

**P L D 2004 Lahore 199**

**Before Asif Saeed Khan Khosa and M.A. Shahid Siddiqui, JJ**

**BASHARAT ALI ---Petitioner**

**Versus**

**SPECIAL JUDGE, ANTI-TERRORISM COURT-II, GUJRANWALA-- Respondent**

Writ Petition No. 15843 of 2003, decided on 14th January, 2003.

**(a) Anti-Terrorism Act (XXVII of 1997)---**

---S. 6 [as substituted by Anti-Terrorism (Amendment) Ordinance (XXXIX of 2001)]---"Terrorism"---Concept---Currently no definition of `terrorism" is available in the customary international law---"Terror" as a manifestation of horror, shock or disgust, is known to human society and civilization since times immemorial but "terrorism" as an 'ism' or an articulated pattern of thought and activity, is relatively of a recent origin---" Terrorism" and "terror"---Distinction---Test to determine whether a particular act is "terrorism" or not is the motivation, object, design or purpose behind the act and not the consequential effect created by such act---"Terrorism", in this context has to be understood as a species different and apart from terror, horror, shock, fear, insecurity, panic or disgust created by an ordinary crime---History of recent "terrorism" in the world and an insight into how the world has understood and tried to define the same may be a significant help and of critical importance in appreciating the true meanings and import of the term "terrorism".

Terror, as a manifestation of horror, shock or disgust, is known to human society and civilization since times immemorial but terrorism, as an 'ism' or an articulated pattern of thought and activity, is relatively of a recent origin.

Terror and terrorism are concepts quite distinct from each other and the quintessence of the two notions is not difficult to distil. Terror as a manifestation of fright, dread, fear or insecurity is a consequential effect created by an act that may not necessarily be motivated to create such an effect whereas terrorism is an activity designed to create such an effect of terror. The critical difference between the two is the design and purpose understood in the criminal, jurisprudence as mens rea. In the case of terror the act, or the actus reus, is not motivated to create fear and insecurity in the society at large but the same is actuated with a desire to commit a private crime against targeted individuals, etc.

and the fear and insecurity created by the act to the society at large is only an unintended consequence or a fall out thereof whereas in the case of terrorism the main purpose is creation of fear and insecurity in the society at large and the actual victims are, by and large, not the real targets. Every crime, no matter what its magnitude or extent, creates some sort of fear and insecurity in some section of the society but every felony or misdemeanour cannot be branded or termed as terrorism. As against that an act of terrorism designed to create fear and insecurity in the society at large may or may not succeed in achieving the desired effect but nonetheless it can be accepted as nothing but terrorism because of the object or purpose behind such act. Thus, the real test to determine whether a particular act is terrorism or not is the motivation, object, design or purpose behind the act and not the consequential effect created by such act. In this context terrorism has to be understood as a species different and apart from terror, horror, shock, fear, insecurity, panic or disgust created by an ordinary crime. The history of recent terrorism in the world and an insight into how the world has understood and tried to define the same may be of significant help and of critical importance in appreciating the true meanings and import of the term `terrorism'.

There is currently no definition of terrorism available in the customary international law.

Another academic attempt to define terrorism indicates that the essence of the activity is the use of, or threat to use violence. According to this definition an activity that does not involve violence or a threat of violence will not be defined as terrorism (including non-violent protest--strikes, peaceful demonstrations, tax revolts, etc.). It is maintained that the aim of the activity is

always political, i.e. the goal is to attain political objectives like changing the regime, changing the people in power, changing social or economic policies, etc. In the absence of a political aim the activity in question will not be defined as terrorism. A violent activity against civilians that has no political aim is, at most, an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism. Some scholars tend to add ideological or religious aims to the list of political aims. The advantage of this definition is that it is as short and exhaustive as possible. The concept of 'political aim' is sufficiently broad to include all the considerations which may be relevant. This approach takes notice of the fact that the targets of terrorism are generally civilians as it exploits the relative vulnerability of the civilian, 'underbelly'---the tremendous anxiety, and the intense media reaction evoked by attacks against civilian targets. The proposed definition emphasizes that terrorism is not the result of an accidental injury inflicted on a civilian or a group of civilians who stumble into an area of violent political activity but it stresses that this is an act purposely directed against Civilians This is why, as mentioned above, political expert George Lopez from the University of Notre Dame defines terrorism as "a form of political violence that by design violates some of the society's accepted moral and legal codes, is often ruthlessly destructive, and it often reflects a detailed strategy that uses horrific violence to-push political goals.

