

THE HIGH COURT OF SINDH, KARACHI

CRIMINAL JAIL APPEAL NO. 361 OF 2019
CONFIRMATION CASE NO. 07 OF 2019

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Irshad Ali Shah*

Appellant:	Iftikhar Ahmed @ Badshah through Mr. Shamsul Haq Rashidi, Advocate
Respondent:	The State through Mr. Mohammad Iqbal Awan, Additional Prosecutor General
Date of hearing:	29.09.2021 and 30.09.2021
Date of announcement	05.10.2021

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J- Appellant Iftikhar Ahmed @ Badshah son of Muhammad Shareef has preferred the instant appeal against the impugned judgment dated 09.05.2019, passed by learned Ist Additional Sessions Judge (Model Criminal Trial Court) Karachi South in S.C.No. 306 of 2010 (State Vs. Iftikhar Ahmed @ Badshah) arising out of FIR No. 524/2010, for offences punishable under Sections 302/397/376 PPC registered at PS Boat Basin Karachi, whereby, after full-dressed trial, the appellant was convicted under Section 265-H(2) and awarded separate death sentences under sections 302 (b) PPC and 376 PPC, subject to the confirmation by this Court. Appellant was also directed to pay compensation of Rs. 12,00,000/- to the legal heirs of the deceased as required under Section 544-A Cr.P.C. In case of default, he was ordered to suffer S.I for six months more. Appellant was also convicted and sentenced for committing an offence punishable u/s.397 PPC to undergo R.I. for seven (07) years and he was also directed to pay compensation of Rs. 10,000/- or in default he was ordered to suffer S.I for six months more. Benefit of Section 382-B Cr.PC is also extended to the appellant. All the sentences were ordered to be run concurrently.

/s/

2. Precisely the facts of the prosecution case as per FIR lodged by complainant Riaz Mahmood son of Abdul Latif, through his statement recorded under section 154, Cr.P.C. on 09.09.20210 at 0100 hours inside mortuary of Jinnah Hospital, are that he resided at his given address and was doing garments business. He further stated that on 08.09.2010 at about 10:30 at night Waqar @ Vicky called his son Azeem Shahzad on phone informing him that complainant's brother Khalid Haroon, his wife Annela, his daughter Maryam and son Danish were murdered by someone inside Flat No.A/3, Chapel Beach Luxury Apartment and their dead bodies were lying there. The complainant further stated that such information was conveyed to him, therefore, he along with his other son namely Waseem reached at the house of his brother Khalid Haroon, where he came to know that dead bodies of those four deceased were shifted to Jinnah Hospital through Chippa ambulance. The complainant reached there and saw dead bodies of Khalid Haroon and Danish lying in mortuary, whereas dead bodies of his sister in law Mst. Anila and her daughter Mst. Maryam were shifted to Civil Hospital Karachi. The complainant further states that now he reports that there was no enmity of his brother but unknown persons for unknown grudge has committed murder of four persons inside the house, therefore, he claims for action.

3. During investigation the present appellant was arrested and after usual investigations challan was submitted before concerned court of law as well as charge read over to him which he denied and further stated that he was falsely implicated in this case. He claimed to be innocent and prayed for trial.

4. In order to prove its case, the prosecution examined 15 witnesses, who exhibited numerous documents and other items and thereafter prosecution side was closed. Thereafter, the statement of the appellant was recorded under Section 342 Cr.PC in which he denied the allegations and claimed his false implication. He however did not examine himself on oath or call any DW's in support of his defence.

5. On conclusion of the trial, learned trial court after hearing learned counsel for the parties and appraisal of prosecution evidence brought on record, convicted and sentenced the appellant/accused as mentioned earlier in this judgment vide ↙

judgment dated 09.05.2019 hence the appellant has filed this appeal against his conviction.

6. Learned counsel for the appellant has contended that there was a delay in lodging the FIR which lead to the complainant along with the police falsely implicating the appellant in this case; that the appellant was not named in the FIR; that there was no eye witness to the offences; that no murder weapon had been recovered from the appellant who had been arrested after a delay of 13 days of the incident; that the recoveries had been foisted on him and for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on the cases of **Ghulam Abbas and another v. the State and another** (2021 SCMR 23), **Altaf Hussain v. The State** (2019 SCMR 274) and **Muhammad Abid v. The State and another** (PLD 2018 Supreme Court 813).

