

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

Criminal Appeal No.D-71 of 2015

Present:

**Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Amjad Ali Sahito**

Appellant: Muhammad Paryal s/o Ghulam
Muhammad b/c Mahar
Through Mr. Aijaz Shaikh, Advocate

State: Through Syed Meeral Shah Bukhari,
Addl. Prosecutor General

Date of hearing: 12.06.2018.

Date of judgment: 26.06.2018.

J U D G M E N T

Amjad Ali Sahito, J.- Appellant Muhammad Paryal s/o Ghulam Muhammad was tried by learned Special Judge Anti-Terrorism Hyderabad in ATA Case No.111/2013, Re. St.Vs. Muhammad Paryal, arisen out of Crime No.122/2013 of Police Station Cantonment Hyderabad, for offence punishable u/s.302, 384 PPC 6(2)(k) of Anti Terrorism Act, 1997 and in consequence whereof he was convicted and sentenced through impugned judgment dated **29.07.2015**, to suffer imprisonment for life, and also to pay fine of Rs.100,000/-. In case of default of payment of fine, to suffer imprisonment for one year more and R.I for 10-years imprisonment for offence punishable u/s.6(2)(k), 7(h) of Anti-Terrorism Act 1997 with fine of Rs.50,000/- and in case of default of payment of fine to suffer six months imprisonment more. However, he was

extended benefit of Section 382-B Cr.P.C and both sentences were ordered to run concurrently and to pay compensation of Rs.200,000/- to the heirs of deceased, till realization of compensation amount, the appellant shall not be released.

2. Briefly stated the facts of the case, as depicted in the FIR, are that on 24.08.2013, at 1715 hours, complainant Muhammad Ismail s/o Sono Khan Aagro, lodged FIR with police station Cantonment Hyderabad stating therein that he and his younger brother Abdul Ghaffar reside together having business of selling fruit through handcart at Doctors Lane road. On the fateful day of incident when the complainant was busy in his work, his relative Muhammad Ramzan Aagro at 3.15 pm informed him through phone that on that day he and Muhammad MalookAagro both had gone to Saddar to meet with his brother Ghaffar and when they were chit-chatting, one constable in uniform came and demanded "Bhatta" from his brother Ghaffar to which he replied that he would pay him money on next day as he has no money today. Ghaffar also disclosed the name of said constable to be Muhammad Paryal. Upon such refusal of Abdul Ghaffar, constable Muhammad Paryal got crossed, he went to the gate of police line, brought one SMG and started straight firing at Abdul Ghaffar who after receiving injury fell down and they were taken him to the hospital. On receipt of such telephonic information, the complainant reached at civil hospital where he saw the dead body of Abdul Ghaffar, lying in the mortuary

where police of police station Cantonment was also present who completed necessary legal proceedings and thereafter the complainant appeared at police station and lodged FIR to the effect that constable Muhammad Paryal had murdered his brother Abdul Ghaffar by causing fire shot injury from his SMG due to non-payment of money/Bhatta.

3. The investigation officer after completion of usual investigation submitted the report u/s.173 Cr.P.C before the competent Court of law by showing the accused Muhammad Paryal in custody.

4. After completing all the formalities, on 14.04.2014 the charge (Exh.4) was framed against the accused under Section 6(2)(a)(k) punishable U/s 7(a)(h) of Anti-Terrorism Act 1997 read with section 302 PPC by the learned trial Court, to which he pleaded not guilty and claimed to be tried.

5. At the trial, in order to establish accusation against the accused, the prosecution examined PW-01 complainant Muhammad Ismail as Exh.6 who produced FIR as Exh.6-A and receipt of dead body as Exh.6-B, PW-02 Muhammad Malook as Exh.7, PW-03 Muhammad Ramzan as Exh.08. Learned Incharge DDPP gave up PW HC 861 Jahanzeb Khan vide his statement at Exh.09, PW-04 MLO Dr. Shahjahan was examined at Exh.10, he produced letter of I.O for conducting postmortem of deceased at Exh.10-A and postmortem report of deceased Abdul Ghaffar as Exh.10-B, PW-05 ASIP Nisar

