

THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

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Criminal Appeal No.525 of 2024

[Rafiq Ahmed & Zameer Ahmed v The State]

Criminal Appeal No.579 of 2024

[Sheeraz @ Sheri v The State]

Criminal Appeal No.619 of 2024

[Usman Ali v The State]

[Confirmation Case No.08 of 2024]

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Mr. Naeem Akhtar, Advocate for Appellant Rafiq Ahmed in Crl. Appeal No.525/2024.

Mr. Rehman Ghani Khattak, Advocate for Appellant Zameer Ahmed @ Zameer Pathan in Crl. Appeal No.525/2024.

Mr. Javaid Ahmed Rajput, Advocate for Appellant in Crl. Appeal No.579/2024.

Mr. Nadeem Ahmed, Advocate for Appellant in Crl. Appeal No.619/2024.

Mr. Babar Ali Shah, Advocate for complainant alongwith complainant.

Mr. Ali Haider Saleem, Additional Prosecutor General [Sindh].

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Date of hearing

05.10.2026

Date of Judgment

08.10.2026

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JUDGMENT

Shamsuddin Abbasi, J.- Through their respective appeals, Rafiq Ahmed son of Muhammad Muneer, Zameer Ahmed @ Zameer Pathan son of Jehangir Iqbal, Sheeraz @ Sheri son of Israr Ahmed and Usman Ali son of Waris Ali, appellants, have called in question the validity of the judgment dated 24.07.2024, penned down by the learned Additional Sessions Judge-I/ Model Criminal Trial Court, Karachi East, in Sessions Case No.1886 of 2022 (FIR No.661 of 2021) registered at Police Station Korangi, District East, Karachi, for offences under Sections 302, 109 and 34, PPC through which they were convicted under Section 302(b), PPC for committing Qatl-i-Amd of Masood Ahmed in furtherance of their common intention and sentenced each of them to death by hanging until dead with direction to pay compensation of Rs.100,000/- each to the legal heirs of the deceased and in default thereof to undergo simple imprisonment for a further period of six months.

2. Briefly stated the facts as set out in the FIR are that complainant Mst. Fozia Masood wife of deceased Masood Ahmed lodged FIR No.661 of 2021 on 29.11.2021 at Police Station Korangi, Karachi, stating therein that her husband was employed as a teacher at Pak Askari College, situated near Bilal Chowrangi. On 26.11.2021 at about 9:45 am as was his routine he left his house for his workplace in his Suzuki Alto car bearing registration No.ATJ-205. According to complainant, she was watching him from the window when immediately after he came out of the main gate of the house in car, two persons riding a motorcycle approached him. The person sitting on the rear seat of the motorcycle alighted from it, took out a pistol and attempted to fire at her husband's car, however, the bullet got jammed in the pistol and the intended fire could not take effect. The complainant raised an alarm whereupon the assailant reloaded the pistol and fired another shot, which struck her husband in the face causing him to fall down. The assailant thereafter removed her husband's wallet from the dashboard of the car and fled from the scene along with his accomplice on the motorcycle. The complainant, accompanied by her son, immediately rushed towards the car and shifted her injured husband to Chiniot Hospital from where he was referred to Jinnah Hospital, however, while on the way he succumbed to his injuries. His dead body was brought back to the house and after the funeral rites the police recorded the complainant's statement under Section 154, Cr.P.C. at her house on 29.11.2021, which was later on incorporated in FIR Book

3. Pursuant to the registration of FIR, the investigation was set into motion and after completion thereof the police submitted challan before the Court of competent jurisdiction, whereby the appellants were sent up to face the trial.

