

IN THE HIGH COURT OF SINDH AT KARACHI

Special Criminal AT Appeal No.11 of 2010  
Confirmation Reference 6 of 2010

Present:

Mr. Justice Naimatullah Phulpoto

Mr. Justice Mohammad Karim Khan Agha

Appellants: 1. Muhammad Kamran S/o. Muhammad Yousuf,  
2. Muhammad Farhan S/o. Faqir Muhammad,  
presently both confined in Central Prison, Karachi  
through Mr. Abdul Razzak, Advocate.

Respondent: The State through Mr. Muhammad Iqbal Awan,  
Deputy Prosecutor General Sindh.

Dates of hearing: 11.12.2018 and 15.12.2018

Date of Judgment: 21.12.2018.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- Appellants Muhammad Kamran and Muhammad Farhan were tried by learned Special Judge, Anti-Terrorism Court-1, Karachi for offences under Sections 302/34 PPC R/w Section 7(a) of the ATA 1997 in Special Case No.42/2006 arising out of Crime No.88/2006 registered at P.S. Saudabad Police Station, Karachi vide judgment dated 16.03.2010 (the impugned judgment) the appellants were convicted under section 7(a) ATA, 1997 R/w. section 302/34 PPC and awarded death sentence and fine of Rs.200,000/- each. In case of default of payment of fine they were ordered to undergo rigorous imprisonment for two years each. However, such conviction and sentence was subject to confirmation by this court.

2. The brief facts of the prosecution case as per charge sheet are that on 01.09.2006 complainant Inspector Khawar Nadeem of the Pakistan Rangers lodged the FIR at P.S. Saudabad, wherein he stated that he was working as Reserve Inspector and residing in 53-Wing Bittai Rangers, Model Colony. On 01.09.2006 S.I. Missri Khan-7837, driver Ghulam Abbas-2267, Naik Liaquat Ali-11705, Sepoy Arman Gul-13361 were on patrolling duty in official mobile van near Jinnah Square when at Maghrib prayer time, S.I. Missri Khan and driver Lance Naik Ghulam Abbas went for Maghrib prayer in adjacent Mosque Ghousia. After prayer when they reached at the corner of Masjid Moulana Mufti Naeemi Road at about 7.15



p.m. all of sudden some unknown accused appeared and started firing on them where upon S.I. Missri Khan died on the spot and Lance Naik Ghulam Abbas received severe injuries and the unknown accused took away official 9MM Pistol No.CDT-700 of SI Missri Khan loaded with 7 live bullets and escaped. Injured Ghulam Abbas was taken to Khomeni Hospital for treatment, where he expired on the same day thereafter the dead bodies of both the deceased were taken to Jinnah Hospital and SIP Rawail Khan Khattak registered the F.I.R. under section 392/302/34 PPC r/w section 7 ATA-1997 and handed over the investigation to Inspector Shaukat Ali.

3. Investigation of the cases was conducted by Inspector Shaukat Ali and during investigation he reached at the place of incident on the pointation of Naik Liaquat Ali along with complainant, Sepoy Arman Gul, inspected the place of incident and secured three empty shells of 30 bore, blood stained earth and recorded the statements of witnesses. SIP Muhammad Iqbal Dogar after receiving information from Police Station directly rushed to Jinnah Hospital and prepared inquest report u/s 174 Cr.P.C. and handed over the documents to Inspector Shaukat Ali, who during investigation recorded his statement and statements of other witnesses and got prepared the sketches of culprits from CPLC Malir with the help of eyewitnesses and got the detail of particulars of pistol from Ranger headquarter and got prepared the sketch of place of vardat through Tapedar and issued letter for search of accused and also made all efforts to apprehend the accused. Thereafter investigation was transferred due to ailment of Inspector Shaukat Ali on the orders of high officials and entrusted to SIP Abdul Rauf. During investigation he remained in search of accused. On 20.10.2006 he came to know that accused Muhammad Kamran @ Kami son of Muhammad Yousuf and Muhammad Farhan @ Goal @ Shani son of Faquir Muhammad were arrested by CID Napier Police in Crime No.190/2006 u/s 353/324/34 PPC and Crimes no.191/2006 and 192/2006 U/s. 13-(d) of the Pakistan Arms Ordinance, 1965 and they had confessed about the commission of offence of other police stations of Karachi so also offence of this case. On such information he went to P.S. CID Napier and after interrogation arrested them in this case and 2 other Crimes No.62/2006 u/s. 302/34 PPC r/w section 7 ATA-1997 and Crime No.95/2006 u/s 302/34 PPC r/w section 7 ATA-1997 of same police station and after getting remand I.O. interrogated them.

