

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE DOST MUHAMMAD KHAN
MR. JUSTICE MAQBOOL BAQAR

Criminal Appeal No.104 of 2010

(On appeal from the judgment dated 20.5.2009 passed by the Lahore High Court, Lahore in CrI.Appeals No.722-724/06 and CrI.Appeals No.127/J and 128/J/2007 and M.R.No.27-T/06)

1. Waris Ali
2. Babar
3. Abdul Sattar
4. Sajjad
5. Tariq
6. Mubarak Ali @ Makha

...Appellants

VERSUS

The State

..Respondent

For the appellants: Ch. Fawad Ahmed, ASC
Mr. Faisal Hussain Ch. ASC
Mr. Mahmood-ul-Islam, AOR (absent)

For the State: Rana Abdul Majeed, Addl. P.G. Pb.

Date of hearing: 4.5.2017

JUDGMENT

Dost Muhammad Khan, J.—

Brief Fact:- The gory incident of bloodbath took place in village, "Behroop Garh" attached to PS Alipur Chatha, District Gujranwala on 24.4.2001 at about 8:30 pm. Four persons, namely, **(i) Nazir Ahmed, (ii) Muhammad Saleem, (iii) Ghulam Abbas**, and a child, namely, **Sumbal**, aged 8/9 years were killed, while **(i) Mst. Safia Bibi, (ii) Mst. Tayyaba, (iii) Muhammad**

Ramzan (PW-17), (iv) Farzana, (v) Khalid, (vi) Mst. Attya Bibi, (vii) Baby Sana, aged about 3/4 years and **(viii) Sarmad**, a child of 8/9 years, were the victims of firearm injuries.

2. Besides the six appellants, six other co-accused, one of whom is still proclaimed offender, were charged for the gruesome incident, attributing them distinct roles of firing at the victims/deceased. The crime report was lodged at the spot by Miskeen Ali (PW-19) at 10:15 pm on the arrival of Sub-Inspector of Police. On the basis of **“Murasila Report”** case FIR No.103 dated 24.04.2001 was registered at the above Police Station, District Gujranwala for crimes U/Ss. 302/324/452/436 PPC read with sections 148 and 149 PPC. Subsequently sections 6 and 7(a) of the Anti-Terrorism Act, 1997 (Special Act) were added thereto.

3. Charge-sheet was filed in the Anti Terrorism Court. During the trial, the prosecution examined 23 witnesses in all and after recording the statements of the accused u/s 342 Cr.P.C. and of some u/s 340(2) Cr.P.C. and also of five defence witnesses, the Judge, Anti-Terrorism Court-II, Gujranwala vide judgment dated 25.04.2006, awarded death sentences to all the six appellants and also to pay fine of Rs. 100,000/- each. Appellants 1, 2 and 3 were further convicted and sentenced to five years R.I., under section 449 PPC with a fine of Rs.20,000/- each, or in default thereof they had to undergo simple imprisonment for one month each on both counts.

4. Appellants No.4, 5 and 6 were also convicted and awarded death sentence on two counts u/s 7(a) of Special Act and had to pay a fine of Rs.100,000/- each on two counts or in default

thereof, they had to undergo three months simple imprisonment each on two counts. They were also convicted and sentenced under section 7(c) of the Special Act to ten years R.I. on two counts each for causing injuries to Sana and Sarmad with fine of Rs.25,000/- each on two counts or in default thereof, to undergo one month simple imprisonment. They were further convicted and sentenced u/s.449 PPC to five years R.I. and to pay fine of Rs. 20,000/- each or in default thereof, to undergo S.I. for one month each on two counts. Benefit of section 382-B Cr.P.C. was extended to them. Co-accused, Mukhtar, whose case was almost at par with the appellants, was convicted u/s 7(c) of the Special Act and was sentenced to 10 years R.I. with fine of Rs. 25,000/- and in default thereof, to suffer one month's simple imprisonment. He was further convicted and sentenced u/s 458 PPC to three years R.I. with a fine of Rs. 20,000/- or in default thereof, one month S.I. Both the sentences were ordered to run concurrently with benefit of section 382-B Cr.P.C.