4. Upon indictment, the appellants pleaded not guilty to the charged offence and claimed trial. At trial, the prosecution examined as many as 13 witnesses initially besides producing documentary and other material in evidence. The gist of the evidence adduced by the prosecution in support of its case is as under:-

5. The complainant Mst. Fozia Masood appeared as PW.1 at Ex.3, PC Muhammad Junaid as PW.2 at Ex.4, Muhammad Anwar (estate agent) as PW.3 at Ex.5, Sultan Masood (complainant's son) PW.4 at Ex.7, Dr. Rajesh as PW.5 at Ex.8, Mehmood Ahmed Mujahid (brother of the deceased) as

PW.6 at Ex.9, SIP Muhammad Ramzan as PW.8 at Ex.11, PC Nabeel Khan as PW.9 at Ex.12, Inspector Masroor Ahmed as PW.11 at Ex.14, Inspector Amjad Javed as PW.12 at Ex.15 and Aftab Ahmed (Judicial Magistrate) as PW.13 at Ex.16. They have exhibited relevant documents in their evidence and were subjected to cross-examination by the defence. Upon completion of the prosecution evidence, the prosecution closed its side vide statement at Ex.17. Thereafter, the statements of appellants were recorded under Section 342, Cr.P.C. wherein they have denied the allegations imputed upon them by the prosecution, pleaded false implication and professed their innocence. Appellant Zameer Ahmed has specifically stated that on 28.01.2022 he had been picked up by Rangers and subsequently handed over to Police Station Korangi where he was booked in a case involving recovery of an unlicensed weapon and subsequent thereof Inspector Amjad Kalyar implicated him in the present case because he had failed to pay the demanded bribe amount of Rs.100,000/-. Appellant Rafiq Ahmed has stated that he was a mechanic by profession and also dealt in the sale and purchase of vehicles. According to him, on 16.01.2022 during an operation he was picked up by law-enforcement agencies along with several other persons and his family members after failing to locate him filed C.P. No.282 of 2022 before this Court and further stated that on 29.01.2022 his family received a phone call from the police, who informed them that he had been involved in the present case. Appellant Usman Ali has stated that on 16.01.2022 he had left his house for his shop but was intercepted and picked up by Rangers during a search operation. According to him, his custody was thereafter handed over to the police, who kept him in illegal detention for nine days and subsequently implicated him in this false case. Appellant Zameer Ahmed also has denied the prosecution case and pleaded his innocence and himself appeared on oath under Section 340(2), Cr.P.C. and examined his father Muhammad Jehangir Iqbal as a defence witness. With the permission of the learned trial Court, the prosecution subsequently examined ASI Sohail Ghouri as PW.14 at Ex.26 and HC Chander Kumar as PW.15 at Ex.27. The appellants were thereafter re-examined under Section 342, Cr.P.C., however, learned counsel for appellant Zameer Ahmed declined to have re-examined him stating that the two witnesses had not implicated Zameer Ahmed in their statements and, therefore, he did not wish to re-examine him.

6. Upon culmination of the trial and after appraisal of the evidence brought on record by the prosecution as well as the defence, the learned trial Court found the appellants guilty of the offence punishable under Section

302(b), PPC, and thus, convicted and sentenced them in the manner set out in para-1 (supra), which necessitated the filing of the listed appeals. Since all the appeals arise out of the same occurrence, FIR and the judgment, they are being heard and decided together through this common judgment.

7. It is jointly contended on behalf of the appellants that they are innocent and have been falsely implicated in this case as otherwise they have nothing to do with the alleged offence and have been made victim of the circumstances. It is next submitted that the prosecution has failed to establish the appellants' guilt beyond reasonable doubt and that the entire case of the prosecution rested upon evidence suffering from material contradictions, delayed identification, inadmissible police disclosures and doubtful recoveries. It is also submitted that the occurrence took place on 26.11.2021 whereas the FIR has been lodged on 29.11.2021 after three days of the occurrence despite the complainant had admittedly witnessed the occurrence from a window, yet no description or identification of the assailants has been furnished and the subsequent identification therefore required strict scrutiny. The learned counsels have particularly challenged the identification evidence and submitted that the identification parade was conducted on 02.02.2022 more than two months after the occurrence without any convincing explanation wherein the complainant identified Usman Ali as the motorcycle rider whereas Sultan Masood identified Sheeraz as the person carrying the pistol, thus, the ocular and identification evidence did not present a consistent account regarding the identity and respective roles of the assailants. It is argued that the prosecution heavily relied upon alleged disclosures/ confessions made by the appellants during police interrogation. Such confessional statements being made before police are inadmissible in evidence and could not be made the basis of conviction and the alleged pointation of the place of occurrence is equally inconsequential as the place was already known to the police and its subsequent pointation resulted in no discovery of a new fact. Learned counsel appearing for Zameer Ahmed has also questioned the alleged recovery of motorcycle at his instance. He has submitted that the motorcycle is shown to be recovered from an accessible place, but no independent person has been associated with the recovery and no forensic evidence has been produced to establish that it was the same motorcycle that was used in the commission of offence. The alleged recovery of 9mm bullet is also challenged on account of serious defects in its chain of custody. The prosecution has not produced relevant Register No.XIX entry, the sealing cloth did not bear the date and time of sealing and the

