ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

Special Cr. A.T. Appeal No.261 of 2018
Special Cr. A.T. Appeal No.262 of 2018
Special Cr. A.T. Jail Appeal No.311 of 2018
Conf. Case (A.T.A) No.13 of 2018

DATE ORDER WITH SIGNATURE OF JUDGE

Present:-
Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Agha Faisal.

Special Cr. A.T. Appeal No.261 of 2018
[Sikandar Ali Lashari vs. The State]

Special Cr. A.T. Appeal No.262 of 2018
[Sikandar Ali Lashari vs. The State]

Special Cr. A.T. Jail Appeal No.311 of 2018
[Muhammad Irfan Khan @ Faheem vs. The State]

Conf. Case (A.T.A) No.13 of 2018
[Reference made by the Judge, ATC No.II,
Karachi for confirmation of death penalty

Dates of hearing:17.6, 25.6, 21.8, 22.8, 02.9, 12.9, 24.9, 29.10, 27.11, 10.12 and 17.12.2019 and 16.3.2020

Sardar Latif Khan Khosa, Advocate for the Appellant in Special Cr. A.T Appeal Nos.261 & 262 of 2018 along with M/s. Sardar Shahbaz Ali Khan Khosa, Malik Javed Iqbal Wains, Baqar Mehdi, Samil Malik Khan, Agha Mustafa Durrani & Ms. Sozeen Khattak, Advocates.

Mr. Abdul Razzak, Advocate for the Appellant in Cr.A.T Jail Appeal No.311 of 2018.

M/s. Peer Asadullah Shah Rashidi, Shahid Hussain Soomro, Sajid Hussain Soomro, Sharfuddin Jamali, Muhammad Dawood Narejo, Nadir Khan Burdi and Mir Muhammad Buriro, Advocates for the Complainant.

Mr. Khadim Hussain, Additional Prosecutor General.

Mr. Jawwad Dero, Addl. A.G. Sindh.

Muhammad Ali Mazhar, J: The aforesaid Special Cr. ATA and Special Cr. A.T. Jail Appeals have been filed by the appellants to

challenge the judgment passed by learned Anti-Terrorism Court No.II, Karachi on 29.8.2018 in Special Case No.91/2014, (FIR. No.12/2014 lodged under Section 302/109/34 PPC read with Section 7 of ATA, 1997 at P.S.GOR Hyderabad) and Special Case No.92/2014 (FIR No. 55/2014, lodged under Section 23-A/24 & 25 of Sindh Arms Act, 2013, P.S. Jamshoro, Hyderabad) whereby both the appellants have convicted to death penalty under Section 302, 109, 114 of PPC and Section 6 & 7 of ATA 1997. Conviction for 14 years rigorous imprisonment was also recorded under Section 23 (i) A, 24 and 25 of the Sindh Arms Act 2013 with further direction to Sikandar Ali Lashari and Irfan to pay compensation to the legal heirs of the deceased.

2. The short-lived facts of the prosecution case are as under:

> **FIR No.12/2014 was lodged by Hunain Tariq on 20.2.2014 under Section 302/109/34 PPC read with Section 7 of ATA, 1997 at Police Station GOR Hyderabad that he dwells with his uncle Khalid Hussain Shahani, Session Judge Jacobabad whose eldest son Aqib Hussain aged about 18 to 19 years was student of first year of Hamdard University Karachi. On 19-2-2014, the complainant along with his cousin Aqib Hussain and his mother Shams un Nisa, sister Komal and Nimra and younger brother Adil left for the Judicial Complex, Hyderabad after Magrib prayer in car to visit Aijaz Khaskheli. They left Judicial Complex Hyderabad at about 9.30 or 10.00 p.m for home. Aqib Hussain was driving the car whereas Shams-un-Nisa, Adil, Komal, Nimra and complainant were also sitting in car. They were going through Niaz Stadium, when at about 10.25 pm, they reached adjacent to Southern Corner, WAPDA Sports when silver colour corolla car, crossed and wedged/blocked them. The complainant saw that four persons, armed with weapons, alighted, opened the door of the car and from my cousin Aqib Hussain enquired his name whether he is son of Session Judge and studying in Hamdard University. The person sitting on the driving seat shouted that he is Aqib Hussain and do not spare him. Upon which two persons caught hold of Aqib Hussain and one of them fired at Aqib Hussain 15 to 16 times then Aqib fell down, the accused had also fired at Aqib Hussain when he had fallen down. According to the complainant, he and other persons sitting in Aqib's car had seen all 05 persons in the headlights of car and could identify them. When they came out from car Aqib was found dead and drenched in blood. He was brought to Civil Hospital, Hyderabad in a Rickshaw where doctors confirmed Aqib's death. The complainant lodged the FIR that silver car had followed them from Judicial Complex Hyderabad and in this car aforesaid accused persons in collusion with each other committed the murder of his cousin.**

3. Sardar Latif Khosa, learned counsel for the appellant Sikandar Ali Lashari argued that no accused was nominated in the FIR. The prosecution case against Sikandar Ali Lashari admittedly does not allege his physical participation in the occurrence. Ocular/Eye witnesses are only family members. The deceased along with other eye witnesses were travelling in their own car but surprisingly the deceased was taken to the hospital in a Rickshaw. The ocular account of pulling out deceased from the

car and firing from point blank range as in such eventuality the injuries were bound to carry the scars of burning and charring. Pir Fareed Jan managed so called video confession. PW-18: Irshad Baig who fixed CCTV camera and produced CD and USB was not an expert. Sikandar Ali Lashari was not told by SSP that his statement was being recorded. Pir Fareed Jan SSP did not appear as witness in the case therefore the CD/USB is inadmissible in term of recent judgment of Supreme Court in Judge Arshad Malik's Case (PLD 2019 SC 675). Sikandar Ali Lashari remained in custody for a month and 25 days and video recording was made on 20.3.2014 under inducement and deceitful means by practicing fraud. Video recording doesn't spell out command to kill rather Sikander Ali Lashari stated that "if Barkat Lashari said so, you should blacken my face and make me ride a donkey, you can write it down. You said you will help me". Recovery was planted on 1.04.2014. PW-19 Muhammad Asim, In charge of digital Investigation Cell stated that all the CDR's he produced in the court are computer generated from SSP Office. He voluntarily said that franchise companies had sent CDR's through email.