4. On 24.10.2006 both the accused confessed the guilt of offence and pointed out the place of incident. Thereafter on 26.10.2006 both of them were further interrogated and they confessed the guilt of offence of Crime No.110/2006 u/s. 302/34 PPC of the same police station and pointed out the place of incident. During investigation both the accused confessed that the weapon which was snatched in this case and the motorcycle which was used in this crime was recovered by CID Police at the time of their arrest in Crime No.190/2006 u/s. 353/324/34 PPC. The photo finger prints of both the accused were taken after adopting the legal procedure. On 02.11.2006 I.O. produced both the accused before the Judicial Magistrate for identification parade where witness Muhammad Riaz identified both the accused while witness Shakir Hussain had gone to Lahore. Thereafter on 06.11.2006 the accused were remanded to jail custody. On 07.11.2006 empty shells which were secured from the place of incident were sent to FSL for examination and report and on 08.11.2006 the bloodstained clothes of the deceased were sent to chemical examiner for examination and report. The above arrested accused were desperate, hardened and dangerous criminals and having record of terrorism and they were involved in murders of police as well as Ranger officials and during investigation both the accused were found to have murdered SI Missri Khan and Lance Naik Ghulam Abbas when both were performing their duties. After completing the investigation the charge sheet was submitted against both the accused before the learned Administrative Judge, Anti-Terrorism Courts, High Court of Sindh, Karachi, from where it was transferred to the trial court for disposal in accordance with law.

5. The trial court framed charge against both the accused Muhammad Kamran @ Kami and Muhammad Farhan @ Goal @ Shani as Ex.6 to which they pleaded not guilty and claimed to be tried vide plea Ex.6/A and Ex.6/B.

6. To prove its case the prosecution examined P.W.1 Complainant Inspector Khawar Nadeem as Ex. 7, who produced his FIR No.88/2006 as Ex. 7/A, memo of inspection of place of incident and recovery of empty shell and bloodstained earth as Ex. 7/B. Thereafter P.W. 2 Naim Muhammad Maroof was examined as Ex.8, who produced memo of



inspection of dead body of deceased SI Missri Khan as Ex.8/C, inquest report of deceased Lance Naik Ghulam Abbas as Ex.8/D. Thereafter P.W 3 SIP Muhammad Iqbal Dogar was examined as Ex.9, who produced his application addressed to MLO Jinnah Hospital for obtaining cause of death certificate of SI Missri Khan as Ex.9/A, his another application addressed to MLO Jinnah hospital for obtaining cause of death of deceased Lance Naik Ghulam Abbas as Ex.9/B, Superdiginama of dead bodies of deceased SI Missri Khan and Lance Naik Ghulam Abbas as Ex.9/C, Road Certificates of both the deceased as Ex.9/D and Ex.9/E. Thereafter P.W.4 Khalid Riaz was examined as Ex.10, who produced memo of arrest of both the accused as Ex.10/A, memos of pointation of place of incident as Ex.10/B, and Ex.10/C. Then PW.5 Muhammad Salahuddin Sheikh was examined as Ex.11, who produced memo of pointation of place of incident as Ex.11/A. Thereafter PW.6 Mr. Maqbool Ahmed Memon, Civil Judge and Judicial Magistrate who carried out the identification parade examined as Ex.12, who produced letter of I.O. for conducting the identification parade of both the accused as Ex.12/A, memos of identification parade of both the accused as Ex.12/B and Ex.12/C, another application of I.O. for identification parade as Ex.12/D, notices of P.W Shakir Hussain u/s. 160 Cr.P.C. as Ex.12/E, notices of P.W Muhammad Riaz u/s.160 Cr.P.C. as Ex. 12/F and notices of both the accused as Ex.12/G and Ex. 12/H. Then P.W. 7 Inspector Shaukat Ali the first IO was examined as Ex.13, who produced his letter addressed to Incharge CPLC as Exs.13/A, his another letter addressed to SSP-Investigation Zone-II for chemical examination as Es.13/B, his another letter addressed to Wing Commander as Ex.13/C, particulars of pistol snatched from SI Missri Khan as Ex.13/D, his letter addressed to DDO Malir Town for preparation of sketch of place of incident as Ex.13/E. Thereafter P.W 8 Dr. Syed Farhat Abbas MLO JPMC was examined as Ex.15, who produced post mortem report of deceased SI Missri Khan as Ex.15/A, cause of death certificate as Ex.15/B. Then PW.9 Muhammad Riaz who was the eye witness to the incident was examined as Ex.16. PW. 10 SIP Sajjad Khan was examined as Ex.17, who produced photocopy of memo of arrest of accused, personal search, recovery and seizure as Ex.17/A. Thereafter PW.11 SIP Abdul Sattar Abro was examined as Ex.19, who produced attested copy of memo of arrest of accused, personal search, recovery and seizure as Ex.19/A. Then PW.12 Dr. Syed Farhat