Ahmed at Exh.11, he produced inquest report as Exh.11-A, Danishnama as Exh.11-B, mashirnama of dead body and securing of clothes of deceased as Exh.11-C and mashirnama of arrest of accused and recovery of SMG alongwith magazine and 18-bullets as Exh.11-D and Roznamcha Entry No.20 dated 24.8.2013 as Exh.11-E, PW-06 Ghulam Hussain at Exh.12, PW-07 ASIP Ghulam Mustafa as Exh.13, he produced roznamcha Entry No.38 dated 24.08.2013 as Exh.13-A, mashirnama of arrest of accused and recovery of SMG alongwith magazine and 18-bullets as Exh.13-B, and Roznamcha Entry No.13 dated 24.8.2013 as Exh.13-C, PW-08 Ghulam Mustafa as Exh.14, he produced copy of list of police personnel and weapon issued to them as Exh.14-A, PW-09 LNK Nadeem Ahmed as Exh.15 and PW-10 I.O SIP Syed Maqsood Ali Shah as Exh.16, he produced Roznamcha Entries Nos.16,17 & 18 dated 24.8.2013 as Exh.16-A and mashirnama of place of vardat as Exh.16-B and Roznamcha Entry No.17 dated 24.8.2013 as Exh.16-C. Learned DDPP given up PW Wakil vide his statement at Exh.17. Thereafter PW-11 TapedarSikandar Ali Shah was examined as Exh.18, he produced letter of the I.O addressed to the Mukhtiarkar for preparing the site sketch was examined as Exh.18 and site sketch as Ex.18-B, PW-12 I.O SDPO Razi Khan Almani as Exh.19, he produced the order of the SSP whereby he was nominated as I.O of the case as Exh.19-A, letter addressed to the Chemical Examiner as Exh.19-B, letter addressed to

Incharge FSL as Exh.19-C, Chemical report as Exh.19-D, FSL Report as Exh.19-E, letter addressed to the MLO for conducting postmortem of deceased Abdul Ghaffar as Exh.19-F and order of the SSP Hyderabad in respect of enquiry conducted against PC 1164 Ghulam Mustafa whereby he was punished to forfeiture of approved service for two years with immediate effect for having he was issued SMG 40-rounds with two magazines and detailed with PC/825 Muhammad Paryal at main gate of police line which was suddenly taken by Muhammad Paryal who went out of the chowki and resorted straight fire over fruit vendor Abdul Ghaffar Aagro who sustained injury and succumbed to the same as Exh.19-G, so also order of SSP passed against accused Muhammad Paryal whereby he was dismissed from service as Exh.19-H. Learned DDPP moved an application U/s 540 Cr.P.C as Exh.20 to summon SHO/SIP Aijaz Lakho which was allowed under no objection of learned DC and PW-13 SHO Aijaz Ali Lakho was examined as Exh.21. Thereafter, the prosecution closed its side vide statement at Ex.22.

6. Statement of accused was recorded under Section 342 Cr.P.C at Ex.23, wherein he denied the prosecution allegations leveled against him and stated that he was not allowed official weapon and has denied that he created sense of fear insecurity amongst the general public nor committed a terrorist act and that he did not demand "Bhatta". The accused further pleaded his innocence and has stated that he

was performing his duty properly and honestly and has not demanded money from anybody and that he is having small children so lastly prayed for justice. However, he had not examined himself on Oath nor examined any witness in his defense.

7. The learned Trial Court, after hearing the learned counsel for the parties and appraisal of the evidence, convicted and sentenced the appellant vide judgment dated 29.07.2015. The conviction and sentenced recorded by learned trial Court has been impugned by the appellant before this Court by way of filing instant appeal.

8. Mr. Aijaz Shaikh, learned counsel for the appellant contended that the impugned judgment is against the law and facts of the case; that the present appellant is innocent and has falsely been implicated in this case; that complainant is not an eye witness of the incident; that most of the witnesses are police officials who have been set up against him due to departmental intrigues and both the eye witnesses are friend and brother of deceased and required independent corroboration is lacking; that the evidence of prosecution witnesses is full of contradictions and discrepancies, which are fatal to the prosecution case; that the "Bhatta" has not been proved as prosecution has miserably failed to produce any criminal record against the appellant that he is habitual offender of demanding "Bhatta"; that the investigating officer