7. On the other hand learned Addl. Prosecutor General who was also representing the complainant fully supported the impugned judgment and contended that the case was based on last seen evidence by persons who knew the appellant well; that the appellant's car was in the vicinity of the place of incident during its occurrence; that the murder weapon being the iron bar had been recovered from the scene; that two sets of recoveries from the robbery of the deceased from their flat and persons had been made on pointation of the appellant at his own flat and in his car and that the DNA swabs taken from the vagina of the deceased Maryam had matched with the DNA of the appellant and as such the prosecution had proved its case beyond a reasonable doubt against the appellant and as such his appeal should be dismissed and his conviction and sentence maintained. He stressed that due to the cold bloodied and unprovoked attack on four person (two female and two male) which lead to their death and the rape of the deceased Maryam and the robbery from the flat and persons of the deceased the death sentence was fully attracted in this case. In support of his contentions he has placed reliance on the cases of **Imran Ali v. The State** (2018 SCMR 1372), **Atif Zareef and others v. The State** (PLD 2021 Supreme Court 550), **Ali Haider alias Papu v. Jameel Hussain and others** (PLD 2021 Supreme Court 362), **Sh. Muhammad Amjad v. The State** (PLD 2003 Supreme Court 704), **Ghulam Farooq v. The State** (2015 SCMR 948), **Dadullah and another v. The State** (2015 SCMR 856),

Jafar Ali v. The State (1998 SCMR 2669), Ijaz Ahmad v. The State (2009 SCMR 99), Muhammad Ishaq & another v. The State (SBLR 2019 Sindh 1603) and an unreported judgment of this Court in Special Criminal A.T. Appeal No.175 of 2019, Confirmation Case No.,07 of 2019.

8. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant's counsel, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

9. Based on our reassessment of the evidence of the PW's, PW Dr. Rosheen Hasan MLO who appeared twice and gave separate evidence as PW 7 and 9 relating to the COD of the deceased, post mortems and other medical reports, recovery of the dead bodies at the scene, recovery of blood at the scene which lead to a positive chemical report, recovery of bloodied iron bar at the scene we find that the prosecution has proved beyond a reasonable doubt that Khalid Haroon, Danesh, Anela and Maryam (collectively referred to as the deceased) were all murdered by being hit over their head and other body parts with an iron bar at about 2230 hours on 08.09.2010 at Flat No.A-03 Chappel Luxury Apartment Block 4 Clifton Karachi.

10. The only questions left before us are (a) who murdered the deceased by hitting them with the iron bar over their heads and other body parts which lead to their murder (b) whether the deceased were robbed along with items from their flat and by whom and (c) whether deceased Maryam was raped and by whom before her murder at the said time, date and location.

11. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted (namely the murder of the deceased, the robbery of the deceased and items from their flat and the rape of deceased Maryam) for the following reasons;

(a) That the S.154 Statement was recorded by the complainant within 3 hours of the incident despite their being no eye witness to the incident and thus the FIR was lodged with promptitude. Even otherwise the complainant had no enmity with the appellant and had no reason to implicate him in a false case. The FIR is against

unknown persons which would not have been the case if the aim of the FIR was to falsely implicate the appellant.

(b) Admittedly there was no eye witness to the murders, robbery and rape of Maryam. This prosecution case starts on the basis of last seen evidence.

