within the ambit of Anti Terrorism Act, hence, the said provisions were added during the course of investigation. It is an admitted fact that the matter was contested between the parties up to the level of this Court in the first round of litigation when a finding was given by the learned High Court while deciding the *lis* that the provisions of Section 6 punishable under Section 7 of the Anti Terrorism Act are not made out from the given facts and circumstances. Said finding of the learned High Court was agitated by **Civil Society** before this Court and ultimately the matter was remanded back to

the High Court for deciding the appeals filed by the appellants afresh. During the proceedings before the High Court, an application for compromise duly signed by both the parties was filed and ultimately a report requisitioned from the learned Trial Court was finally adjudicated and decided by the learned High Court while accepting the factum of compromise between the parties in accordance with law. The question which requires determination by this Court is only confined to the question as to **(i)** whether the ingredients of terrorism are established from the facts and circumstances surfaced during the proceedings before trial court, **(ii)** whether the provision of Section 6 punishable under Section 7 of the Anti Terrorism Act is applicable in the given circumstances, and **(iii)** whether the punishment inflicted by the High Court while reducing from death sentence to imprisonment for life was justified at all. Undeniably, it is an admitted fact that provisions of Anti Terrorism Act are co-related and ancillary to the substantive offence, which in all fairness is provision of Section 302 PPC. The gravity of said substantive offence can lead it to the conclusion whether the provisions of Anti Terrorism Act are attracted or not. Anti Terrorism Act is a special law enacted with a special intent and purpose, which can be gathered from the bare reading of Preamble of the said Act. It is principle of legislation that preamble of any enactment is always considered as grundnorm of the legislation, which expresses the postulates to attract the said provision of the enactment according to its scope of legislation. As stated above, the Anti-Terrorism Act is a special enactment and special enactment needs to be taken in perspective of its own object. Any departure from same would be negation of its object and spirit. A preamble of a statute is an introductory and expressionary statement that explains the very purpose and underlying philosophy behind the enactment. To better understand the scheme of Anti Terrorism Act, it would be in order to reproduce the Preamble of the Act, which reads as under:-

> "An act to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences;

> 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;

9. A bare perusal of the Preamble shows that the basic purpose behind the enactment of Anti Terrorism Act, 1997, was to prevent, **(i)** terrorism, **(ii)** sectarian violence, and **(iii)** for speedy trial of heinous offences. The word "terrorism" has been given the same meaning as assigned in Section 6 of the Act, which reads as under:-

> **6. Terrorism.**-(1) In this Act, "terrorism" means the use or threat of action where:-
>
> (a) the action falls within the meaning of sub-section (2); and
>
> (b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect [5][or a foreign government or population or an international organization] or create a sense of fear or insecurity in society; or
>
> (c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause [1][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.]
>
> (2) An "action" shall fall within the meaning of sub-section (1), if it:-
>
> (a) involves the doing of any thing that causes death;
>
> (b) involves grievous violence against a person or grievous bodily injury or harm to a person;
>
> (c) involves grievous damage to property [2][including government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any others means;
>
> (d) involves the doing of any thing that is likely to cause death or endangers person's life;
>
> (e) involves kidnapping for ransom, hostage-taking or hijacking;
>
> (ee) involves use of explosive by any device including bomb blast [2][or having any explosive substance without any lawful justification or having been unlawfully concerned with such explosive;
>
> (f) incites hatred and contempt on religious, sectarian or ethnic basis to strip up violence or cause internal disturbance;
>
> (g) involves taking the law in own hand, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government

officials and institutions, including law enforcement agencies beyond the purview of the law of the land;

(h) involves firing on religious congregation, mosques, imambargahs, churches, temples and all other places or worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;

(i) creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade
and daily business, and disrupts civic life;

(j) involves the burning of vehicles or any other serious form of arson;

(k) involves extortion of money ("bhatta") or property;

(l) is designed to seriously interfere with or seriously disrupt a communication system or public utility service;

(m) involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;

(n) involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant;

(o) involves in acts as part of armed resistance by groups or individuals against law enforcement agencies; or

(p) involves in dissemination, preaching ideas, teachings and beliefs as per own interpretation on FM stations or through any other means of communication without explicit approval of the government or its concerned departments.]