has recorded the statements of shopkeepers adjacent to the place of incident but they have not stated a single word against the appellant that he used to demand "Bhatta" from them; that since "Bhatta" is motive of the incident but same has not been proved as previously no complaint has been lodged by the complainant or deceased against the present appellant; that the present appellant was deputed as police constable to open the gate of police line Hyderabad which is just opposite to the place of incident before that no complaint was made to any police officer to believe that the appellant used to demand "Bhatta" from the shopkeepers/handcarts, as the prosecution has failed to establish that how much amount was demanded by the appellant as "Bhatta", hence the trial court has wrongly convicted the appellant U/s 6(2)(k) under section 7(h) of Anti Terrorism Act, 1997. He lastly contended that the prosecution has miserably failed to prove the case against the appellant and thus, according to him, under the above mentioned facts and circumstances, the appellant is entitled for his acquittal. In support of his contention, he relied upon the case of Muhammad Shah Vs. The State reported in 2010 SCMR 1009, The State through Prosecutor-General Accountability National Accountability Bureau Islamabad Vs. Misbahuddin Farid reported in 2003 SCMR-150, Saindad & 2-others Vs. the State reported in 1972 SCMR-74, Faheem Ahmed Farooqui Vs. The State

reported in 2008 SCMR-1572 and Mst. Rukhsana Begum Vs. Sajjad and others reported in 2017 SCMR-596.

9. Conversely, learned Additional Prosecutor General for the State argued that there was no malafide on the part of complainant to implicate the appellant in this case falsely; that the appellant is named in the FIR with specific role of firing upon the deceased; that the ocular testimony furnished by complainant and eye-witness is corroborated with medical evidence as well as recovery of crime weapon. He further argued that the learned trial Court has rightly appreciated the evidence while recording conviction and sentence of the appellant in accordance with law and thus he lastly prayed for dismissal of the instant appeal.

10. We have heard learned counsels for the parties and perused the record.

11. At the outset, we would make it clear that failure of motive or proof of charge for offence under section 6 of the Act would never mean failure of main offence. The section 6 of the Act is an independent offence hence does not control other independent offence (s). It may only be relevant for deciding jurisdiction before taking cognizance by Special Court but stamping thereof or otherwise at subsequent stage (s), including appellate one, would not prejudice lawful conviction for other independent offences.

12. Proceeding further on evaluation of the material brought on the record, it appears that the case of prosecution mainly depends upon the ocular testimony furnished by the prosecution in shape of statements of complainant Muhammad Ismail (PW-01) and eye witnesses Muhammad Malook (PW-02) and Muhammad Ramzan (PW-03) and their evidence is corroborated by PC Ghulam Mustafa (PW-08), LNK Nadeem Ahmed (PW-09), SIP Syed Maqsood Ali shah (PW-10), so also supported by medical evidence of Dr. Shahjahan (PW-04) including circumstantial evidence of rest of the witnesses.

13. There can be no denial to legally established principle of law that it is always the direct evidence which is material to decide a fact(charge). In this case complainant Muhammad Ismail (PW-01) is not eye witness and only two witnesses namely Muhammad Malook and Muhammad Ramzan are eye witnesses of the incident. Here, it is material to make it clear that for bringing the law into motion (lodgment of FIR), it is never the requirement of law that informant must be an **eye-witness**. The basic purpose of FIR is not meant to decide guilt or innocence but to activate the law enforcing agencies to immediately move for collection / preservation of evidence. Reference may well be made to the case of Sikandar v. The State & another 2006 SCMR 1786 wherein it is observed that:-

“5. ... The complainant certainly was not an eye-witness **but this is not necessary that case must be registered on the basis of information to be given by a person having direct knowledge of occurrence rather law can be set at motion by any person.** This may be pointed out that first information report is not substantive evidence and statement of first information, who is not an eye-witness cannot be treated at par to the direct evidence of an eye-witness but the same may be used as corroborative evidence.

Therefore, contention, so raised by learned counsel for appellant, with reference to complainant as not being an **eye-witness** has no relevancy for deciding legality of direct account, brought on record through other eye-witnesses. The acceptance or otherwise of direct evidence would require independent determination where it is to be seen that whether evidence of such witness could be accepted or otherwise which too is to be done on settled principles of appreciation of evidence.