The law on last seen evidence was laid down by the Hon'ble Supreme Court in the case of **Fayyaz Ahmed V State** (2017 SCMR 2026) at P.2030 at Para 7 where it was held as under regarding last seen evidence;

"The last seen evidence is one of such categories of evidence. In this category of cases some fundamental principles must be followed and the Prosecution is under legal obligation to fulfill the same, some of which may be cited below:-

- (i) There must be cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused and those reasons must be palpable and prima facie furnished by the Prosecution.
- (ii) The proximity of the crime seen plays a vital role because if within a short distance the deceased is done to death then, ordinarily the inference would be that he did not part ways or separated from the accused and onus in this regard would shift to the accused to furnish those circumstances under which, the deceased left him and parted ways in the course of transit.
- (iii) The timing of that the deceased was last seen with the accused and subsequently his murder, must be reasonably close to each other to exclude any possibility of the deceased getting away from the accused or the accused getting away from him.
- (iv) There must be some reasons and objects on account of which the deceased accompanied the accused for accomplishment of the same towards a particular destination, otherwise giving company by the deceased to the accused would become a question mark.
- (v) Additionally there must be some motive on the part of the accused to kill the deceased otherwise the Prosecution has to furnish evidence that it was during the transit that something happened abnormal or unpleasant which motivated the accused in killing the deceased.

- (vi) The quick reporting of the matter without any undue delay is essential, otherwise the prosecution story would become doubtful for the reason that the story of last seen was tailored or designed falsely, involving accused person.

Beside the above, circumstantial evidence of last seen must be corroborated by independent evidence, coming from unimpeachable source because uncorroborated last seen evidence is a weak type of evidence in cases involving capital punishment.

- (vii) The recovery of the crime weapon from the accused and the opinion of the expert must be carried out in a transparent and fair manner to exclude all possible doubts, which may arise if it is not done in a proper and fair manner.
- (viii) The Court has also to seriously consider that whether the deceased was having any contributory role in the cause of his death inviting the trouble, if it was not a pre-planned and calculated murder."(Bold added)

In the later case of **Muhammed Abid V State** (PLD 2018 SC 813) which delved further into the doctrine of "last seen together" evidence it was held by the supreme court as under at P.817 Para 6:

"The foundation of the "last seen together" theory is based on principles of probability and cause and connection and requires 1. cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused. 2. **proximity of the crime scene.** 3. **small time gap between the sighting and crime.** 4. **no possibility of third person interference** 5. motive 6. time of death of victim. The circumstance of last seen together does not by itself necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime" (bold added).

Having stated the law on last seen evidence above we need to consider whether the evidence on record brings this case within the ambit of last seen evidence which we shall do by examining the evidence;

- (i) From the evidence of PW 1 Riaz Muhammed, PW 2 Arshad Tanvir, PW 3 Syed Waqar Hussain, PW 5 Huma Nayab, PW 6 Bimish Hira and PW 8 Syed Shamsheer Ali none of whom had any enmity or ill will towards the appellant and had no reason to falsely implicate him in this case although all bar PW 8 Syed Shamsheer Ali were related to the deceased the picture emerges that the appellant was treated like an adopted son by deceased Khalid and his wife Anila who had been with them for 10 to 11 years and mostly resided with them at their flat which was the scene of the incident apart from occasionally going to his own flat from time to time. All these PW's therefore knew the appellant well and he knew them well and this fact has not been disputed by the appellant. The fact that the PW's were mostly related to the deceased does not mean that there evidence cannot be relied upon. This is because there was no ill will or enmity between them and the appellant. In fact they treated the appellant as a friend and a family member. In this respect reliance is placed on **Ijaz Ahmed V State** (2009 SCMR 99).
- (ii) According to the evidence of PW 3 Syed Waqar Hussain who was the son in law of deceased Khalid having married one of his daughters (PW 5 Huma Nayab) one day prior to the incident he had gone shopping with his wife PW 5 Huma Nayab and purchased artificial jewellery gifts for deceased Maryam. He and his wife then went to the deceased's flat to deliver the gifts at 1 or 1.30am on the day of the incident and the front door was opened by the appellant who let them in. The persons in the flat were all asleep except the appellant. Deceased Danesh was asleep and the appellant went away to sleep with him. He and his wife woke up deceased Maryam and gave her the gifts which they had brought for her. They were let out by deceased Khalid. Before leaving they saw the appellant's van was parked outside the flat. PW 5 Huma Nayab who is the wife of PW 3 Syed Waqar Hussain and daughter of deceased Khalid and Anila corroborates her husband PW 3 Syed Waqar Hussain in all material respects regarding the purchase of the artificial jewellery, delivering it to her sister Maryam at 2am on the next day, the appellant opening the door of the flat to let them in and that when she left the flat her father, mother, brother and sister Maryam and the appellant were all present in the flat and the appellants vehicle was parked outside the flat.