Abbas was examined as Ex.20, who produced postmortem report of Lance Naik Ghulam Abbas as Ex.20/A and cause of death certificate as Ex.20/B. Lastly PW.13 I.O. SIP Abdul Rauf who was the second IO of the case was examined as Ex.21, who produced entry No.5 as Ex.21/A, another entry No.17 as Ex.21/B, sketch of place of vardat as Ex.21/C, entry No.46 as Ex.21/D, entry No.49 as Ex.21/E, entry No.6 as Ex.21/F, entry No.8 as Ex.21/G, entry No.10 as Ex.21/H, his letter addressed to Incharge FSL as Ex.21/I, his another letter addressed to Incharge chemical examiner as Ex.21/J, FSL Report as Ex.21/K and Chemical Examiner's Report as Ex.21/L. Thereafter learned SSP filed the statement to close the side of prosecution as Ex.22.

7. Statement of accused Muhammad Kamran @ Kami @ Kamoo S/o. Muhammad Yousuf was recorded under section 342, Cr.PC at Ex. 23, wherein he has denied all the allegations leveled against him; that he was in custody of CID police since 14.10.2006; that he did not murder any one; that nothing was recovered as alleged from his possession; that he did not point out any place of incident and that he had been falsely implicated by the PW's and the police in order to show their efficiency. He did not produce any witness in his defense

8. The statement of accused Farhan @ Goal @ Shani S/o. Faquir Ahmed was recorded u/s. 342 Cr.P.C. as Ex.24, wherein he denied all the allegations leveled against him and stated that he was in custody of CID police since 15.10.2006 and in essence gave a similar statement as accused Kamran. He did not produce any witness in his defense

9. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 16.03.2010 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

10. In a nutshell the case of the prosecution is that on 01-09-2006 at around 7.15 pm two personnel of the Pakistan rangers were shot by firearm after offering Maghrib prayers at Masjid-e-Bazam-e-Ghousia by the accused who also stole SI Missri's pistol. SI Missri died on the spot whilst driver Ghulam Abbas died in hospital. This led to PW 1 Khawer Nadeem registering an FIR on the same day for murder against unknown



accused. The murder was witnessed by PW 9 Muhammed Riaz who also picked the accused out at an identification parade held by PW 6 Maqbool Ahmed who at the time was VIth C.J and J.M District Central. The fact that both the accused died as a result of firearm injuries was also corroborated by PW 8 and 12 Farhat Abbas who was the MLO who carried out the post mortem of deceased Missri and placed on record the post mortem of deceased Abbas. The accused, who were already in police custody on account of a different FIR, also confessed to the crime to the police and led the police to the place of incident. Along with other PW's the prosecution also relied on numerous exhibits including the recovery of empties, pistols, post mortem report, FSL report and chemical report.

11. In a nutshell the plea of both the accused was that they were already in police custody prior to the incident; that they did not murder any one or lead any one to the place of the incident and that the case had been falsified against them by the police.

12. Learned advocate for appellants contended that it was unwitnessed incident as the eye witness was not present at the scene of the incident and he was a chance witness; that 2 other rangers personnel were in their mobile near by but they did not come to the rescue of their brother rangers which did not appeal to reason; that the Pesh Imam from the mosque was not examined who should have been if this was a genuine case; that there was a delay in sending the recovered empties from the scene which had not been explained; that the sketch of the vardat was unreliable; that the medical evidence did not support the eye witness evidence; that the pistols later recovered from the CID police during the alleged encounter with the police had not been sealed and there was no evidence of their safe custody; that the FSL report could not be relied upon in respect of deceased Missri's pistol as its number had not been mentioned; that Ghulam Abbas' post mortem report had not been produced by its maker but by another Doctor and as such it could not be relied upon; that the identification parade of the appellants could not be relied upon as it had not been carried out in accordance with the Federal Capital and Sindh Courts Criminal Circulars (2002 Edition) on Conduct of Identification Parades by Magistrates and that the identification parade was a joint identification parade which could not be relied upon; that



there was a complete lack of evidence in this case against the appellants and on account of any one of the factors mentioned above the appellants were entitled to the benefit of the doubt and as such should be acquitted of the charge.

