THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Muhammad Hashim Khan Kakkar

Mr. Justice Salahuddin Panhwar

Mr. Justice Ishtiaq Ibrahim

J.P. 279 of 2020

(against the Judgment dated 28.01.2020 passed by Sindh High Court, Sukkur, in Crl. Jail Appeal. No. D-10/2017)

Imtiaz Shaikh

…Petitioner(s)

VERSUS

The State

…Respondent(s)

For the Petitioner : Mr. Rehan Iftikhar, ASC

For the State : Mr. Salim Buriro, APG Sindh *(via v/l. Karachi)*

On Court's Call : Mr. Tariq Siddiqui, APG Punjab

Date of hearing : 21.09.2026

JUDGMENT

ISHTIAQ IBRAHIM, J. Although the petition is barred by 112 days, in view of the reasons furnished for the delay, the same is condoned in the interest of justice.

2. Through this petition, the petitioner, Imtiaz Shaikh, has impugned the judgment dated 28.01.2020 passed by the High Court of Sindh, Sukkur. The case stems from three interconnected Crime Reports registered at Police Station Sadiq Kalhoro, District Khairpur Mir, namely: FIR No. 05/2012 [under Sections 302, 324, 364, 404, 120-B, 109, 149 PPC read with Section 7 of the Anti-Terrorism Act (ATA), 1997], FIR No. 10/2012 [under Sections 324, 353, 399, 402, 149 PPC read with Section 7 ATA], and FIR No. 11/2012 [under Section 13(d) of the Arms Ordinance, 1965]. Co-accused Ismail Shaikh was acquitted by the learned High Court hence for ease of reference, the convictions and sentences passed by the learned Anti-Terrorism Court, Khairpur Mir via judgment dated 26.01.2017 and the subsequent modifications by the learned High Court of Sindh to the extent of petitioner Imtiaz Shaikh are summarized in the table below. All sentences were ordered to run concurrently with benefit of 382-B:

Sections	Trial Court Judgement	High Court Judgement
302(b)/149 PPC r/w 149 PP (Crime No. 05/2012)	Death on 3 counts and compensation of Rs. 2,50,000 each deceased or in default 6 months R.I.	Converted to Life imprisonment on 3 counts with fine intact.
7 ATA, 1997	Death on 3 counts and compensation of Rs. 50,000 each deceased or in default 6 months R.I.	Converted to Life imprisonment on 3 counts with fine intact.
364/149 PPC (Crime No. 05/2012)	R.I. for Life + Fine Rs. 50,000/- each (06 months R.I. in default).	Maintained
324/149 PPC (Crime No. 10/2012)	R.I. for 10 years + Fine Rs. 25,000/- (04 months R.I. in default).	Maintained
353/149 PPC (Crime No. 10/2012)	R.I. for 2 years	Maintained
13(d) Arms Ordinance (Crime No. 11/2012)	R.I. for 7 years + Fine Rs. 15,000/- (02 months R.I. in default).	Maintained
402/149 PPC (Crime No. 10/2012)	R.I. for 7 years + Fine Rs. 15,000/- (02 months R.I. in default).	Set aside-Acquitted
404/149 PPC (Crime No. 05/2012)	R.I. for 3 years + Fine Rs. 10,000/- each (02 months each R.I. in default).	Set aside-Acquitted
399/149 PPC (Crime No. 10/2012)	R.I. for 10 years + Fine Rs. 25,000/- (04 months R.I. in default).	Set aside-Acquitted