4. It was further contended that Sikandar Ali Lashari was implicated purely on circumstantial evidence. No evidence worth to incriminate Sikandar Ali Lashari with the charge of abetting or masterminding. It was further contented that Sikandar Ali Lashari was posted as District & Sessions Judge in Jamshoro, Kotri in year 2010, where Muhammad Khan Kheshkheli filed an application for lodging FIR against some individuals including PIR Fareed Jan, then DPO Operation and in capacity of District and Session Judge Sikandar Lashari passed an order on 29.4.2010 for lodging FIR, therefore Pir Fareed Jan was annoyed and implicated Sikandar Lashari to take revenge.

5. He further argued that Article 164 of QSO expressly authorizes Court to allow to produce evidence that may have become

available because of modern devices or techniques in such cases as it may consider appropriate. Audio Cassette and tape recorders were thus, admissible in evidence. On the other hand, Indian Supreme Court has clarified that tape recorded conversation can only be relied upon as corroborated evidence of conversation deposed by any of the parties to the conversation and in the absence of any such conversation, the tape recorded conversation is indeed, no proper evidence and cannot be relied upon. (Ref:Mahbir Parsand Verma Dr. Surinder Kaur (1982) 2 SCS 258).

6. It was further contended that the preamble of ATA Act, 1997 clearly indicates that it was promulgated for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences. So, in the cases of the terrorism, the mens rea should be with an object to accomplish the act of terrorism and carrying out terrorist activities to overawe the state. The learned counsel relied on following judicial precedents:

1.2019 SCMR 301 (Majeed alias Majeedi & others v. The State). Accused had not been nominated in the FIR and according to the prosecution he was implicated upon his own disclosure allegedly made before the local police when he had been arrested in connection with some other case. In such backdrop cautious approach had to be adopted in placing a whole hearted reliance upon the statement made by the complainant before the Trial Court. Accused was acquitted of the charge by extending the benefit of doubt.

2.2018 SCMR 577 (Kamal Din alias Kamala v. The State). In the FIR the culprits had not been nominated and they were mentioned as unknown. One of the injured eye-witnesses had acknowledged before the Trial Court that the accused persons had been shown to him at the police station before holding of the test identification parade. Proceedings of the test identification parade clearly showed that the accused had not been picked up by the eye-witnesses with reference to any role played by him during the occurrence.

3.2017 SCMR 486 (Muhammad Asif v. The State). Once prosecution witnesses were disbelieved with respect to a co-accused then, they could not be relied upon with regard to the other accused unless they were corroborated by corroboratory evidence which came from an independent source and was also unimpeachable in nature.

4.PLD 2019 S.C. 488 (Kanwar Anwaar Ali Special Judicial Magistrate in the matter of). Evidentiary value and object of test identification parade in criminal cases stated. Test identification parade and correct pointing out of an accused person by an eye-witness therein was not a substantive piece of evidence. Evidence offered through identification proceedings was not a substantive piece of evidence but was only corroborative of the evidence given by the witnesses at the trial. It had no independent value of its own and could not as a rule, form a sufficient basis for conviction though the same may add some weight to the other evidence available on record; identification parade was necessary only where the offender was

a complete stranger to the witnesses. Whole object of the identification proceedings was to find out whether the suspect was or was not the real offender; failure to hold a test identification parade was not always fatal to the prosecution's case.

5.2009 SCMR 230 (Muhammad Akram v. The State). Prosecution witnesses had made divergent statements at the trial about delivery of ransom amount exonerating one accused. If the prosecution witnesses could involve one accused in a false case, then their statements qua the other accused could not be relied upon in the absence of very strong, independent and corroboratory evidence against them. Recovery of weapons was also of no consequence as the same were never sent to any Expert to determine whether they were in working order or not. Prosecution evidence was not free from doubt, benefit of which must be given to the accused as a matter of right and not of grace.

6.2019 YLR 337 (Syed Muhammad v. The State). If two distinctive interpretations or explanations of law and facts were available, the one which favored accused, must be followed. Accused could not be deprived of benefit of doubt, merely because there was only one circumstance, which created doubt in the prosecution story.

7.2019 P.Cr.L.J. 442 (Abdul Baqi v. The State). For awarding conviction on the basis of extra judicial confession, three-fold proof was required i.e. firstly, it was in fact made; secondly; that it was voluntarily made; and thirdly, it was truly made. Judicial or extra judicial confession could be made sole basis for conviction of an accused, if the court was satisfied and had believed that it was true and voluntary and was not obtained by torture, coercion or inducement.

8.2017 SCMR 2026 (Fayyaz Ahmad v. The State). To believe or rely on circumstantial evidence, it was imperative for the prosecution to provide all links in an unbroken chain, where one end of the same touched the dead body and the other the neck of the accused. To carry conviction on a capital charge it was essential for the courts to deeply scrutinize circumstantial evidence because fabricating of such evidence was not uncommon. Minute and narrow examination of circumstantial evidence was necessary to secure the ends of justice. For a case resting on circumstantial evidence prosecution had to establish the case beyond all reasonable doubts. Beyond "reasonable doubt" did not mean any doubt but it must be accompanied by reasons, sufficient to persuade a judicial mind for placing reliance on the same. To draw an inference of guilt from such evidence, the court had to apply its judicial mind with deep thought, extra care and caution and whenever there was any indications showing the design of the prosecution of manufacturing and preparation of a case, the courts had to show reluctance in believing it unless it was judicially satisfied about the guilt of accused person and the required chain was made out without any missing link.

9. PLD 2019 Lahore 366 (Yasir Ayyaz v. The State). Qanun-e-Shahadat. Article 164 had revolutionized the scope to accommodate modern innovative techniques to secure, preserve and reproduce the information, hitherto unavailable. Said provision of law independently provided a wide mechanism to bring on record evidence through visual, audio, digital, sonic or biological and other means on the basis of information capable to establish or negate any fact in issue, certainly subject to integrity of the procedure/process duly qualified in the case.

10. 2013 SCMR 383 (Azhar Iqbal v. The State). (c) Criminal Procedure Code. Statement of an accused recorded under S.342, Cr.P.C. was to be accepted or rejected in its entirety and where the prosecution's evidence was found to be reliable and the exculpatory part of such statement was established to be false and excluded from consideration, then the inculpatory part of such statement might be read in support of prosecution's evidence.