Out of the various facets of the world view about terrorism one factor is constant and that is that in order to qualify as terrorism an act must be designed to achieve a political and a larger objective and the same is not primarily directed against the actual victims themselves who are treated merely as 'collateral damage'. It is also quite evident that the extent of the actual damage caused or injuries inflicted by the act is not the determinative factor in this regard.

#### **(b) Anti-Terrorism Act (XXVII of 1997)---**

---S. 6---"Terrorism"---History of terrorism as it is known today traced.

#### **(c) Anti-Terrorism Act (XXVII of 1997)---**

---S. 6 -[as substituted by Anti-Terrorism (Amendment) Ordinance (XXXIX of 2001)]---"Terrorism"---Definition and scope---Intent and motivation behind the action would be the determinative of the issue irrespective of the fact whether any fear and insecurity was actually created or not---Action can be termed as "terrorism" if the use or threat of that action is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or if such action is designed to create a sense of fear or insecurity in society, or the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause---Creating fear or insecurity in the society is not by itself "terrorism" unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, fall out or an unintended consequence of a private crime--Emphasis of the Legislature appears to be on the motivation and objective and not on the result---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 totally different concept which denotes commission of a crime with the object and purpose of destabilizing the society or Government with a view to achieve objectives which are political in the extended sense of the word; such an approach appears to be in harmony with the emerging international perception about terrorism according to which, the aim of the activity is always political, i.e. the goal is to attain political objectives like changing the regime, changing the people in powers, changing social or economic policies, etc.---In the absence of a political aim, the activity in quest will not be defined as terrorism---Violent activity against civilians that has not political aim is, at most, an act of criminal delinquency, a felony, or simply an act of insanity unrelated aims to the list of political aims---High Court observed that in view of such conceptual transformation even the interpretations of "terrorist act" or "terrorism" rendered by the Courts in Pakistan in the past on the basis of the earlier law may, require revisiting and reinterpretation so as to be in line with the newly-introduced definition and concept of terrorism---Principles.

The core and essence or the pith and substance of a 'terrorist act' defined by Anti-Terrorism Act, 1997 was striking terror in the people or any section of the people or alienating any section of the people or adversely affecting harmony among different sections of the people. The emphasis appeared to be on the gravity of the offence and its effect upon the general populace rather than on the actual motivation behind the act.

The above mentioned definition of a 'terrorist act' contained in section 6 was subsequently amended through the Anti-Terrorism (Second Amendment) Ordinance, 1999.

Through this amendment the focus on the effect of the action was extended to a potential or likely effect besides the actual effect of the action and the focal point still remained the effect of the action rather than the incentive or inspiration behind the same.

While providing in the amended section 6 that "in, order to, or if the effect of his actions will be to, strike terror or create a sense of fear and insecurity in the people, or any section of the people, does any act or thing---" the Legislature never specified the motivation for that "act or thing" on the part of the perpetrator which propelled or prompted him to commit a terrorist act. Thus, the actus reus was itself considered to be determinative if the same was intended to create fear and insecurity, etc. in the public at large, had the effect of creating such fear and insecurity, etc. or had a potential for creating such fear and insecurity, etc. According to this definition what was of paramount consideration was the effect of the act, whether actual, intended or potential, and not the design or the purpose behind that act. It was in that context that the Supreme Court of Pakistan had interpreted the provisions of section 6 of this Act in Many cases, that an act was to be considered a terrorist act if its effect, whether actual, intended or potential, was to create fear and insecurity, etc. in the society at large.