13. In support of his contentions he placed reliance on **Javed Khan alias Bacha and another** (2017 SCMR 524), **Gulfam and another v. The State** (2017 SCMR 1189), **Government of North-West Frontier Province through Secretary, Agriculture, Livestock and Cooperatives Department, Peshawar and others v. Abdullah Khan and others** (2011 SCMR 898), **Riaz Ahmed v. The State** (2010 SCMR 846), **Mst. Sughra Begum and another v. Qaiser Pervez and others** (2015 SCMR 1142) **Noor Muhammad v. The State and another** (2010 SMCR 97), **Abid Ali and 2 others v. The State** (2011 SCMR 208), **Lal Khan and others v. Qadeer Ahmed and others** (2018 SCMR 1590) and **Muhammad Irshad v. Allah Ditta and others** (2017 SCMR 142), **Noor Muhammad v. The State** (2010 SCMR 97), **Muhammad Saleem v. The State** (2010 SCMR 374), **Bhimappa Jinnapla Naganur v. State of Karnataka** (1993 SCMR 2229), **Wahab Ali and others v. The State** (2010 P Cr. LJ 157), **The State of Gujarat v. Adam Fateh Mohmed Umatiya and others** (1971 SCMR 208), **Leela Krishnarao Pansare v. Bombasaheb Bhanuda Ithape** (AIR 2014 SC 2867), **Said Umar v. Abdul Ghaffar** (2017 YLR 1641), **Mst. Askar Jan and others v. Muhammad Daud and others** (2010 SCMR 1604), **Muhammad Asghar alias Nannah and others v. The State** (2010 SCMR 1706), **Imran Ashraf and 7 others v. The State** (2001 SCMR 424), **Ali Sher and others v. The State** (2008 SCMR 707), **Muhammad Akram v. The State** (2009 SCMR 230), **Shahbaz Masih v. The State** (2007 SCMR 1631), **Faheem Ahmed Farooqui v. The State** (2008 SCMR 1572), **Mst. Anwar Begum v. Akhtar Hussain alias KAKA** (2017 SCMR 1710), **Zahir Yousuf and another v. The State** (2017 SCMR 2002), **Mazhar Iqbal and another v. The State** (2017 SCMR 2036) and **Federal Capital and Sindh Courts Criminal Circulars (2002 Edition) on Conduct of Identification Parades by Magistrates**.

14. On the other hand Mr. Muhammad Iqbal Awan, Deputy Prosecutor General, contended that on the day of incident after registration of the FIR the 161 Cr.PC statement of eye witnesses namely Muhammad Riaz was



recorded and it could be safely relied upon; that the sketch of the vardat is not a substantive piece of evidence; that the Pesh Imam of Masjid's evidence was not necessary as he was not an eye witness and that always Pesh Imam of Masjid after prayers is the last to leave; that although the recovered empties and pistol were sent to the ballistic expert on the same day this was not fatal to the prosecution case; that with regard to safe custody of the empties and pistol this stood proven as no question in this respect was put to the IO during his cross examination; that the medical evidence corroborated the ocular evidence; that the identification parade was carried out in accordance with the law and that the motive for murdering the rangers was to create terror in the area as the appellants are target killers associated with one political party and thus for all the above reasons the prosecution had proved its case beyond a reasonable doubt against the appellants whose death penalty should be confirmed. In support of his contentions he placed reliance on **Bashir Ahmed v. The State** (2004 P. Cr.LJ 1326), **The State v. Khan Muhammad @ Khanan & others** (2005 SD 639), **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872), **Irfan alias Irfoo and 2 others v. The State** (2016 MLD 1977) **Abdul Khalique v. The State** (2015 YLR 1015), **Rafaqat Ali and others v. The State** (2016 SCMR 1766), **Nizamuddin v. The State** (2010 SCMR 1752) and **Mst. Naseem Akhtar and another v. The State** (1999 SCMR 1744).

15. We have heard the learned counsel for the parties and scanned the entire evidence which has been read out by learned counsel for the appellants and considered the relevant law.

16. In deciding this case in our view we need to consider the case within the context of the given circumstances. It appears that the accused were arrested following a police encounter where upon a number of unlicensed pistols were recovered from them and following their arrest they admitted before the police to the commission of a number of crimes including the murder of SIP Aijaz Hussain and the two rangers personnel in this case which led to further FIR's being registered against them. It is to be noted that as informed to us by the DPG the case regarding the police encounter whereby the accused were arrested is still pending and thus we would not like to go into the aspects of this case lest it prejudice



the appellants in that trial. In case No.192/2006 concerning the recovery of the unlicensed firearms from the accused at the time of the arrest following the encounter with the police one of the accused has been acquitted of the charge vide judgment dated 26-11-2009 in Special Case 24/2009. Since this judgment has not been appealed and has reached finality in our view it would not be proper to rely on any recovery of the firearms in this case including the recovered one belonging to deceased Missri. We do however note that the non recovery of the pistol would not be relevant in determining the guilt of the accused in the murder case provided that there was already sufficient evidence on record to prove beyond a reasonable doubt that the accused had committed the offense of murder. In this respect reliance is placed on the case of **Muhammed Nadeem** (Supra) which at P.875 para 8 held as under;

