

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Amjad Ali Bohio

Special Criminal A.T.Jail Appeal No.114 of 2022

Conf. Case No.07 of 2022.

Appellants

1. Zahidullah @ Suleman S/o. Ismail Khan,
2. Inamullah @ Bilal S/o. Molvi Raees,
3. Bismillah @ Haji Lala S/o. Amanullah,
4. Muhammad Qasim @ Haji Siddique S/o. Muhammad Akbar, through M/s. Syed Iftikhar Ahmed Shah and Muhammad Naeem, Advocates.
5. Gul Muhammad S/o. Loung Khan through Mr. Hashmat Khalid, Advocate.

The State

Through Mr. Muhammad Iqbal Awan,
Additional Prosecutor General, Sindh.

Date of hearing

06.09.2023.

Date of Judgment

18.09.2023.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- The Appellants Zahidullah @ Suleman S/o. Ismail Khan, Inamullah @ Bilal S/o. Molvi Raees, Bismillah @ Haji Lala S/o. Amanullah, Muhammad Qasim @ Haji Siddique S/o. Muhammad Akbar and Gul Muhammad S/o. Loung Khan have filed this appeal against the judgment passed by the Anti-Terrorism Court No.XII, Karachi dated 30.03.2022 in Special Case No.168 of 2021 arising out of F.I.R. No.09/2021 U/s. 353, 324, 427, 34 PPC R/w Section 7 of ATA, 1997 & 120-B, 121, 121-A, 122 PPC R/w Section 6(2) of ATA 1997, Special Case No.168-A of 2021 arising out of F.I.R. No.10/2021 U/s. 23(1)(A) of Sindh Arms Act, Special Case No.168-B, arising out of F.I.R. No.11/2021 U/s. 23(1)(A) of Sindh Arms Act, Special Case No.168-C of 2021 arising out of F.I.R. No.12/2021 U/s. 23(1)(A) of Sindh Arms Act, Special Case No.168-D,

of 2021 arising out of F.I.R. No.13/2021 U/s. 23(1)(A) of Sindh Arms Act, Special Case No.168-E of 2021 arising out of F.I.R. No.14/2021 U/s. 23(1)(A) of Sindh Arms Act, Special Case No.168-F of 2021 arising out of F.I.R. No.16/2021 U/s. 23(1)(A) of Sindh Arms Act and Special Case No.168-G of 2021 arising out of F.I.R. No.17/2021 U/s. 4/5 of Explosive Substances Act, R/w Section 7 ATA 1997 registered at P.S. CTD Karachi whereby the appellants Zahidullah @ Suleman S/o. Ismail Khan, Bismillah @ Haji Lala S/o. Amanullah, Muhammad Qasim @ Haji Siddique S/o. Muhammad Akbar, Inamullah @ Bilal S/o. Molvi Raees and Gul Muhammad S/o. Laung Khan were convicted and sentenced as under:-

All the accused were convicted U/s. 265-H(II) Cr.P.C. in Special Case No.168/2021 and sentenced U/s. 353 PPC to R.I. for two years along with fine of Rs.500,000/-each. In case of failure to pay fine, they shall suffer S.I. for six months. All the above accused were further convicted U/S. 265-H(II) Cr.P.C. and sentenced U/s. 324 to R.I. for ten years and fine of Rs.500,000/-each. In case of failure to pay the fine they shall suffer S.I. for 2½ years more. All the appellants were further convicted U/S. 265-H(II) Cr.P.C. and sentenced U/s. 427 PPC to R.I. for two years and fine of Rs.500,000/- each. In case of failure to pay the fine they shall suffer S.I. for six months more.

In Special Case No.168/2021 all the accused persons were convicted U/S. 265-H(II) Cr.P.C. and sentenced U/s. 120-B PPC, R/w Section 121-A PPC to Life Imprisonment as R.I. and fine of Rs.10,00,000/- each. In case of failure to pay fine, they shall suffer S.I. for 6¼ years more.

In Special Case No.168/2021 all the accused persons were convicted U/s. 265-H(II) Cr.P.C. and sentenced U/s. 122 PPC to Life Imprisonment as R.I. and fine of Rs.10,00,000/- each. In case of failure to pay fine, they shall suffer S.I. for 6¼ years more.

In Special Case No.168/2021 accused Zahidullah @ Suleman S/o. Ismail Khan and Bismillah @ Haji Lala S/o. Amanullah were convicted U/s. 265-H(II) Cr.P.C. and sentenced to death U/s. 121 PPC along with fine of Rs.10,00,000/- each.