According to her evidence the next day at 3 or 4pm she called her sister (Maryam, her mother, father and

brother but all their phones were off. She then being worried asked her husband whose place of work was near to her parents flat to go to the flat and check on her parents. When her husband went to the flat he found it locked and no one answered. She and her husband then tried to search out her sister as they feared that she might have been kidnapped. After breaking their fast they informed the police at PS Boat Basin. The police accompanied her and her husband to her parents flat who broke open the flat door where she saw things scattered all over the place, articles missing and the dead bodies of her mother, father, brother and sister (Maryam). The appellant was not present who she feared had been kidnapped especially when she called his mobile phone and found it to be switched off. The appellants vehicle was also no longer parked outside the flat. About 2 days later she suspected the appellant as he could not be found and did not even come to her parents funeral despite being their adopted son. This aspect of her evidence is corroborated in all material respects by her husband PW 3 Syed Waqar Hussain. This aspect of her evidence is also corroborated by PW 11 Muhammed Mubeen who was SHO PS Boat Basin who broke down the door of the flat. We have no reason to disbelieve the last seen evidence of PW 3 Syed Waqar Hussain and PW 5 Huma Nayab and thus we believe that they saw the appellant at about 1.30am on the day of the incident and at the place of the incident.

The bodies of the deceased were recovered less than a day later and the appellant was the last person to see the deceased alive. In terms of fulfilling the requirements of last seen evidence;

- (a) Since the appellant was treated as the son of the murdered Khalid and Anila and was very friendly with their son Danesh and usually stayed at there flat he had every reason to be with the deceased when he was last seen with them.
- (b) The place of the incident was the place where the appellant was last seen with the deceased i.e deceased Khalid's flat where the appellant was staying.
- (c) The timing to when the appellant was last seen with the deceased and time of death of the deceased is close especially as most of this time was during the night when people ordinarily sleep.

- (d) The incident was reported expeditiously i.e immediately after PW 5 Huma Nayab found that all the deceased phones were switched off and after a brief search for them.
- (e) The post mortems were carried out by an expert and the murder weapon was found bloodied at the scene of the crime.
- (f) The motive for the murder of the deceased was that either they had refused to allow him to marry Maryam or after raping Maryam the appellant needed to get rid of all the eye witnesses.

Thus, we find this to be a fit case of last seen evidence however there must be more corroboration/supportive material to connect the appellant with the offenses in order to convict him on the basis of last seen evidence which must be treated with great care and caution.

Other supportive/corroborative material.

(a) The appellant's van was not only seen whilst he was at the flat but according to tracking records was in the vicinity of the flat at the time when the murders were committed.

(b) That despite being treated as an adopted son of deceased Khaild and his wife Anila and being best friends with deceased Danesh it does not appeal to logic commonsense or reason as to why the appellant did not answer his phone after the incident and did not even attend the funeral of his adopted parents if he had nothing to hide.

(c) Again two days prior to his arrest when he was spotted in his van by the police it does not appeal to logic, commonsense or reason that he would attempt to and indeed did escape from the police who were chasing him if he was truly innocent.

(d) That some of the items which were stolen from the flat including the artificial jewellery given to the deceased Maryam by her sister was recovered at the appellant's flat where he took the police on his own pointation and which was recognized by PW 5 Huma Nayab who had given her deceased sister the artificial jewellery.

(e) That other items stolen from the flat of the deceased at the time of the murder were also recovered from the appellant from the boot of his car on his pointation.

(f) That the medical evidence supports the fact that all the deceased were murdered by a hard blunt object like the iron

bar which was found bloodied at the scene which the appellant would have had access to.

(g) The appellant could easily have over powered the two males and females in the flat as it appears from the police sketch of where the dead bodies were lying and the evidence that the deceased were nearly all killed in their bedrooms whilst they were sleeping and as such died instantaneously or within a short interval as per post mortem reports.

