

**IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.**

Present:

*MR. JUSTICE NAIMATULLAH PHULPOTO*  
*MR. JUSTICE SHAMSUDDIN ABBASI*

Cr. Appeal No.D-106 of 2006  
Confirmation Case No.D-04 of 2006  
Criminal Acquittal Appeal No.D-131 of 2006

Date of hearing: 03.04.2018.  
Date of Announcement of Judgment: 25.04.2018

Appellants : Ashraf and Ramzan in Cr. Appeal No.D-106/06  
Through Syed Madad Ali Shah, Advocate.

Appellant: Irfan in Cr. Acq. Appeal No.D-131/06.  
Through Syed Tariq Ahmed Shah, Advocate.

Respondent : The State  
Through Syed Meeral Shah Addl.P.G.

**J U D G M E N T**

**SHAMSUDDIN ABBASI, J:** We intend to dispose of Cr. Appeal No.D-106 of 2006, filed by Appellants Ashraf and Ramzan against the judgment dated 15.06.2006 passed by learned Vth Additional Sessions Judge, Hyderabad in Sessions No. 450 of 2000 (Re: State Versus Abdul Sattar and others) arising out of Crime No.35/2000 under section 302, 324, 147, 148, 149 PPC registered at P.S Sakhi Pir, whereby the appellants were convicted under section 302(b) PPC and sentenced to death and to pay fine of Rs.50,000/- each and in case of non-payment of fine they were ordered to further undergo R.I for six months. Appellant Ramzan was further convicted under section 324 PPC and sentenced to undergo R.I for 7 years. However, both the appellants were extended benefit of section 382-B, Cr.P.C. Learned trial court has also made a reference for confirmation of death sentence to this court being confirmation Case No.D-04 of 2006. The learned trial court has also acquitted co-accused Abdul Sattar, Abdul Razzak, Asif, Akhtar Hussain, Abdul Rauf and Ishrat Ali by extending them benefit of doubt vide same judgment dated 15.06.2006. The complainant has preferred Criminal

Acquittal Appeal No.D-131/2006 against acquitted accused / respondents No.1 to 6. As all the appeals and reference arose out of the same judgment, therefore, we intend to dispose of the same together to avoid repetition.

2. The brief facts of the case has been disclosed by the complainant Irfan Samo in his F.I.R. lodged on 06.06.2000 at 11:45 p.m at P.S Sakhi Pir that there existed a dispute in between the Sama community and Khuman community at Tando Wali Muhammad, Hyderabad. People of Khuman community were involved in drug trafficking and Sama community had raised objections on the drug paddlers. On 06.06.2000 complainant Irfan and his father Muhammad Ibrahim were present in house, it was about 11:00 a.m. when they heard some commotions outside of their house and they came out. It is alleged that they saw that accused Muhammad Ramzan alias Karo, Ashraf alias Ashoo, Ishrat, Asif, Akhtar, Abdul Sattar, Abdul Razzak and Abdul Rauf were standing there. Out of them, Ashraf alias Ashoo, Asif, Ishrat, Abdul Razzak, Abdul Sattar, Abdul Rauf and Akhtar were armed with pistols whereas Muhammad Ramzan alias Karo was armed with pistol and repeater of 12 bore. They saw that they were abusing while standing in front of house of Ali Nawaz (grandfather of complainant). In the meanwhile, Ali Nawaz and his son Ayazuddin (uncle of complainant) came out of their house. Ashraf alias Ashoo while abusing the grandfather of complainant instigated others not to spare and finish them, on that, it is alleged that Ashraf alias Ashoo, Muhammad Ramzan alias Karo and Akhtar made straight firing on Ali Nawaz and Ayazuddin, who sustained firearm injuries and fell down. Complainant and others took shelter by concealing them and raised cries. Accused persons made firing, raised slogans and abused the complainant. Ali Akbar Samoo, Wasim Samoo and other neighbourers we attracted. On seeing them, accused persons fled away. Complainant party found bullet shot on the left side of chest of Ali Nawaz and bullet injury on left side thigh of Ayazuddin. Injured were shifted to LMCH where injured Ali Nawaz succumbed to his injuries. Thereafter, the complainant went to Police Station and lodged F.I.R. it was recorded being F.I.R. No.35/2000.