In Special Case No.168/2021 all the accused persons were convicted U/s. 265-H(II) Cr.P.C. and sentenced U/s. 7(1)(b) of ATA 1997 to Life Imprisonment and fine of Rs.50,00,000/- each. In case of failure to pay fine, they shall suffer S.I. for 6¼ years more.

In Special Case No.168-G/2021 all the accused persons were convicted U/s. 265-H(II) Cr.P.C. and sentenced U/s. 4 of Explosive Substance Act 1908 for Life Imprisonment as R.I., U/S. 5 of Explosive Substance Act 1908 for 14 years as R.I. and U/S. 7(2)(ff) of ATA 1997 for life imprisonment as R.I.

In Special Case No.168-A/2021 to Special Case No.168-F of 2021 all the accused persons were convicted U/s. 265-H(II) Cr.P.C. and sentenced U/s. 23(I)(A) of Sindh Arms Act, 2013 for 14 years as R.I. and fine of Rs.500,000/- each. In case of failure to pay fine, they shall suffer S.I. for 3½ years more.

2. The brief facts of the prosecution case as per FIR are that SIP Syed Safdar Ali received statement U/S. 154 Cr PC of Inspector Muhammad Shoaib Qureshi of PS CTD/STIG Civil Lines, through PC Shakeel Lodhi that one Inspector Muhammad Shoaib Qureshi of CTD/STIG of Civil Lines Karachi vide letter No. DIGP/CTD/RDR/2021 dated 12.01.2021 subject to Element (IR) Anti-State Threat Alert, according to which information received that a foreign agency has been planning for accomplishment of heinous terrorism activity, for which necessary measures has been almost completed and there is likelihood to point out the official/important building, upon such information, for which CTD Intelligence Team was constituted and he was deputed to find out the whereabouts of terrorists, upon which he also deputed members of such Intelligence Team and spy informers, then "with efforts of deputed constituted team and informers, he received spy information about the availability of some foreigner/suspicious persons, who are residing in a house situated in the area of Shah Latif Town, upon which secret surveillance was kept upon the residents of such house and High-ups were accordingly informed. On the night of 08.02.2021, spy information was received that six unknown persons looking like non-locals, having unnumbered Auto Rickshaw of yellow colour, in which they have loaded suspicious bags, and at such time they were available in the House No. L-1, Sector 21-A, Shah Latif Town District Malir, Karachi, hence he shared such information to his High-ups, and upon directives of High-ups, he alongwith personnel of Law Enforcement Agencies, SIP Muhammad Dilawar, H.C Muhammad Siddique, P.C Umar Ali, P.C Shakeel Lodhi, P.C Sardar Rauf, P.C Muhammad Kashif via police mobile No.SPE-234,

150

accompanied other deputed police parties, so police party headed by Inspector Zafar Abbas Siyal alongwith SIP Qadeer Khan, ASI Malikullah, H.C Muhammad Munir, P.C Jamshed Tanoli, P.C Muhammad Faheem Qureshi, P.C Muhammad Aamir via police mobile No.SPB-813, police party headed by SIP Ishtiaque Ahmed alongwith HC Kamran Khan, PC Rizwan and Mola Bux via police mobile No.SPE-706, police party headed by ASI Raja Bashir alongwith ASI Manzoor Ali, P.C. Kalay Khan, P.C Muhammad Bachal Chandio, P.C. Malik Asif Khan, PC Muhammad Suleman, P.C Haneef Korejo, P.C Naeemulah via police mobile No.SPM-132, police party headed by H.C Kafeel Ahmed, H.C Shayaan Jadoon, P.C Razwan Israr, P.C Danish Shah via police mobile No.SPM-169, and police party headed by Inspector Muhammad Shoaib Qureshi alongwith spy informers and Inspector Sanaullah via APC No.SP-9741 duly armed with official arms & ammunitions, so also alongwith safety Jackets Helmets, left P.S at about 0300 hours and reached at about 0430 hours at pointed place, whereupon on the pointation of spy informer, by cordoning off the said house, upon such situation terrorists became alert and started firing upon all police parties with their firearms from inside of the house with intention to commit murder, upon which Inspector Shoaib Qureshi loudly directed them to surrender themselves, but they failed to do so and kept on firing at the police party, so in retaliation and self-defense, Inspector Shoaib Qureshi directed police parties to make firing from their official weapons, during which as a result of such firing, one accused sustained bullet injury in front of main gate of the house and fell down at some distance on vacant plot and four bullets hit upon the mirror and body of APC No.SP-9741 on driver side, in the meantime ASI Raja Bashir threw three Stun Grenades inside such house, due to which firing stopped from accused side, so Inspector Shoaib Qureshi alongwith police officials entered into the house, and saw the accused persons duly armed were available, then in presence of SIP Muhammad Dilawar and H.C Muhammad Muneer, all accused persons were apprehended. All accused persons were enquired their names one by one and search of all accused persons was conducted and from accused Zahidullah @ Suleman S/o Ismail Khan, one rifle of 223 bore close butt unnumbered, loaded with magazine 07 live rounds and one live round in chamber was recovered,

