

Eye witness Believed + Negligence of  
police guard

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## IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi*

SPECIAL CR. A.T. APPEAL NO.159 OF 2021.

Appellant: Abdul Wasay Jokhio S/o. Abdul  
Qayoom through Mr. Nadir Khan  
Burdi, Advocate .

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

SPECIAL CR. A.T. JAIL APPEAL NO.172 OF 2021.  
CONFIRMATION CASE NO.09 OF 2021

Appellant: Imtiaz Hussain S/o. Muhammad  
Riaz through Mr. Iftikhar Ahmed  
Shah, Advocate.

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

Date of Hearing. 20.09.2022

Date of Announcement 26.09.2022

### JUDGMENT

Mohammad Karim Khan Agha, J:- Appellants Abdul Wasay Jokhio s/o Abdul Qayoom and Imtiaz Hussain s/o Muhammad Riaz were tried in the Anti-Terrorism Court No.III, Karachi in Special Case No.2061 of 2016 (New Special Case No.215 of 2016) in respect of Crime No.842/2016 u/s 302/324/223/224/34 PPC r/w section 7 of ATA, 1997 registered at PS K.I.A., Karachi and vide judgment dated 24.09.2021 Imtiaz Hussain was convicted and sentenced for offence u/s. 302-(b) PPC and Section 7(1)(a) ATA 1997 to death sentence on each count subject to confirmation by this court with direction to pay compensation of Rs.5,00,000/- (Rupees Five Lacs) to the legal heirs of the deceased PC Muhammad Rafiq in terms of Section 544-A Cr.P.C. He was also convicted for an offence u/s.324 PPC

and Section 7(1)(c) of ATA, 1997 to undergo R.I. for ten (10) years with fine of Rs.10,000/- and in case of default he shall suffer S.I. for 06 months more. He was also convicted and sentenced to undergo R.I. for the period of two (02) years and to pay fine of Rs.1,000/- for offence U/s. 221 PPC. In case of default in payment of fine, he shall suffer S.I. for the period of 15 days. Accused Abdul Wasay Jokhio s/o. Abdul Qayoom was convicted and sentenced to undergo S.I. for a period of 02 years u/s. 223 PPC with fine of Rs.50,000/- and in case of default in payment of fine, he shall suffer S.I. for 03 months more. Benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. The brief facts of the case are that on 30.09.2016 at about 05:30 p.m. the complainant received information through mobile that Inspector Abdul Wasay Jokhio SIO Korangi with his subordinate staff namely PC Muhammad Rafiq and PC Daim Khan had gone in his private Car No.AFE-090 Maker Courer for obtaining remand in crime Nos.358/2016, 359/2016 and 313/2016 of accused Imtiaz s/o Muhammad Riaz and Abdul Malik s/o Syed Ameen from Administrative Judge of ATC Courts. While returning to PS Korangi when they reached Causeway Malir Nadi at about 05:00 /05:15 p.m. both the accused fired on constables who received bullet injuries in the head. It was further informed to the complainant that PC Rafiq succumbed to his injury while PC Daim was seriously injured and was shifted to Jinnah Hospital. The complainant has further stated in his FIR that due to negligent act of Abdul Wasay Jokhio, accused persons succeeded to run away on snatched motorcycle while firing. Hence FIR was lodged against the appellants.

3. After completing usual investigation the case was challaned and the appellants were sent up to face trial. They both plead not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 17 PWs and exhibited various documents and other items. The statement of accused persons was recorded under Section 342 Cr.P.C in which appellant Imtiaz claimed that he was not present at the time of the murder and appellant Jokhio claimed that he had not been negligent in respect of the incident which lead to the death of his colleague Rafiq and serious injury to his other colleague Daim. Appellant Imtiaz did not give evidence under oath however appellant Jokhio gave evidence under oath and once again,

reiterated that he had not been negligent in discharge of his official duties. Neither of the appellants called any DW in support of their defence case.

5. After appreciating the evidence on record the trial court convicted the appellants and sentenced them as set out earlier in this judgment. Hence, the appellants have filed these appeals against their convictions.