(3) The use or threat of use of any action falling within sub-section (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not sub-section (1) (c) is satisfied.

(3A) Notwithstanding anything contained in sub-section (1), an action in violation of a convention specified in the Fifth Schedule shall be an act of terrorism under this Act.]

(4) In this section "action" includes an act or a series of acts.

(5) In this Act, terrorism includes any act done for the benefit of a proscribed organization.

(6) A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.

(7) In this Act, a "terrorist" means:-

(a) an individual who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation, [1][facilitation, funding] or instigation of acts of terrorism;

(b) an individual who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation, [1][facilitation, funding] or instigation of acts of terrorism, shall also be included in the meaning given in clause (a) above.

10. Section 6 defines terrorist acts, Section 7 provides punishment for such acts whereas Section 8 prohibits acts intended or likely to stir up sectarian hatred mentioned in clauses (a) to (d) thereof. The word "sectarian" has been described as "pertaining to, devoted to, peculiar to, or one which promotes the interest of a religious sects, or

sects, in a bigoted or prejudicial manner". However, the word "heinous offence" has not been described in the Act. In common parlance "heinous offence" means an offence which is serious, gruesome, brutal, sensational in character or shocking to public morality and which is punishable under laws of the land. A bare reading of the Anti Terrorism Act reveals that an Anti-Terrorism Court has been conferred jurisdiction not only to try all those offences which attract the definition of 'terrorism' provided by the Act but also some other cases, which have been specified in Third Schedule of the Act involving heinous offences which do not fall in the said definition of terrorism. The sole purpose of trying such offences by the Anti Terrorism Court is for speedy trial of such heinous offences irrespective of the fact that they do not fall within the ambit of 'terrorism'. This Court in the case of Ghulam Hussain Vs. The State (PLD 2020 SC 61) while elaborately discussing the scope and intent of the legislature behind the enactment of Anti Terrorism Act, 1997, has held that "an act of 'terrorism' is not just a grave offence but it is a class and species apart and this class or species has to be understood in its true and correct perception and perspective otherwise every serious offence may be found by one Judge or the other to involve terrorism depending upon a subjective assessment of the potential of the act to create some sense of fear or insecurity in some section of the society. Such an approach may not be wholesome as it may ultimately result in every case of a serious offence landing in a Special Court and thereby rendering the ordinary courts substantially redundant. It ought not to be lost sight of that the legislature's repeal of the Suppression of Terrorist Activities (Special Courts) Act, 1975, doing away with the Schedule of the Anti-Terrorism Act, 1997 at one stage and also its retraction from the 'effect' through the fresh definition of 'terrorism' cannot be without any significance or purpose. That drastic change of the definition manifestly indicated a change of meanings and of focus and such a change has to be given its proper effect. After all if the term 'terrorism' as defined today is still to be interpreted in the same manner as the erstwhile term 'terrorist act' then there was hardly any occasion

or need for the legislature to amend the definition and to bring about any change in the existing law in that regard. The legacy and interpretations pertaining to the Suppression of Terrorist Activities (Special Courts) Act, 1975 and of the original provisions of the Anti-Terrorism Act, 1997 have now to be shaken or shrugged off so as to correctly understand the definition of 'terrorism' introduced through the later Act and its amendments. This Court had itself declared in the case of Mumtaz Ali Khan Rajban and another v. Federation of Pakistan and others (PLD 2001 SC 169) that the subject matters of the Suppression of Terrorist Activities (Special Courts) Act, 1975 and the Anti-Terrorism Act, 1997 were "different" and their respective applicability was "governed by different criteria". The Court further held that the “distinction between cases of terrorism and cases of specified heinous offences not amounting to terrorism but triable by an Anti-Terrorism Court has already been recognized by this Court in the cases of Farooq Ahmed v. State and another (2020 SCMR 78), Amjad Ali and others v. The State (PLD 2017 SC 661) and Muhammad Bilal v. The State and others (2019 SCMR 1362). It has been clarified by this Court in those cases that such specified heinous offences are only to be tried by an Anti-Terrorism Court and that court can punish the person committing such specified heinous offences only for commission of those offences and not for committing terrorism because such offences do not constitute terrorism. For the purposes 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,