Abdul Salam and Shehzad @ Sajjad co-accused both were acquitted, extending them benefit of doubt.

5. The appeals, filed by the appellants were dismissed through the impugned judgment by the Lahore High Court, Lahore along with appeal of Sabir Hussain and Murder Reference, sent by the Trial Judge was answered in the affirmative, hence this appeal filed with the leave of the Court.

We have heard the learned ASC for the appellants and the learned Additional Prosecutor General and have carefully perused the record/evidence.

6. The report of the crime was lodged at the crime spot after more than two hours. Except 2/3 minor victims, Mst. Safia Bibi (PW-16), Muhammad Ramzan (PW-17) and two other were majors and of considerable maturity. They were having the stamps of injuries and according to the Medical Officer, they were able to speak coherently but the complainant, namely, Miskeen Ali (PW-19) lodged the crime report, sidetracking the injured witnesses.

Why the injured victims with bleeding wounds and in a very painful condition were kept at the spot for hours, till the time police arrived there; why they were not moved quickly to the hospital for medical aid and management/treatment, is another begging question, which shall put the Court on guard.

7. Admittedly, the motive for the crime did relate to the complainant however, he was not caused even a minor harm, though, he was chasing the accused like a shadow during the commission of the crimes at different successive stages and had witnessed different transactions in different houses. Being a prime target for the accused, sparing his life, is another aspect, leaving behind a room for debate.

8. The above infirmities and mysteries apart, the crucial point for the Court, requires determination is the application of sections 6 and 7(a) of **the Anti Terrorism Act, 1997**. Whether in view of the specific personal motive to take revenge, set up by the Prosecution, which was maintained upto the end of the trial, is fact, taking out the case from the fold of terrorism.

The preamble to Anti Terrorism Act, 1997 provides as follows:-

"An Act to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences, it is hereby enacted as follows:-....."

The provision of clause (x) of section 2, provides that "terrorism" or "act of terrorism" has the meaning as assigned to it in section 6.

Sub-section (1)(a) (b) of section 6 states as follows:-

"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 or create a sense of fear or insecurity in society."*

Sub-section (2) of section 6 provides as follows:-

"(2) *An "action" shall fall within the meaning of sub-section (1) if it:*

- (a) *involves the doing of anything that causes death;*
 - (b) *involves grievous violence against a person or grievous bodily injury or harm to a person;*
-"*

The provision of section 7 of the Act *ibid* provides as follows:-

"7. Punishment of acts of terrorism.—(1) *Whoever commits an act of terrorism under Section 6, whereby--*

- (a) *death of any person is caused, shall be punishable, on conviction, with death or with imprisonment for life, and with fine; or*

- (b) *he does anything likely to cause death or endangers life, but death or hurt is not caused, shall be punishable, on conviction, with imprisonment of either description for a term which shall be not less than ten years but may extend to imprisonment for life and with fine;*
- (c) *grievous bodily harm or injury is caused to any person, shall be punishable, on conviction, with imprisonment of either description for a term which shall not be less than ten years but may extend to imprisonment for life and shall also be liable to a fine;"*

(The rest are not relevant for construction in this case)

9. Under the jurisprudence, "*mens rea*" is an essential ingredient of every crime, needs to be attended first by the Courts of law however, in cases of terrorism or terrorist activities the "*mens rea*" becomes twofold, i.e. the first object is to commit a crime, while the primary object of "*the mens rea*" in the second fold speaks of terrorism related ideology, purpose and object, the most nefarious and detestable designs to commit crimes, creating sense of fear, insecurity and instability in the society and community with the ultimate object to destabilize the State as a whole. The true and perceivable object of this second "*mens rea*" is to create chaos, large scale disturbances, widespread sense of insecurity in the society/public and to intimidate and destabilize the State as a whole by means of terrorist activities.