157

from his right hand. From accused Bismillah @ Haji Lala S/o Amanullah, one riffle of 222 bore unnumbered loaded with magazine 03 live rounds and one in chamber was recovered from his right hand. From accused Muhammad Qasim @ Haji Siddique S/o Muhammad Akbar, one 30 bore pistol of black colour unnumbered, loaded with magazine one live round & one live round in its chamber was recovered from his right hand. From accused Inamullah @ Bilal S/o. Molvi Raees, one rifle of 223 bore unnumbered loaded magazine with twelve live rounds and one live round in its chamber was recovered from his right hand. From accused Gul Muhammad S/o Laung Khan, one 30 bore pistol of black color unnumbered, loaded magazine with two live rounds and one live round in its chamber was recovered from his right hand. Accused disclosed the name of deceased accused as Laal Muhammad @ Mehmood S/o Saeed Muhammad, who was lying at vacant plot situated at some distance of the gate of the house, who succumbed to his injuries and died on the spot due to receiving bullet injuries. From right hand of deceased accused, one Kalashnikov unnumbered, loaded with Magazine with 10 live rounds and one in chamber was recovered. Thereafter, Inspector Sanaullah conducted proceedings U/s 174 Cr.P.C and prepared memo of inspection of dead body and also he alongwith Inspector Zaffar via police mobile shifted deceased accused through Chhipa ambulance to Jinnah Hospital for postmortem. Thereafter, 25 empties of Kalashnikov, 14 empties of 222 Rifle, 20 empties of 223 rifle, 07 empties of 30 bore pistol, three Shells of Stun Grenade, 03 throwing pins/levers, and 02 levers from the different places were recovered at the crime scene, Upon query accused persons further disclosed that Rickshaw having no number plate is loaded with Explosive Substances, Rockets etc. which is parked outside the gate of house, which they kept ready for doing heinous terrorism attacks, whereas suicidal jackets, detonators and other objects, were kept in the secret pockets of cotton boxes inside room. Thereafter, upon such disclosure BDU In charge Kashif Jalal of East Zone was called for examination of such recovered explosive substances, who recovered two HE-Shell rockets from backseat of yellow colour Rickshaw without number, its chassis and engine numbers were rubbed and under its backseat, eleven explosive slabs, whereas, on the backside of driving seat,

152

in wooden box, one IED alongwith gray powder nuts and bolts weighing about two K.G, and dark gray colour chemical powder weighing about two K.G, six meters wire of safety fuse, and dat wire/cord six meters, whereas, from such room three cord/wire boxes were found, so upon its search, from first box seven empty magazines of rifle 223, one empty magazine of SMG, 32 chargers loaded with ten live bullets per charger, 100 live bullets of rifle 222, 150 live bullets of Kalashnikov, two fouji color Bandoliyan, two magazines of 30 bore pistol (each was loaded with four live bullets). Whereas from second box, 15 green colour hand grenades of RGD-I type alongwith 15 hand grenades of green color of RGD-1 alongwith 15 detonators were recovered and from the third box, three complete suicidal jackets, electric IED Circuit, twelve Detonators, two packets of steel nails, two 9 volt batteries, approximately two K.G ball bearings and nut bolts, dat cord five meters, one remote control for controlling IED device, two black and orange meters, one remote control for controlling IED device, two black and orange colour digital meters, ten meters electric wire and one brown (KHAKI) colour envelope having two colour maps, one rent agreement were recovered. Upon query accused persons failed to produce the licenses of recovered weapons and documents of recovered Rickshaw, for which same was seized U/S. 550 Cr.P.C. and arms and ammunitions were sealed separately at the spot. Whereas, after the defusing of Jackets, hand grenades, detonators and other explosive materials by BDU team, packed the same separately for safe condition, which were seized in police custody. Hence, the FIRS were registered against the accused persons to the above effect.

3. After completion of investigation challan was submitted and charge was framed against the accused/appellants to which they plead not guilty and claimed trial.

4. The prosecution in order to prove its case examined 14 witnesses and exhibited various documents and other items. The statements of the appellants/accused were recorded under Section 342 Cr.P.C. in which they denied all the allegations leveled against them. However, they did

not give evidence on oath and did not call any D.W. in support of their defence case which was one of false implication.