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, P.P.C. 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. The same may also be said about the other offences mentioned in entry No. 4 of the Third Schedule to the Act pertaining to "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", "Firing or use of explosive by any device, including bomb blast in the court premises", "Hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance" and "Unlawful possession of an explosive substance or abetment for such an offence under the Explosive Substances Act, 1908". Such distinction between cases of terrorism and other heinous offences by itself explains and recognizes that all heinous offences, howsoever serious, grave, brutal, gruesome, macabre or shocking, do not ipso facto constitute terrorism which is a species apart." This Court in the seven members' bench judgment has settled the issue that not every case of grievous bodily injury or harm, damage to private property, doing anything that is likely to cause death or endangers a person's life etc would amount to terrorism. It would be in order to reproduce the relevant portion of the said judgment, which reads as under:-

> "If the said requirements and purposes mentioned in clause (c) of subsection (1) of section 6 do not need to be satisfied and if mere use or threat of use of a firearm, an explosive substance or any other weapon for commission of the actions mentioned in subsection (2) of section 6 is to ipso facto constitute the offence of terrorism then every murder committed (action under clause (a) of subsection (2) of section 6), every grievous bodily injury or harm caused (action under clause (b) of subsection (2) of section 6), every grievous damage to private property (action under clause (c) of subsection of section 6), doing anything that is likely to cause death or endangers a person's life (action under clause (d) of subsection (2) of section 6) or creating a serious risk to safety of the public or a section of the public (action under clause (i) of subsection (2) of section 6) even if committed with an ordinary stick, a brickbat or a stone when used as a weapon would constitute the offence of terrorism! Such trivializing of the diabolical offence of terrorism surely could not be the intention of the legislature when framing a law for the offence of terrorism which is a class apart and a species different from any other ordinary crime.....
>
> ..... mere shock, horror, dread or disgust created or likely to be created in the society does not transform a private crime into terrorism but terrorism as an 'ism' is a totally different concept which denotes commission of a crime with the design or purpose of destabilizing the government, disturbing the society or hurting a section of the society with a view to achieve objectives which are essentially political, ideological or religious. This approach also appears to be in harmony with the emerging international perspective and perception about terrorism. The international perception is also becoming clearer on the point that a violent activity against civilians that has no political, ideological or religious aims is just an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism. This metamorphosis in the anti-terrorism law in our country has brought about a sea change in the whole concept as we have understood it in the past and it is, therefore, of paramount importance for all concerned to understand this conceptual modification and transformation in its true perspective.

11. Admittedly, in the present case, the occurrence took place due to cutting indecent joke with daughter of the complainant by the appellant Ghulam Murtaza Lashari, who was cook of the appellant Shahrukh Jatoi, which aggravated the situation and ultimately resulted into instant unfortunate incident. If the facts of this case are evaluated on the touchstone of the very scheme of the Anti Terrorism Act and the

dictum laid down by a larger Bench comprising of seven members of this Court, it becomes crystal clear that there was no element of terrorism in the present case. This aspect also lends support from the fact that the father of the deceased, who was himself a police officer, while lodging the crime report admitted that scuffle took place amongst youth in Country club, which ultimately resulted into the instant unfortunate incident. It is a matter of great concern and apathy that a young man lost his life as a result of an incident, which was initiated by servant of the appellant Shahrukh Jatoi and the deceased became a classic example of egoistic approach, which in all eventualities is drastic and the society cannot accredit the same by any stretch of imagination. The involvement of civil society while agitating the grievances of an individual lends support that the egocentric attitude is unacceptable leaving far reaching impression not only for the youth of the day rather for the generations to come. All these facts and circumstances when considered and evaluated conjointly, it might imprint an impression otherwise but we are constrained to follow the Constitution and the law on the subject. It seems essential to reiterate that the courts adjudicate the matters without being influenced by passions. The prime duty of the Court is to do justice according to its own conscience. While dealing with the life and liberty of an accused, utmost care and caution is required to be exercised by the Courts of law because slight carelessness on their part may deprive an accused person/citizen of his life and may cause irreparable hardship and damage to his family. Reference is placed on Khalil-uz-Zaman Vs. The State (PLD 1994 SC 885). We also feel it appropriate to refer to a bouquet of Ahadees mentioned in Khalil-uz-Zaman supra case on this issue, which is as follows:-