10. In cases of this nature, "*mens rea*" is essentially with an object to accomplish the act of terrorism and carrying out terrorist activities to overawe the State, the State Institutions, the public at large, destruction of public and private properties, make

assault on the law enforcing agencies and even at the public at large. The ultimate object and purpose of such acts is to terrorize the society or to put it under constant fear while in ordinary crimes committed due to personal vengeance/blood feud or enmity, the element to create fear or sense of insecurity in the society, public by means of terrorism is always missing.

11. True, that the offences contained in the Schedule to the Anti-Terrorism Act would fall within the definition of terrorism and terrorist activities but the crimes committed due to private revenge or to say traditional crimes, cannot be dragged into the fold of terrorism and terrorists activities.

12. The mere fact that the crimes for personal motive are committed in a gruesome or detestable manner, by itself would not be sufficient to bring the acts within the meaning of terrorism or terrorist activities. The Courts of law should not lose sight of the fact that terrorism and terrorist activities are committed and are carried out by a person, group of persons and well equipped organizations, whose primary aim and object is to destabilize the society and the State as a whole through such activities. The object and "*mens rea*" behind such activities is clearly spelled out from the nature of the crime committed, which must be attended to by the Courts with a deep judicial thought, as in the latter category the sole object/purpose in committing different crimes is to cause alarm, dread, fright inducing sense of insecurity in the mind of the people.

13. The acts of terrorism and terrorist activities are committed and carried out in a wolfish manner by terrorists and

terrorist groups, to whom training and skills are imparted, their brainwash is made in a planned manner so that, while committing gruesome and sickening crimes, they have to act in cruel manner and in pursuance of creating terror, the prime and ultimate object to be accomplished. The suicidal attacks and blasts in busy markets/business places, hospitals, mosques, other religious and educational institutions where peoples are slaughtered/butchered and their limbs are blown apart through bomb blast, are some of the instances of such activities, conveying dreadful message to the community/society at large of terror, for no motive other than the one to create fear and sense of insecurity.

14. Albeit, murder, attempted murder, causing bodily harm or hurt and damage to property and some other offences have been included in the Third Schedule, appended to the Anti Terrorism Act however, on plain reading, it becomes apparent that these offences are triable by the Special Courts, constituted under the Special Act but, there is no reference either expressed or implied in the Schedule that the Special Court shall award punishment under section 7 read with section 6 of the Act to accused persons charged for such crimes.

There is another category of offences, which are squarely mentioned in the substantive provision of section 7 read with section 6 of the Special Act, which are specifically described to be acts of terrorism and shall fall within that definition however, the qualifying words, attached thereto, create a subtle distinction between the ordinary crimes, committed out of personal revenge, enmity or private motive and those committed for the object of

creating terror. This aspect needs to be interpreted and construed in a meaningful and objective manner so that the two categories of crimes i.e. ordinary crimes and those related to terrorism, are neither mixed up nor intermingled because construction placed on it at random without judicial thoughts, the cardinal principle relating to construction of Statute, would be defeated and ordinary crimes having no nexus with terrorism or terrorist activities would be incorrectly or wrongly placed in the grey category of crimes, which is not the object and intent of the Legislature. If ordinary crimes committed due to personal revenge or motive are given the colour of terrorism or terrorist activities, hundreds and hundreds of Criminal Courts (Sessions Courts) and other Courts would be rendered inoperative and their vested jurisdiction would be taken away for no justifiable reason. The Prosecution and disgruntled complainants have been noticed making crude attempts to paint an ordinary crime as an act of terrorism so that the rival/opposite party is put to maximum mental agony. Here, it becomes the duty of the Court of law to draw a fine distinction between two kinds of crimes, which are definitely pole apart.

15. In construing and interpreting Statute, the fundamental principle is to discover the true intent of the Legislature enacting a particular law to meet a particular situation and to confront a specific emerging threat. What were the reasons and background, which influenced the mind of the Legislature in enacting special law of this nature, one has to look upon the history of events, which had occurred preceding the enactment of the law by the Legislature because that is of much help to the Court of law to reach at a proper and fair conclusion.