14. Muhammad Malook (PW-02) in his evidence deposed that on 24.8.2013 at about 3.15 pm he along with Muhammad Ramzan went to see their friend Abdul Ghaffar (deceased) who is dealing with fruit business while they were chit-chatting, a police constable Muhammad Paryal (appellant) came and demanded money from the deceased to which he replied that today he has no money and he will pay him on next day. On that harsh words were exchanged, and on inquiry by above named eye witnesses, deceased disclosed the

name of police constable as Muhammad Paryal. Then police constable angrily went to the police line, meanwhile police constable fired twice at Abdul Ghaffar from the gate of police line which hit direct to Abdul Ghaffar, who fell down on the ground and they shifted him to hospital but he died on the way. In cross examination he has admitted that deceased Abdul Ghaffar was having a fruit "thella" at place of incident and at the time of demanding money the appellant was empty handed and no any customer was available at there. He further admitted that they did not see the appellant (accused) pointing rifle at the deceased, one bullet hit to deceased right side of his chest which was passed through and through and other had hit the deceased near his right ear which was also through and through. Muhammad Ramzan (PW-3) who is also eye witness of the incident also supported the version of PW Muhammad Malook and in his evidence deposed that on eventful day viz. 24.8.2013, he and Muhammad Malook went to meet Abdul Ghaffar (deceased) and as soon as they reached over there police constable arrived and demanded "Bhatta" from Abdul Ghaffar but he told him that he did not have any money and he will pay him on next day. Deceased Abdul Ghaffar disclosed the name of police constable as Muhammad Paryal. Said police constable had fired two shots from the gate of police line which hit to deceased Abdul Ghaffar, then they have phoned his brother Muhammad Ismail (complainant). They took Abdul Ghaffar to hospital but he

died on the way. In cross examination he admitted that previously deceased Abdul Ghaffar did not make any complaint about anybody. At the time when the appellant demanded "Bhatta" he was empty handed and he does not know where from the appellant got the rifle at the gate. He further admitted that he had seen the accused after second shot. At the time when first shot had hit to Abdul Ghaffar, he was standing and fell down when he received second bullet. The first shot bullet hit to deceased on his right side and second bullet hit to deceased within no time. The second bullet hit him to his right side of chest at the nipple and no passerby received any injury from said firing. The perusal of the record shows that there has not been any serious challenge to presence of these private eye-witnesses at place of incident; nor there is any denial to claim of friendship of these witnesses with the deceased. The claim of continuity of business by deceased in front of police line gate where (at gate) the appellant was performing his duties at relevant time. The appellant has also brought nothing on record against these eye-witnesses as well complainant which could justify replacement of real culprit with appellant. We would add that in absence of such proof, the possibility of false involvement in murder cases is always rare, particularly when it is a case of **single accused**. In the instant matter PW Muhammad Malook and PW Muhammad Ramzan are friends of deceased whose words were believed by complainant (blood-relation)

hence it does not appear to be believable that both of them agreed in substitution of real culprits with innocent person (appellant) when undeniably the time of incident is day-light incident. The reference in this context may be made to the case of **Zahoor Ahmed V. The state (2007 SCMR 1519)** wherein the Hon'ble Supreme Court of Pakistan has observed that:-

6. ... The petitioner is a maternal-cousin of the deceased, so also the first cousin of the deceased through paternal line of relationship and thus, in the light of the entire evidence it has correctly been concluded by the learned High Court that the blood relation would not spare the real culprit and instead would involve an innocent person in the case. Further it has rightly been observed that it was not essential for the prosecution to produce each of the cited witnesses at the trial.