On August 15, 2001 the Anti-Terrorism Act, 1997 was drastically amended through the Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance No. XXXIX of 2001). Through the amending Ordinance the Schedule of the Act containing various offences to be tried under the said Act was done away with and the term 'terrorist act' with its definition contained in section 6 of the Act was substituted and replaced by the term 'terrorism' with the definition thereof.

The definition of 'terrorism' introduced in Pakistan in 2001 through the latest amendment in the Anti-Terrorism Act, 1997 proceeds on lines somewhat similar, if not identical, to the corresponding definitions contained in the relevant laws of Northern Ireland, United Kingdom, United States of America, Australia and India.

The similarities, nay resemblances, in the definitions of a 'terrorist act' or 'terrorism' enacted in Northern Ireland, United Kingdom, United States of America, Australia, India and Pakistan are too striking to be merely coincidental and, therefore, in the larger interests of global harmony and communion their interpretations ought also not be different.

The resume of legislative developments in the field of terrorism in Pakistan shows that with different laws and definitions of terrorist act or terrorism the emphasis has been shifting from one criterion to another including the gravity of the act, lethal nature of the weapon used, plurality of culprits, number of victims, impact created by the act and effect of fear and insecurity brought about or likely to be created in the society by the action. The last definition of a 'terrorist act' contained in section 6 of the Anti-Terrorism Act, 1997 squarely focused on the effect of fear and insecurity intended to be created by the act or actually created by the act or the act having the potential of creating such an effect of fear and insecurity in the society. It, however, appears that subsequently the Legislature did not feel convinced of the aptness or correctness of that definition and resultantly the erstwhile definition of a 'terrorist act' contained in section 6 of the Anti-Terrorism Act, 1997 was repealed and a totally fresh and new definition of 'terrorism' was introduced through an amended section 6 of the Anti-Terrorism Act, 1997 and this was accomplished through the Anti-Terrorism (Amendment) Ordinance, 2001 (Ordinance No. XXXIX of 2001) promulgated on 15-8-2001. The Legislature had probably realized by then that an effect of an act may not always be a correct indicator of the nature of such an act as every crime, especially of violence against person or property, does create some sense of fear and insecurity in some section of the society and a definition of terrorism based upon the magnitude or potential of an effect created or intended to be created or having a potential of creating would necessarily require a premature, speculative and imaginary quantification of the effect so as to determine the nature of the act in order to decide about the jurisdiction criminal Court to try such an act. That surely was an insecure test and the result of such a premature, speculative and presumptive test could vary from Court to Court and from Judge to Judge reminding a legal scholar of the Star Chamber and the early days of a Court of Equity in England where equity was said to vary with the size of the Chancellor's foot. The new definition of 'terrorism' introduced through the amended section 6 of the Anti-Terrorism Act, 1997 as it stands today appears to be the most comprehensive and the clearest definition of 'terrorism' introduced in our legal system

thus far. It appears that in, its quest for an apt and appropriate definition of terrorism and after stumbling through various, approaches in that regard the Legislature in our country has finally hit upon a definition of terrorism which is not only closest to its real meaning but the same is also in accord with the international perceptions about the same. The earlier emphasis on the speculative effect of the act has now given way to a clearly defined mens rea and actus reus. The amended section 6(1)(b) now specifies the 'design' and section 6(1)(c) earmarks the 'purpose' which should be the motivation for the act and the actus reus has been clearly mentioned in section 6(2)(a) to (n) and now it is only when the actus reus specified in section 6(2) is accompanied by the requisite mens rea provided for in section 6(1)(b) or (c) that an action can be termed as 'terrorism'. Thus, it is no longer the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualifies to be termed as terrorism or not but it is now the intent and motivation behind the action which would be determinative of the issue irrespective of the fact whether any fear and insecurity was actually created or not. After this amendment in section 6 an action can now be termed as terrorism if the use or threat of that action "is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect" or if such action is designed to "create a sense of fear or insecurity in society" or the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause. Now creating fear or insecurity in the society is not by itself terrorism unless the motive itself is to create fear or insecurity in the society and not when fear or insecurity is just a byproduct, a fall out or an unintended consequence of a private crime. In the last definition the focus was on the action and its result whereas in the present definition the emphasis appears to be on the motivation and objective and not on the result. Through this amendment the Legislature seems to have finally appreciated that 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 object and purpose of destabilizing the society or government with a view to achieve objectives which are political in the extended sense of the word. This approach appears to be in harmony with the emerging international perception about terrorism according to which, "the aim of the activity is always political, i.e. the goal is to attain political objectives like changing the regime, changing the people in power, changing social or economic policies, etc. In the absence of a political aim, the activity in quest will not be defined as terrorism. A violent activity against civilians that has no political aim is, at most, an act of criminal delinquency, a felony, or simply an act of insanity unrelated to terrorism. Some scholars tend to add ideological or religious aims to the list of political aims". This metamorphosis in the antiterrorism law in the country has brought about a sea change in the whole concept as it has been understood in the past and it is, therefore, of paramount importance for all concerned to understand this conceptual modification and transformation in its true perspective. In view of this conceptual transformation even the interpretations of a 'terrorist act' or 'terrorism' rendered by Courts in Pakistan in the past on the basis of the earlier law may, require revisiting and reinterpretation so as to be in line with the newly introduced definition and concept of terrorism.