5. After appreciating the evidence on record, the learned trial Court through the impugned judgment convicted and sentenced the appellants as set out earlier in this judgment. Hence, the appellants have filed this appeal against their convictions and sentences.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 30.03.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellants have contended that the appellants are completely innocent of any wrong doing and that they have been falsely implicated by the police in order to show their efficiency; that they were not present at the time of any raid on the house in question and as such they did not fire upon the police; that the weapons and other items recovered from them were all foisted; that they had nothing to do with any yellow rickshaw and/or any weapons or explosives which might have been found in it or any weapons/explosives recovered from the house; that their judicial confessions which had all been retracted were not made voluntarily but on account of torture and as such the confessions of the appellant could not be safely relied upon; that there was no evidence of any conspiracy and this was not a case of waging war against the State of Pakistan and as such for any or all of the above reasons the appellants should be acquitted of the charge by being extended the benefit of the doubt. In support of their contentions they placed reliance on the cases of **Raza and another v. The State and 2 others** (PLD 2020 Supreme Court 523), **Muhammad Azhar Hussain and another v. The State and another** (PLD 2019 Supreme Court 595), **Azeem Khan and another v. Mujahid Khan and others** (2016 SCMR 274), **Muhammad Ismail v. The State** (2017 SCMR 713), **Mazhar alias Fouji and another v. The State** (2016 YLR 2815), **Riaz Hussain v. The State** (2001 SCMR 177), **Shafqat Mehmood and others v. The State** (2011 SCMR 537), **Gulfam and another v. The State**

(2017 SCMR 1189), *Noor Islam v. Ghani ur Rehman and another* (2020 SCMR 310), *Muhammad Akram v. The State* (2009 SCMR 230), *Joygun Bibi v. The State* (PLD 1960 Supreme Court (Pak.) 313), *Muhammad Pervez and others v. The State* (2007 SCMR 670), *Hafiz Muhammad Arshad v. The State* (PLD 2007 Lahore 324), *Tariq Pervez v. The State* (1995 SCMR 1345), *Muhammad Amin v. The State* (PLD 2006 Supreme Court 219) and *Orangzaib v. The State* (2018 SCMR 391).

8. On the other hand learned Additional Prosecutor General appearing on behalf of the State has fully supported the impugned judgment. He has contended that the appellants were all arrested on the spot after an encounter with the police during which one of the accused side was killed; that illegal weapons were recovered from them and a massive amount of explosive devices in the rickshaw outside the house and in the house itself where the accused were residing and there was even a rental agreement for the house which was recovered in the name of one of the accused; that the confessions of the appellants were made voluntarily and could be safely relied upon; that empties found at the crime scene matched that of the weapons recovered from the appellants through a positive FSL report, the report on the explosives were all positive and their confessions proved their conspiracy to wage war on Pakistan and thus the appeals be dismissed and the confirmation reference answered in the affirmative. He has placed reliance on the cases of *Nazir Ahmed v. The State* (2023 SCMR 1299), *Javed Iqbal and others v. The State* (2016 SCMR 787), *Bimbadhar Pradhan v. The State of Orissa* (PLD 1957 Supreme Court (Ind.) 68), *Manjeet Singh v. The State* (PLD 2006 Supreme Court 30), *Dadullah and another v. The State* (2015 SCMR 856), *Joygun Bibi v. The State* (PLD 1960 Supreme Court (Pak.) 313) and *Muhammad Yaqoob v. The State* (2020 SCMR 853).

9. We have heard the arguments of the learned counsel for the appellants as well as by learned Additional Prosecutor General Sindh, gone through the entire evidence which has been read out by the learned counsel for the appellants, and the impugned judgment with their able

assistance and have considered the relevant law including the case law cited at the bar.

10. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellants for which they were convicted and sentenced in respect of offences under S.353, 324, 427 PPC, S.4 and 5 of the Explosives substances Act 1908, S.23(1) (a) SAA, S. 7(1) (b) ATA and for an offence under S.6 (2) (ee) ATA 1997 and under the Third Schedule serial No.3 R/w S.6(2) (a), (b), (c) and (d) and S.21 (I) ATA for aiding and abetting such offences keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