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

7. As indicated by the brief facts of the case although the cases of both the appellants are inter-connected since they involve entirely different offences and aspects we will deal with each case separately. Namely, the appellant Imtiaz has been convicted of murdering one police man and seriously injuring another whilst he was being produced for remand whereas appellant Jokhio was one of the police men who was producing the appellant for remand but has been charged with negligence in effect for allowing the appellant Imtiaz and his now deceased co-accused to escape from police custody.

**With regard to the case of appellant Imtiaz.**

8. Learned counsel for the appellant Imtiaz has contended that based on the facts and circumstances of the case the case did not fall within the purview of the ATA; that he was in the Punjab at the time of the murder and it was his deceased co-accused who murdered the police man and injured the other police men and as such it was a case of mistaken identity; that the sole eye witnesses evidence cannot be safely relied upon especially in terms of identification; that no pistol was recovered from him and that there are major contradictions in the prosecution evidence/case and thus for any or all of the above reasons the appellant should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Imran alias Dully and another v. The State and others (2015 SCMR 155)** and **Tariq Mehmood v. The State and others (2019 SCMR 1170)**.



9. On the other hand, learned Addl. Prosecutor General Sindh has fully supported the impugned judgment and has in particular contended that the case fell within the purview of the ATA; that sole eye witness has correctly identified the appellant as being the person who fired on him and murdered the deceased and his identification evidence in respect of the appellant could be safely relied upon; that the appellant was arrested in the Punjab in amongst others a case for carrying an illegal firearm which was recovered from him and was the same firearm which was taken from appellant Jokhio who was guarding him at the time of the incident which when matched with the empties recovered at the scene produced a positive FSL report; that the car in which the police men were shot was also recovered with bullet holes and contained blood stains; that the medical evidence fully supported the eye witness evidence and as such the prosecution had proved its case against the accused beyond a reasonable doubt and as such his appeal should be dismissed and the confirmation reference answered in the affirmative since there were no mitigating circumstances to justify any reduction in sentence. In support of his contentions, he placed reliance on the cases of **Mawas Khan v. The State and another** (PLD 2004 Supreme Court 330), **Muhammad Ashraf v. The State** (2011 SCMR 1046), **Amir Khan v. The State** (2000 SCMR 1885), **Muhammad Mansha v. The State** (2001 SCMR 199), **Muhammad Younas and another v. The State and others** (1990 SCMR 1272), **Ijaz Ahmed v. The State and others** (2022 SCMR 1577), **Nazimuddin v. The State** (2010 SCMR 1752), **Rafaqat Ali and others v. The State** (2016 SCMR 1766), **Wahid v. The State** (PLD 2002 Supreme Court 62), **Amrood Khan v. The State** (2003 SCJ 604), **Dr. Javaid Akhtar v. The State** (PLD 2007 Supreme Court 249), **Muhammad Ilyas and others v. The State** (2011 SCMR 460) and **Zulfiqar Ahmad and another v. The State** (2011 SCMR 492).

10. We have heard the arguments of the learned counsel for the appellant as well as learned Additional Prosecutor General and have gone through the entire evidence which has been read out by learned counsel for the appellant, and the impugned judgment with the able assistance of learned counsel and have considered the relevant law including the case-laws cited at the bar.

11. During the course of arguments learned counsel for the appellant Imtiaz pointed out that PW 16 Afzal Muhammed who was the MLO who

medically examined the injured PW 13 Daim might not have been cross examined by counsel for the appellant Imtiaz and as such this opportunity might have been denied to him. Learned counsel for appellant Imtiaz however stated that he did not want the appeal remanded on this ground as PW 16 Afzal Muhammed was not such an important witness and that the appellant had not been prejudiced by this witness not being cross examined by his counsel and he wanted to argue the case on merits. This position was also adopted by learned counsel for appellant Jokhio and learned APC. Keeping in view the desire of learned counsel to not remand the case and the fact that no such remand had been ordered in the past when a similar situation arose we continued to decide these appeals on merit. In this respect reliance is placed on the case of **Muhammed Rafique V State** (2020 SCMR 664) which was not remanded despite the same defect where it was held as under at P.666,

*"Though medical officer has not been cross examined during the trial, none the less, upon analysis, abrasions came about during the occurrence, admit possibilities exculpatory in nature"*

12. Based on our reassessment of the evidence of the PW's especially the medical evidence and other medical reports including the post mortem report of the deceased, recovery of empties and blood and car which the deceased was shot inside of at the crime scene we find that the prosecution has proved beyond a reasonable doubt that PC Muhammed Rafiq (the deceased) was shot and murdered by firearm and PC Daim was shot and seriously injured by firearm on 30.09.2016 at about 1715 hours near Carsaz Malir Nadi KIA Karachi whilst sitting in a private car.