Keeping in view the latest definition of 'terrorism' contained in section 6 of the Anti-Terrorism Act, 1997, mere gravity or brutal nature of an offence does not provide a valid yardstick for branding the same as terrorism. In order to qualify as terrorism the motivation behind the offence has to be political in the extended sense of the word and, as provided in the United Kingdom Law, "the use or threat is made for the purpose of advancing a political, religious or ideological cause" and the act has to be designed to destabilize the society at large. The history of crimes in the human society is replete with macabre, gruesome and horrifying offences shocking the society at large yet such crimes were never treated or accepted as terrorism because the motivation was personal and private. As against that even an unsuccessful attempt at sabotage of public supplies or services has readily been accepted as terrorism because the purpose behind the act is to destabilize the society at large. Even a petty theft in a house in a street is likely to create a sense of insecurity in the people living in that street, a rape of a young girl is bound to send jitters in every family having young girls living in the relevant locality, a murder in the vicinity surely creates a grave sense of fear in the inhabitants of the area, a bloodbath in furtherance of an ongoing feud shocks the society as a whole, a massive fraud in a bank may send shockwaves throughout the banking and financial sectors and an offence committed against a member of any profession may render the other members of that profession feeling vulnerable and insecure. But all such offences are ordinary crimes distinguishable from terrorism because for the former the motivation is personal and private whereas for the latter the purpose has to be to destabilize the society at large. In this backdrop a premature, speculative, presumptive and imaginary quantification of the effect of an action so as to determine the nature of the act as terrorism or not

appears to be an unsure and subjective test and it would be safer and consistent to revert to the principle of nexus carved out by the Supreme Court of Pakistan which is not only now a statutory requirement but the same is also consistent with the first major enunciation of the relevant law by our Supreme Court and that too by a Bench larger than any other Bench deciding any of the other cases.