*"Learned counsel had serious reservations about the recovery of dagger at a belated stage and that it was never smeared with blood so as to justify the false report of Chemical Examiner. In the light of what subsequently occurred during trial and what the accused stated in his statement under section 342, Cr.P.C, the recovery of dagger or its having been stained with blood or not, becomes completely immaterial. The accused has admitted in his statement that he had inflicted dagger blow to the deceased. Even otherwise, the recovery of crime weapon in a criminal case is not at all material. It can only be a piece of supporting evidence. If other evidence goes to prove the case independently, the recovery is not essential at all."* (bold added)

17. In our view the **crucial** elements in this case are whether (a) we find the evidence of the eye witness to be trustworthy, reliable and confidence inspiring and as such believable and (b) whether we can safely rely on the eye witnesses identification of the accused keeping in view that he also identified the accused correctly at the identification parade held before the judicial magistrate (c) whether there is any other reliable supportive or corroborative evidence on record and (d) whether the trial court has rightly appreciated the prosecution evidence.

#### **The eye witness evidence.**

18. PW 9 Muhammad Riaz is the only eye witness to the incident. In his evidence he states that on 01-9-2006 at Maghrib time after prayers he came out from the Ghousia Mosque when he also saw the rangers officials



coming out of the Mosque who were a little distance from him. He saw two men/boys standing in one corner, one of them was heavy built and one of them was thin built. The person who was of thin build fired upon the ranger official who fell down on the ground after receiving firearm injury. When the second ranger official turned back both the boys fired on him and he fell down on the ground after receiving firearm injury. Thereafter the person of heavy build took out pistol of injured rangers official and both of the culprits then ran away on a motor bike to Urdu Nagar. That due to fear people of the locality became frightened and were running hear and there. He also states that on 02-11-2006 he identified both the accused in separate identification parades where he assigned a specific role to each accused.

19. The earlier part of his statement ties in with the content of the FIR which was lodged by PW 1 Khawer Nadeem 2 and a half hours after the incident which we do not consider to be an undue delay as such delay has been fully explained by him in that he registered the FIR after he had gone from his HQ to the vardat and then to the hospital and only registered his FIR after the dead bodies had been moved to Jinnah hospital. It being settled law that delay in lodging an FIR will not be fatal to the prosecution case provided that the delay is explained and that during such period there was no chance of concocting a false story which there was not in this case.

20. Significantly during cross examination of eye witness Muhammad Riaz he states that the police recorded his statement at about 9.30 or 10 pm on the day of the incident. This means that his statement was given to police about 2 hours after the incident. In his cross examination he also states concerning the statement which he gave to the police 2 hours after the incident:

*"I had given the identification of the accused in the police statement, but I did not give the ages of the culprits. I stated before police that two persons/boys were standing on the corner of Mosque. I stated before police that one of them was a heavy built and second one was thin built. I stated before police that the person of thin built fired on the Rangers. I had stated before police that as soon as Ranger personnel received bullet injury he fell down. I have stated before police that the culprits ran away to Urdu*



*Nagar. I have stated before police that the vehicles of Rangers came there and took injured with them. I have stated before police that thereafter we went towards the other side of Mosque and stood there. I stated before police that thereafter area police mobile and Rangers vehicles started patrolling in the area. I stated before police that police enquired from me that I can identify the accused and I replied in affirmative." (bold added)*

21. The importance of the witness giving his statement shortly after the incident without any delay is that it adds to the reliability of such a statement as it gives little time for concoction. In this respect reliance is placed on **State V Khan Muhhamed** (Supra) which held as under at P.647

*"These facts tallies not only with the facts mentioned in the FIR but the same were deposed by the complainant and PWs in their depositions. Had they not been present at the scene of the incident, then how they could have known the facts and parts assigned to the respondents? There was no occasion or time with the complainant to tutor these witnesses whose statements were recorded immediately just after the incident of this case. Thus the presence of the witnesses at the scene of the incident has been established beyond any reasonable doubt. When they were present at the place of incident, they actually saw the occurrence and identified two of the culprits viz. respondents Khan Muhammad and Alam Sher." (bold added)*

22. He also states during cross examination that the distance between the culprits and the ranger's official was about 2 and a half feet at the time of firing.

23. The witness is a jeweler who has been carrying on business in the local area for the past 35 years whose shop is in the close vicinity of the mosque and the incident and as such it was not unusual that he should have been at the mosque after Maghrib prayers at the time of the incident. As such, he is not a chance witness. **Importantly** his S.161 statement was taken about 2 hours after the incident where he gave descriptions of the accused and stated that he can identify the accused if he sees them again and hence there was little, if any, chance of fabrication and most of his S.161 statement he has reproduced in his evidence. In his evidence **he states that the accused were not far from him at the time of firing** which would tie in with his ability to identify them which he later did at the identification parade especially as the incident took place in day light hours. As we will come to later his evidence about the shooting of the deceased from 2 to 2 and a half feet is corroborated by the medical