(h) **Most crucially** the DNA vaginal swabs taken from deceased Maryam produced a 100% match with the appellant which leaves no doubt coupled with the medical evidence and the fact that deceased Maryam was found half naked and the DNA swabs were kept with a safe chain of custody that Maryam was raped at the flat where her dead body was found and thereafter murdered and the rapist was the appellant which also places him in the flat at the time of the rape and the murders.

With regard to the results of DNA testing it has recently been held by the Hon'ble Supreme Court in its judgment dated 07.01.2021 passed in the case of **Ali Haider @ Pappu v Jameel Hussain, etc** (PLD 2021 SC 362) that:

"DNA, strongest corroborative piece of evidence today."

10. DNA evidence is considered as a gold standard to establish the identity of an accused. As a sequel of above discussion, it can safely be concluded that DNA Test due to its accuracy and conclusiveness is one of the strongest corroborative piece of evidence. In *Salman Akram Raja* case this Court has held that DNA test help provides the courts the identity of the perpetrator with high degree of confidence, and by using of the DNA technology the courts are in a better position to reach at a just conclusion whereby convicting the real culprits and excluding the potential suspects, as well as, exonerating wrongfully involved accused. DNA test with scientific certainty and clarity points towards the perpetrator and is, therefore, considered one of the strongest corroborative evidence today, especially in cases of rape. The usefulness of DNA analysis, however, depends mostly on the skill, ability and integrity shown by the investigating officers, who are the first to arrive at the scene of the crime. Unless the evidence is properly documented, collected, packaged and preserved, it will not meet the legal and scientific requirements for admissibility into a court of law".

(i) That the police PW's had no enmity or ill will towards the appellant and had no reason to falsely implicate him in this case by for example foisting the robbed jewellery on him and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon. In this respect reliance is placed on 5

Mushtaq Ahmed V The State (2020 SCMR 474). As per planting the appellants DNA on the deceased's vaginal swabs we find this almost impossible to be done as the police would have had no such expertise. Even other wise as mentioned earlier the police had no enmity or ill will with any of the appellants which would cause them to implicate the appellants in a false case. The appellant did not even challenge the DNA evidence and claim that it had been tampered with.

(j) 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 effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669).

(k) All the PW's gave there S.161 Cr.PC statements with reasonable promptitude which left no time for collusion or concoction and there were no improvements in the evidence which they gave in court as PW's under oath so as to render their evidence at trial unreliable.

(l) None of the evidence of any PW was dented during lengthy cross examination so as to render their evidence unreliable. Rather such evidence was given in a straightforward manner and was confidence inspiring.

(m) That it does not appeal to logic, reason or commonsense that the complainant would allow the real rapists and murderers of his sister, brother, mother and father to get off scot free by substituting them with innocent people. In this respect reliance is placed on **Allah Ditta V State** (PLD 2002 SC 52).

(n) We have also examined the defence case. The defence case simply seems to be that of false implication and denial of the allegations against the appellant. He has suggested that the flat owner Younis was the murderer of the deceased but he did not give any evidence on oath or call any DW in support of his defence and in light of his DNA being found on the vaginal swabs of deceased Maryam this would tend to destroy his defence case especially as he did not even deny his presence at the scene during cross examination.

We are also aware that this is a case of circumstantial evidence and that this is to be held to a high standard of proof in capital cases. In this respect with regard to circumstantial evidence to lead to a conviction in a capital case it was held as under by the Supreme Court in the case of **Fayyaz Ahmed V State** (2017 SCMR 2026) at P.2030 para's 5 and 6 which are reproduced as under;

"To believe or rely on circumstantial evidence, the well settled and deeply entrenched principle is, that it is imperative for the Prosecution to provide all links in chain an unbroken one, where one end of the same touches the dead body and the other the

neck of the accused. The present case is of such a nature where many links are missing in the chain.