prosecution has failed to satisfactorily establish safe custody and transmission of the article to the forensic laboratory. It is further submitted that the alleged recovery of the empty cartridge and coin from the deceased's car on 22.01.2022 almost two months after the occurrence is highly doubtful. These articles were allegedly discovered by private persons while the vehicle was being washed and were not recovered during the initial inspection of the vehicle. No convincing explanation has been offered for such belated discovery. It is argued that the medical evidence merely established the factum and cause of death and did not connect any appellant with the crime. Likewise, the alleged motive arising from a business dispute with Rafiq has not been established through independent and confidence inspiring evidence and in any event motive could not substitute for substantive proof of participation. Learned counsels have emphasized that no independent witness from the locality has been associated with the alleged recoveries despite the admitted presence of several persons at the relevant places. As regards appellant Zameer Ahmed, learned counsel has specifically submitted that none of the material prosecution witnesses attributed any direct role to him and his involvement is sought to be established principally through the alleged police disclosure and recovery of the motorcycle, both of which were insufficient in law to sustain his conviction. It is finally argued that the prosecution has failed to prove its case against the appellants beyond reasonable doubt, therefore, the appellants deserve to be acquitted by extending them the benefit of doubt. Besides, their oral submissions, the learned counsel appearing for Rafiq Ahmed and Usman Ali have filed their written synopsis. In support, the learned counsel for Rafiq Ahmed has relied upon the cases of *Mst. Hajira Bibi alias Seema and others v Abdul Qaseem and another* (2023 SCMR 870), *Sudheer through Senior Superintendent, Central Prison, Hyderabad v The State* (2023 P.Cr.L.J. 25), *Noor Muhammad v The State and another* (2010 SCMR 97), *Zeeshan @ Shani v The State* (2012 SCMR428), *Zafar Iqbal alias Kodu v The State and another* (2017 YLR 648) and *Mst. Khan Bibi and others v Abdul Malik and others* (2012 P.Cr.L.J. 281).

8. Conversely, the learned Additional Prosecutor General, assisted by the learned counsel for the complainant, has supported the impugned judgment and contended that the prosecution has proved its case against appellants through consistent ocular, medical and corroborative evidence forming a coherent chain against the appellants. It is next submitted that the complainant and her son are natural witnesses to the occurrence and their

relationship with the deceased is of no ground to discard their testimony. Their presence at the spot has been established by the circumstances and their account remained consistent on the material particulars. It is also submitted that the delay in lodging the FIR stood satisfactorily explained by the fact that the deceased was first shifted to Chiniot hospital and then to Jinnah hospital where post-mortem examination was conducted, whereafter the body of deceased was brought home and funeral rites were performed and thereafter statement of complainant was recorded, thus, the delay could not by itself discredit the prosecution case. It is submitted that Usman has been identified by the complainant during a judicial identification parade conducted before a Magistrate whereas appellant Sheeraz has also been identified by PW. Sultan as the person carrying the pistol. The identification evidence when read with the other incriminating circumstances sufficiently connected the respective appellants with the occurrence. As regards the alleged police disclosures, learned Additional Prosecutor General has submitted that the prosecution has relied only upon such portions as were legally admissible particularly where they led to recoveries and the subsequent recovery of motorcycle at the pointation of appellant Zameer constituted an additional incriminating circumstance and could not be discarded merely on account of minor procedural deficiencies. It is further submitted that the recoveries of the 9mm bullet and empty cartridge are consistent with the medical evidence regarding firearm injury and provided corroboration to the ocular account. Any deficiency in documentation relating to custody or sealing constituted an investigative irregularity which did not demolish the substantive prosecution evidence. He has maintained that the prosecution has also established a plausible motive against Rafiq arising from the financial dispute between him and the deceased supported by the agreement produced in evidence. Lastly, submitted that the impugned judgment is based on fair evaluation of evidence and calls for no interference and prayed for dismissal of appeal.