evidence where "charring" is found on the body of one of the dead rangers. Furthermore he seems to be a respected member of the community being a former President of the Goldsmiths Association representing the jewelers in the area. He did not know either of the accused and it has not come on record that he had any enmity with either of the accused and as such had no reason to falsely implicate the accused. The accused despite conducting a lengthy cross examination of this eye witness PW has not been able to damage let alone shatter the evidence of this PW and no cogent reason whatsoever has come on record as to why this PW should be disbelieved or why he would falsify his evidence. The fact that the eye witness did not tell any other person at the scene apart from the police officer who recorded his S.161 statement that he was an eye witness we find completely irrelevant. This is because we have to consider such cases in the context of the environment in which we are living and the prevailing ground realities. Namely that the eye witness had just seen the accused shoot 2 armed rangers personnel in uniform in broad day light out side a busy mosque and as such if he went around telling all and sundry that he was an eye witness to such an incident the accused who he could identify may well target either him or his family thus the eye witness quite sensibly kept his information to himself and the police officer who he gave his statement to for his own safety and that of his family. The ground reality is that in the current environment in which we live (and in most countries whether developed or otherwise) very few eye witnesses to heinous crimes would like to come forward to give evidence against accused involved in such crimes due to fear of reprisals to either them or their family and would certainly not disclose the fact to all and sundry prior to the trial of the accused.

24. In our view the evidence of the eye witness appears natural and is of sufficient detail to show that he was present at the time of the incident, saw the incident and that he was able to identify the accused which he later did at an identification parade before a Judicial magistrate. As such we find his evidence to be trustworthy, reliable and confidence inspiring and we consider that we may convict the accused based on his evidence provided that it is corroborated/supported by some other evidence such as medical evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857) where it was held at P.1860 at Para 6 as under:



*"6. It is true that there is only ocular testimony of P.W. 4 Mst. Khatun Bibi corroborated by medical evidence, P.W. 6 Dr. Muhammad Sarfraz Sial. The fact that there is only ocular testimony of one P.W. which is unimpeachable and confidence-inspiring corroborated by medical evidence would be sufficient to base conviction. It has been noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence". (bold added)*

25. Even otherwise corroboration is only a rule of prudence when there is inherent merit in the eyewitness account as was held in the case of **Zulfiqar Ahmad and another v. The State** (2011 SCMR 492), as under at P.497 Para 8.

*"We have also examined the prime contention of Mr. Ibadur-ur-Rehman Lodhi, learned Advocate Supreme Court on behalf of appellants that no corroboration whatsoever is available on record connecting the assailants with the commission of alleged offence but it cannot be considered for the simple reason that corroboration is not a principle of law but a rule of prudence and while dilating upon the rule of corroboration it was held in case titled **Shahzad v. State** (2002 SCMR 1009) as follows:-*

*"We would like to mention here at this juncture that corroboration is not a rule of law but that of prudence. There is no denying the fact that acid test of the veracity of the prosecutrix's statement is the inherent merit of her statement because corroborative evidence alone could not be made a base to award conviction. It is well-settled by now that "the extent and the nature of corroboration required may, no doubt, vary from witness to witness and from case to case, but as a rule it is not necessary that there should be corroboration in every particular, all that is necessary is that the corroboration must be such as to effect the accused by connecting or tending to connect him with the crime. The corroborative evidence should tend to show that the witness or witnesses evidence that the accused took part in the crime is true. To say that certain witnesses required corroboration and then to lay clown that the corroborative evidence must show that the accused did not precise act attributed to him by the witnesses is tantamount to doing away with the evidence of those witnesses. And the same would be the result if the corroborative evidence required is such as is incompatible with the innocence of the accused. The true rule governing such situation is that the corroborative evidence should at least tend to show*



*that the evidence of the witnesses when they name the accused as taking part in the crime is true. Corroboration of the interested testimony should be such as would remove the doubt that the accused have been falsely implicated" (Ramzan Ali v. State (PLD 1967 SC 545), Ashraf v. Crown (PLD 1956 FC 56). (bold added)*

26. Having found the evidence of the eye witness to the incident PW 9 Muhammad Riaz to be trustworthy, reliable and confidence inspiring and which we believe we now turn to see if there is any other evidence to support or corroborate by way of prudence and abundant caution his evidence.

#### **The identification Parade**

27. With regard to the identification parade conducted by PW 6 Maqbool Ahmed who at the time was judicial magistrate Karachi central we consider that he had conducted the identity parade of both the accused whereby they were each picked out by PW Muhammad Riaz in accordance with the relevant law and it can be safely relied upon. He conducted separate identification parades with dummies of similar resemblance to the accused and there is no evidence that the accused was shown to the witness prior to the identification parade a part from the bald assertions of the accused.