11. 2009 SCMR 230 (Muhammad Akram v. The State). For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts. Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession but as a matter of right.

12. 2018 SCMR 372 (Atta ur Rehman & another v. The State). Death sentence reduced to imprisonment for life. Mitigating circumstances. Sentence of death was withheld when it was not clear as to whether a particular accused was actually responsible for causing death or not.

13. 1999 YLR 2250 (Gulzar Hussain Awan v. Akbar). Article 164. Audio/video cassette and evidence of tape-recorded conversation could be made admissible in evidence.

14. PLD 2020 Supreme Court 61 (Ghulam Hussain and others vs. The State in which honurable Supreme Court held that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act…. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.

7. Mr. Abdul Razzak, learned counsel for the appellant Irfan Khan though adopted the arguments of Sardar Latif Khan Khosa. However he added that according to charge sheet Sikanadar Lashari disclosed during interrogation that appellant Muhammad Irfan Khan @ Faheem was his accomplice in the crime but Sikandar Lashari in his statement recorded under Section 342 Cr.P.C clearly stated that he does not know him. The ocular statements of eyewitnesses PW-1 to PW-4, relatives of the deceased were false that they were accompanied with the deceased when he was dragged out from the car and firing upon him. All four witnesses given different statement regarding holding hands of Aqib Shahani whereas the Doctor's report establishes that Aqib Shahani had received many bullets. If the appellant enfolded the deceased from his back, Irfan would have also sustained bullet injuries. He further argued that MLO was not competent in Medical and Forensic Science. The appellant Irfan could not be linked with the incident. He relied on following judicial precedents:

1. 2010 SCMR 1706 (Muhammad Asghar alias Nannah vs. The State). Onus rests on prosecution to prove guilt of accused beyond a reasonable doubt throughout the trial and it never shifts to accused except in cases falling under Art. 121 of Qanun-e-Shahadat, 1984, but it is inextricably linked to presumption of innocence of accused. Two concepts i.e., "proof beyond reasonable doubt" and "presumption of innocence" are so closely linked together that the same must be presented as a unit. Presumption of innocence is the

golden thread of criminal justice then proof beyond a reasonable doubt is silver and these two threads are forever intertwined in the fabric of criminal justice. Reasonable doubt is real doubt, an honest doubt, a doubt that has its foundation in the evidence or lack of evidence, it is the doubt that is honestly entertained and is reasonable in the light of evidence after a fair comparison and careful examination of entire evidence.

2. 2011 SCMR 474 (Muhammad Saleem vs. Muhammad Azan). Prosecution witnesses while appearing in court made improvements in their statements to strengthen prosecution case, such improvements had cast serious doubt on veracity of such witnesses. High Court was also justified to come to conclusion that medical evidence was in conflict with ocular evidence, therefore, reliance on such ocular testimony was unsafe.

8. Peer Asadullah Shah Rashidi, learned counsel for the complainant argued the object of killing was to content family honour alone. The eye witnesses have stated that victim was fired and fell down despite that he was being fired. No cross examination was conducted by the appellants from eye witnesses and MLO on the injuries. The eye witness PW Hunain Shahani in examination in chief clearly stated that the person who dragged him out held him from his arms on his back side and the one who had knocked the glass of window of our car fired at him indiscriminately. When Aqib was fired upon he fell down and thereafter too he was being fired upon. About 16/17 bullets were fired. It is afterthought that S.S.P. Pir Fareed Jan Sarhandi due to personal grudge implicated Sikandar Ali Lashari in this case. It was further contended that against Irfan, four eye witnesses assigned him direct role of holding arms of the deceased from back, whereas other accused Ghulam Abbass Siyal (absconder) fired as many as 17/18 firearm shots on deceased. It was further averred that messages data received from the mobiles of deceased by the Investigation Officer got first clue that deceased and Miss Keenjhar D/o Sikandar Lashari were in a relationship, cook of Sikandar Lashari namely Malook saw them in a room of house of Sikandar Lashari, narrated this to wife of Sikandar Lashari, who in turn informed Sikandar Lashari, he maltreated Miss Keenjhar and shown his anger. Further, the data reveals that deceased was being chased by official police guard of Sikandar Lashari namely Morchana and deceased felt threats to his life.

The evidence of motive is available everywhere in all pieces of evidence.

9. It was further averred that CDR data of Sikandar Lashari shows that he was using SIM of PW Abdul Saleem Afridi at his own IMEI number and he remained in regular contact with accused Barkat Lashari (absconder), who in turn was in contact with actual killers. The data further reveals that Sikandar Lashari was in contact with his guard Morchana through his own and other sim of Afridi. Many notices under section 94 Cr.P.C were sent to Sikandar Lashari to produce his mobile for forensic opinion and daughter but he failed therefore, adverse inference can be drawn against him under Article 129 of Qanoon-e-Shahadat Order 1984. The learned counsel further pointed out some admissions from video recording of interrogation and relied on Article 42 of Qanun-e-Shahadat Order, 1984. The video was played in open court by Trial judge and it was found audible, true and genuine.

10. It was further contended that the crime weapons were recovered by police on pointation of Sikandar Lashari in presence of two private witnesses. The empties of recovered weapons also matched with the empties recovered from crime scene and both the FSL Reports are available on record which makes the case of the prosecution strong enough. One arm license of absconder Farhan Siyal was also found with crime weapons. The transcripts of voice recordings were also produced by Investigation Officer in which Miss Keenjhar has admitted that she was in love with the deceased. The learned counsel denied that learned Judicial Magistrate Ihsan Malik applied Section 6 of A.T.A., 1997 because he was student of Mr. Khalid Hussain Shahani in Law College. The order of learned magistrate forwarding the case to A.T.C. was not challenged. The recording of 164 Cr.P.C. statements and conducting identification parades was done in his official duties being area magistrate of P.S. GOR colony. The same magistrate recorded version of witness Manzoor Deeper who had resiled

from his statement under Section 161 Cr.P.C. A large size of photo of absconding accused Ghulam Abbas Siyal was shown to identifying witnesses, since this photo was available in the crime record of accused which was brought by police for the purpose of identification parade due to the fact that Ghulum Abbas Siyal had absconded. In support of his contention, the learned counsel referred to following dictums:-

1. AIR (33)1946 Calcutta 156 (Dhanapati De and others vs. Emperor.) A confession is a statement which either admits in terms the offence or at any rate substantially all the facts which constitute the offence. The statement of an accused which is not self-exculpatory but which does minimize the part he took in the offence and which ascribes to himself a part much less important and much less active than that ascribed to others named by him is a confession.