9. We have heard the learned counsel for the appellants as well as the learned Additional Prosecutor General, assisted by the learned counsel for the complainant, and have carefully examined the entire evidence available on record with their able assistance.

10. Insofar as the delay of three days in the lodgment of FIR is concerned, in our considered view, the same does not create a dent in the prosecution case. The occurrence took place on 26.11.2021 whereas the FIR has been

lodged on 29.11.2021. Significantly, no one is nominated in the FIR and the complainant being the wife of deceased and a household lady merely reported that two unknown persons had arrived on a motorcycle and committed murder of her husband. Record further reflects that immediately after the firing, the injured was shifted to Chiniot Hospital wherefrom he was referred to Jinnah Hospital, however, he succumbed to his injuries on the way. Thereafter, the post-mortem examination was conducted, the dead body was brought home and funeral rites were performed and soon thereafter the police reached the house of complainant and recorded her statement under Section 154, Cr.P.C. which was subsequently incorporated in FIR Book. In such circumstances, the complainant's immediate concern was understandably to save the life of her husband and upon his death to attend to his burial and funeral rites rather than to embark upon a detailed legal process against unknown assailants. The delay is, therefore, satisfactorily explained by the circumstances attending the occurrence. More importantly, the FIR did not contain the name of any appellant, which materially reduces the possibility of deliberation, consultation or false nomination at the inception of the case. The principle enunciated in *Ghulam Abbas v. The State* (2022 SCMR 1102), that absence of the accused's name in the initial report may in appropriate circumstances demonstrate absence of deliberation before registration of the case is attracted with greater force in the present case. Mere fact of delay, therefore, cannot by itself furnish a legally sustainable basis for extending its benefit to the appellants.

11. The case against Rafiq Ahmed, Usman Ali and Sheeraz @ Sheri, however, does not rest upon the FIR or upon any isolated piece of evidence. The entire evidence has to be examined cumulatively and in its proper perspective. Appellants Rafiq Ahmed and Usman Ali were arrested on 27.01.2022 in connection with separate cases concerning recovery of unlicensed weapons registered as FIR No.42 of 2022 and FIR No.43 of 2022 under Section 23 of the Sindh Arms Act, 2013. During investigation of those cases, information surfaced regarding their possible connection with the murder of Masood Ahmed. The prosecution evidence further discloses the circumstances in which Inspector Masroor Ahmed came to know about the alleged involvement of Rafiq Ahmed and the financial dispute between him and the deceased. According to the prosecution, the deceased had invested money in the business of Rafiq Ahmed and subsequently demanded return of the amount resulting in strained relations between the two. While the disclosures allegedly made before the police cannot by themselves be

treated as substantive evidence of guilt, the subsequent investigative steps cannot be discarded merely because they were set in motion during investigation. Their evidentiary worth must be determined independently from the material actually brought on record.

12. We are conscious of the settled principle that a confession or disclosure made by an accused before police is not substantive evidence against him except to the limited extent permitted by law where such information leads to discovery of a relevant fact. We have, therefore, not treated the inadmissible portion of any alleged disclosure as an independent basis for conviction. The question before us is whether the material subsequently collected by the investigating agency considered on its own evidentiary footing and in conjunction with the substantive evidence establishes the appellants' connection with the occurrence. In this regard, the judicial identification of Usman Ali assumes significance. The complainant was subjected to a judicial identification parade before the learned Magistrate, wherein she identified Usman Ali as one of the assailants and attributed him the role of driving the motorcycle and subsequently she appeared before the learned trial Court and identified Sheeraz @ Sheri as the person who had alighted from the motorcycle, was armed with a pistol and fired upon her husband. The fact that the assailants were initially unknown does not render a subsequent identification legally worthless. The real test is whether the witness had sufficient opportunity to observe the assailants and whether the identification proceedings were conducted in circumstances capable of inspiring confidence. In this respect, the principles laid down in *Zakir Khan v. The State* (1995 SCMR 1793) and subsequently reiterated in *Ghulam Abbas v. The State* (2022 SCMR 1102) are instructive. Identification is essentially an assessment of the witness's power of observation, perception and subsequent recollection. Where the witness has had a sufficient opportunity to observe the offender and the testimony regarding identity is otherwise confidence inspiring, the absence of a test identification parade is not, by itself, fatal to the prosecution case. Conversely, where an identification parade is held, its value depends upon the circumstances in which it was conducted including the lapse of time and the possibility of the identifying witness having seen the accused after his arrest. In the case in hand, the prosecution did not merely rely upon an identification made for the first time in Court rather a judicial identification proceeding was arranged and the complainant identified Usman Ali therein. No material circumstance has been brought on record showing that the