The Legislature consists of human being susceptible to receive impact and is influenced by the events necessitating the new legislation to meet a specific emerging threat so that to curb it, providing harsh measures and punishment and while doing so, Article 25 of the Constitution to some extent, is sidetracked because drawing a distinction, between different classes of people on reasonable differentia and sound rationale, is a permissible course.

16. Due to geographic importance of our homeland, when revolution occurred in the neighbouring country in the West, a mess of unmanageable disturbances prevalent there, crossed into our homeland through western border. Due to the intervention of alien powers on account of clash of interest, the neighbouring country was made intense battle ground. Sophisticated weapons were generously distributed amongst the so called crusaders, the impact of which was felt in our homeland within no time.

17. The civil war in the neighbouring country caused annoyance to looser. A wave of terrorism and terrorist activities was unleashed in our homeland, sparing none. When a Federal Minister of the country was assassinated in a bomb blast in the campus of the Peshawar University and when the terrorists posed a potential threat to the society, the **Suppression of Terrorist Activities Ordinance, 1974** (repealed) was enacted in emergency, which was made Act of the Parliament. The Schedule to the said Act was amended from time to time. When the Seaport, the metropolitan city of Karachi was subjected to similar terrorist activities, besides the explosive substances, Kalashnikov rifles and

T.T. pistols were frequently used for carrying out such activities, the offences of murder and damage to properties, caused through such means were also included in the Schedule of the Act *ibid*.

When the terrorism and terrorist activities got momentum and emerged as a potential threat to the society and the State both, the Legislature enacted the present **Anti Terrorism Act, 1997** to confront and curb the same. With the passage of time, due to need and requirements of the day, amendments were introduced in the substantive provisions of the Act *ibid* as well as the Schedule, appended thereto.

18. However, in the recent past when the law & order situation became worst assuming the status of evil monster, the Pakistan Armed Forces were called in aid of Civil Administration in different parts of the country. The terrorists, captured during the military operation, were suggested to be tried by the Court Martial or Field General Court Martial and for that purpose through **21st Constitution Amendment, "Pakistan Protection Act"** was enacted, the Military Laws, were amended, authorizing these Courts Martial to try civilians (terrorists) to prevent further damage to the State and the writ of the State. In the two military operations, one carried out in "*Malakand*" and "*Sawat*" area and the other in North and South "*Waziristan*" tribal areas, the headquarters and bases of the terrorists and militants were destroyed and they were flushed out from those areas and writ of the State was re-enforced.

The above narrative of the events history would show that the Legislature was constrained to enact harsh laws and for speedy trial of terrorists through Special Courts, mentioned above.

19. Keeping in view the above narrative, it is thus essential to look at the legislation and the new enactments, as to how these were introduced and what was the purpose & object of the same. The conventional and ordinary crimes of murder, hurt, etc. were being committed due to personal motives however, in committing these crimes unlike in the past, where the same were being committed through clubs, sharp weapons, shotguns or non-automatic rifles, the old crime weapons were substituted by sophisticated weapons, fully or semi automatic which fell in the hands of the majority of the peoples. Now invariably these crimes are committed with modern weapons, which has no doubt a devastating effect. However, this category of crimes is committed due to longstanding blood feud and is the result of personal motive. There is no intention (*mens rea*) in committing these crimes to create fear, terrorize the society/community at large or to put it under constant fear and terror. In terrorism cases, evil elements are always persuasive factor and integral parts of it, therefore, due care and caution shall have to be observed by the Courts so that ordinary crimes might not be pushed to the grey area of terrorism or terrorist activities to be dealt with under the law, meant for a particular class of peoples, group of persons/organizations, which are to be treated altogether differently under the special law.

The careful reading of all the relevant provisions of Anti Terrorism Act, 1997 would show that the sole and primary object

of the same is to curb and eliminate terrorism and terrorist activities and also the groups involved in the same, besides to eliminate the sectarian and factional violence committed with the same object therefore, ordinary crimes due to personal motive or revenge shall not be taken at par with acts of terrorism or terrorist activities, the sole object of which is nothing but to terrorize the society/community and the State as a whole. There is a sky high difference between the crimes of the old category and the new one, for which special law has been enacted.