"Terrorism" is one of the manifestations of increased lawlessness and cult of violence. Violence and crime constitute a threat to an established order and are a revolt against a civilized society. "Terrorism" has not been defined nor is it possible to give a precise definition of "terrorism" or lay down what constitutes "terrorism". It may be possible to describe it as use of violence when its most important result is not merely the physical and mental damage of the victim but the prolonged psychological effect it produces or has the potential of producing on the society as a whole. There may be death, injury, or destruction of property or even -deprivation of individual liberty in the process but the extent and reach of the intended terrorist activity travels beyond the effect of an ordinary crime capable of being punished under the ordinary penal law of the land and its main objective is to overawe the Government or disturb harmony of the society or "terrorise" people and the society and not only those directly assaulted, with a view to disturb even tempo, peace and tranquillity of the society and create a sense of fear and insecurity. ----- Even though the crime committed by a `terrorist' and an ordinary criminal would be overlapping to an extent but then it is not the intention of the Legislature that every criminal should be tried under the Special Act, where the fall out of his, activity does not extend beyond the normal frontiers of the ordinary criminal activity. Every `terrorist' may be a criminal but every criminal cannot be given the label of a `terrorist' only to set in motion the more stringent provisions of Special Act. The criminal activity, in order to - invoke Special Act, must be committed with the requisite intention as contemplated by the said Act ----- it follows that an activity which is sought to be punished under the Special Act has to be such which cannot be classified as a mere law and order problem or disturbance of public order or even disturbance of the, even tempo of the life of the community of any specified locality but is of the nature which cannot be tackled as an ordinary criminal activity under the ordinary penal law by the normal law enforcement agencies because the intended extent and reach of the criminal activity of the `terrorist' is such which travels beyond the gravity of the mere disturbance of public order even of a `virulent nature' and may at times transcend the frontiers of the locality and may include such anti-national activities which throw a challenge to the very integrity and sovereignty of the country in its democratic polity-----Thus, unless the act complained of falls strictly within the letter, and spirit of the relevant provisions of Special Act and is committed with the intention as envisaged by that provision by means of the weapons etc. as are enumerated therein with the motive as postulated thereby, an accused cannot be tried or convicted for an offence under the Special Act. When the extent and reach of the crime committed with the intention as envisaged by Special Act transcends the local barriers and the effect of the criminal act can be felt in other States or areas or has the potential of that result being felt there, the provisions of Special Act would certainly be attracted. Likewise, if it is only as a consequence of the criminal act that fear, terror or/and panic is created but the intention of committing the particular crime cannot be said to be the one strictly envisaged by the Special Act, it would be impermissible to try or convict and punish an accused under the Special Act. The commission of the crime with the intention to achieve the result as envisaged by the Special Act and not merely where the consequence of the crime committed by the accused creates that result, would attract the provisions of the Special Act. Thus, if, for example, 'a person goes on a shooting spree and kills a number of persons, it is bound to create terror and panic in the locality but if it was not committed with the requisite intention as contemplated by the Special Act, the offence would not attract the Special Act. On the other hand, if a crime was committed with the intention to cause terror or panic or to alienate a section of the people or to disturb the harmony etc. it would be punishable under the Special Act, even if no one is killed and there has been only some person who has been injured or some damage etc. has been caused to the property, the provisions of the Special Act would be squarely attracted. ----- There could be some cases where the Designated Courts have charge-sheeted and/or convicted an accused person under Special Act even though there is not even an iota of evidence from which it could be inferred, even prima facie; let alone conclusively, that the crime was committed with the intention as contemplated by the provisions of the Special Act merely on the statement of the investigating agency to the effect that the consequence of the criminal act resulted in causing panic or terror in the society or-in a section thereof. Such orders result in the misuse of the Special Act -----Thus, the true ambit and scope of the provision of Special Act is that no conviction can be recorded unless the evidence led by the prosecution establishes that the offence was committed, with the intention as envisaged by the Special Act by means of the

weapons etc. as enumerated in the relevant provision and was committed with the motive as postulated by the said provision. Where it is only the consequence of the criminal act of an accused that terror, fear or panic is caused, but the crime was not committed with the intention as envisaged by the Special Act to achieve the objective as envisaged by the relevant provision an accused should not be convicted for an offence under the Special Act. To bring home a charge under the Act, the terror or panic etc. must be actually intended with a view to achieve the result as envisaged by the relevant provision and not be merely an incidental fall out or a consequence of the criminal activity. Every crime, being a revolt against the society, involves some violent activity which results in some degree of panic or create some fear or terror in the people or section thereof, but unless the panic, fear or terror was intended and was sought to achieve either of the objectives as envisaged in the Act, the offence would not fall, *stricto sensu*, under the Special Act.