15. The record further shows that prosecution does not depend on evidences of private persons but also examined natural witness i.e police constable Ghulam Mustafa (PW-08) who was performing his duty on the main gate of police line Hyderabad. In his evidence he deposed that on 24.8.2013 his duty was on main gate of police line Hyderabad. PC Muhammad ParyalMahar (appellant) was also assigned duty at main gate with him. He went to sit in the guard room adjacent to the main gate to check the mail during that PC Muhammad Paryal (appellant) had taken his SMG rifle and immediately had fired at Abdul GhaffarAagro (fruit-wala) standing in front of the gate, he fired two rounds one had hit

on the right chest through and through and other one on the right cheek which was also through and through. In meanwhile he pushed the appellant and he fell down and other police officials namely LO Ghulam Mustafa, PC Nadeem and PW Saleem also came there, apprehended the appellant Muhammad Paryal and recovered SMG from him. In cross examination he has admitted that he had not heard exchange of hot words between fruit-wala and the appellant nor he had seen any dispute between them, however, he has admitted that SMG rifle was issued to him. This witness supported the evidence of private eye-witnesses and since the defence never denied murder of deceased in consequence of fires from SMG then defence was under obligation to explain otherwise fact (story) resulting into death of deceased by use of SMG. This was never attempted by defence. The direct evidence, as detailed above is in shape of eye witness Muhammad Malook and Muhammad Ramzan and duly supported by other witnesses deputed/posted at main gate of police line hence the availability of witnesses at the venue of occurrence at the relevant time is quite natural, who otherwise categorically stuck with their claim from beginning that they along with deceased were chit-chating with each other and PW PC Ghulam Mustafa and LNK Nadeem Ahmed and ASI Ghulam Mustafa were posted at police line Hyderabad. These witnesses legally cannot be termed to be interested witnesses; rather would fall within category of natural witnesses. We

would not hesitate to observe that the evidence of these witnesses carries weight because first part i.e their presence at spot in support of their claim to have witnessed the incident is not disputed. Needless to mention that in absence of first part such a witness would never qualify the requirement necessary for direct evidence as required by Article-71 of Qanun-e-Shahadat Order 1984. In the instant matter, all these witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of occurrence in clear cut manner. Besides this, these eye witnesses have also explained the mode and manner of taking place of the occurrence; qua the capability of the appellant. Although, they were cross examined by the defense at length wherein they learned counsel for the defense asked multiple questions to shatter their confidence and so also presence at the scene of occurrence, but could not extract anything from both eye witnesses namely Muhammad Malook and Muhammad Ramzan, as well as other police officials and they remain constant on all material points. LNK Nadeem Ahmed (PW-09) also supported the evidence of the prosecution story and in his evidence he deposed that on 24.8.2013 he was posted at police Headquarter Hyderabad as Computer Operator, when he was working on computer, all of sudden he heard fire sound on main gate, then he alongwith ASI Ghulam Mustafa and PC Saleem came out and were standing, when Mustafa Sahab took them towards main gate where

they saw that PC Paryal had fallen down along with official SMG. On inquiry PC Mustafa disclosed that PC Paryal (appellant) had opened two fires at "Thela-wala" in front of main gate, ASI Mustafa then taken official SMG from PC Paryal (appellant) and took out magazine from the same and unloaded it along with 18-live bullets recovered from the magazine. ASI Ghulam Mustafa then arrested PC Muhammad Paryal (appellant); such mashirnama of arrest and recovery was prepared in presence of PC Muhammad Saleem and PC Nadeem Ahmed and obtained their signatures over it and produced at Exh.13-B. In cross examination he admitted that they had reached at place of incident within two minutes. Then in order to support the version of the mashir LNK Nadeem, prosecution has examined ASIP Ghulam Mustafa (PW-07) who has confirmed the arrest of the appellant in the above manner. There is no denial to such arrest of the appellant along with weapon, used in commission of the offence, hence, is also a strong corroboration to ocular account which was rightly believed so by the learned trial court.

16. In so far as the relation of eye witnesses to the complainant is concerned, an interested witness is not one who is relative or friend but is the one who has motive to falsely implicate any accused. Reliance in this context is placed upon the case of **Zulfiqar Ahmed and others Vs. The state (2011 SCMR-**

492) wherein the Honourable Supreme court of Pakistan has held that:

...It is well settled by now that merely on the ground of inter se relationship the statement of a witness cannot be brushed aside. The concept of "interested witness" was discussed elaborately in case titled Iqbal alias Bala V. The State (1994 SCMR-1) and it was held that 'friendship or relationship with the deceased will not be sufficient to discredit a witness particularly when there is no motive to falsely involve the accused.

17. Thus mere relationship of these eye witnesses with the deceased alone would not support the plea of the appellant that their testimonies are not worth believing. In the matters of capital punishments, the accused would not stand absolved by making a mere allegation of false implication; but once the prosecution establishes the charge, the defence becomes duty bound to establish its defence, if any, and failure in that regard would always bring its consequences.