13. The only question left before us therefore is who murdered the deceased by firearm and seriously injured PC Daim at the said time, date and location and did appellant Imtiaz escape from custody?

14. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant Imtiaz **except** under the ATA for which he was convicted for the following reasons keeping in view that each criminal case must be decided on its own particular facts and circumstances;

(a) That the FIR was lodged with promptitude and the appellant was named in the FIR. If there was any slight delay in lodging the FIR i.e after two hours this was because two police man

had been shot and needed to be taken to hospital as an emergency. One of whom expired and as such the slight delay in lodging the FIR has been fully explained and as such this slight delay is not fatal to the prosecution case. The appellant was named in the FIR as he was being transported from the PS by police officers two of whom he shot to the court in order to take there judicial remand. Thus, it was known who the accused were and there was no time to cook up a false case against them especially as the third police officer who accompanied them Jokhio who was also accused of negligence in their escape confirmed that this is what actually happened. Furthermore, the complainant had no enmity with the accused and had no reason to falsely implicate him and this slight delay in lodging the FIR has not benefited the prosecution or prejudiced the accused. In this respect reliance is placed on **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872)

(b) We find that the prosecution's case primarily rests on the sole eye witness to the murder of the deceased and in particular his correct identification of the appellant as the person who shot and murdered the deceased as well as himself whose evidence we shall consider in detail below;

(i) Eye witness PW 13 Daim. He was one of the PC's who was in the car taking the appellant and his deceased co-accused for remand at the court. His eye witness evidence is set out in full for ease of reference;

*"On 30.9.2016, I was PC at PS Korangi, Karachi. Inspector Abdul Wasay Jokhio was investigating a crime of P.S Korangi. On that day, he took the custody of accused Imtiaz and Abdul Malik from P.S. Korangi, I alongwith Inspector Abdul Wasay Jokhio and PC Muhammad Rafique went to City court in the car of Inspector Abdul Wasay. He parked the car at the road side and when he left, I saw cover of his pistol and asked that why there was only cover without pistol, upon which he said to me that he had left the pistol at his house. He then left us there with two accused and went inside City court, and returned after considerable time at about 03-00 or 04-00 p.m. From City court we were coming towards P.S Korangi. Inspector Abdul Wasay was driving the car and we were coming from river side. All of sudden, I heard fire. I was sitting on the front seat of the car, whereas, PC Muhammad Rafique was sitting with accused at rear portion. After I heard fire, I saw at back seat and noticed that accused Imtiaz had pistol in his hand, who fired upon me which hit on my head and I became conscious and did not know what happened thereafter. I remained unconscious for one or two months. This is my statement".*

This eye witness was accompanying the appellant Jokhio, the deceased in Jokhio's private car who were all policemen taking the appellant Imtiaz for remand at the court. This eye witness knew who Imtiaz was as he was accompanying him on remand. It was day light and he was sitting close to him in the car for at least 3 hours when the incident took place which included the driving,

time to and from court and the long time appellant Jokhio took in the court as such we would have got a good look at the appellant from close range as they remained seated in the car and would easily have been able to recognize him again especially as before this time appellant Imtiaz had been held in the police station where he worked. As such based on the particular facts and circumstances of this case no identification parade was required. He gave his evidence in a natural manner; was named as present in the FIR; was seriously injured during the incident which is supported by the medical evidence; he had no enmity or ill will with the appellant Imtiaz and had no reason to involve him in a false case; he is not a chance witness and was not even cross examined on any aspect of his evidence which can be assumed to be admitted. In this respect reliance is placed on the case of **Dr. Javaid Akhtar** (Supra). As such we find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in relation to the correct identification of the appellant Imtiaz as the person who shot the deceased and himself before escaping from lawful custody.