3. After registration of F.I.R. police visited the place of wardat and prepared mashirnama of place of incident and recovered crime empties and blood stained earth and visited hospital where completed formalities

for postmortem of deceased Ali Nawaz and recorded the statement of injured Ayazuddin. During investigation police arrested accused Abdul Sattar, Abdul Razzak in presence of mashirs and interrogated the arrested accused, who led police and produced crime weapons. Police registered cases against the accused persons. Police also sent the recovered weapons and empties recovered from the place of incident to the Ballistic Expert for examination and report. After usual investigation, police submitted challan against the accused u/s 302, 324, 147, 148, 149 PPC.

4. Trial Court framed charge against the accused Abdul Sattar, Abdul Razzak, Ashraf, Asif, Akhtar and Abdul Rauf. They pleaded not guilty and claimed to be tried.

5. During pendency of case, absconding accused Muhammad Ramzan alias Karo was also arrested and police submitted supplementary challan and learned trial court framed amended charge to which all accused pleaded not guilty and claimed for their trial.

6. Prosecution in order to prove its case had examined P.W-1 Dr. Zavar Hussain Shah (who conducted postmortem of deceased Ali Nawaz and examined injured Ayazuddin) at Ex.23. P.W-2 complainant Irfan was examined at Ex.24, P.W-3 injured Ayazuddin at Ex.25, P.W-4 Ali Akbar (mashir of the case) at Ex.26, P.W-5 Ghulam Muhammad (mashir of the case) at Ex.27, P.W-6 Muhammad Shafique (first I.O of the case) at Ex.28, P.W-7 Hassan Ali (Tapedar) at Ex.29. P.W-8 Khan Nawaz (second I.O of the case) at Ex.31, P.W-9 ASI Nusrat Ali (mashir) at Ex.32. P.W-10 SIP Agha Abdul Majeed (I.O of the case) at Ex.33, P.W-11 SIP Tariq Latif (mashir) at Ex.33. Thereafter, learned DDA closed the side of prosecution vide his statement Ex.34.

7. Statements of accused were recorded under sections 342, Cr.P.C in which they pleaded their innocence and denied prosecution allegation. However, neither they have examined themselves on oath nor led any evidence in their defence.

8. After hearing the parties and assessment of the evidence, learned trial court passed the judgment dated 15.06.2005, whereby convicted and sentenced the appellants Ashraf and Muhammad Raman as stated above, whereas, acquitted the accused Abdul Sattar, Abdul Razzak,

Asif, Akhtar Hussain, Abdul Rauf and Ishrat Ali. Against said judgment the above Cr. Appeal and Criminal Acquittal Appeal have been preferred

9. Learned Counsel for appellants Ashraf and Muhammad Ramzan has contended that the judgment passed by the learned trial court to the extent of appellants is based on misreading and non-reading of the evidence. He further contended that the learned trial court has rightly acquitted 06 co-accused of the charge by disbelieving the evidence against them but on the same set of evidence learned trial court convicted the appellants without any cogent reason and legal justification. He further contended that the trial court has wrongly relied upon highly interested evidence of P.Ws, who were close relatives of the deceased and inimical to appellants as complainant Irfan Samoo is grand-son of deceased Ali Nawaz and injured P.W Ayazuddin is son of deceased, whereas, P.W Ali Akbar is nephew of deceased. He further contended that eye-witnesses namely Muhammad Ibrahim and Wasim were not examined by the prosecution and were given up though they were also close relatives of complainant party. He further contended that learned trial court did not consider the fact that prosecution had not examined any independent witness though place of incident is thickly populated area and many Mohalla people had witnessed the incident. He further contended that the ocular evidence is belied by medical evidence as per F.I.R. injured Ayazuddin had received firearm injury, whereas, according to Dr. Zawar Hussain, who had issued medical certificate, injured Ayazuddin had sustained two injuries by hard and blunt substance, which were not explained by the prosecution witnesses and medical certificate of injured Ayazuddin reveals that Dr. Zawar Hussain had referred the injured Ayazuddin at 11:00 a.m., whereas, time of incident is also shown at 11:00 a.m. He further contended that the ocular evidence is contradictory to each other and not confidence inspiring to warrant conviction. He has further contended that recovery of weapons was highly doubtful and place of recovery was shown from cattle pond and both the mashirs of recovery are highly interested witnesses and I.O had failed to associate any independent witness for recovery of weapon. He further contended that fatal injury has not been specifically attributed to anyone. He has also contended that the learned trial court has awarded a bit harsh punishment / sentence to the appellants against single murder. Learned counsel for the appellants

