

lodged against Saddam Hussain appellant on the recovery of Kalashnikov along with seventeen (17) live bullets. The learned trial Court (Judge Anti-Terrorism Court-VIII, Karachi), vide judgment dated 01.11.2016, convicted the appellants u/s 7(1)(a) of the Anti-Terrorism Act, 1997, read with sections 302/34 PPC and sentenced them to imprisonment for life each with fine of Rs.5,00,000/- each and in case of non-payment of fine, they were directed to further suffer S.I for three (03) years. The learned trial Court also sentenced Saddam Kakar (appellant) to R.I for seven (07) years for the offence punishable under section 13-D of the Arms Act, 1965. The properties of the appellants as defined in section 2(Pa) of the Anti-Terrorism Act, 1997, were ordered to be forfeited as provided under section 7(2) of the Anti-Terrorism Act, 1997. The benefit of section 382-B Cr.P.C was also extended to the appellants and the sentences of imprisonment awarded to Saddam Kakar (appellant), were ordered to run consecutively. In appeal, the learned High Court dismissed the appeals filed by the appellants vide impugned judgment dated 30.10.2019 and maintained the judgment of the learned trial Court.

3. Arguments heard. Record perused.

4. As per contents of the FIR, Muhammad Yasin complainant was present in the emergency ward of Jinnah Hospital, Karachi, where he came to see Abdul Rehman (deceased), who was under medical treatment due to sustaining injuries in an earlier incident. In the meanwhile, some unknown accused started firing in the emergency ward due to which the abovementioned Abdul Rehman (deceased), again sustained firearm injuries and died at the spot. On hearing the report of firing, the police officials and rangers reached at the place of occurrence and apprehended one of the above-mentioned unknown

accused, who disclosed his name as Saddam Kakar (appellant). A Kalashnikov along with seventeen (17) live bullets were recovered from the possession of the said appellant, whereas the other accused persons managed to flee away from the spot, hence the FIR of this case.

5. First of all, we take up the case of Azhar Hussain (appellant in Crl.A.No.353/2023). The said appellant was neither nominated in the FIR nor apprehended at the spot. He has been implicated in this case with the allegation that he was one of the unknown accused persons, who also participated in the occurrence.

Learned Additional Prosecutor General has stated that there is a video recording of CCTV camera, which showed that Azhar Hussain appellant also participated in the occurrence due to which he was implicated in this case. According to the prosecution's case, Azhar Hussain (appellant) inflicted a rod blow on the body of Abdul Rehman (deceased), during the occurrence but none of the prosecution eye-witness had stated that Azhar Hsusain (appellant), inflicted any rod blow on the body of the deceased. Moreover, no injury on the body of the deceased was noted during his postmortem examination, which can be caused with a rod, therefore, the role attributed to Azhar Hussain (appellant) by the prosecution is not supported by the medical evidence. The photographs of the occurrence taken with the help of CCTV camera recording have also been placed on the record and exhibited in evidence, which are also available at page Nos.275, 277, 279, 281 & 283, of the paper book of this case but perusal of the said photographs shows that the appellant could only been seen while present at the spot at the time of occurrence. There is nothing in these photographs to establish that Azhar Hussain (appellant), was carrying any club or iron rod and he inflicted the same on the body of the deceased. The place of occurrence

is situated in the Jinnah hospital, Karachi, which is a public place, therefore, mere presence of the said appellant in a hospital at the time of occurrence is not sufficient to hold his participation in the occurrence of this case. None from the private witnesses mentioned in the FIR, appeared in the witness box except Muhammad Sharik Khan (PW-1) but the said witness was declared hostile by the prosecution. It is true that in ocular account the prosecution produced Gohar Mehmood ASI and Niaz Muhammad SI, who appeared in the witness box before the learned trial Court as PW-2 and PW-3 but even in their statements recorded by the learned trial Court, they did not name the appellant in this case. Although they stated that apart from Saddam Kakar (co-convict), the other accused available in the Court was also present at the spot at the time of occurrence but they did not assign any role to the other accused (Azhar Hussain appellant), in their abovementioned statements. As mentioned earlier, mere presence of Azhar Hussain (appellant), in a hospital at the time of occurrence is not sufficient to connect him with the alleged offence. Moreover, as mentioned above, Azhar Hussain (appellant), was not named in the FIR and no identification parade of the appellant has been conducted in this case. No weapon of offence was recovered from the possession of Azhar Hussain (appellant) during the course of investigation of this case. No motive whatsoever was alleged or proved against Azhar Hussain (appellant).

6. Keeping in view all the aforementioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against Azhar Hussain (appellant) beyond the shadow of doubt. Consequently, his appeal (*Crl.A.No.353/2023*), is allowed. The impugned judgment to the extent of Azhar Hussain (appellant), is set

aside and he is acquitted of the charges while giving him the benefit of doubt. He shall be released from the jail forthwith unless required to be detained in any other case.