We can convict on the evidence of this sole 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 case 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) **Muhammad Ismail vs. The State** (2017 SCMR 713) and **Ijaz Ahmed** (Supra). That what is of significance is the quality of the evidence and not its quantity and in this case we find the evidence of this sole eye witness to be of good quality and believe the same especially in terms of the correct identification of the accused who fired on and murdered the deceased and shot him.

Thus, based on our believing the evidence of the PW eyewitness mentioned above especially in terms of him correctly identifying the appellant as the person who murdered the deceased and shot him what other supportive/corroborative material is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of **Muhammad Waris v The State** (2008 SCMR 784)

(c) Although appellant Jokhio is a co-accused he is not charged with murder but only negligence. In his S.342 Cr.PC statement he fully corroborates the eye witness about the happening of the incident in his presence. Like wise whilst giving evidence under Oath. As such we rely on his S.342 Cr.PC statement and his evidence under oath as being corroborative/supportive of the eye witness evidence.

(d) That the medical evidence and medical reports as discussed above fully support the eye-witness/ prosecution evidence. It confirms that the deceased was hit on the head and likewise the injured eye witness by firearm shots. In any event ocular evidence takes precedent over medical evidence if in conflict. In this respect reliance is placed on the case of **Wahid** (Supra),



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(e) That the car which was recovered by the police was the car which was driven by the appellant Jokhio and belonged to Jokhio and had bullet holes and human blood in it as corroborated by an FSL report and a chemical report.

(f) The police PW's travelled to the Punjab where they arrested Imtiaz in this case who was already in custody in another case and a case which concerned an illegal fire arm. If Imtiaz was not recognized or known by the police in this case why did the police travel all the way to the Punjab to arrest him whereby they had to cross numerous administrative and bureaucratic hurdles which further supports the prosecution case that Imtiaz was correctly identified.

(g) Importantly whilst in the Punjab PW 10 Ali Akbar who was one of the police officers sent to re arrest appellant Imtiaz in this case was also authorized to recover the pistol which the Punjab police had recovered from Imtiaz in the arms case lodged against him in the Punjab which he brought back to Karachi. It is the appellant's case that this pistol did not belong to appellant Jokhio. There contention is based on the fact that when appellant Jokhio reported his pistol missing on the day of the incident he had given the number of his pistol as 6878 however in the FIR lodged in the Punjab the number on his pistol is mentioned as 6876 which is different. **Significantly**, appellant Jokhio in his S.342 Cr.PC statement in answer to question 4 admitted that he kept the pistol in his car and in his statement under oath admits that his licensed pistol is numbered 6876 which was the number of the pistol recovered from the Punjab which in any event only has one digit difference from the application concerning his lost pistol which was either a typo or in the worse case scenario was deliberately done to mislead the police into believing that his pistol had been stolen prior to the murder and escape of appellant Imtiaz. We are however in no doubt that the pistol which was recovered from the appellant Imtiaz by the police in the Punjab was the pistol which was owned by and belonged to the appellant Jokhio which when sent for FSL with the empties recovered at the scene of the crime matched which we find directly links the appellant Imtiaz to the commission of the crime. The empties were also not foisted as they were sent soon after the crime before the pistol was recovered for FSL and sent again with the pistol for FSL once it was recovered which on both occasions lead to positive reports. Furthermore, mere delay in sending the pistol for FSL in the absence of evidence of tampering would not off set a positive FSL report. In this respect reliance is placed on the case of **Muhammed Ashraf (Supra)**

(h) Most of the relevant police entries have been exhibited concerning the shooting and murder which fully support the prosecution's case.

(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 and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on **Mushtaq Ahmed V The State (2020 SCMR 474)**



(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 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 appellant Imtiaz being driven in the appellant Jokhio's car by Jokhio for a remand hearing accompanied by the deceased and the eye witness to the appellant Imtiaz acquiring a pistol and shooting the deceased and the eye witness and escaping, to the appellant Imtiaz being arrested in the Punjab in a different case to the recovery of his pistol to a positive FSL report with the empties recovered at the crime scene.

(k) That the appellant was already under arrest in a similar type case in the Punjab and was implicated in many cases in Sindh and in one case had even been handed down a life sentence by the trial court which was maintained by this court which indicates that he had a propensity to commit such like crimes and was a habitual offender.