finally contended that he would be satisfied if the sentence of appellants Ashraf alias Ashoo and Muhammad Ramzan alias Karo is modified / converted from death penalty to life imprisonment. In support of his contentions learned Counsel for appellants has relied upon the cases of (1) MUHAMMAD NADEEM WAQAS and another vs. The STATE (2014 SCMR 1658), (2) ALI BUX and others vs. The STATE (2018 SCMR 354), (3) Mst. SUGHRA BEGUM and another vs. QAISER PERVEZ and others (2015 SCMR 1142), (4) MUHAMMAD HUSSAIN vs. THE STATE (2008 SCMR 345), (5) AMIN ALI and another vs. THE STATE (2011 SCMR 323), (6) MUHAMMAD ZAHIR and another vs. SHAH SAEED and 2 others (2016 P.Cr.L.J 1821), (7) Mondar Khan Babar vs. Piyar Ali & others (SBLR 2018 Sindh 311), (8) ALI MUHAMMAD and 2 others vs. THE STATE (2007 YLR 894), (9) UMER vs. THE STATE (2009 P.Cr.L.J 1119), (10) Saifullah vs. The State (SBLR 2017 Sindh 163), (11) Mst. RUKHSANA BEGUM and others vs. SAJJAD and others (2017 SCMR 596), (12) TARIQ vs. The STATE (2017 SCMR 1672), (13). IMTIAZ alias TAJ vs. The STATE and others (2018 SCMR 344), (14) MUHAMMAD SHAH vs. THE STATE (2010 SCMR 1009), (15). ZAFAR vs. The STATE and others (2018 SCMR 326), (16) BARKAT ALI vs. MUHAMMAD ASIF and others (2007 SCMR 1812), (17) SHERAL alias SHER MUHAMMAD vs. THE STATE (1999 SCMR 697), (18) QADDAN and others vs. The STATE (2017 SCMR 148), (19) MUHAMMAD NAWAZ and others vs. The STATE and others (2016 SCMR 267), (20) HASHIM QASIM and another vs. The STATE (2017 SCMR 986), (21) MUHAMMAD TASAWEER vs. Hafiz ZULKARNAIN and 2 others (PLD 2009 Supreme Court 53), (22) TANVEER alias RABAIL and another vs. THE STATE (2012 YLR 2026), (23) SHAHBAZ and 4 others vs. THE STATE and others (2010 P.Cr.L.J 1719), (24) ALI DINO KHAROSE vs. GHULAMULLAH KHAROSE and others (2015 MLD 473) and (25) AZHAR ALI vs. THE STATE (PLD 2010 Supreme Court 632).

10. On the other hand, learned counsel for appellant / complainant Irfan has supported the judgment passed by the learned trial court to the extent of conviction and sentence awarded to the appellants Ashraf and Muhammad Ramzan and he further contended that the learned trial court has acquitted the accused / respondents No.1 to 6 in Criminal Acquittal Appeal No.D-131/2006 on the same set of evidence in which the learned trial court has rightly convicted the appellants Ashraf and