28. Importantly this was a day light incident where the eye witness was close to the accused who he got a good look at and described in his S.161 statement and the identification parade was carried out just over 4 weeks from the date when he witnessed the incident and as such the appearance of the accused would have been fresh in his mind. The identification parade was not carried out after an undue delay as the accused were only arrested 10 days before the identification parade following a police encounter. Not only did PW Muhammad Riaz identify the accused he also assigned them a specific role in the incident as per his earlier statement before the police where he was also able to describe the accused. It is true that in his evidence in chief the Judicial Magistrate had stated that Shakir Hussain also identified the accused but he has explained in cross examination that Skahir Hussain did not appear on the date of identification. In any event it is sufficient that the accused were correctly identified by one eye witness. The eye witness at the time of his



statement about 2 hours after the incident told the police that he could recognize the accused if he saw them again which he did. Bearing in mind that this was a day light incident and that the accused were not far from him at the time of the incident he was able to correctly identify them. PW 6 Maqbool Ahmed (judicial magistrate) also identified in court the accused as the persons who PW Muhammad Riaz had picked out at the identification parade.

29. Even other wise the holding of an identification parade is not mandatory under the law and an eye witness can be relied on in his identification of an accused if his evidence is found to be reliable, trustworthy and confidence inspiring as it has already been found in this case. In this respect reliance is placed on the case of **Rafaqat Ali** (Supra) wherein it was held as under at P.1772 Para 13:

*"13. The contention of the learned Counsel that the Appellants Nos.2 and 3 were not identified in the identification parade would not lead to draw an inference that they were not present at the place of occurrence. The FIR contained description of the Appellants with specific role. In fact, the injured witnesses in their testimonies before the trial Court have not only identified them but also implicated them with specific role. Holding of identification parade is not mandatory. If testing of a witness qua identity of accused even in Court inspire confidence and the witness is consistent on all material particulars and there is nothing in evidence to suggest that he is deposing falsely, in such circumstances, absence of witnesses during identification parade would not be fatal to prosecution case. The testimony of the injured eye-witnesses P.Ws 10 and 12 was confidence inspiring and could not be shaken despite lengthy cross-examination by the defence. The recoveries effected on the pointation of the Appellants wedded with the empties recovered from the place of occurrence in terms of F.S.L. report. The P.Ws 10, 12 and 13 were inmates of the house and their presence at the place of incidence as eye-witnesses was natural. Out of the aforesaid eye-witnesses, P.Ws-10 and 12 received firearm injuries at the hands of the Appellants during the occurrence." (bold added)*

#### **The medical and other supportive/corroborative material**

30. In our view the medical evidence is also supportive of the eye witness account. Namely, that the PW 8 Farhat Abbas who was the MLO who carried out the post mortem of deceased Missri found the cause of



death to be cardio respiratory failure due to acute shock and hemorrhagic resulting from firearm injury on account of one wound. The post mortem report conducted by Dr. Hammed Jumani of deceased Abbas also found the same cause of death by firearm injury and **importantly** noted "blackening and charring" around one wound of entry which according to PW 8 Farhat Abbass MLO blackening and charring around the wound results if the firing is made from less than 3 feet which also ties in with the evidence of the eye witness PW Muhammad Riaz who stated that the firing was within 2 and 2 and a half feet. We do not consider the fact that the post mortem report of deceased Abbas was exhibited in evidence by MLO PW 8 Farhat Abbas to be of much significance since the author of the post mortem report Dr. Jumani was an "Ex" MLO who had presumably left government service and PW 8 Farhat Ali was familiar with Dr. Jumani's handwriting and signature

31. Thus, we find the medical evidence in terms of the cause of injury by firearm and the distance of the shots to be supportive of the eye witness evidence.

32. We also note that PW 7 Inspector Shaukat Ali recovered from the place of incident 3 used bullets of 30 bore and blood stained earth and that the earth as per chemical report was found to be stained with human blood.

33. With regard to corroboration in our view based on the particular facts and circumstances of this case corroboration through medical evidence, recoveries and blood stained earth is more than sufficient corroborative material (if any is required) to corroborate the eye witness who we have already found to be trustworthy reliable and confidence inspiring. In this respect reliance is placed on **State V Khan Mohammed** (Supra) where it was held as under at P.648

*"The fourth point for consideration is that corroboration depends on the particular circumstances of each case. In the present case, the witnesses are corroborated by the medical evidence and through recoveries. Thus it is safe to rely upon the evidence in the peculiar circumstances of the present case."*

34. Thus based on the eye witness evidence as supported by the identification parade, the medical evidence, used bullets found at the



scene and blood stained earth we are of the view that the prosecution has proved its case against both the accused for the murder of the ranger personnel Missri and Abbas and thus we uphold their conviction as per the impugned judgment.