(l) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is simply one of false implication by the police based on the fact that the appellant was in jail in the Punjab at the time of the offence as per his S.342 Cr.PC statement and that the crime was committed by the deceased co-accused however having taken such defence it was incumbent on him to produce at least some evidence in support of the same which he failed to do. In this respect reliance is placed on the case of **Anwar Shamim V State** (2010 SCMR 1791). The appellant did not give evidence on oath and did not produce any DW in support of his defence case or produce any other evidence which could dent the prosecution case. Thus, for the reasons mentioned above we disbelieve the defense case as an afterthought in the face of reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

15. Thus, based on the above discussion especially in the face of reliable, trustworthy and confidence inspiring eyewitness evidence and other corroborative/supportive evidence mentioned above, we have no doubt that the prosecution has proved its case against the appellant Imtiaz beyond a reasonable doubt for the offences for which he has been convicted and hereby maintain his convictions and sentences except with regard to the ATA offences for which he is acquitted for the reasons set out below.

16. We do **not** find that this case falls within the purview of the ATA as defined by a larger bench of the Supreme Court in the case of **Ghulam Hussain V State** (PLD 2020 SC 61) where in essence for their to be an act of terrorism there had to be an object, intent, purpose and design to create terror on account of such act. Whether people were terrorized as a by product of the act did not convert the act into one of terrorism nor the fact that it may have been of a particularly brutal nature. Based on the particular facts and circumstances of this case it appears that the intent of the appellant Imtiaz was to escape from police custody and in achieving this object he murdered one policemen who was guarding him and seriously wounded another which had no object, intent, purpose or design to create terror which was rather to escape from police custody and as such the appellant is acquitted of all offences under the ATA.

17. With regard to sentencing the appellant in order to make his escape good shot dead one policeman and seriously injured another who is currently paralyzed and has greatly had his quality of life reduced and has made life difficult for his family. The murder and serious injury of the police men was premeditated and they were not even given a chance to surrender and was committed in cold blood by a hardened criminal. We find no mitigating circumstances to reduce the sentence handed down to the accused as his motive for the murder was to escape custody in respect of serious crimes **at any cost including cold bloodied premeditated murder of police men** which is a crime against society as it is the duty of the police to protect society and if someone murders a policeman in a premeditated manner the only appropriate sentence is a deterrent one in order to deter others from murdering policemen whilst carrying out there lawful duty as if a policeman can be murdered in such a callous manner the accused would not think twice before murdering an ordinary citizen for example, if he resisted a robbery which is common in Karachi these days and such like persons must be sent a loud and clear message by the courts that if it is proven that they have caused the pre mediated murder of a police man whilst carrying out his lawful duty they will not be spared by the courts and as such we up hold the death sentence handed down to appellant Imtiaz and all other sentences handed down to him in the impugned judgment. {

18. As such Imtiaz's appeal is dismissed; the convictions and sentences in the impugned judgment in respect of all the PPC offences are upheld whilst the appellant is acquitted of all convictions under the ATA. The confirmation reference is answered in the affirmative.

**With regard to the case of appellant Jokhio.**

19. Learned counsel for appellant Jokhio contended that there had been no negligence on his part; that the appellant had been handed cuffed and he managed to escape after acquiring a pistol which was not his and that after the appellant shot the two other police men in his car a gun was placed at his head as driver and when the car crashed the appellant and his now deceased co-accused escaped and as such there was no negligence on his part since based on the particular facts and circumstances of this case he had no option but to allow the appellants to escape otherwise he would also have been shot and as such he should be acquitted of the charge of negligence by extending him the benefit of the doubt. In support of his contentions he placed reliance the cases of **Muhammad Nawaz v. The State** (PLD 2021 Balochistan 87), **Muhammad Nawaz v. The State** (PLD 2002 SC 287), **Allah Bux V State** (2007 MLD 39) and **HC Muhammed Khan V State** (PLD 2017 Dindh 723)

20. Learned APG fully supported the impugned judgment in the case of the appellant Jokhio and its findings. In particular he contended that it was the pistol of the appellant which had been used to enable the appellant Imtiaz and his co-accused to escape which the appellant had allowed to fall into the hands of the appellant through his negligence and which had even lead to the death of one police man and serious injury to another apart from the escape of the appellant and his deceased co-accused who were under lawful custody.