18. The minor discrepancies in statements of all the witnesses are not enough to demolish the case of prosecution because these discrepancies always occurred on account of lapse of time which can be ignored. It is not a discrepancy or discrepancies which could be pressed for an acquittal but the defense has to bring on record the contradictions which too should be of a nature to cut at root of the prosecution towards their presence and manner of incident. It is settled principle that the variations in the statements of witnesses which are neither material nor serious enough to affect the

case of the prosecution adversely, are to be ignored by the court. It is also a settled principle that statements of the witnesses have to be read as a whole and the court should not pick up a sentence in isolation from the entire statement and ignoring its proper reference, use the same against or in favour of a party. The contradictions have to be material and substantial so as to adversely affect the case of prosecution.

19. Furthermore, from the evidence of both eye witnesses Muhammad Malook and Muhammad Ramzan it reveals that appellant Muhammad Paryal directly fired upon deceased Abdul Ghaffar who fell down and succumbed to injuries on the way to hospital. The ocular account of above said eye witnesses is substantiated with the medical evidence of Medical Officer Dr. Shahjahan who conducted postmortem on the dead body of deceased Abdul Ghaffar and found the following injuries.

- 1) Punctured lacerated wound of fire arm size about 1.cm in diameter with inverted margin over the right side of face that was wound of entry.

Punctured lacerated wound of fire arms size 1.5 cm in diameter with averted margin over the left side of neck (would of exit)

- 2) Punctured lacerated wound of fire arms size 1 c.m in diameter with inverted margin over the right lateral upper side of the chest (would of entry).

Punctured lacerated wound of fire arm size 1.5 cm in diameter over the left lateral part of the chest (wound of exit).

20. From the internal and external examination Medical Officer was of the opinion that death had been caused due to

severe bleeding cause shock and led to death in ordinary course of nature due to involvement of vital organ like heart and lungs and major blood vessel resulting from discharge of fire arm.

21. The Investigating Officer Razi Khan started investigation during which he visited the place of incident. He sent crime weapon (SMG) and empties to FSL Hyderabad for its report which he has produced at Exh.19/E wherein it was opined that two 7.62 mm bore crime empties now marked as “C 1” and “C2” were fired from the 7.62 mm bore SMG No.200 88502, in question, in view of the following major points i.e striker pin marks, breech face marks and ejector marks etc are **similar**. The clothes of deceased and blood stained earth were sent to the Chemical Examiner such report was found as positive as Exh.19/D. Thus, from the above evidence it is suffice to say that death of deceased Abdul Ghaffar was unnatural at the hands of appellant Muhammad Paryal. In this context the reliance is placed upon case of **Ali Bukhsh & others Vs. The State (2018 SCMR-354)** wherein the Hon’ble Supreme Court of Pakistan has held that:

“3...in the FIR lodged in respect of the incident in question the present appellants had been nominated and specific role has been attributed to them therein. The ocular account of incident has been furnished before the trial court by three eye witnesses namely Ali Akbar complainant (PW-01), Ghulam Shabir (PW-02) and Bilawal (PW-03) who had made consistent statements and had pointed their accusing fingers towards the present appellants as the main perpetrators of the murder in issue. The

said eye-witnesses had no reason to falsely implicate the appellants in a case of this nature and the medical evidence had provided sufficient support to the ocular account furnished by them”

22. Insofar as the motive is concerned, the prosecution has examined nine witnesses out of them eight witnesses have not supported the motive (demand of Bhatta) of the prosecution but only one witness namely Muhammad Ramzan (PW-3) has supported the prosecution motive for demand of “Bhatta”. In his evidence he has stated that “we went there one police constable came there and demanded “Bhatta” from Abdul Ghaffar but Abdul Ghaffar told him that he did not have any money for payment and he would pay him on the next date. Muhammad Malook (PW-2) who is also eye witness of the case in his evidence has deposed that “we were chit-chatting, a police constable came and demanded money from him”. ASIP Ghulam Mustafa (PW-7), he was on duty at police line Hyderabad in his cross examination he admitted that “being Line Officer of Police Line he has not received any complaint against him(appellant)”. SDPO Razi Khan (PW-12) who is also Investigation Officer in cross examination, he admitted that “I had not heard any complaint of the accused Peral in the past”, hence rest of the witnesses being police officials posted at police Line Hyderabad admitted that previously no complaint was received against the appellant regarding demand of “Bhatta”. Muhammad Ramzan (PW-3) has not been corroborated by any of above cited witnesses regarding