35. It is to be noted that in reaching our above finding we have not taken into account the recoveries of the pistols and the FSL report as we do not consider it appropriate to do so keeping in view that one of the accused has been acquitted u/s 13 (d) of the Arms Ordinance on account of seizure of a number of weapons which related to this and other cases although to a certain extent we may have done so. In this respect reliance is placed on **State V Khan Muhammed (Supra)** which held as under at P.650.

*"Learned advocate for the respondents has stated that respondent Khan Muhammad was acquitted in the case of 13(e), Pakistan Arms Ordinance, therefore, the said evidence cannot be used against him and has relied upon the case of Sambasivam v. Public Prosecutor (PLD 1950 Privy Council 23). It has been observed in the said authority that the acquittal in such type of case would reduce, in some degree the weight of evidentiary value of the said piece of evidence against the accused in the trial. This authority does not show that the evidence is to be discarded altogether but it only emphasizes that degree of its reliance is slightly reduced. However, in the present case the respondent Khan Muhammad was acquitted in a separate trial in which the evidence was recorded separately whereas in the present case separate evidence was recorded. It is well-settled principle of law that while deciding a case, the evidence of another case cannot be taken into consideration but the case should be decided on the evidence available on the record of that particular case." (bold added)*

36. We have also not taken into account the evidence of the accused taking the police to the place of incident after their extra judicial confessions. This is because although PW 5 Muhammed Salahuddin acted as an independent Mushir to the place of pointation and we have no reason to disbelieve him, it is a fact that the accused took the police to the place of incident nearly 7 weeks after the incident and the place of incident was well known to most people of the locality as the incident had even been shown on T.V. The police could easily have taken the accused to the place of the incident without the need for any pointation by the accused. Furthermore nothing was recovered from the place of incident at



their pointation. We have also not placed any reliance on the extra judicial confession of the accused before the police. With regard to the other rangers personnel not reacting in time to the incident we do not consider this to be of much significance as it is not known where their mobile was parked in which they were sitting at the time of the incident. Even if they had reacted faster they would not have known who the culprits were and would not have been able to accost them as the accused fled the scene on motorbike without being seen by the other ranger personnel. In our view the Inam of the mosque not giving evidence is also irrelevant as he was not an eye witness and there appears no doubt from the evidence that the incident took place outside the mosque and the only issue was the identification of the persons who had carried out the murder and since he was not an eye witness he would have been of no assistance in this respect.

37. The next issue to be considered is that of the sentence to be awarded. Both the accused have been rightly awarded the death penalty. Our courts have adopted the approach that the usual sentence for murder is the death penalty. This may be reduced to imprisonment for life if there are any mitigating circumstances or if the judge in his discretion is of the view that based on the particular facts and circumstances of the case the appropriate sentence is to award the alternate to death being the sentence of imprisonment for life. In this respect reliance is placed on **Ghulam Mohy-Ud-Din V State** (2014 SCMR 1034)

38. In this case we find no mitigating factors and based on the particular facts and circumstances of the case we are not inclined to exercise our discretion to reduce the death sentence to imprisonment for life. In this case the motive of the appellants was to create terror and insecurity in the public which they did as per the evidence and to intimidate the law enforcement agencies from carrying out their duty; that the incident took place outside a place of worship where the deceased had just gone to say their prayers which should be regarded as a sacred place; that the deceased were murdered in cold blood in broad day light in front of many people for no other reason than to create terror and fear in the society; that this was a target killing where two rangers in uniform were deliberately selected from the other worshippers leaving the mosque and were murdered because they were security personnel entrusted with

maintaining law and order in Karachi; the message that was intended to be sent out to the general public and indeed was sent out is that if 2 armed rangers personnel wearing uniform could in effect be executed in such a manner in broad day light in a public place how could an ordinary citizen feel secure; that the police and rangers are symbols of the State and an attack on such personnel can be considered as an attack against the State who in Karachi at this time are taking on the onerous and dangerous responsibility of maintaining law and order for the benefit of its citizens and a clear deterrent message needs to be sent out that if you cold bloodedly murder a police officer, a ranger, a member of the armed forces or any other member of a law enforcement agency, which attacks on such personnel can be seen as an attack on the State, no leniency will be shown by the courts. Thus the sentences imposed in the impugned judgment are upheld with slight modification that the appellants are convicted u/s 7(1) (a) of the ATA 1997 and sentenced to death and to pay a fine of RS 200,000 each and in case of default in payment of fine to suffer simple imprisonment for a further 6 months. Both appellants have rightly been convicted u/s 302 (b) Tazir and sentenced to death and the fine of RS 200,000 imposed by the trial court is converted to compensation payable to the legal heirs of both deceased persons equally and in default of payment thereof the appellants shall undergo simple imprisonment for 6 months and as such the confirmation reference is answered in the affirmative in respect of each of the appellants.

39. The appeals and confirmation reference are disposed of in the above terms.