21. We have heard the arguments of the learned counsel for the appellant Jokhio as well as learned Additional Prosecutor General and as mentioned earlier have gone through the entire evidence on record.

22. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant Jokhio for the following reasons keeping in view that each criminal case must be decided on its own particular facts and circumstances;

- (a) As mentioned earlier the FIR was lodged with promptitude and the appellant Jokhio is named in it as the person whose negligence enabled the escape from lawful custody of appellant Imtiaz and his deceased co-accused.
- (b) From the evidence it clear that Jokhio was taking the appellant and the deceased co-accused for remand and that during the lawful custody of the appellant and the deceased co-accused they escaped from the custody of the appellant who was the most senior officer.
- (c) We have already found that it was appellant Jokhio's pistol which made its way into the hands of appellant Imtiaz who then shot the deceased and seriously injured the eye witness.
- (d) Eye witness PW 13 Daim whose evidence we have already believed specifically states in his evidence as under regarding appellant Jokhio's pistol;

*"On 30.9.2016, I was PC at PS Korangi, Karachi. Inspector Abdul Wasay Jokhio was investigating a crime of P.S Korangi. On that day, he took the custody of accused Imtiaz and Abdul Malik from P.S. Korangi, I alongwith Inspector Abdul Wasay Jokhio and PC Muhammad Rafique went to City court in the car of Inspector Abdul Wasay. He parked the car at the road side and when he left, I saw cover of his pistol and asked that why there was only cover without pistol, upon which he said to me that he had left the pistol at his house".*

- (e) Since we have already believed the evidence of PW 13 Daim who had no ill will or enmity with the appellant Jokhio and no reason to implicate him in a false case and has stated in his evidence which he was not cross examined on that the appellant Jokhio told him that he had left his pistol at home we disbelieve the evidence of the appellant regarding the missing pistol especially as it turned out to be the murder weapon. No officer of such seniority as appellant Jokhio would have left his weapon at home when he had to take two hardened criminals for a remand hearing. This does not appeal to logic, commonsense or reason.
- (f) From the evidence it appears that **at best** the pistol was left lying **negligently** in Jokhio's car (or at worst some thing more sinister for which he was not charged and hence the report he made about his missing firearm as a ready made defence) as admitted by the appellant Jokhio in his S.342 Cr.PC statement and it was found by the appellant Imtiaz. With regard to his missing firearm appellant Jokhio states **under oath** as under;

*"I was having three four police constables in the investigation branch. I had taken two constables on the day of incident along with accused for seeking remand. Both the accused were handcuffed while they were taken for remand. It is correct that I had taken the accused in my own car for seeking remand on 30.09.2016. It is correct that pistol bearing No.0006876 is my licensed weapon. I used to keep my licensed pistol for my safety. It is correct that Ex.98/B is not original of the application moved at*



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City Court PS. Voluntarily says, that the original is available and I can produce the same with my statement. I had kept my pistol under the driver seat while leaving for collecting remand papers from the Court of J.M. I had kept the pistol in the car after the accused had alighted from the car. When I came back I found the cover of the pistol in the car and the pistol was missing. I had searched the vehicle as well as the accused but the pistol was not found either in the vehicle nor the accused were found in possession of the pistol.

Note:- When the witness is confronted with the question as to how the accused came in possession of pistol when he immediately searched the pistol after coming back from the Court of J.M, he is now taking a somersault and states that he does not remember that as to whether he had put the pistol in the car before leaving the High Court or after leaving the car in the City Court".

23. Thus we dismiss the appeal of appellant Jokhio and up hold his conviction and sentence as set out in the impugned judgment.

#### Conclusion

24. In conclusion both the appeals are dismissed and the confirmation reference in respect of appellant Imtiaz is answered in the affirmative. Since appellant Jokhio is on bail his bail bonds stand cancelled and he shall be taken into custody to serve out the remainder of his sentence. The appellants shall have the benefit of S.382 (b) Cr.PC and any remissions available under the law. With regard to appellant Imtiaz his sentences shall run concurrently.

25. The appeals are disposed of along with confirmation reference in the above terms.

Announced in open Court on 26/09/2022

KAR

Mohammed Karim Khan Azhar J.

OS 26/9/22

Omar Sial, J.