2. PLD 2016 S.C. 17 (Malik Muhammad Mumtaz Qadri v. The State). (c) In a case of murder two questions were of paramount importance, first, was it the accused person facing the trial who had committed the murder in issue?; and second, if it was the accused person facing the trial who had committed the murder in issue then did he have any factual or legal justification for committing that murder?. Ground for mitigation of sentence could not be pressed into service on the basis of something which had never been proved on the record. Significance of motive in a case of murder was to establish as to who would be interested in killing the person murdered and such factor was to provide corroboration to the ocular account furnished by the prosecution but where the accused person admitted killing the deceased there the primary purpose of setting up the motive stood served.

11. Mr. Khadim Hussain, Additional Prosecutor General though subscribed the arguments move forward by the learned counsel for the complainant, however he added that news of this brutal murder of Aqib was published in so many newspapers which created insecurity and sense of fear in society that son of District Judge is not even safe. This also caused resentment in the lawyers community who went on boycott, city of Larkana was also closed due to this incident. The eye witnesses were also frightened who could not come out from car. He further argued that motive of this murder is obvious that Sikandar Ali Lashari was annoyed to know the love affair of his daughter with Aqib and Sikandar Lashari admitted in video that he is responsible of this crime. Accused Sikandar Ali Lashari has not examined himself on oath nor he has produced his daughter Keenjar to deny. He further argued that data of messages, video CD and

voice messages produced in court indisputably proved that Sikandar Al Lashari was the mastermind and strong ocular testimony is also available on record against Irfan.

12. Heard the arguments. The learned trial court has extensively considered the entire evidence led in the trial and we have also vetted and scrutinized the evidence. The learned trial court declared proclaimed offenders to accused Barkat, Ghulam Abbass, Iqbal, Morchand/morchana on 11.6.2014. The charge was framed on 8.01.2016 and both the present appellants pleaded not guilty and claimed the trial. The indispensable gist and or pith and substance of the testaments deciphering from record are that P.W-1, Hunain Tariq deposed entire incident whereas PW-2, Shams-un-Nisa, PW-3, Komal Shahani and PW-4, Adil Hussain all corroborated the statement of PW-1 and deposed the same; PW-11, Syed Babar Ali Shah stated that he heard the firing and stopped at one side and due to this incident harassment was created amongst the public and after firing PW stopped the Rickshaw, thereafter, Aqib was taken to Civil Hospital. In the Identification Parade PW-1 to PW-4 all identified Ghulam Abbas Siyal from his photo and in another Identification Parade also identified Irfan who dragged out the deceased from the car and held his hands from flipside and Ghulam Abbas Siyal fired on Aqib on which he was fallen down, thereafter, more gunshots were fired on him; MLO Dr. Baldevo Maheshwari who conducted postmortem avowed that deceased sustained 19 injuries out of which three were in his genital organs; PW-21, Razi Khan Almani produced the FSL report. It was also brought on record by means of the data of two mobile phones to show that deceased Aqib Shahani was in unvarying contact with Ms. Keenjhar. The messages also divulged that cook Malook had seen Aqib while coming out of Keenjhar room and shared this with appellant Sikandar Ali Lashari and his wife Fareeda Lashari. The data of messages of mobile phones was produced as Exhibit 43-K with some photographs of Aqib Shahani and Keenjhar in mobile

phones as Exhibit P/43-E, P43-F and P43-G. Cook Malook stated in his 161 Cr.P.C. statement that he had seen Aqib Shahani coming out from the room of Keenjhar and informed Sikandar Ali Lashari, his wife and gunman Morchana. It is also manifested from the chronicle of the case that CDR, photographs and the messages were put on view to the honourable Chief Justice of this Court thereafter, his lordship ordered to interrogate appellant Sikandar Ali Lashari and his wife. PW-6 Abdul Saleem, Clerk of IInd ADJ Hyderabad stated that he obtained Ufone sim and handed over to Sikandar Ali Lashari who had mobile of dual sim and using one sim of Mobilink. The statement of this witness was also recorded under Section 164 Cr.P.C. in presence of Sikandar Ali Lashari.

13. The evidence also reflects that PW-18 P.C., Irshad Baig was called at SSP House Civil Line Hyderabad on 20.03.2014 to install a camera so that statement of Sikandar Ali Lashari may be recorded. The said witness recorded the conversation between SSP, Pir Fareed Jan Sirhindi and Appellant Sikandar Ali Lashari on 20.03.2014. He produced C.D. as Article “G” and USB as Article “H” in Sindhi Language. PW-21 Razi Khan Almani produced its transcript in Urdu language as Ex. P/43-Z. The impugned judgment unequivocally demonstrates that the CD (video recorded statement) was also played in the trial court but the trial court did not find it tampered though it was opposed by the defence counsel as manipulated. PW-19, Muhammad Asim, In charge of Digital Investigation Cell was given two numbers of deceased Aqib Shahani. He called interim report of said numbers and also produced CDR. The same witness also produced the CDR of mobile phone which was in the name of Sikandar Ali Lashari. He also obtained CDR of mobile phone which was in the name of Abdul Saleem and CDR of mobile phone which was in the name of Ufaq wife of absconding accused Barkat Ali Lashari. He also obtained CDR of another mobile phone which was in the name of Syed Alan Shah but it was being used by absconding

accused Ghulam Abbas Siyal. The CDR shows that Sikandar Ali Lashari was in touch with killers.