Muhammad Ramzan. He further contended that the learned trial court had erred while considering the fact that the respondent No.1 to 6 / accused had come at the place of incident and formed an unlawful assembly being armed with deadly weapons with common intention / common object to commit murder of deceased Ali Nawaz due to motive as complainant party was restraining the accused party from selling of narcotics in the mohalla. He further contended that the prosecution has established its case through their witnesses including injured witness of incident namely Ayazuddin and defence counsel did not shatter their evidence. He further contended that the prosecution has established its case through ocular evidence, medical evidence and circumstantial evidence and respondents No.1 to 6 had common object, to kill the deceased Ali Nawaz and got injured P.W Ayazuddin and finally he prayed for setting aside of the judgment to the extent of acquittal of respondents No.1 to 6 / accused and for their conviction as per law. In support of the contentions learned Counsel for appellant / complainant has placed reliance on the cases of (1) MUHAMMAD ARSHAD vs. The STATE (2015 SCMR 258), (2) MUHAMMAD MANSHA vs. The STATE (2016 SCMR 958), (3) SHARAFAT ALI vs. The STATE (2016 SCMR 28), and (4) NIAZBULLAH and another vs. LIAQ-UR-REHMAN and 2 others (2015 YLR 402).

11. Learned Additional Prosecutor General Sindh has supported the judgment passed by the learned trial court and contended that the prosecution has proved its case beyond shadow of doubt and learned trial court has rightly convicted the appellants Ashraf and Muhammad Ramzan and acquitted the respondents No.1 to 6 of the charge. Learned Additional Prosecutor General Sindh has conceded to the proposal of learned Counsel for Ashraf and Muhammad Ramzan and raised no objection if their conviction and sentence is modified / reduced / converted from death to life imprisonment.

12. We have carefully perused the record and judgment passed by the learned trial court. From the perusal of record it appears that case of prosecution is based upon the ocular evidence, medical evidence and circumstantial evidence. The ocular evidence of prosecution rests upon the evidence of P.W-2 complainant Irfan, P.W-3 injured Ayazuddin and P.W-4 Ali Akbar. The evidence of all the eye-witnesses was identical in details and they have supported each other on each and every point.

P.W-2 complainant Irfan has deposed that on 06.06.2000 at 11:00 a.m. he alongwith his father Ibrahim came out of his house on the cries coming out side of their house. They saw that accused Ashraf, Asif, Akhtar, Abdul Razzak and Abdul Rauf were armed with pistols whereas accused Ramzan alias Karo was armed with pistol and 12 bore repeater and they were abusing his grand-father deceased Ali Nawaz by standing outside of his house. In the meanwhile, Ali Nawaz and Ayazuddin came out of their house. While seeing Ali Nawaz and Ayazuddin, accused Ashraf instigated other accused not to spare them, on that, accused Ramzan alias Karo, Ashraf alias Ashoo and Akhtar made direct fires on Ali Nawaz and Ayazuddin while remaining accused had made direct firing towards complainant party. Grand-father of complainant namely Ali Nawaz and uncle of complainant namely Ayazuddin sustained bullet injuries and fell down. Complainant party hided themselves in the walls and made cries and on their cries Ali Akbar Samoo, Wasim Samoo and other neighbourers were attracted thereafter accused while firing went away. Complainant saw that Ali Nawaz had sustained bullet injuries on left side of his chest and injured Ayazuddin had also sustained bullet injury on his left side of leg. Thereafter complainant shifted injured to L.M.C Hospital where grand-father of complainant namely Ali Nawaz died. Complainant left Wasim Samoo, Akber Samoo and Muhammad Ibrahim Samoo at the dead body and went to P.S Sakhi Pir for report.

P.W-3 Ayazuddin, who is injured in this case, has deposed that on 06.06.2000 he alongwith his father Ali Nawaz were available in their house. At about 11:00 a.m. they heard cries coming from outside of their house, on that, he alongwith his father Ali Nawaz came out from their house and saw that accused Ashraf alias Ashoo, Ishrat, Asif, Akhtar Abdul Sattar, Abdul Rauf, Abdul Razzak, and Ramzan alias Karo armed with pistol and repeaters abused to them and instigated co-accused not to spare Ali Nawaz, on that accused Ashraf alias Ashoo made direct fire which hit to his father on his chest thereafter accused Ramzan alias Karo also made direct fire which hit his father on his chest. Accused Akhtar also made direct fire at his father, who fell down. He further deposed that he intervined accused Ramzan alias Karo, who also made fires from his repeater on Ayazuddin and he sustained the same on his left leg, abdomen and back. He further deposed that remaining accused also made firing towards them and towards their houses and on their cries, their relatives and neighbourers namely Irfan son of Ali