complainant had previously been shown or exposed to Usman Ali in a manner calculated to facilitate his identification. The defence has also failed to demonstrate any such infirmity in the identification proceedings as would render the same inherently unreliable. The identification, therefore, cannot be discarded merely because the accused were strangers to the complainant at the time of the occurrence.

13. The evidence of second Investigating Officer Inspector Amjad Javed further shows that after assuming investigation he approached the learned Magistrate for remand of Usman Ali and Rafiq Ahmed, but the request was declined and the revision petition against such refusal was also dismissed by the learned Additional Sessions Judge. Permission was nevertheless granted to interrogate the appellants inside jail. We do not treat anything allegedly stated by the appellants during such interrogation as confessional evidence against them. The significance of the subsequent investigation lies in the independent material which emerged thereafter. Among such material is the CDR relating to Rafiq Ahmed, which establishes his communication with the deceased and also with Usman Ali and Sheeraz @ Sheri around the relevant period. A call data record by itself does not establish participation in murder, it merely establishes communication and its evidentiary significance therefore has to be assessed in conjunction with the other circumstances proved by the prosecution. When considered alongside the financial dispute, the identification evidence and the subsequent investigative material, the communications assume corroborative significance and furnish a connecting circumstance between Rafiq Ahmed with the persons allegedly engaged by him for completing the plan

14. The prosecution has also brought on record a plausible motive for the occurrence. The evidence brought on record indicates that the deceased had invested a substantial amount in a property related business with Rafiq Ahmed and that a dispute subsequently arose when the deceased demanded return of his invested money. Although motive is not a constituent element of murder and absence of motive is not by itself sufficient to demolish an otherwise reliable prosecution case, a proved motive is nevertheless a relevant circumstance when it provides a rational explanation for the occurrence. In the case in hand, the alleged financial dispute does not stand entirely in isolation but is supported by the evidence produced during trial. It consequently furnishes a relevant background against which the other incriminating circumstances are to be evaluated. The motive, however, is

being treated by us only as a corroborative circumstance and not as substantive proof of guilt.

15. The role attributed to Usman Ali is likewise not founded solely upon any alleged disclosure made during investigation. He was identified by the complainant in judicial identification proceedings as the person who was driving the motorcycle on which the assailants arrived. The prosecution case from its inception was that two persons came on a motorcycle, one of whom alighted and opened fire. The subsequent investigation connected Usman Ali with the other persons implicated in the occurrence while the CDR and other material provide further corroborative circumstances. We have subjected the identification evidence to careful scrutiny and find no material contradiction or circumstance of such magnitude as would render the complainant's identification inherently unreliable. Her failure to name the assailants in the FIR does not contradict the subsequent identification rather the FIR itself records that the assailants were unknown to the complainant at that stage. The subsequent identification is thus not an improvement in the sense of converting a named person into an accused through deliberation particularly when a judicial identification proceeding was subsequently conducted.