14. According to PW-22, Khawar Gul, Shams-un-Nisa, mother of Aqib Shahani appeared on 03.05.2014 to give further statement and also handed over CD of mobile conversation between her (Shams-un-Nisa) and Ms. Keenjhar and also with Tariq brother of deceased to show that Keenjhar was infatuated and in love with Aqib Shahani and wanted to marry him. The mushirnama presents the narrative of entire incident. Blood was picked up from the road and secured in a plastic bag. 15 9mm empties were also recovered. The CDR, Ex.P/41 produced in evidence discernibly demonstrates that Sikandar Lashari on 19.02.2014 at 22:01:52 hours called from mobile phone No. 0333-2617126 to Barkat Lashari for 59 seconds and again Sikandar Lashari at 22:29:07 hours for 22 seconds called to Barkat Lashari and Barkat Lashari after hearing from Sikandar Lashari called Ghulam Abbas Siyal at 22:30:01 for 13 seconds. Barkat Lashari then called accused Sikandar Lashari at 22:30:30 for 10 seconds. Sikandar Lashari again called Barkat Lashari at 22:37:11 for 14 seconds and sequentially Barkat Lashari called Ghulam Abbas Siyal at 22:38:30 for 68 seconds and Barkat Lashari called Sikandar Lashari at 22:39:55 for 27 seconds. PW-19 Muhammad Asim had produced the CDRs of the Sims of all the accused including deceased Aqib which disclosed that Aqib was chased by the killers. The data also displayed that Sikandar Lashari was continually in contact with the killers on 19.02.2014 till 11:00 P.M. Appellant Sikandar Ali Lashari neither examined himself on oath nor produced his daughter Kenjar to deny anything nor produced and defence witness. The record reflects that Sikandar Lashari also pointed out the place where the murder weapons were shrouded i.e. a cattle farm at Saeedabad Colony Jamshoro. The mushirnama was produced as Ex.P/42-A. IO Razi Khan Almani sent the weapons for FSL and according to the report one pistol used in the murder of Aqib had matched with the empties

recovered from the scene of crime whereas other appellant Irfan was arrested on 22.04.2014.

15. Razi Khan Almani retired DSP stated that vide letter dated 20.02.2014 (exhibit 43-C) Special Team was constituted by SSP Hyderabad comprising five members and he was also one of the members of the Special Investigation Team. He also pointed out letter dated 03.03.2014 issued to the Registrar of High Court of Sindh and also exhibited various notices under Section 94 Cr.P.C issued to Sikandar Lashari for production of her daughter for statement and her protection/safety. He further stated in his evidence that photographs of deceased as well as Ms. Keenjhar were shown to (the then) hon'ble Chief Justice of Pakistan Tasaduq Hussain Jilani, hon'ble Justice Anwar Zaheer Jamali and hon'ble Justice Khilji Arif Hussain as well as hon'ble Chief Justice of Sindh High Court. He also produced a letter issued to the Registrar, Sindh High Court for allowing interrogation of Sikandar Lashari. He further stated that cook Malook in his statement recorded under Section 161 Cr.P.C stated that he had seen Aqib Shahani coming out from room of Ms.Keenjhar and he had informed this to Sikandar Lashari, his wife Ms. Waheeda Lashari and Morchana his gunman. He further deposed that SSP Hyderabad Pir Fareed Jan Sirhindi, DSP Umer Tufail, Ijaz Ali SDPO Qasimabad, SIP Sikandar Mustafa SHO GOR and SIP Munir Abbasi met the hon'ble Chief Justice of this court and the hon'ble Chief Justice given a date to submit the progress report. He also produced progress report which was presented to the hon'ble Chief Justice of this court through Registrar, Sindh High Court and after going through CDR, photographs and the progress report, the hon'ble Chief Justice ordered to interrogate the accused Sikandar Lashari and his staff, thereafter, he was arrested. The same witness also produced the voice recording of telephonic conversation between Shams-un-Nisa (mother of deceased), Keenjhar (daughter of Sikandar Lashari), Komal (Aqib's sister) Tariq (younger brother of Aqib) and Shahzad

(Aqib's cousin). In order to deny, Sikandar Lashari never produced her daughter nor produced any evidence nor recorded his statement under Section 342 Cr.P.C on oath. The said conversation speaks volume and also revealing undoubtedly a love affair between deceased and daughter of Sikandar Lashari.

16. After closing the side by the prosecution, the statement under Section 342 Cr.P.C of appellant Sikandar Lashari Ali was recorded on 12.5.2018. The statement of appellant Irfan was also recorded on 21.5.2018. However on the application of appellant Sikandar Lashari his one more statement under Section 342 Cr.P.C was also recorded on 28.5.2018 in which he produced various documents such as different proceedings conducted by him as Session Judge to show that he passed some orders against SSP Pir Fareed Jan Sirhindi so he had become inimical which is misconceived and miscomprehended notion while keeping in mind the entire facts and evidence led in the case. It is well settled exposition of law that if any incriminating piece of evidence is not put to accused in his statement under Section 342, Cr.P.C. for his explanation, then the same cannot be used against him for his conviction. We have found out that each and every incriminating piece of evidence was confronted to both the appellants adequately for their explanation in their detailed statements recorded under Section 342 Cr.P.C.

17. The Video CD of conversation between SSP Pir Fareed Jan Sirhindi and Sikandar Ali Lashari was played in the trial court which fact has not been denied by the learned counsel of the both appellants. For our satisfaction, we have also seen the same video CD footage in chamber and also compared the statement with the transcript produced in Urdu language in trial court. The picture was clear and voice was clearly audible and not lost or distorted by other sounds or disturbance. The video does not

demonstrate or indicate any coercion or compulsion rather Sikandar Ali Lashari was sitting in a very comfortable and congenial manner, drinking juice and voluntarily talking to SSP without any pressure even sometimes he suggested SSP to record what he is saying. Meaning of dubbing is replacement of a soundtrack in one language by one in another language; the combination of several soundtracks into a single track; the addition of a soundtrack to a film or broadcast. To add (sound effects or new dialogue) to a film or to a radio or television production. To provide (a motion-picture film) with a new soundtrack and especially dialogue in a different language; to make a new recording of (sound or videotape already recorded) *also* to mix (recorded sound or videotape from different sources) into a single recording. **(Ref: https://www.collinsdictionary.com/dictionary/english/dubbing & https://www.merriam-webster.com/dictionary/dub).** Dubbing, mixing or re-recording is a post-production process used in filmmaking and video production in which additional or supplementary recordings are lip-synced and mixed with original production sound to create the finished soundtrack. We have very carefully watched and listened Sikandar Lashari video statement in CD to figure out his speech patterns, expressions, conversation/colloquy, movements and gestures and it goes beyond any doubt and no reason or probability to believe that the conversation was recorded with some kind of threats or coercion. This is in fact an actual record of the conversation of the event. The voice and picture in C.D. does not seem to be tampered with or doctored. The accuracy of the recording has been proved with satisfactory evidence so as to rule out any possibility of tampering with the record. In this video statement, Sikandar Ali Lashari made various admissions which show that he was the mastermind who hired or arranged assassins to murder Aqib. Even in his 342 Cr.P.C statement he did not raise objections or demur that the C.D. recording was doctored but claimed that it was recorded in some inducement. SSP Pir Fareed Jan Sirhindi was questioning Sikandar Ali Lashari

in a free and friendly manner and Sikandar Ali Lashari was also replying the questions in peaceful and in friendly manner. Video statement was recorded by P.C. Arshad who was examined in court and I.O. Razi Khan stated that he was present in another room when the video was recorded The statement of the Sikandar Lashari in video C.D is also corroborated by the CDR that Sikandar Lashari was in contact with the killers and he planned and mastermind of the murder of Aqib.