3. Briefly, on 20.02.2012, SIP/SHO Police Station Sadiq Kalhoro Ghulam Abbas Shar/PW-1, who was a member of a Joint Investigation Team (JIT) constituted by SPP Naushehro Feroze regarding the abduction of a foreigner, Mr. Tom, and his driver, Gada Hussain (Crime No. 13/2012 u/s 365-A PPC, P.S. Bhirya City), received spy information regarding the presence of the abductees stating that they were being held captive at the camp of dacoit Shamoon Shaikh in District Khairpur. PW-1 along with his subordinate police personnel, departed in a private vehicle towards the designated location. Upon reaching Village Dost Mohammad, the police party parked their vehicle and proceeded on foot under the guidance of private spy informers Soobal Mallah and Gul Mohammad Mallah. At approximately 17:30 hours, near Village Shamoon Shaikh in Ketti Mumtaz, the team encountered an armed group comprising of 13 accused persons namely (1) Shamoon Shaikh, (2) Ali Gohar @ Gohar Shaikh, (3) Azizullah Shaikh, (4) Qurban Shaikh, (5) Zamir Shaikh, (6) Imtiaz Shaikh, and

(7) Parvez Shaikh (all armed with Kalashnikovs); (8) Ghulam Shabir Shaikh (armed with a G-3 rifle); (9) Mumtaz @ Mumtoo Shaikh, (10) Ranjhan @ Ranjhoo Shaikh, (11) Ismail Shaikh, (12) Usman Shaikh, and (13) Latif Gopang along with 5 to 6 unidentified individuals all armed with Kalashnikovs. Upon spotting the police, the accused opened fire with intent to kill, leading to a retaliatory firing from the police party that lasted for about an hour. During the encounter, a bullet jammed in the G-3 rifle of PC Bashir Ahmed. Taking advantage of the situation as the police party changed positions, the accused overpowered and abducted PC Bashir Ahmed, Soobal Mallah, and Gul Mohammad Mallah, forcibly taking them toward the camp of dacoit Nazroo Narejo. Subsequent information received by the police revealed that dacoits (1) Nazroo Narejo, (2) Mushtaque Narejo, (3) Pathan Narejo, and (4) Bahadur @ Bajoo Narejo (all armed with G-3 rifles), along with (5) Khan Mohammad @ Gooro Narejo, (6) Shahnawaz Narejo, and (7) Soobal Narejo (armed with Kalashnikovs) along with the above named accused people including petitioner Imtiaz, executed the three abductees and dumped their bodies at Burira Pattan. On 21.02.2012, a police team reached Burira Pattan and recovered the firearm-riddled bodies of PC Bashir Ahmed, Soobal Mallah, and Gul Mohammad Mallah, following which FIR No. 05/2012 was registered by SIP Ghulam Abbas Shar at P.S. Sadiq Kalhoro.

4. A couple of months later, on 12.04.2012 at 20:00 hours, ASI/SHO Syed Lutufullah Shah received spy information that accused Imtiaz Shaikh (wanted in FIR No. 05/2012) and his accomplices were present at Link Road Headquarter, Mour Kalhoro. ASI Lutufullah Shah, accompanied by ASI Pir Bux Maitlo, C-Ali Nawaz Kalhoro, and subordinate staff, raided the location and spotted 5 armed accused persons identified in torchlight: (1) Imtiaz Shaikh, (2) Shahnawaz Narejo, (3) Deedar Shaikh, (4) Shamoon Shaikh, and (5) Ali Gohar @ Gohoo Shaikh. When challenged to surrender, they initiated a 30-minute firefight. Police retaliated, ultimately apprehending Imtiaz Shaikh on the spot along with an unlicensed Kalashnikov (KK) containing 10 live rounds, while the co-accused escaped into the jungle. Imtiaz Shaikh petitioner disclosed that the recovered weapon was the same one used in the murder and abduction incident of FIR No. 05/2012. This led to the registration of FIR No. 10/2012

(encounter) and FIR No. 11/2012 (under Section 13(d) Arms Ordinance) against him.

5. Arguments heard, record perused with the assistance of the learned counsels for parties. We also appreciate the assistance provided by Learned APG Punjab in this matter.