Akbar Samoo, Wasim Samoo and Ibrahim Samoo came running there. Accused persons also made firing to them. Thereafter, complainant shifted his father and injured Ayazuddin in Rickshaw to hospital where his father died and injured was admitted in the hospital and such F.I.R. of the incident has been lodged by complainant at Police Station. We have also examined the evidence of P.W-4 Ali Akber, who deposed that on 06.06.2000 he was coming from Market after purchasing vegetables when he reached near the house of his uncle, he saw that accused Ashraf alias Ashoo, Ramzan alias Karo, Ishrat, Asif, Abdul Rauf, and Akhtar were standing. He further deposed that he saw his uncle Ali Nawaz and his son Ayaz came out from their house. Accused Ramzan alias Karo was armed with pistol and repeater and remaining accused were armed with pistols. Accused Ashraf alias Ashoo abused Ali Nawaz and his son Ayaz and instigated to co-accused not to spare on that Ashraf alias Ashoo made fire at Ali Nawaz which hit him on his chest. Accused Ramzan alias Karo also made fire which hit to his uncle Ali Nawaz, who fell down, then accused Akhtar also made direct firing towards his uncle Ali Nawaz and remaining accused also made fires to Ali Nawaz. Accused persons also made fires towards Wasim and Ali Akbar but they hid themselves in the walls. Accused Ramzan alias Karo also made fires from his repeater on Ayaz who also sustained the same on his left leg, thereafter accused while making firing left the spot. Then, complainant shifted the injured to hospital in a Rickshaw where under Ali Nawaz died in the hospital and injured Ayaz remained admitted in the hospital. Thereafter, Irfan went to P.S and lodged F.I.R. of incident. All the above three witnesses were subjected to lengthy cross examination but the learned defence Counsel could not shatter their evidence and they deposed in the same line and supported their version.

13. We have also noticed that the incident had taken place in front of house of deceased Ali Nawaz, P.W Ayazuddin and complainant Irfan. So they are natural witnesses and they could not be considered as chance witnesses. We cannot discard their evidence only on the ground that injured Ayazuddin is son of complainant, complainant Irfan is grandson of deceased Ali Nawaz and P.W Ali Akber is nephew of deceased Ali Nawaz until and unless it is proved that interested witnesses had ulterior motive on account of enmity or other consideration. In the



present case, evidence is straight forward and confidence inspiring particularly, when ocular evidence was corroborated by medical and circumstantial evidence. Here, in this case prosecution has well established it's case on the point that the ocular evidence is fully corroborated by medical evidence as it has come on record through P.W-1 Dr. Zavar Hussain Shah, who deposed that on 06.06.2000 he was posted as Senior Medic Legal Officer at LMCH Hospital and at about 11:30 a.m. he received dead body of Ali Nawaz through police letter and conducted postmortem of deceased Ali Nawaz and stated that deceased had expired in causality department during treatment due to firearm injuries. He further deposed that injuries sustained by deceased Ali Nawaz were individually and collectively sufficient to cause death in ordinary course of nature. The said P.W also examined injured Ayazuddin and issued final medical certificate. He deposed that injured Ayazuddin sustained injuries No.2 and 5 with firearm weapon which is corroborated by ocular version of complainant that accused Ramzan alias Karo had fired from his repeater / gun at Ayazuddin and it is an admitted position that cartridge was being used in the repeater and injuries sustained by injured clearly show that the same were result of fire of cartridge. It is made clear that specific role of firing at deceased Ali Nawaz has been assigned to accused Ashraf and Ramzan while injuries sustained by Ayazuddin were specifically attributed to accused Ramzan.