18. The picture-perfect video footage with clear soundtrack undoubtedly corroborates and substantiates with other available evidences that it was Sikandar Lashari who orchestrated and plan out the homicide of Aqib to quiet down and pacify his grudge and resentment. He made various admissions which are sufficient to prove his culpability if weigh down and mull over with the intrinsic value of evidence including CDR and messages data which all inspiring confidence. The motive is also self-explanatory and easy to understand in the case in hand which an admitted fact in the video statement is. It is clearly seen in the video that Sikandar Lashari said that he will not hide anything, he admitted that after knowing affair of his daughter with Aqib from his wife, he called Barkat Lashari at his under construction house in Hussainabad, Hyderabad and narrated the whole event to Barkat Lashari who sought Sikandar Lashari instructions but he stopped to do anything because may be Mr.Shahani come to meet him. When Barkat Lashari asked his thoughts, Sikandar Lashari told him that we'll get him (Aqib) beaten up so that he gets deterred. Sikandar Lashari stated that he had no knowledge about whom Barkat Lashari contacted but next Sunday when Sikandar Lashari went to his plot, Barkat Lashari came there and asked him if Mr. Shahani's family came or said something to which Sikandar Lashari said they are not even bothered about it. On February 19 Barkat Lashari called Sikandar Lashari and told that the work has gone awry but it has been done and now Sikandar Lashari has to face it. Sikandar Lashari asked what he has done. Barkat Lashari

told Sikandar Lashari that the boy has died. Sikandar Lashari told him who asked you to kill the boy, you have done wrong to me. Sikandar Lashari admitted that he was in contact with Barkat Lashari. It was also seen in the video footage that when confronted the record of call data, Sikandar Lashari while making entreaties (folding hands) said to SSP now it has happened. Do as you please. Sikandar Lashari further stated that he told that it is a Civic car with tinted glasses. He also admitted that he informed Barkat Lashari the make and car number. When SSP asked who the assailants were, Sikandar Lashari replied that he knows only about Barkat Lashari. When SSP asked that he (Sikandar Lashari) was in contact with the assailants before and after murder and he was also in contact with Ghulam Abbas Siyal, Sikandar Lashari replied that he was only in contact with Barkat Lashari. He further stated to SSP that act is done now save him. When SSP asked a question that Sikandar Lashari, you have remained in constant contact with them (killers), before the murder and after the murder as well; you were also in contact with Ghulam Abbas Siyal. He replied that he was in contact with Barkat Lashari. He further stated to SSP that I am telling you that I just committed it; please save me, whatever happened this is it. Further stated to SSP that you can write down whatever I have said and I am responsible for it. SSP asked Lashari that he has made them escape and when he was arrested, he informed Barkat Lashari. Sikandar Lashari admitted that he informed Barkat Lashari of his arrest. SSP asked the question that you (Sikandar) orchestrated the plan with Barkat Lashari and others what did you have in mind? He replied I was thinking that I'd get him beaten up. He further admitted that he had discussed this matter with his paternal cousin in village whose name is Najam Lashari. He further stated that he did not instruct for the murder. They (killers) have committed a misdeed. One bullet was enough to kill, they opened a burst. SSP confronted CDR then again Sikandar Lashari responded that he is accepting it. Not denying it at all. When SSP asked that your (Sikandar Lashari) CDR record

showing communication with Barkat Lashari and Ghulam Abbas Siyal, then he again said I have admitted now say as you please. SSP asked Barkat Lashari called you (Sikandar) after the job was finished, he replied in yes that Barkat called him and said the boy has died and I said you have ruined me. SSP asked if Barkat Lashari is apprehended and said you issued instructions for murder? Sikandar Lashari replied if Barkat Lashari said so, you should blacken my face and make me ride a donkey, you can write it down. You said you'd help me. He further said one thing has already happened and now I am admitting. SSP asked Sikandar Lashari to see CDR that a call has been made from Sikandar's number to Ghulam Abbas Siyal at 23:08 Hrs. First he denied to recognize but further said that communication is there and he is not denying it. SSP asked the Sikandar Lashari that he discussed some other facts with CIA Centre's Inspector Aslam Langha. He replied that he talked about some facts, he was worried and once thought that he should pick him up (Aqib) and drown him with the help of Morchana. I thought I'd take him to Sajawal. He further admitted that he spoke to his relatives and his paternal cousin Najam Lashari suggested that Mr. Shahani's whole family should be exterminated. SSP asked Sikandar Lashari that this was his relative's plan? If your relatives had got hold of Mr. Shahani's family they would have exterminated them? Sikandar replied that this might have happened but they wouldn't have succeeded after coming far away from the village.