To carry conviction on a capital charge it is essential that courts have to deeply scrutinize the circumstantial evidence **because fabricating of such evidence is not uncommon as we have noticed in some cases thus, very minute and narrow examination of the same is necessary to secure the ends of justice** and that the Prosecution has to establish the case beyond all reasonable doubts, resting on circumstantial evidence. "Reasonable Doubt" does not mean any doubt but it must be accompanied by such reasons, sufficient to persuade a judicial mind for placing reliance on it. If it is short of such standard, it is better to discard the same so that an innocent person might not be sent to gallows. To draw an inference of guilt from such evidence, the Court has to apply its judicial mind with deep thought and with extra care and caution and whenever there are one or some indications, showing the design of the Prosecution of manufacturing and preparation of a case, the Courts have to show reluctance to believe it unless it is judicially satisfied about the guilt of accused person and the required chain is made out without missing link, otherwise at random reliance on such evidence would result in failure of justice.

It may also be kept in mind that sometimes the investigating agency collects circumstantial evidence seems apparently believable however, **if the strict standards of scrutiny are applied there would appear many cracks and doubts in the same which are always inherent therein and in that case Courts have to discard and disbelieve the same.**" (bold added)

In the case of **Azeem Khan V Mujahid Khan** (2016 SCMR 274) the following was reiterated with respect to circumstantial evidence at P.290 as under;

"In cases of circumstantial evidence, the Courts are to take extraordinary care and caution before relying on the same. Circumstantial evidence, even if supported by defective or inadequate evidence, cannot be made basis for conviction on a capital charge. More particularly, when there are indications of design in the preparation of a case or introducing any piece of fabricated evidence, the Court should always be mindful to take extraordinary precautions, so that the possibility of it being deliberately misled into false inference and patently wrong conclusion is to be ruled out, therefore hard and fast rules should be applied for carefully and narrowly examining circumstantial evidence in such cases because chances of fabricating such evidence are always there. **To justify the inference of guilt of an accused person, the circumstantial evidence must be of a**

quality to be incompatible with the innocence of the accused. If such circumstantial evidence is not of that standard and quality, it would be highly dangerous to rely upon the same by awarding capital punishment. The better and safe course would be not to rely upon it in securing the ends of justice."

12. Thus, based on our reappraisal of the evidence as discussed above and considering that the case is based on circumstantial evidence we never the less find that the evidence starting from the last seen evidence to recovery of the dead bodies at the flat, the recoveries of stolen items from both the home and van of the appellant and the appellants 100% matching DNA test on the vaginal swabs on deceased Maryam and the other reasons mentioned above the evidence on record provides a believable corroborated unbroken chain of events which makes an unbroken chain where one end of it touches the dead bodies of the deceased, the rape of the deceased Maryam and the items stolen from the flat of the deceased and the other the neck of the appellant and as such find that the prosecution has proved its case against appellant through circumstantial evidence beyond a reasonable doubt in respect of the offences for which he has been charged being the murder of 4 innocent people, the rape of a young girl and the robbery of the flat and the deceased and as such we maintain all the convictions against the appellant in the impugned judgment which we uphold.

13. With regard to sentencing in the case of **Ghulam Farooq V State** (2015 SCMR 948) where three persons had been brutally murdered the Supreme Court upheld the death penalty in the following terms at P.949;

"As regards the sentence of the appellant the circumstances of the case are such that the cruel and brutal manner in which the appellant had taken three lives has been found by us to be utterly offensive and his conduct has, thus, failed to evoke any sympathy. The appellant had not only killed his sister for choosing a matrimonial partner on her own but had also killed his brother-in-law and also an infant daughter of the appellant's sister apart from killing a fully formed fetus inside the womb of his sister. One of the sentences provided by the law for an offence of murder is death and in the peculiar circumstances of this case the appellant deserves no less, particularly

when he has killed not one but three innocent persons and also a fully formed fetus".

14. In this case the appellant has murdered 4 innocent people in a most brutal manner by hitting them over their heads with an iron bar, he also completely betrayed their trust as they had for years treated him as a son and viciously raped and murdered a young girl with her whole life ahead of her and has also callously robbed the household and personal items of the deceased after murdering them and as such we find the appropriate sentence to be a deterrent one and as such uphold all the sentences handed down to the appellant and answer the confirmation reference in the affirmative whilst dismissing the appeal.

15. The appeal and confirmation reference stand disposed of in the above terms.