6. The examination of the record reveals that the prosecution's case against the petitioner Imtiaz Shaikh is built upon 2 distinct episodes:

- Episode 1 (The raid, encounter and abduction at Ketti Mumtaz on 20.02.2012 and subsequent recovery of dead bodies on 21.02.2012)
- Episode 2 (Second Encounter on road near More Kalhoro on 12.04.2012)

Both PW-1 (SIP Ghulam Abbas) and PW-5 (PC Ghulam Hyder) are natural and spot eye-witnesses who were part of the initial police party. They deposed before the trial court that petitioner Imtiaz Shaikh was present at Ketti Mumtaz duly armed with a Kalashnikov among other co-accused persons and absconders, opened direct fire upon the police party performing their official duty, and actively participated in overpowering and abducting PC Bashir Ahmed, Soobal Mallah, and Gul Mohammad Mallah. The direct ocular account of Episode 1 is strongly corroborated by the evidence of PW-3 (SIP Pir Bux) and PW-4 (ASI Syed Lutufullah Shah), who arrested petitioner Imtiaz Shaikh on 12.04.2012 after he again resorted to direct firing upon police officers attempting to apprehend him. The recovery of the working Kalashnikov from his immediate physical possession on the spot establishes his identity as an active member of an armed dacoit gang operating in the area. In view of the foregoing ocular evidence, it stands established beyond reasonable doubt that the petitioner, Imtiaz, was involved in the abduction, as the eyewitnesses themselves witnessed the occurrence. Moreover, being a member of a dacoit gang, the petitioner was fully aware that the abduction could expose the abductees to the risk of murder or other fatal harm. In these circumstances, the essential ingredients of the offence punishable under Section 364 PPC stand established against the petitioner. However, when we evaluate the prosecution's evidence regarding the substantive charge of murder under Section 302(b) PPC, an evidentiary lacuna comes to light. There is not a single eye-witness on record who witnessed the actual act of killing at Burira Pattan. As per the narration in the FIR lodged by PW-

1 (SIP Ghulam Abbas Shar), the complainant only subsequently received spy information that the three abductees (PC Bashir Ahmed, Soobal Mallah, and Gul Mohammad Mallah) had been murdered and their dead bodies dumped at Burira Pattan. The prosecution seeks to bridge this fatal gap solely through the recovery of firearm empties from the murder scene namely, Kalashnikov and G-3 empties. However, it is an admitted feature of the prosecution case that the petitioner was not the sole person armed with an automatic weapon and several other co-accused dacoits (including absconders Nazroo Narejo, Shamoon Shaikh, and others) were simultaneously present at the scene, also carrying Kalashnikovs and G-3 rifles. In the absence of any direct eyewitness account to the execution, it is legally impossible to ascertain whose bullet fired the fatal shots or which specific individual among the large gang committed the actual murders. The mere recovery of empties from a place where a heavily armed gang operated cannot substitute for concrete proof of participation in the act of killing. It is also noteworthy that Imtiaz Sheikh petitioner belongs to the village of Shaman Sheikh, and the persons named in the abduction episode likewise bear the surname Sheikh, whereas the alleged murders took place at the camp of dacoit Nazroo Narejo. This circumstance raises a reasonable doubt as to the petitioner’s control over, or participation in murders, particularly when the place of occurrence of these murders was under the domain of another dacoit group, thereby entitling the petitioner to the benefit of doubt to that extent. As there is no direct link or conclusive evidence establishing that it is the petitioner who committed the murder of the three abductees, we are of the considered view that his conviction and sentence under Section 302(b) PPC cannot be sustained.