7. Now coming to the case of Saddam Kakar (*appellant in Crl.A.Nos.351 & 352 of 2023*), we have noted that Saddam Kakar (appellant), was arrested at the spot by the officials of police and rangers, immediately after the occurrence while carrying a Kalashnikov. The prosecution eye witnesses namely Gohar Mehmood (PW-2) and Niaz Muhammad (PW-3), stated before the learned trial Court that on the day of occurrence i.e., on 21.12.2012, they were posted at police station Saddar Karachi and were performing patrol duty inside the Jinnah Hospital, Karachi. At about 08.00 p.m, Abdul Rehman (deceased), was brought to the abovementioned hospital in injured condition, who was attacked by the culprits and the said culprits tried to run away after the occurrence. They (PWs) along with others chased the culprits and apprehended one of the accused, who disclosed his name as Saddam Kakar (appellant). A Kalashnikov along with a magazine having seventeen (17) live bullets was recovered from the possession of Saddam Kakar (appellant). The abovementioned witnesses were cross-examined at length but their evidence could not be shaken. They remained consistent on all material aspects of the case. Their evidence is confidence inspiring and trustworthy.

8. The prosecution case against Saddam Kakar (appellant), is further corroborated by the recovery of Kalashnikov and positive report of Fire Arms Examiner, Forensic Division, Sindh Karachi (Ex.54), according to which the empties recovered from the spot were found to be fired from the abovementioned weapon. Saddam Kakar (appellant), could not produce any licence to justify the possession of Kalashnikov.

9. Keeping in view all the abovementioned facts, we have come to this irresistible conclusion that the prosecution case against Saddam Kakar (appellant), has been proved beyond the shadow of any doubt for offences under section 302/34 PPC and 13-D of the Arms Act, 1965.

10. Insofar as the conviction and sentence awarded to Saddam Kakar (appellant) for the charge under section 7 of Anti-Terrorism Act, 1997, is concerned, we have noted that it was a case of personal vendetta because according to the prosecution's case, the brother of Abdul Bari Kakar (co-accused since P.O), namely Ramzan Kakar was earlier murdered on the day of occurrence and due to the said grudge, the occurrence of the present case was committed by Saddam Kakar (appellant) and his co-accused. It is, therefore, evident that it was a case of personal vendetta, therefore, the provisions of section 7 of Anti-Terrorism Act, 1997, are not attracted in this case. It is true that the occurrence in this case took place inside the Jinnah Hospital, Karachi, which is a public place but mere this fact that the occurrence took place at a public place would not bring the case of Saddam Kakar (appellant), within the ambit of section 7 of Anti-Terrorism Act, 1997 and ingredients of said offence are not attracted in this case on the abovementioned ground, as observed in the judgments reported as "Abrar Ahmad Farooq and others v. The State and another" (PLD 2024 Supreme Court 815) and "Farooq Ahmed v. The State and another" (2020 SCMR 78), wherein this Court held that mere this fact that the occurrence took place in the Court premises would not attract the provisions of section 7 of Anti-Terrorism Act, 1997, when the occurrence was committed due to personal vendetta.

11. Consequently, Crl.A.No.351/2023, is partly allowed, convictions and sentences of Saddam Kakar (appellant), for the offences under

sections 7(1)(a) & 7(2) of the Anti-Terrorism Act, 1997, are hereby set-aside and Saddam Kakar (appellant), is acquitted from the charge under sections 7(1)(a) & 7(2) of the Anti-Terrorism Act, 1997. However, Crl.A.No.351/2023, is partly dismissed, conviction and sentence of Saddam Kakar (appellant), for the charge under section 302 PPC, is maintained and upheld. The amount of fine Rs.5,00,000/-, awarded by the learned trial and maintained by the learned High Court to Saddam Kakar (appellant), shall be treated as compensation amount under section 544-A Cr.P.C. The amount of compensation, if recovered, shall be paid to the legal heirs of the deceased and in case of non-payment of compensation, the appellant shall further undergo simple imprisonment for six (06) months.

12. The conviction and sentence awarded to Saddam Kakar (appellant) under section 13-D of the Arms Act, 1965, are hereby maintained and upheld. Resultantly Crl.A.No.352/2023, filed by Saddam Kakar (appellant), is hereby dismissed.

13. It is worth mentioning that the case FIR No.318/2012, dated 22.12.2012, under section 13-D of the Arms Act, 1965, police station Saddar Karachi was lodged against Saddam Kakar (appellant), on the recovery of Kalashnikov, which was used during the occurrence of case FIR No.317/2012, dated 22.12.2012, under sections 302/144/109/34 PPC, read with section 7-ATA, 1997, police station Saddar Karachi and as such both the cases are offshoot of the same incident, therefore, while invoking the provisions of section 397 Cr.P.C, we direct that the sentences of imprisonments awarded to Saddam Kakar (appellant), for offences under sections 302 PPC and 13-D of the Arms Act, 1965, except the sentence of imprisonment awarded to the said appellant on account of non-payment of compensation amount shall run

concurrently. Benefit of section 382-B Cr.P.C, is also extended in favour of Saddam Kakar (appellant).

14. Crl.A.Nos.351 & 352 of 2023, filed by Saddam Kakar (appellant), stand decided in the abovementioned terms.

JUDGE

JUDGE

JUDGE

Islamabad, the
09th of September, 2025
Not Approved For Reporting
Aitaz