14. It is also a matter of record that crime weapons were recovered on the pointation of accused persons during police custody and the same were sent to ballistic expert alongwith crime empties recovered from the place of incident and such report was received in positive. Though the learned trial court did not consider this aspect of the case in respect of crime weapons and matching with crime empties through Ballistic Expert's opinion on the ground that police had recovered crime weapons during police custody and trial court was of the opinion that there was possibility that the crime weapons could be foisted upon the accused by the police. The conclusion of the learned trial court is reproduced here as under:-

*"I have arrived at the conclusion that prosecution has been able to prove its case through ocular evidence corroborated by medical evidence and of abscondence of accused Ramzan, that accused Ramzan alias Karo and Ashraf alias Ashoo having motive to commit the*

*present crime in furtherance of their common intention attacked upon Ali Nawaz to commit his Qatl-I-Amd and thereby caused his Qatl-I-Amd. The injuries sustained by PW Ayazuddin at the hands of accused Ramzan are proved to have been caused in such circumstances that if PW Ayazuddin have been died accused Ramzan would have been guilty of Qatl-I-Amd of PW Ayazuddin. The point No.3 is answered accordingly.*

*In view of my findings on point No.3 above, accused Ashraf alias Ashoo and Muhammad Ramzan alias Karo have committed the offence punishable under Section 302 PPC while accused Ramzan in addition has also committed offence punishable under Section 324 P.P.C while accused Abdul Sattar, Abdul Razzak, Abdul Rauf, Ishrat Ali, Asif and Akhtar are entitle for benefit of doubt”.*

15. From the perusal of evidence of persecution witnesses and available record, it appears that prosecution had failed to establish motive against accused party as set up in F.I.R. motive is stated by the complainant that there was dispute in between Sama Community and Khuman Community as Khuman Community was doing business of drug trafficking and Sama Community was annoyed and restraining them from the drug trafficking but the complainant in his deposition had not specified the enmity and simply deposed that due to old enmity accused have committed murder of his grand-father Ali Nawaz and caused injuries to Ayazuddin and P.W Ayazuddin has deposed that accused persons were dealing with the business of narcotics and his father was restraining the accused party from doing that business but during cross examination the said witness had admitted the fact that his father deceased Ali Nawaz was not happy on the installation of “ALAM” by accused persons and he used to object on such activities because his father was affiliated with “Tableegh Jamait” and P.W in the court did not disclose any motive for this incident, therefore, we are of the considered view that the prosecution witnesses have failed to establish the motive against accused party. There is another aspect of this case that three persons namely Ashraf alias Ashoo, Muhammad Ramzan alias Karo and Akhtar had fired at deceased but medical evidence shows that deceased had received only two firearm injuries.

16. As per Jail Roll of appellants available on record, appellant Ashraf alias Ashoo has served sentence of 17 years, 9 months, and 16 days up to 27.03.2018, and appellant Muhammad Ramzan alias Karo has served sentence of 14 years, 06 months and 18 days up to 27.03.2018. We have considered the contentions of learned Counsel for the appellants for conversion of sentence from death to life imprisonment,

which was conceded by learned Additional Prosecutor General Sindh. We rely on the judgment passed by the Honourable Supreme Court in the case of *MUHAMMAD NADEEM WAQAS* and another vs. The STATE (2014 SCMR 1658), in which the Honourable Supreme Court has observed that *“two appellants have been convicted and sentenced to death for murder of one deceased, which, in peculiar circumstances of the case and for the above reasons, is a bit harsh”*. Here, in this case, two persons have been specifically assigned role of firing at deceased, which was corroborated by medical evidence. We also rely on the judgment passed by the Honourable Supreme Court in the case of *ALI BUX* and other vs. The STATE (2018 SCMR 354) wherein the Honourable Supreme Court has reduced the sentence of death penalty to life imprisonment. In the case of *ATTA-UR-REHMAN* and another vs. The STATE (2018 SCMR 372) the Honourable Supreme Court also reduced the death sentence to life imprisonment, wherein it has been held as under:-

*“Both the courts below had observed in the impugned judgments passed by them that the firearms recovered from the appellants' custody during the investigation had matched with some crime-empties secured from the place of occurrence but we note that those observations made by the courts below were not factually correct. Apart from that the allegations leveled against the appellants and their co-accused were joint and common and no specific injury had been attributed to any particular accused person. It is, thus, not clear as to which one of the accused persons, including the present appellants, was actually responsible for causing the fatal injuries to the deceased. In such circumstances generally a sentence of death is withheld when it is not clear as to whether a particular culprit was actually responsible for causing a death or not. For all these reasons we have decided to exercise caution and to err, if at all, on the side of precaution.”*