- (a) That the FIR's were all lodged with promptitude leaving no time for the police to concoct a false case against the appellants with all the appellants being nominated in the FIR's with specific roles.
- (b) According to the evidence of PW 2 Muhammed Shoaib he received intelligence from DIG CTD that a foreign agency was planning to make a huge terrorist attack against an important Government building in Karachi. Resultantly on the orders of the high ups he set up a team to locate these terrorists and contacted his spies and informers in respect of such information. On 08.02.2021 he received spy information that suspicious persons who looked like strangers with a yellow Rickshaw without number plate and loaded with suspicious bags were available at House L-1, Shah Latif town district Malir. He contacted BDU chief inspector Kashif Jamal who he told to meet him at star gate. He then left the PS with 4 mobiles and APC with a large number of police officers duly armed with official weapons and surrounded the house in question. Accused persons in the house at about 4.30am opened fire on the police party. The persons in the house refused to surrender and he directed the police to return fire. During the encounter one person attempting to escape from the house was shot and the police APC was hit by 4 bullets fired from the persons in the house one of which hit its mirror. Then ASI Raja Bashir threw three stun grenades inside the house and the shooting stopped. The police then entered the house and found 5 persons semi conscious. All 5 were apprehended on the spot and each were found to have an unlicensed fire arm in their

possession. A rental agreement for the house was also recovered from them along with maps of prominent sites in Karachi including the Sindh Assembly. On the pointation of the accused a large amount of explosives and explosive devices were found in the yellow rickshaw which was made safe by PW 1 Kashif Jalal who was the BDU expert which he had brought with him. A large amount of ammunition, grenades, other explosive devices including suicide jackets, nails and ball bearings were also recovered from the house and made safe by the BDU expert and sealed all of which were noted down in the mashirnama of arrest and recovery.

This eye witness had no ill will or enmity with the accused and had no reason to implicate them in a false case rather he was acting on spy information. He was a not a chance witness. He gave his evidence in a natural manner and was not dented despite a lengthy cross examination and his evidence was not improved on materially from his S.154 Cr.PC statement which he made on the spot immediately after the incident which was sent to the PS for lodging the FIR's. We find his evidence to be reliable, trust worthy and confidence inspiring and we believe the same.

- (c) His evidence is corroborated in all material respects by PW 8 Muhammed Dilwar who was the mashir of arrest and recovery. PW 1 Kashif Kamal the BDU expert also corroborates the making safe of all the explosive substances found in the yellow rickshaw and the house where the accused were arrested from immediately after the encounter who also produced positive certificates in respect of the explosives. The same considerations apply to their evidence as to PW 2 Muhammed Shoaib
- (d) PW 5 Sanaullah who was a part of the raiding party also corroborates the evidence of PW 2 Muhammed Shoaib from leaving the PS to the encounter to entering the house and PW 1 Kashif Kamal inspecting the explosives in the Rickshaw. He also carried out the S.174 Cr.PC proceedings in respect of the person who was shot attempting to escape from the house who died from fire arm injuries before being sent to hospital via chippa ambulance whose evidence is corroborated by PW 6 Khafeel Ahmed. The death of the escapee through firearm injury was also corroborated by the medical evidence. PW 4 Shakeel who was also a part of the raiding party also corroborates the evidence of PW 2 Muhammed Shoaib from leaving the PS to the encounter to

entering the house and PW 1 Kashif Kamal inspecting the explosives in the Rickshaw. He took PW 2 Muhammed Shoaib's S.154 Cr.PC statement back to the PS and gave it to PW 3 Safdar for lodging the FIR's. All the S.161 Cr.PC statements of these witnesses were taken with promptitude. The same considerations apply to their evidence as to PW 2 Muhammed Shoaib.

We can convict on the evidence of these eye witness alone though it would be of assistance by way of caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That what is of significance is the quality of the evidence and not its quantity and in this case we find the evidence of these eye witnesses to be of good quality and believe the same.

- (e) The rental agreement which was recovered at the spot was made between PW 9 Malik Akbar Hussain the owner of the property and appellant Gul Muhammed. PW 9 Malik Akbar Hussain gave evidence to this effect and the fact that Gul Muhammed made regular rental payments. He produced the original rental agreement which had even been lodged at the local PS. This agreement directly links the appellants to the house where the rickshaw was parked outside with all the explosive devices and the explosives and other items found in the house. He was an independent witness. He was not a chance witness as he dealt in real estate. He was not dented during cross examination and gave his evidence in a natural manner which we find to be reliable, trust worthy and confidence inspiring and believe the same. His evidence totally destroys appellant Gul Muhammed's defence case that he was not involved in this case.
- (f) The empties recovered at the scene matched with the weapons recovered from the possession of the appellants through positive FSL reports.
- (g) Likewise the firearm damage caused to the APC was caused by bullet shots as per FSL report.
- (h) PW 13 Fayyaz Ahmed who was the IO of the case also seized

the kot register and firearms which had been allocated to the police who were a part of the raiding party and it was found that 4 police officers who had been allocated weapons namely Qadir, Shakeel, Ruaf and Umer had all discharged 11, 14, 25, and 5 rounds respectively during the encounter which also lead to positive FSL reports when the empties recovered at the scene were matched with their weapons.