19. According to Article 42 of the Qanun-e-Shahdat Order 1984, a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk, or because it was made in answer to questions which he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make

such confession, and that evidence of it might be given against him. Whereas under Article 43 it is expounded that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons is proved, (a) such confession shall be proof against the person making it; and (b) the Court may take into consideration such confession as circumstantial evidence against such other person. Attached "explanation" cabarets that "Offence", as used in this Article, includes the abetment of, or attempt to commit, the offence. Whereas Article 164 of Qanun-e-Shahdat Order 1984 envisages that in such cases as the court may consider appropriate, the court may allow to be produced any evidence that may have become available because of modern devices or techniques. In unison, Section 27B of the Anti-Terrorism Act, 1997, provides that notwithstanding anything contained in this Act or Qanun-e-shahadat, 1984 or any other law for the time being in force, a person accused of an offence under this Act solely on the basis of electronic or forensic evidence or such other evidence that may have become available because of modern devices or techniques referred to in Article 164 of the Qanun-e-Shahadat, 1984 (P.O.No. 10 of 1984), shall be lawful. In the case of **Dhanapati De and others vs. Emperor, (AIR (33) (1946 Calcutta 156),** the court held as under:-

> **"What constitutes a confession was considered by the Privy Council. It is true that their Lordships were considering in a sense the converse of the present problem; but they made it clear that a confession is a statement which either admits in terms the offence or, at any rate, substantially all the facts which constitute the offence. In my opinion the statement of Khalilur Rahman which is not self-exculpatory but which does minimize the part he took in the offence and which ascribes to himself a part much less important and much less active than that ascribed to others named by him is a confession and as such is admissible in evidence under S. 30, Evidence Act. [Ref: 66 I. A. 66 [(39) 26 A.I.R. 1939 P.C. 47 : 18 Pat. 234 : I.L.R. 1939 Kar. P.C. 123: 66 I. A. 66 : 1941 R.L.R. 789 : 180 I.C. 1 (P.C.), Narayana Swami v. Emperor.].**

20. The learned counsel for the appellant Sikandar Lashari argued that the video footage was tampered, in addition he argued that was recorded on account of some inducement but at

one fell swoop he himself pointed out some portion of the statement from the same video transcript available in Urdu language that when SSP asked if Barkat Lashari is apprehended and said Sikandar Lashari issued instructions for murder? Then Sikandar Lashari replied if Barkat Lashari said so, you (SSP) should blacken my (Sikandar Lashari) face and make me (Sikandar Lashari) ride a donkey, you (SSP) can write it down. On one hand the statement was said to be recorded under some inducement whereas Sikandar Lashari in his statement recorded under Section 342 CR.P.C stated that that he was not told that his statement is being recorded through camera but it was hidden so in our view both the pleas are mutually destructive. Under Article 37 of Qanun-e-Shahdat Order 1984, it is enlightened that a confession made by an accused person is irrelevant in a criminal proceedings, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against, whereas Article 42 of the Qanun-e-Shahdat Order 1984 has contrasting and complementary outcome with well-defined analysis that if a confession is otherwise relevant, it does not become irrelevant merely because it was made under a promise of secrecy or in consequence of a deception practiced on the accused person for the purpose of obtaining it. Under the precepts and canons of Article 42 deception is allowed to be practiced and any such confession is acceptable. The statement of Sikandar Lashari was recorded through deception practice and not through inducement as for recording confession through inducement; it does not give rise to the occasion that the accused should be unaware or unacquainted that his statement is being recorded. No alleged inducement was substantiated except that SSP on the request of Sikandar Lashari stated that he will try for compromise which can be viewed in the video statement and said statement is covered under deception practice permissible under Article 42 and not an inducement as provided under Article 37 which niceties are different with different consequences. The deception practice may

occur at the stage of detecting process, investigation and interrogation. The goal of an interrogation or criminal interview is to obtain factual information about a crime and the confession of the person responsible for it. Virtually all interrogations involve some deception. A sting operation is also a deceptive operation designed to catch a person committing a crime. Electronic Media also sometimes resort to sting operations to record video and broadcast to expose criminal activities. Corpus delicti rule provides that a confession standing alone is not enough for a conviction. The phrase refers to the requirement that there be some kind of evidence apart from the accused confession. In this case Sikandar Lashari admitted after realizing the aftereffects of overwhelming evidence produced before him which he could not deny and then disclosed trueness. The learned counsel for the appellant also argued that entire call data of Sikandar Lashari including with the killers are managed by the prosecution in CDR by means of some computer software. No such plea was taken during trial and in fact this data was produced to Sikandar Lashari which was not denied by him in the Video statement.

21. Along the lines of Electronic Transactions Ordinance, 2002, the definition of "electronic" includes electrical, digital, magnetic, optical, biometric, electro-chemical, wireless or electromagnetic technology and "electronic document" includes documents, records information communications or transactions in electronic form. Under the dictates and prescription of Section 3 of the same Ordinance it is noticeably connoted out that no document, record, information, communication or transaction shall be denied legal recognition, admissibility, effect, validity proof or enforceability on the ground that it is in electronic form and has not been attested by any witness. At least two letters are already available on record written to Mobilink and Ufone by the SSP Hyderabad for providing CDR of different sim numbers which are already mentioned in the letters and if the data is received through email it does not cast any doubt against its veracity under the provisions of Electronic

Transaction Ordinance, 2002. It cannot be lost sight that in an unreported order dated 30.08.2012 passed in C.P.No.D-39/2010 by the learned division bench of this court though in a matter of missing person who returned back to his home, regardless of, the learned Division Bench of this court in the larger public interest, issued directions to the authority concerned to streamline the collection of evidence, assessment and information so collected and email addresses of all the concerned focal person, DIGP of various ranges may be provided to the cellular companies and they may obtain such information as may be required, instantly through emails, which may also ensure authenticity and also protect the data or information shared with law enforcement agencies. This proposal was considered expedient and DIG had assured the learned Division Bench that such course would be adopted and email addresses of all concerned officers will be shared with cellular companies. In the case of **Alamgir Khalid Chughtai v. The State, (PLD 2009 Lahore 254)**, the honourable court while elucidating the provisions of Electronic Transactions Ordinance held Cybercrime has become rampant in society and that is the reason legislature in its wisdom has provided a different criterion about admissibility of evidence in such cases as without any wire one can have facility of connection all over world as whole business of world is going on through inter-net, E-mail. Due to development in science and technology, it is not possible to bring on record physical existence of everything as whole technology is based on satellite operational networks. All documents prepared, produced or generated through modern devices are admissible in evidence. In the wake of above set of circumstances, we are not convinced with the line of argument that since CDR data collected by the I.O from mobile franchise companies was received through e-mail hence its legal recognition or admissibility cannot be recognized or accepted as true.

22. The expression evidence largely denotes to the material relating to the subject matter of legal proceeding, such as witness testimony; audio or video data; photographs; physical objects such as clothing or a weapon allegedly used to commit an offense; digital evidence including both data and the media storing the data; scientific findings, such as blood test results/medical evidence; and demonstrative evidence, such as displays, charts, or models. The utmost considerable constituent to settle on is whether a piece of evidence is admissible to the proceeding. New technology and the progression of communiqué systems have markedly revolutionized and switched over the modus of exchanging and switching information by means of Compact Disc (CD), Video Compact Disc (VCD), Pen drive, audio data, website data, social network communication, e-mail, SMS/MMS, Chip etc.