16. So far as Sheeraz @ Sheri is concerned, PW.4 Sultan Masood identified him as the person who was carrying the pistol and fired at the deceased. The witness is the son of the deceased and was naturally present at the place of occurrence. His account is that he was inside his house when his mother, who was watching his father from the window as he was leaving for work suddenly raised an alarm after hearing the firing and he along with his mother rushed towards his father and reached near his car where he saw two persons on a motorcycle. He thereafter identified Sheeraz @ Sheri as the person carrying the pistol and firing at the deceased. Mere relationship with the deceased does not make the witness incompetent or render his testimony liable to rejection. The rule applicable to related witnesses is one of caution and not of automatic exclusion. As held in *Zakir Khan* (1995 SCMR 1793) relationship by itself does not render a witness unreliable unless circumstances exist showing a motive for false implication. Having carefully examined the testimony of PW.4 Sultan Masood, we find that his account regarding the person who opened fire is consistent on the material aspect and receives support from the medical evidence, which establishes that the deceased sustained a firearm injury. His evidence cannot, therefore, be discarded merely because he happens to be the son of the deceased.

17. The recoveries relied upon by the prosecution also furnish corroborative circumstances, though we do not attribute to them a value greater than the law permits. During investigation, the alleged crime weapon was recovered from Zameer Ahmed @ Zameer Pathan and the motorcycle allegedly used in the occurrence was also recovered. Recovery evidence has to be examined with particular care and cannot be used to fill gaps in otherwise deficient prosecution evidence. In the case in hand, however, the recoveries are not being treated as the sole basis of conviction. Their significance is confined to their corroborative effect when examined along with the identification evidence, call data record, motive and other circumstances appearing on record. The evidentiary value of the recovery against Zameer Ahmed @ Zameer Pathan is nevertheless materially different from the evidence connecting Rafiq Ahmed, Usman Ali and Sheeraz @ Sheri and his case will accordingly be considered separately.

18. The contradictions, omissions and alleged improvements pointed out by learned defence counsel have also been carefully examined. It is settled that a contradiction is materially different from a mere omission and that only those contradictions which go to the root of the prosecution case and materially affect the credibility of a witness can justify rejection of otherwise confidence inspiring testimony. Minor discrepancies, which naturally occur when witnesses narrate an occurrence after passage of time, are not to be magnified into contradictions of substance. At the same time, this principle cannot be employed to overlook a contradiction which strikes at the very foundation of the prosecution case. In the case in hand, the discrepancies highlighted by the defence do not affect the core features of the prosecution version viz arrival of two assailants on a motorcycle, firing upon the deceased, the subsequent identification of Usman Ali, the identification of Sheeraz @ Sheri as the shooter and the circumstances connecting Rafiq Ahmed with the other accused. The evidence is thus to be assessed in its entirety rather than dissected into isolated fragments. This approach is consistent with the principle enunciated in *Zakir Khan's* case that minor discrepancies and omissions are to be considered in the overall circumstances of the case and do not by themselves render otherwise reliable testimony unacceptable.

19. The cumulative effect of the foregoing evidence is of considerable significance. The complainant immediately reported the occurrence without nominating any person and stated that two unknown persons came on

motorcycle and committed murder of her husband. Thereafter, Usman Ali was subjected to judicial identification proceedings and was identified by the complainant with a specific role. PW.4 Sultan Masood identified Sheeraz @ Sheri as the person who was armed with a pistol and fired upon the deceased. The call data record provides a connecting circumstance regarding the communications of Rafiq Ahmed with the deceased and the other accused around the relevant period. The prosecution has also established a plausible financial motive arising from the dispute between Rafiq Ahmed and the deceased. The subsequent investigation and recoveries furnish further corroborative circumstances. None of these circumstances is being treated in isolation. When examined together, they form a coherent chain which points towards the participation of Rafiq Ahmed, Usman Ali and Sheeraz @ Sheri and is inconsistent with their plea of complete innocence. We are, therefore, satisfied that the prosecution has succeeded in establishing their participation in the murder of deceased beyond reasonable doubt.

20. The case against Zameer Ahmed @ Zameer Pathan, however, stands on an entirely different footing. His alleged role is essentially confined to facilitating the other accused by providing the motorcycle and weapon on rental basis. No direct role in the actual commission of the murder has been attributed to him by either of the material ocular witnesses. He was neither identified by the complainant as one of the assailants nor was he shown to have been present at the place of occurrence. The prosecution case against him principally rests upon the alleged disclosure before the police and the recovery said to have been effected at his instance. Even if such recovery is taken into consideration to the extent permissible by law, it does not establish that Zameer Ahmed @ Zameer Pathan had conscious knowledge of or participation in the plan to murder the deceased. The prosecution has failed to produce independent and confidence inspiring evidence establishing his conscious participation in the criminal design. The possibility that the motorcycle or weapon was provided without knowledge of its intended use cannot be excluded beyond reasonable doubt. Since the burden rests upon the prosecution to prove the charge beyond reasonable doubt and suspicion, however strong, cannot substitute proof, Zameer Ahmed is entitled to the benefit of doubt. His appeal is, therefore allowed and he is acquitted of the charge.