"القضاة ثلاثة واحد فی الجنة واثنان فی النار فاما الذی فی الجنة فرجل عرف الحق فقضی به ورجل عرف الحق فجار فی الحکم فهو فی النار ورجل قضی للناس علی جهل فهو فی النار (رواه ابوداؤد والترمذی وابن ماجه)

(قاضی تین قسم کے ہوتے ہیں۔ ان میں سے ایک جنت میں جائے گا اور دو جہنم میں۔ جنتی قاضی وہ ہے جو حق کو پہچانے اور اس کے مطابق فیصلہ کرے۔ رہا وہ قاضی جو حق کو تو پہچانے لیکن فیصلہ صادر کرنے میں زیادتی کرے، وہ دوزخی ہے۔ اسی طرح وہ قاضی جو جہالت کے باوجود فیصلے کرے وہ بھی جہنمی ہے)۔"

"لیاتین علی القاضی العدل ساعة یتمنی انه لم یقض بین اثنین فی تمرة قط (رواه احمد فی مسنده وابن حبان فی صحیحه)"

"(قیامت کے دن منصف قاضی پر بھی ایک وقت ایسا آئے گا جب وہ حسرت سے یہ کہے گا کہ اے کاش! میں نے دو آدمیوں کے درمیان ایک کھجور کے بارے میں بھی فیصلہ نہ کیا ہوتا۔)"

12. We feel appropriate to refer to some of the judgments of this Court where the occurrence took place due to personal vendetta/enmity and the substantive offence under Section 302 PPC was compromised between the parties, this Court set aside the conviction and sentence of the accused under Section 7 of the Anti Terrorism Act, 1997. In the case of Muhammad Akram Vs. The State (2022 SCMR 18), the accused committed murder of his wife under the impulses of 'ghairat'. He was 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 petition before this Court, the parties compromised the matter. The Court accepted the compromise and set aside the conviction of the accused under Section 7 of the Anti Terrorism Act. The judgment of Muhammad Akram supra case was further reiterated by this Court in the case of Muneer Malik Vs The State (2022 SCMR 1494). The same was the case in Amjad Ali Vs. The State (PLD 2017 SC 661), Dilawar Mehmood Vs. The State (2018 SCMR 593), Muhammad Bilal Vs. The State (2019 SCMR 1362) and Farooq Ahmed Vs. The State (2020 SCMR 78). In these circumstances, there left no ambiguity that the present case was the outcome of personal egoistic approach and there was no design or purpose of destabilizing the government, disturbing the society or hurting a section of the society with a view to achieve objectives which are essentially political, ideological or religious, therefore, provisions of Anti Terrorism Act were not applicable in the present case.

13. So far as the conviction of the appellant Shahrukh Jatoi under Section 13(e) of the Arms Ordinance is concerned, admittedly the crime empties were firstly sent to Forensic Science Laboratory on 31.12.2012 but subsequently they were taken back on 17.01.2013 and were re-submitted later on along with the alleged recovered pistol from the appellant on 23.01.2013. This Court in a number of cases has held that if the crime empty is sent to the Forensic Science Laboratory after the arrest of the accused or together with the crime weapon, the positive report of the said Laboratory looses its evidentiary value. Sending the crime empties together with the weapon of offence is not a safe way to

sustain conviction of the accused and it smacks of foul play on the part of the Investigating Officer simply for the reason that till recovery of weapon, he kept the empties with him for no justifiable reason. In this view of the matter, we set aside the conviction of the appellant Shahrukh Jatoi under Section 13(e) of the Arms Ordinance.

14. For what has been discussed above, these appeals are allowed and the impugned judgment is set aside. The appellants are acquitted of the charge. They shall be released from jail forthwith if not required/detained in any other case. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the
18th of October, 2022
Approved For Reporting
Khurram