20. Another cardinal principle for construing a Penal Statute is that if the same transgresses upon the liberty, property and life of the citizens, it shall be so construed and interpreted to preserve such rights and not in a manner to destroy the same, thus, at random application of the provisions of the Special Act to the crimes of ordinary nature like the instant one, would be neither desirable nor appropriate being not permissible under the law. In the case of **The State v. Syed Qaim Ali Shah (1992 SCMR 2192)** the same principle was laid down by this Court.

21. In enactments, meant to deal with particular subject and purposive in nature, the Courts are required not to depart from its literal construction, the same shall be narrowly interpreted. Widening the scope of such Statutes would defeat the legislative intent therefore, indulging in straining by enlarging the scope of the Special Law, intended to cover specified crimes and special object, is not permissible course because the result and object intended to be achieved by the Legislature, shall go waste. Unnecessarily bringing conventional crimes within the mischief

provision of the special law may result into chaos and the very object of Article 175 of the Constitution and the laws would be defeated besides the clear intent of the Legislature.

22. As has been discussed earlier, Penal Statute and that too of a harsh nature, must be narrowly examined and by no stretch of imagination it shall be given extended meaning to cover crime/crimes, not clearly falling within the ambit of the same. Carrying forward any legal fiction on any other consideration, is not a permissible course in view of the universal principle relating to construction of Statute. The society has already suffered at the hands of the devils and evil minded people, indulging in terrorism and terrorist activities, thus, ordinary citizens, charged for crimes committed due to personal vendetta, irrespective of the consequences, ensuing in the consummation of a crime, shall not be lightly labeled as terrorists on account of the damage caused as it is not a determinative and decisive factor, as the most lethal/sophisticated weapons, fully automatic are conveniently available almost in every part of the country. The use of such weapons, even by a single person would thus cause multiple injuries or even multiple casualties.

The situs of the crime with certain limitations is relevant to bring it within the fold of mischief provision of Special Act, as the offences committed in specified places are squarely mentioned in para-4, clause (ii) and (iii) which are as follows:-

“(ii) Use of fire arms or explosive 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."

Under section 34 of the Special Act, the Legislature has delegated powers authorizing the government to amend the Schedules, so as to add any entry thereto or to modify it, therefore, when the Legislature has specifically authorized the government to make amendment in the Schedule then, the Courts of law are not supposed to interpret the provision of the Special Act in a way by including any other place in the Third Schedule or to exclude any place, specifically mentioned therein because it would amount to encroachment on the power of the government without any justifiable reason, unless and until the provisions of the Third Schedule are struck down by the Court on the ground being violative or *ultra -vires* of the mandatory provision of the Constitution.

23. It may also be clarified that in the Third Schedule, some offences like abduction or kidnapping for ransom have been specifically mentioned as acts of terrorism while about the other offences, reference is made to the substantive provisions.

If the entire scheme of the Special Act is carefully studied, combinedly with the Schedules appended thereto, it would suggest that the Special Act was enacted by the Legislature with an intent to meet and confront a particular class of criminals and specified crimes, posing threat to the society and the State attributable to terrorists. Many of these organizations have been duly proscribed, while some have been placed under watch/observation, as authorized by Schedules I, II and other related provisions. The

raising of funds by such organizations is prohibited and the funds raised, are liable to be forfeited in favour of the State; the money laundering by various suspect organizations is scanned and checked by the law enforcing agencies. All suspected financial transactions and accumulation of assets through terrorism have been brought within the ambit of the provision of the Special Act and are liable to forfeiture by the State.

Not only the preamble to the Special Act but majority of the substantive provisions are clearly directed to deal with terrorists, terrorist activities and terrorist organizations. After careful study of the entire scheme of the Special Act, with a deep thought, the only legitimate conclusion thus would be that barring specified crimes, the conventional or customary crimes like murder, attempted murder, causing hurt and theft, etc. are not included in the scheme of the Special Act. In the same way, offences of murder, causing bodily harm or hurt with whatever weapon in places other than those mentioned in the Schedule where, element of terrorism is not perceivable from the facts of a particular case, the same shall not come within the mischief of terrorism or terrorist activities. The courts of law shall not lightly ignore that being a harsh law, enacted to punish terrorists, hardcore militant and those involved in offences, specifically mentioned in the Schedule or other provisions of the Special Act, the same cannot be liberally extended to cover criminals who commit crime of murder, hurt or of attempted murder for any reason or motive, having no nexus with terrorism or militancy.