7. Turning to the convictions of the petitioner, Imtiaz Shaikh, under Sections 324 and 353 PPC as well as Section 13(d) of the Arms Ordinance, 1965. The record explicitly shows that in Episode 1 (20.02.2012), the petitioner was spotted at Ketti Mumtaz actively participating in a gang of dacoits. Eye-witnesses PW-1 (SIP Ghulam Abbas Shar) and PW-5 (PC Ghulam Hyder) testified that the petitioner, armed with a Kalashnikov, along with his accomplices, opened direct fire upon the police party who were executing an official JIT order to recover kidnapped victims. This fierce gun battle lasted for a duration of one full hour. Similarly, in Episode 2 (12.04.2012), PW-3 (SIP Pir

Bux Maitlo) and PW-4 (ASI Syed Lutufullah Shah) stated that upon being signaled to surrender at Headquarter More Kalhoro, the petitioner and his co-accused again resorted to direct firing upon the police party to evade arrest, resulting in an encounter that lasted for 30 minutes. Opening direct, continuous firing with lethal weaponry against uniformed police personnel for an extended duration -1 hour in the first instance and 30 minutes in the second - leaves no room for doubt regarding the mens rea to attempt murder under Section 324 PPC. Had the police party not taken defensive positions and retaliated, fatal casualties among the force were inevitable. Furthermore, this act also was to prevent them from conducting a raid or effecting an arrest squarely constitutes criminal force and assault to deter public servants from discharging their official duties under Section 353 PPC. In fact, the forcible overpower and abduction of PC Bashir Ahmed [deceased] while in uniform on duty is in itself an aggravated assault falling squarely within the ambit of Section 353 PPC.

8. The charge under Section 13(d) of the Arms Ordinance, 1965 also stands established through the spot arrest of the petitioner during Episode 2, where an unlicensed, functional Kalashnikov equipped with a magazine containing 10 live bullets was recovered from his immediate physical possession by PW-3 and PW-4. Inspection of the crime scenes in both episodes yielded multiple Kalashnikov empties (25 empties from the Episode 1 site and 15 empties from the Episode 2 site). While other absconding dacoit members were also allegedly armed with Kalashnikovs, the petitioner before us was specifically seen carrying and firing a Kalashnikov during both encounters by the respective eyewitnesses, and a matching, working Kalashnikov with live ammunition was subsequently recovered directly from his hands thereby sustaining the charge under 13(d) of the Arms Ordinance, 1965.

9. As a consequential relief flowing from our finding regarding the failure of prosecution evidence to directly connect the petitioner with the actual act of killing at Burira Pattan, his conviction under Section 7(1)(a) [or Section 7(a)] of the Anti-Terrorism Act, 1997 which penalizes the act of terrorism resulting in the death of a person can no longer be sustained. The proved evidence establishes that during both episodes, the petitioner launched an armed assault upon law enforcement officers performing their official duties. Such indiscriminate firing

directly at a uniformed police party engaged in a law enforcement operation was an act with the immediate danger of causing fatalities and serious harm falling within the ambit of Section 6(2)b ATA, 1997. The act of petitioner also constitutes serious violence against members of the police force, bringing his acts also within the scope of Section 6(2)(n) of ATA, 1997. Therefore, his conviction under Section 7(1)(a) is modified and converted into Section 7(1)(b) and Section 7(1)(h) of the ATA, 1997.

10. In view of the foregoing, this appeal is partly allowed. The conviction and sentence of the appellant under Section 302 PPC are hereby set aside, while his convictions and sentences under Sections 364, 324 and 353, all read with Section 149 PPC, are maintained. The conviction under Section 7 of the Anti-Terrorism Act, 1997, is modified to convictions under Sections 7(1)(b) and 7(1)(h) of the said Act. Accordingly, the appellant is sentenced to ten years' rigorous imprisonment (R.I.) with a fine of Rs. 50,000/-, and, in default of payment thereof, to undergo six months' rigorous imprisonment (R.I.) under Section 7(1)(b); and five years' rigorous imprisonment (R.I.) with a fine of Rs. 10,000/-, and, in default of payment thereof, to undergo two months' rigorous imprisonment (R.I.) under Section 7(1)(h), respectively. The benefit of Section 382-B Cr.P.C. shall be extended to the appellant. All sentences shall run concurrently.

Judge

Judge

Judge

Announced on _____ in Open Court at Islamabad.

Judge

Not Approved for Reporting
Tayyaba Munir, Law Clerk