One cannot help noticing that the cases pertained to offences committed for private purposes with no motivation to destabilize the society at large were all adjudged by the Supreme Court to be cases of terrorist acts or terrorism on the basis of a presumptive and speculative quantification of the effect that the relevant actions could have created in the society. In all such cases, the change brought about by the new definition of 'terrorism' with its resultant shifting of focus from the effect of the action to the design or purpose behind the action had not been noticed and all those cases had been decided on the basis and on the yardstick of the principles provided for by the earlier definition of a 'terrorist act'. In the said cases the gravity of the offence with its resultant actual, intended or potential effect on the people at large was considered as the measure for determining whether the act constituted terrorism or not. The mind-set inherited in the background of the Summary Military Courts, Speedy Trial Courts and Special Courts for Suppression of Terrorist Activities, which were different Courts constituted at different stages in the past for separate and special handling of offences of grave nature, may take some time to be dispelled and it may take a while to appreciate and realize that an act '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 subjective assessment of the potential of the act to create 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 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 newly introduced term 'terrorism' 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 shrugged off so as to correctly understand the new definition of 'terrorism' introduced through the latest amendment in the latter Act. 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".

Ordinary crimes are not to be dealt with under the Act. A physical harm to the victim is not the sole criterion to determine the question of terrorism.

An act of terrorism is a preplanned and organized system of intimidation. Its requisites and attributes are that such act and its effects are made known to the people and widely circulated with exaggeration. It is neither hidden nor disguised. It means an act which is committed with the sole object to terrorise the people and to feel them insecure.

If any offence is committed to avenge an enmity or dispute or to settle a score on account of any known and visible reasons in the conduct of human being or a crime is committed in relation to the life, liberty, property, honour and dignity of any person which is taken by the society as a normal crime or a criminal act of ordinary nature, it remains confined to the commission of an offence *simpliciter* and does not amount to terrorism.

An act of private revenge based upon a personal vendetta is not to be treated as an act of terrorism which is a species apart.

However, it appears that in the last few years the said principle has either been side tracked or placed on the back burner in our country and the law is not only being stretched in a different direction but the same is also often being misapplied and misused by the police and the subordinate Courts. An appropriate and correct restatement of the relevant law for its proper application is, therefore, not only necessary but also a crying need so that the relevant law may be saved from being derailed from its real objectives.

Mumtaz Ali Khan Rajban and another v. Federation of and others PLD 2001 SC 169; Muhammad Mushtaq v. Ashiq and others PLD 2002 SC 841; Mst. Raheela Nasreen v. The State and another 2002 SCMR 908; Muhammad Amin v. The State SCMR 1017; Zia Ullah v. Special Judge, Anti-Terrorist Court, Faisalabad and 7 others 2002 SCMR 1225; State through Advocate General, N.W.F.P. Peshawar v. Muhammad Shafiq PLD 2003 SC 224; Naeem Akhtar and others v. The State and others PLD 2003 SC 396; Sh. Muhammad Amjad v. The State PLD 2003 SC 704; Mst. Najam-un-Nisa v. Judge, Special Court 2003 SCMR 1323; Abdul Ghafoor Bhatti v. Muhammad Saleem and others 2003 SCMR 1934; Mehram Ali and others v. Federation of Pakistan and others PLD 1998 SC 1445; Jamat-i-Islami Pakistan through Syed Munawar Hassan, Secretary-General v. Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs PLD 2000 SC 111; Ch. Bashir Ahmad v. Naveed Iqbal and 7 others PLD 2001 SC 521; Jahangir Akhtar Awan and 2 others v. The State and 8 others PLD 2000 Kar. 89; Sh. Muhammad Amjad v. The State 2002 PCr.LJ 1317; Muhammad Afzal and others v. S.H.O. and others 1999 PCr.LJ 929; Mazhar v. The State PLD 2003 Lah. 267; Niranjana Singh Karam Singh Punjabi, Advocate v. Jitendra Bimraj Bijia and others AIR 1990 SC 1962; Usmanbhai Dawoodbhai Memon v. State of Gujrat (1988) 2 SCC 271; Kartar Singh v. State of Punjab (1994) 3 SCC 569; Hitenda Vishnun Thakur and others v. State of Maharashtra and others AIR 1994 SC 2623; Haji Abdullah Khan and others v. Nisar Muhammad Khan and others PLD 1965 SC 690; Pir Bakhsh v. The Chairman, Allotment Committee and others PLD 1987 SC 145; Trustees of the Port of Karachi v. Muhammad Saleem 1994 SCMR 2213; Khawaja Auto Cars Limited. V. Haji Sharif Khan 1996 CLC 1337; Muhammad Rafique and 16 others v. Sultan Bakhsh and another PLD 1991 Kar. 320; Subedar v. Mian Inam Elahi and others PLD 1989 Lah. 309 and Fazal Muhammad Chaudhri v. ch. Khadim Hussain and 3 others 1997 SCMR 1368 ref.