24. True, that in section 6 read with section 7 of the Special Act, offences of murder, attempted murder or causing bodily hurt or injury have been made cognizable by the Special Court, however, from the qualifying words, preceding the description of offences under sub-section(1) of section 6 read with the provisions of section 7 the intention of the Legislature becomes perceivable/visible that in committing these crimes essentially the element of "*terrorism*" shall be persuasive factor however other category of crimes duly specified and listed in Special Act shall fall within the ambit of provision of same being act of terrorism in that regard. The manifest intent of the Legislature does not leave behind any doubt for debate.

25. In certain circumstances, offences of murder or bodily harm, committed by the individuals in a sudden fight, even at public places, due to sudden flare up where the reason preceding such fight is concealed by both the parties, shall also not fall within the definition of terrorism because the object to be achieved is not terrorism or to carry out terrorist activities, therefore, courts shall not hurriedly jump at the conclusion that any such offence(s) are acts of terrorism in all open and shut cases of ordinary crimes where object is not terrorism nor the culpable act committed is directed to carry out terrorist activities, shall not be forcibly brought within the ambit of the provisions of Special Act.

26. The famous Jurists on construction and interpretation of Statute are almost in agreement that whenever Penal Statute requires interpretation then, it shall be so interpreted, which favours the accused person and not the State. Reference may be

made in this regard to the case of **Brig.(rtd.) F.B.Ali and another v. The State** (PLD 1975 SC 506) and the case **King v. Aung Nyum** [(Q.B) 42 CrI.L.J.125]. In the above cited precedents the principle that Penal Statute has to be strictly construed was adopted. Question of carrying forward any legal fiction does not arise in such cases and whenever there is a room where a Penal Statute is susceptible to two interpretations, then it must be interpreted in favour of the accused.

27. If the Legislature intended to bring the crimes of routine murder, attempted murder or causing bodily hurt within the ambit of the provisions of the Special Act then, it would have not employed the word of terrorism or terrorist activities. The comprehensive list of terrorism related offences against the public at large/society and in particular places of worship and educational institutions, offences against law enforcing agencies, armed forces, is the clear manifestation of intent of the law givers. This fact by itself signifies the intention of the Legislature what it actually intended to achieve. Although, incidentally, in ordinary crimes sometimes, the damage caused to human life might be devastating, gruesome and heart sickening, however, this by itself would be not sufficient reason to bring the crime within the fold of terrorism or to attract the provision of section 6 or section 7 of the Special Act, unless the object intended to be achieved was falling within the category of crimes, clearly perceivable to create terror in people or/and sense of insecurity.

28. Another crucial aspect which cannot be lightly ignored, the provisions relating to “**Qisas and Diyat Laws**” (now

the integral part of the PPC). These rights based on Islamic Injunction are personal rights of the legal heirs of a deceased person (wali) or the victims, while the State is placed next to it. These vested rights of individuals cannot be lightly disturbed or taken away by the provisions of Special Act in crimes, not related to terrorism or terrorist activities. Bringing these crimes at random within the mischief provisions of Anti Terrorism Laws, (Special Act) would certainly deprive the legal heirs of the deceased of taking "***Qisas***" in the case of "***Qatl-i-amd***" or "***Diyat***" and the victims of **hurt** from the right of "***Qisas, Diyat, Arsh or Daman***". In the event of conviction under the penal provisions of the Special Act, the fine imposed along with other similar penalties shall go to the public exchequer and in this way these rights recognized by the Islamic injunctions as indefeasible and unavoidable would be defeated for no justifiable reason. For this reason too, crimes against human body or property not clearly falling within the definition of terrorism and terrorist activities shall not be construed as such because by adopting that course these rights would be infringed, which are of overriding and superimposing effects.