21. Having maintained the conviction of Rafiq Ahmed, Usman Ali and Sheeraz @ Sheri, we now turn to the question of sentence. The conclusion

that their conviction under Section 302(b), PPC is sustainable does not by itself conclude the question whether the extreme penalty of death is warranted. The sentence has to be determined independently upon consideration of the aggravating as well as mitigating circumstances appearing from the record. In the case in hand, the occurrence undoubtedly constitutes a grave offence and the prosecution has established that the deceased was targeted and killed with a firearm. Nevertheless, the record does not disclose that the deceased was subjected to prolonged torture or other exceptional brutality before his death. The manner of occurrence though unquestionably serious and condemnable does not disclose circumstances of such exceptional depravity as would make the death penalty the only appropriate sentence.

22. We have further considered the nature of the evidence against each appellant. Although the evidence is sufficient to sustain their conviction, the case against them is founded upon a combination of identification evidence and corroborative circumstances rather than upon an unimpeachable account covering every stage of the alleged conspiracy. The occurrence took place on 26.11.2021 and the appellants have remained in custody for a considerable period during the investigation and trial. The passage of time by itself is not a sufficient ground for converting a death sentence nevertheless prolonged incarceration and the uncertainty attendant upon a capital sentence are relevant circumstances when the Court undertakes an individualized assessment of punishment. There is also no material on record showing that any of these appellants had previously been convicted of murder or that they are habitual offenders nor does the record disclose circumstances demonstrating that their continued existence in society would constitute such an exceptional danger as to make death the only proportionate punishment. The principle of proportionality also requires that the sentence correspond not only to the gravity of the offence but to the particular circumstances in which it was committed, the individual role of each accused, the quality and nature of the evidence and the mitigating circumstances available on record. The established motive and planned nature of the occurrence undoubtedly constitute aggravating circumstances, however, when weighed against the absence of exceptional brutality, the period already spent in custody, the absence of established previous murder convictions and the overall evidentiary circumstances, we find that the case does not fall within that narrow category in which death is the only appropriate punishment. There remains sufficient room consistent with the

principle governing capital sentencing to hold that imprisonment for life would adequately meet the ends of justice. Accordingly, while we find no merit in the appeals of Rafiq Ahmed, Usman Ali and Sheeraz @ Sheri insofar as their convictions are concerned, their appeals deserve partial acceptance on the question of sentence. Their convictions under Section 302(b), PPC are maintained, however, the sentence of death awarded to each of them is converted into imprisonment for life. The sentence of compensation imposed by the learned trial Court shall remain intact and the appellants shall also be entitled to the benefit of Section 382-B, Cr.P.C.

23. For the foregoing reasons, Criminal Appeal No.525 of 2024 to the extent of appellant Rafiq Ahmed and Criminal Appeal No.579 of 2024 and Criminal Appeal No.619 of 2024 preferred by Sheeraz @ Sheri and Usman Ali respectively are dismissed on merits insofar as their convictions are concerned with the modification that the sentence of death awarded to each of them is converted into imprisonment for life whereas Criminal Appeal No.525 of 2024 to the extent of Zameer Ahmed @ Zameer Pathan is allowed and his conviction and sentence are set aside and he is acquitted of the charge by extending him the benefit of doubt. He shall be released forthwith if not required to be detained in connection with any other case.

24. Subject to above modification, whereby the sentence of death awarded to Rafiq Ahmed, Usman Ali and Sheeraz @ Sheri is converted into imprisonment for life and Zameer Ahmed @ Zameer Pathan is acquitted, the Confirmation Case No. 08 of 2024 is answered in Negative.

JUDGE

JUDGE