- (i) It is true that there were no independent mashirs to the arrest and recovery but it has come in evidence that this was because the house was cordoned off and no one was permitted entry from the time of the operation until much after and as such no independent mashir was available.
- (j) That it has not been proven through evidence that any particular police witness had any enmity or ill will towards the appellants and had any reason to falsely implicate them in this case for instance by foisting the weapons on them and in such circumstances it has been held that the evidence of the police witnesses can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on the case of *Mushtaq Ahmed V The State* (2020 SCMR 474).
- (k) It is impossible to foist such a large cache of explosives, devices, wires, timers, ammunition, weapons including grenades in both a house and a rickshaw. Even otherwise, if these were to be foisted it makes no sense to foist them in two places. The rickshaw would not have been needed and all the material could have been left in the house.
- (l) The rickshaw was seized and was produced before the court.
- (m) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to affect the prosecution case and the conviction of the appellants. In this respect reliance is placed on the cases of *Zakir Khan V State* (1995 SCMR 1793) and *Khadim Hussain v. The State* (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the time PW 2 Muhammed Shoaib received the terrorist alert report to him forming a team to trace them out to his spies locating them to him putting together a raiding party to the appellants entering into an encounter with the police to the stun grenades knocking the appellants out to the appellants

being apprehended on the spot with unlicensed firearms with massive explosive making devices in the rickshaw outside their house and in the house which the appellants were renting to positive explosive reports to the empties matching the recovered weapons from the appellants to the police APC being hit by bullets fired by the appellants from the house to a member of the accused side being killed by the police during the encounter who was trying to escape from the house.

- (n) Although it is for the prosecution to prove its case beyond a reasonable doubt we have also examined the defence case which in effect is false implication simplitor. However none of the appellants gave evidence on oath or called any DW in support of their defence case. Appellant Gul Muhammed's assertion that he was in custody at the time of the incident and had nothing to do with it is under mined by the evidence of his landlord PW 9 and the rental agreement which he signed for the house. Thus in the face of the over whelming prosecution evidence as discussed above we give no weight to the defence case of false implication especially as none of the prosecution had any ill will or enmity towards the appellants and had no reason to implicate them in a false case.

11. Thus, for the reasons mentioned above we uphold the convictions and sentences in the impugned judgment in respect of all the appellants in respect of offences under S.353, 324, 427 PPC, S.4 and 5 of the Explosives substances Act 1908, S.23(1) (a) SAA and S.7(1) (b) ATA.

12. With regard to the offence under S.6 (2) (ee) ATA 1997 punishable under S.7 (ff) ATA we find from the charge that the appellants had sufficient notice of this offence and were able to defend themselves against it and did so at trial and since the prosecution has proved this offence beyond a reasonable doubt in respect of all the appellants each of the appellants is sentenced to life imprisonment for committing the offence under S.6(2) (ee) ATA.

Offences under S.120 B r/w 121A, 121 and 122 PPC.

13. All these offences concern "waging war against Pakistan"

14. We are not convinced that the appellants were waging war against Pakistan. They have made no declaration of war against Pakistan. They do not appear to be affiliated with any organization or country directing them to wage war on Pakistan.

15. Waging war cannot be confused with an act of terrorism which in effect these appellants were intending to carry out.

16. As such the appellants are acquitted of all these offences and the impugned judgment in respect of them is set aside and the confirmation reference is answered in the negative.

Offences under the Third Schedule serial No.3 R/w S.6(2) (a), (b), (c) and (d) of the ATA and S.21(I) ATA

17. Since the appellants were charged with conspiracy to wage war against Pakistan the appellants were on notice to defend themselves against any offence concerning conspiracy which they did before the trial court.

18. In addition to the evidence already discussed above which has lead us to maintaining the convictions and sentences for offences under S.353, 324, 427 PPC, S.4 and 5 of the Explosives substances Act 1908, S.23(1) (a) SAA and S.7(1) (b) ATA each of the appellants made a confession before a judicial magistrate which confessions are set out below for ease of reference;

JUDICIAL CONFESSION OF ACCUSED
ZAHIDULLAH S/O. ISMAIL U/S. 164 CR.P.C.

"I took the training on suicide attacks from my teacher Qari Fazal Jalal. I took the training from Hizb-ul-Hirar, Afghanistan, where my teachers were Qari Medad & Abu-Salman. After some days Qari Medad handed over me to Abu-Habab, who had given me training, in which the weapons & explosives were included. We made sufficient attacks, wherein some of them were made at the military."