demand of “Bhatta” while one eye witness Muhammad Malook (PW-2) who in his evidence stated that appellant demanded money from deceased (Abdul Ghaffar), whether demand of money was for the purpose of “Bhatta” or otherwise, no evidence has been led by the prosecution during the course of trial regarding demand of “Bhatta” even the quantum of “Bhatta” money has not been disclosed by any of the witness. Therefore, the prosecution has failed to prove the motive (demand of “Bhatta”); hence real cause of occurrence remained shrouded in mystery. In this context reliance is placed on the case of Mst. Nazia Anwar V. The State 2018 SCMR 911 wherein the Hon’ble Supreme Court has held that :

“4..... I have, thus entertained no manner of doubt that the real cause of occurrence was something different which had been completely suppressed by both the parties to the case and that real cause of occurrence had remain shrouded in mystery.

23. Prima facie, the prosecution never brought any substantial evidence / material on record to establish demand of **‘Bhatta’** and mere use of words of **‘Bhatta’** would never justify punishment for offence under section 6 of the Act. Reference may be made to case of Sagheer Ahmed v. The State 2016 SCMR 1754 wherein it is observed as:-

“10. Complainant has also not disclosed the specific dates, times and places of demanding Bhatta by accused persons nor any such evidence was produced before the Investigating Officer to prima facie establish such allegations. **In absence of any tangible material, mere allegations of demanding Bhatta do not attract section**

6(2)(k) of Anti-Terrorism Act, 1997, in the present case nor said section was mentioned in the FIR and Challan.

24. Failure of prosecution to establish such independent charge would always result in failure of rejection of charge to such extent. A claim of money would not be a substitute to that of '**Bhatta**' as both carry independent definitions / meanings. The root of this murder even if believed to be result of dispute over some demand of money would not hold conviction for offence as defined U/s 6 of the Anti-Terrorism Act, 1997. Further, the prosecution story prima facie shows appellant first came with empty handed; but on exchange of hot-words went; took SMG and fired at deceased only. Such story also negates an intention of causing terror among the general public. In such circumstances, offence of murder or bodily harms, committed by the individual(s) in a sudden fight even at public place, would not bring such actions within the definition of terrorism.

25. Considering the facts and circumstances discussed above, we are of the humble view that the prosecution has successfully proved its case against appellant Muhammad Paryal through ocular account furnished by complainant Muhammad Ismail (PW-01) and eye witnesses Muhammad Malook (PW-2), Muhammad Ramzan (PW-03) duly supported by ASIP Ghulam Mustafa (PW-07), PC Ghulam Mustafa (PW-08), LNK Nadeem Ahmed (PW-09) which is also corroborated by evidence of Medicolegal Officer Dr. Shahjahan (PW-04) and

circumstantial evidence by Investigation Officer Razi Khan (PW-12).

26. Accordingly, the conviction and sentence awarded to the appellant Muhammad ParyalMahar by the trial court R.I for life and fine of Rs.100,000/- and one year imprisonment more in case of non-payment of fine is hereby maintained. Since the learned trial court omitted to mention clause(b) of section 302 PPC while awarding this sentence, though charge was framed to that extent as well, hence it is to be necessarily construed that appellant Muhammad Paryal was convicted and sentenced U/s 302(b) PPC R.I Life Imprisonment and fine of Rs.100,000/- to be paid to the legal heirs of deceased Abdul Ghaffar as compensation and in case of default of payment of fine to suffer S.I for six months more. However, the benefit of section 382-B Cr.P.C beextended to the appellant. The conviction and sentence R.I Ten years for offence punishable U/s 6(2)(k) under section 7(h) of Anti-Terrorism Act, 1997 alongwith compensation are hereby set aside; and with above modification, instant appeal filed by the appellant is dismissed.

Dated: this 26th day of June, 2018.

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