29. The provision of Article 4(1) of the Constitution in commanding language, directs as follows:-

"To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan."

The phrase used "*to be treated in accordance with law*" includes that every citizen must be dealt with according to law applicable to him, subject, of-course, to the facts and

circumstances of the case. If any citizen is triable under the ordinary penal law of the land, then, treating him harshly under special law, not clearly applicable to him would be a violation of the command of the Constitution.

Under Article 227 of the Constitution, *"all existing laws shall be brought in conformity with the injunction of Islam as laid down in the Holy Quran and Sunnah, in this part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions."* Thus, the combined effect would be that the two categories of crime, the one committed in an ordinary manner due to personal vengeance/revenge/private motive or due to sudden fight where the essential ingredient of terrorism is not involved, shall in no manner affect the personal right of ***Qisas, Diyat, Arsh or Daman*** of the legal heirs of the deceased (wali) or the victims of the assault as the case may be superimposing the provision of Anti Terrorism Act, i.e. sections 6 and 7 thereof, because it will also defeat the prohibitory language contained in the above Article of the Constitution and to that extent any such order of any Court shall be deemed to void and be inoperative.

30. In the present case, besides many infirmities highlighted in the earlier paras of the judgment, it appears that the noose was thrown wider, the act/acts, the crimes committed and executed were the consequence of personal motive and in the course of the transaction no element of terrorism defined by Legislature was involved, although it was gruesome in nature, however, the punishment provided u/s 302(a) and (b) PPC is also death sentence besides compensation too was awardable u/s 544-

A Cr.P.C. therefore, in the matter of punishment there is no marked distinction, if the penal provision of PPC is applied. The parties are having a blood feud since long and the object to be achieved was to take revenge for the previous murder and attempted murder, therefore, in our considered view, both the Courts below have not taken due care by applying correct provision of law to the established facts of the case. The construction on the provisions of Anti Terrorism Act and the principle laid down in the cases cited at the bar ie. Shahbaz Khan @ Tippu v. Special Judge Anti-Terrorism Court (PLD 2016 SC 1) and Kashif Ali v. The Judge Anti-Terrorism Court, No.II, Lahore (PLD 2016 SC 951) proceeds on different premises, both legal and factual and are not attracted to the facts and circumstances of the present case.

31. Accordingly, the conviction of the appellants u/s 7(a) of the Special Act, is set aside and the same is converted to one u/s 302(b) PPC 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 u/s 302(b) PPC and the conviction and sentences awarded to them u/s 6 read with section 7 of the Special Act are set aside. Similarly, the conviction and sentences of the appellants for causing hurt to the injured victims are converted from section 7(a) etc. of the Special Act to one u/s 324 PPC read with S.337-A(a)(iii)

PPC in the case of Mst. Tayyba Bibi, while in the case of Khalid Mehmood to one u/s 337-E(c) PPC. In the case of Muhammad Ramzan u/s 337-E(c) PPC, in the case of Sarmad Ali to one u/s 337-A(i) PPC, in the case of Mst. Farzana u/s 337-E(c) PPC, and in the case of Mst. Safia Bibi to one u/s 337-A(i) PPC. The fine amount imposed, except for offences under Ss. 449 and 452 PPC are converted to '**Daman**' in all cases of the injured victims, while rest of the compensation amount payable by the appellants for the murder of the deceased is maintained or in default thereof, the appellants shall have to undergo six months S.I. However, rest of the convictions recorded and sentences awarded to them under above Penal Provisions i.e. Ss. 449 and 452 PPC along with compensation amount and sentences of fine amount imposed upon them are maintained. It is directed that all the substantive sentences of imprisonments shall run concurrently, with benefit of section 382-B Cr.P.C to all the appellants.

These are the detailed reasons for our short order of even date, which is as under:-

"For the reasons to be recorded later, we partly allow this appeal, convert sentences of death of the appellants into imprisonment for life under section 302(b), PPC."

Judge

Judge

Judge

Islamabad, the
4th May, 2017
Nisar /-

"Approved for reporting"