After the sufficient attacks, we went away to Fidai Center, where we were kept alone. After some time, Abu-Habab handed over me to some unknown person in Pakistan, whose name was subsequently learned to me as Abdul Wasay, who got crossed the border and handed over me to Colonel Bismillah, who brought me to Karachi and got prepared Rickshaw from me, which I required to be brought to Sindh Assembly and to make suicide attack there on the instance of Colonel Bismillah" (bold added).

JUDICIAL CONFESSION OF ACCUSED GUL MUHAMMAD S/O. LAUNG KHAN U/S. 164 CR.P.C.

"In the year 2011/2012, my meeting was taken place with Bismillah at the time when I used to work with Razzaq Achakzai, who wanted to get make a targeted killing in Quetta. Then for the same work, I took away Bismillah to Kandahar and get him to meet with Razzaq. Bismillah was with Razzaq up to sufficient. In the year 2020, Bismillah contact me and said that an attack is required to be made at Sindh Assembly, and for making cooperation he promised to pay Rs.25 Lacs. Thereafter, I took the house in Shah Latif Town on a rent basis and took a Rickshaw to Bismillah. Meanwhile, Lal Mohammad, Zahidullah, Mohammad Qasim & Inamullah had come to me. I gave some photographs of the New Sindh Assembly to Bismillah" (bold added).

JUDICIAL CONFESSION OF ACCUSED INAMULLAH S/O. MOLVI RAEES U/S. 164 CR.P.C.

"In the year 2014, Gull Ahmed got held my meeting with Colonel Bismillah, who used to work for General Razzaq. On the saying of Gull Ahmed, I worked for Bismillah and made target killing in Quetta. Bismillah also taught me how to use weapons. After some time, Bismillah got held my meeting with General Razzaq. Thereafter in the year of 2015, I killed some people in Quetta. Then after leaving the Bismillah and General Razzaq, I worked for two years with Ahmed-ullah Nazuk Barakzai, who was Chief of some organization. Thereafter in the year 2019, Bismillah asked me to work with him and I started to work with him. Meanwhile, our contact was made with Abdul Wasay and Ahmed Wali, who were in Kandahar & Kabul. They both used to work for

India. Then on the saying of Ahmed Wali, we made an attack at some place of the Quetta. Thereafter, on the saying of Ahmed Wali & Colonel Bismillah, I made preparation for the attack at Sindh Assembly. Some of us had to make firing and Zahid and Lal Muhammad had to go inside the assembly. (bold added).

JUDICIAL CONFESSION OF ACCUSED BISMILLAH
S/O. AMANULLAH U/S. 164 CR.P.C.

"I am in Pakistan from the sufficient time, the ASI Majeed & his accomplice Shera made many cases at me and I was apprehended in many cases. Thereafter, some of my people killed to A.S.I. Majeed then to Shera, including one of my knowing Samiullah. Thereafter I shifted my family to Kandahar. In the year 2012, my friend Gull Mohammad got held my meeting with General Razzaq Achakzai the Police Chief, who gave me Rs.10 Lacs for making target killing in Karachi & Quetta. On the instance of General Razzaq I made target killing of sufficient people, in which Included Mullah Relmatullah, Moulvi Idrees, Moulvi Younus and so many other people too. In 2016, the General Razzaq appointed to Naik Mohammad as my Commander and also made officer there. After some time, when I did not get understand Naik Muhammad, I left General Razzaq and went to Ahmedullah Nazuk Barakzai, who was a very senior officer of the government institution. Ahmedullah held my meeting with Masoor-Andazi, who kept me under section 241 and said to me that you are now Colonel from today. In 2016 & 2017, I committed so many target killings. After the murder of General Razzaq, Ahmedullah become included in the government too. I also went away to Kandahar. In 2019, my meeting was held with Abdul Wasay, who used to work for India in Kandahar. On the saying of Abdul-Wasay, I worked for him, who took away me to Kabul, where I met with Mohammad Wali Afghani, who also used to work for India, who got meet me with an unknown person, who was a senior officer, he said me to commit attacks in many Cities of Pakistan against huge money. In 2020, under the direction of said people I accompanied by my accomplices made a plan for a suicide attack at the Sindh Assembly. The said officers also promised to provide us with some jackets, grenades explosive substances and gave us some money too. In 2020, the arms & explosives were

slowly-slowly received to us through vegetable vehicles, and I had made a group through Gull Mohammad, in which included Mohammed Qasim, Inamullah, Gull Mohammad, Lal Mohammad, Zahidullah and me. In 2021, we hired a house in Shah Latif Town and kept our entire arms & explosive substance there. With the help of our accomplices, we put & fit many goods inside the Rickshaw, which we had taken, and it was decided that the attack shall be committed during the session of Sindh Assembly. All of them were assigned different tasks by me, among which was to park the rickshaw and for Lal Muhammad & Zahidullah to commit a suicide attack, but the police apprehended us before that" (bold added).