We have also observed that in this case the prosecution witnesses have deposed that accused Ramzan, Ashraf and Akhtar had fired from their weapons. It reveals that single fire shot was received by deceased Ali Nawaz and single firearm shot was received by injured Ayazuddin. Three persons made firing and two shots were received by deceased and injured and it is not clear / specific that as to which one of the accused persons was actually responsible for causing the fatal injury to deceased Ali Nawaz and Honourable Supreme Court has rightly held in the case of *ATTA-UR-REHMAN* (supra) that *“In such circumstances generally a sentence of death is withheld when it is not clear as to*

*whether a particular culprit was actually responsible for causing a death or not”.*

We also rely on the case of *MUHAMMAD ABBAS vs. The STATE* (2018 SCMR 397, wherein the death sentence was reduced to imprisonment for life by the Honourable Supreme Court holding as under:-

*“As regards the sentences of death passed against the appellant we note that it had nowhere been alleged by any eye-witness that the appellant had actually fired at any of the deceased or had caused any injury to any person. Even the extra-judicial confession attributed to Shah Nawaz co-accused confirmed the said aspect of the matter as according to the same the appellant had merely accompanied his co-accused to the place of occurrence, he had remained present with a motorcycle at the spot and had not caused any injury to any person during the incident in issue. Although a firearm had allegedly been recovered from the custody of the appellant during the investigation yet the said firearm never stood connected with the alleged offences. We have been informed that the appellant had been arrested in connection with this case way back in the year 1997 and he has remained behind the bars ever since. In this view of the matter we have found that in terms of the role attributed to the appellant he did not deserve the maximum sentence provided for the offences in question.”*

*For what has been discussed above this appeal is dismissed to the extent of the appellant's convictions on six counts of the charge under section 302(b), P.P.C. read with section 34, P.P.C. read with sections 6/7(i) of the Anti-Terrorism Act, 1997 but the same is partly allowed to the extent of his sentences of death on each such count which sentences are converted into sentences of imprisonment for life on each count.”*

17. According to the statement of complainant Irfan and P.W / injured Ayazuddin are concerned to extend the role of co-accused Abdul Satar, Abdul Rauf, Abdul Razaque, Arif, Akhtar and Ishrat is concerned, they stated in their statement that alleged accused were armed with Pistols and they fired towards complainant party but at the same time both have specifically stated that Accused Ramzan and Ashraf made firing on deceased Ali Nawaz and injured Ayazuddin but it is a matter of record that rest of complainant party was comprising on complainant / P.W No.2 Irfan, his father Muhammad Ibrahim (not examined), P.W No.4 Ali Akber, and Waseem Samo (not examined) had not received any scratch in the incident when particularly it has come on the record that the distance in between accused party and complainant party was 5 feet (through map of place of incident produced by Tapedar / P.W No.7 Haji

Hassan Ali). It is very difficult to accept that 6 persons fired from the Pistols at the distance of 5 feet but all the bullets were missed and we are agreed with the observation of learned trial court which extended the benefit of doubt to co-accused / respondents No.1 to 6 and acquitted them of the charge.

18. As discussed above allegations leveled against Appellants were joint and common and no specific injury had been attributed to any particular accused person. It is, thus, not clear as to which of the accused/Appellants was actually responsible for causing the fatal injuries to the deceased. All these factors put us to maximum caution in the matter of sentence of death passed against Appellants.

19. For what has been discussed above, Criminal Appeal No.D-106 of 2006 is dismissed to the extent of convictions of the Appellants recorded by trial Court under section 302(b) PPC but sentence of death on the charge of murder is reduced to imprisonment for life, remaining convictions, sentence and fine shall remain intact. All the sentences of imprisonment passed against Appellants shall run concurrently and benefit of section 382-B Cr.P.C shall be extended to them.

Consequently, Reference made by trial court for confirmation of death sentence is answered in negative and Criminal Acquittal Appeal No.D-131 of 2006 having become infructuous is dismissed.

These appeals are disposed of in the above terms.

JUDGE

JUDGE