#### **(d) Precedent---**

---- Conflict between two decisions of the same Court---Decision of larger Bench to prevail.

#### **(e) Anti-Terrorism Act (XXVII of 1997)---**

----S. 6 [as substituted by Anti-Terrorism (Amendment) Ordinance (XXXIX of 2001)]---Penal Code (XLV of 1860), Ss.302/324/452/436/148/149---Constitution of Pakistan (1973), Art. 199---Constitutional petition---Terrorism---Motive set up in the F.I.R. was an on-going murder fuelled between the parties and a refusal of the complainant party to enter into a compromise with the accused party in a recent case of a murderous assault---Challan in the case, after the completion of the investigation, was submitted before the Anti-Terrorism Court---Petitioner submitted application before the Trial Court under S.23, Anti-Terrorism Act, 1997, seeking transfer of the case to a Court of ordinary jurisdiction claiming that the case did not involve terrorism as defined in S.6, Anti-Terrorism Act, 1997 but the application was dismissed---Petitioner had contended that circumstances of the case did not attract the definition of "terrorism" contained in S.6 of the said Act---Validity---Held, despite the brutality displayed by the culprits and the consequent horror, shock, fear and insecurity likely to be created by the savagery perpetrated by the offenders, same did not appear to be a case of "terrorism" as the motive for the alleged offences was nothing but personal enmity and private vendetta and the motivation on the part of the accused party was not to overawe or intimidate the Government, etc. or to destabilize the society at large or to advance any sectarian cause etc. ---Intention of the accused party did not depict or manifest any "design" or "purpose" as contemplated by the provisions of S.6(1)(b) or (c), Anti-Terrorism Act, 1997 and, thus, the actus reus attributed to it was not accompanied by the necessary mens rea so as to brand its actions as "terrorism" triable exclusively by a Special Court constituted under the Anti-Terrorism Act, 1997---High Court, allowed the Constitutional petition of the accused persons and impugned order of the Anti-Terrorism Court was declared to be without lawful authority and of no legal effect and the

same was set aside---Application filed by the petitioner before the Anti-Terrorism Court for transfer of the case to the Court of ordinary jurisdiction was accepted and petitioner's case was declared to be triable by a Court of ordinary jurisdiction---Judge of the Anti-Terrorism Court was directed by the High Court to transmit the record of the petitioner's case to the District and Sessions Judge of the relevant District forthwith for further proceedings in the matter---High Court further directed the office to send copy of the present judgment to the Presiding Officer of all the Special Courts constituted under the Anti-Terrorism Act, 1997 in the Province of the Punjab for their information and guidance.

The State of U.P. v. Ram Chandra Trivedi AIR 1976 SC 2547; Mehram Ali and others v. Federation of Pakistan and others PLD 1998 SC 1445; Jamat-i-Islami Pakistan through Syed Munawar Hassan, Secretary-General v. Federation of Pakistan through Secretary, Law, Justice and Parliamentary Affairs PLD 2000 SC 111 and Ch. Bashir Ahmad v. Naveed Iqbal and 7 others PLD 2001 SC 521 ref.

Ch. Fawad Hussain assisted by Muhammad Asif Ismail for Petitioner.

Muhammad Sohail Dar, Asstt. A.-G. for Respondents Nos.1 and 3.

Ras Tariq Chaudhry, Advocate for Respondent No. 2.

Dates of hearing: 12<sup>th</sup>, 13th and 14th January, 2004.