JUDICIAL CONFESSION OF ACCUSED
MUHAMMAD QASIM @ HAJI SIDDIQUE S/O.
MUHAMMAD AKBAR S/O. AMANULLAH U/S.
164 CR.P.C.

"Abdul Wasay is my relative, who promised to give me Rs.10 Lacs and asked me to go and meet with Bismillah. Thereafter I came to Karachi and my meeting was held with Bismillah, who asked me to park a Rickshaw at Sindh Assembly, to which I said yes, but before this the police apprehended us". (bold added).

19. It is well settled by now that we can rely on a retracted judicial confession provided that it was made (a) voluntarily (b) with the object of telling the truth and (c) there are only minor procedural irregularities in the manner in which the confession was recorded.

20. In this case all the appellants retracted their judicial confessions claiming that they were not made voluntarily and that they were pressurized into making the confession by the police or made to sign blank paper. There are no major procedural irregularities committed by the magistrate whilst recording their confessions as the IO in his evidence stated that the appellants were returned to judicial custody after their confessions, they were informed by the magistrate according to his evidence that he was a magistrate and the confessions could be used against them and they were given adequate reflection time.

21. We note however that during cross examination this defence was never taken and appears to be an after thought. When placed in juxta position with the recoveries made at the house and in the rickshaw especially explosives, bomb making material, suicide jackets, nails and ball bearings and the picture of the Sindh Assembly and other prominent targets in Karachi we find that the confessions were made voluntarily and with the object of telling the truth and rely upon the same as against each maker/appellant.

22. When such confessions are placed in juxta position with the other corroborative material as already discussed above in convicting the appellants for the offences mentioned earlier in this judgment we find that it has been proved beyond a reasonable doubt that all the appellants entered into a conspiracy and/ or aided and abetted such conspiracy to blow up the Sindh Assembly whilst it was in session which would have potentially lead to a massive loss of life (keeping in view the suicide jackets, explosives, nails and ball bearings recovered at the crime scene) the design, object and purpose of such attack being to create terror as to fall within the purview of the ATA 1997 as held in the case of **Ghulam Hussain V State** (2020 PLD SC 61) and thus we convict the appellants for Offences under the Third Schedule serial No.3 of the ATA R/w S.6(2) (a), (b), (c) and (d) of the ATA and S.21(I) ATA and sentence them each to life imprisonment under S.7 (1) (a) to (d) ATA for conspiracy to commit each separate offence under S.6(2) (a), (b), (c) and (d) ATA and under S.21 (I) ATA for aiding and abetting the conspiracy to commit each separate offence aforesaid and sentence each of the appellants to life imprisonment for each such separate offence.

Summary.

- (a) The convictions and sentences handed down to each of the appellants in the impugned Judgment are all maintained in respect of offences under S.353, 324, 427 PPC, S.4 and 5 of the Explosives substances Act 1908, S.23(1) (a) SAA and S.7(1) (b) ATA.
- (b) The appellants are each convicted u/s S.6 (2) (ee) ATA 1997 punishable under S.7 (ff) ATA and each sentenced to life imprisonment.

- (c) The appellants are each convicted for Offences under the Third Schedule ATA serial No.3 R/w S.6(2) (a), (b), (c) and (d) of the ATA and each sentenced to life imprisonment under S.7 (1) (a) to (d) for conspiracy to commit each separate offence under S.6(2) (a), (b), (c) and (d) ATA.
 - (d) The appellants are each convicted under S.21 (1) ATA for aiding and abetting the conspiracy to commit such offences in © above and are each sentenced to suffer life imprisonment under S.7(1) (a) to (d) ATA.
 - (e) The appellants are each acquitted of the charge for offences under S.120 B r/w 121A, S. 121 and 122 PPC with the confirmation reference being answered in the negative.
 - (f) After serving out their sentences appellants Zahidullah, Inamullah and Muhammad Qasim all being non Pakistani nationals be deported to Afghanistan which is their country of origin.
23. As such the appeals partly allowed and partly dismissed and the confirmation reference is answered in the negative however the appellants shall each have the benefit of S.382 (B) Cr.PC and all the sentences shall run concurrently.