23. In the latest case of **Ishtiaq Ahmed Mirza & others versus Federation of Pakistan & others (PLD 2019 Supreme Court 675),** the honourable Supreme Court has considered meticulously and comprehensively the aftereffect and aftermath of audio-video statement in evidence. The short lived facts of the case (supra) are that on 06.07.2019 a media briefing was held by Ms. Maryam Nawaz, Vice President of the Pakistan Muslim League (N) in which based on a video statement, she disclosed that the Judge of NAB court contacted his old friend namely Nasir Butt, a worker of the political party of the former Prime Minister and had asked for a meeting so as to express his remorse on having convicted Mian Muhammad Nawaz Sharif under pressure from certain individuals. The NAB Court Judge was also shown in that video to be admitting that the said conviction and sentence weighed heavily on his conscience. The apex court considered various judgment of local and foreign jurisdiction and articulated enlightened guiding principles as under:-

11. The precedent cases mentioned above show that in the matter of proving an audio tape or video before a court of law the following requirements are insisted upon:

*** No audio tape or video can be relied upon by a court until the same is proved to be genuine and not tampered with or doctored.**

*** A forensic report prepared by an analyst of the Punjab Forensic Science Agency in respect of an audio tape or video is per se admissible in evidence in view of the provisions of section 9(3) of the Punjab Forensic Science Agency Act, 2007.**

*** Under Article 164 of the Qanun-e-Shahadat Order, 1984 it lies in the discretion of a court to allow any evidence becoming available through an audio tape or video to be produced.**

*** Even where a court allows an audio tape or video to be produced in evidence such audio tape or video has to be proved in accordance with the law of evidence.**

*** Accuracy of the recording must be proved and satisfactory evidence, direct or circumstantial, has to be produced so as to rule out any possibility of tampering with the record.**

*** An audio tape or video sought to be produced in evidence must be the actual record of the conversation as and when it was made or of the event as and when it took place.**

*** The person recording the conversation or event has to be produced.**

*** The person recording the conversation or event must produce the audio tape or video himself.**

*** The audio tape or video must be played in the court.**

*** An audio tape or video produced before a court as evidence ought to be clearly audible or viewable.**

*** The person recording the conversation or event must identify the voice of the person speaking or the person seen or the voice or person seen may be identified by any other person who recognizes such voice or person.**

*** Any other person present at the time of making of the conversation or taking place of the event may also testify in support of the conversation heard in the audio tape or the event shown in the video.**

*** The voices recorded or the persons shown must be properly identified.**

*** The evidence sought to be produced through an audio tape or video has to be relevant to the controversy and otherwise admissible.**

*** Safe custody of the audio tape or video after its preparation till production before the court must be proved.**

*** The transcript of the audio tape or video must have been prepared under independent supervision and control.**

*** The person recording an audio tape or video may be a person whose part of routine duties is recording of an audio tape or video and he should not be a person who has recorded the audio tape or video for the purpose of laying a trap to procure evidence.**

*** The source of an audio tape or video becoming available has to be disclosed.**

*** The date of acquiring the audio tape or video by the person producing it before the court ought to be disclosed by such person.**

*** An audio tape or video produced at a late stage of a judicial proceeding may be looked at with suspicion.**

*** A formal application has to be filed before the court by the person desiring an audio tape or video to be brought on the record of the case as evidence.**

24. In the case of Ram Singh V Ram Singh AIR 1986 SC 3, Supreme Court of India has also held that audio recordings are admissible as document, if they fulfill certain conditions as laid down in the case as under:-

a) the voice of the speaker must be duly identified by the maker of the record or by others who recognize his voice. Where the maker has denied the voice it will require very strict proof to determine whether or not it was really the voice of the speaker.

b) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.

c) Every possibility of tampering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

d) The statement must be relevant according to the rules of Evidence Act.

e) The recorded cassette must be carefully sealed and kept in safe or official custody.

f) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbance.

25. In the case of Jagjit singh vs. State of Haryana ((2006) 11 SCC 1), the court considered the digital evidence in the form of interview transcripts from the Zee News television channel and determined that the electronic evidence placed on record was admissible and upheld the reliance placed by the speaker on the recorded interview. In the case of Abdul Rahaman Kunji Vs. The State of West Bengal, [MANU/WB/0828/2014], the High Court of Calcutta while deciding the admissibility of email held that an email downloaded and printed from the email account of the person can be proved by virtue of Section 65B r/w Section 88A of Evidence Act. The testimony of the witness to carry out such procedure to download and print the same is sufficient to prove the electronic communication. In Hopes v. H.M. Advocate, 1960 Scots Law Times 264, the court while dealing with the question of admissibility of tape recorded conversation observed that new techniques and new devices are the order of the day.

A categorical exposition is further found in the case of **R. v. Maqsud Ali. R. v. Ashiq Hussain [1965] 2 All E.R. 464,** that "the prints as seen represent situations that have been reproduced by means of mechanical and chemical devices. Evidence of things seen through telescopes or binoculars which otherwise could not be picked up by the naked eye have been admitted, and now there are devices for picking up, transmitting, and recording, conversations. We can see no difference in principle between a tape recording and a photograph. In saying this we must not be taken as saying that such recordings are admissible whatever the circumstances, but it does appear to this court wrong to deny to the law of evidence advantages to be gained by new techniques and new devices, provided the accuracy of the recording can be proved and the voices recorded properly identified; provided also that the evidence is relevant and otherwise admissible, we are satisfied that a tape recording is admissible in evidence. Such evidence should always be regarded with some caution and assessed in the light of all the circumstances of each case. There can be no question of laying down any exhaustive set of rules by which the admissibility of such evidence should be judged". In S.Pratap Singh v. State of Punjab, AIR 1964 SC 72, the court considered the issue and clearly propounded that tape recorded talks are admissible in evidence and simple fact that such type of evidence can be easily tampered which certainly could not be a ground to reject such evidence as inadmissible or refuse to consider it, because there are few documents and possibly no piece of evidence, which could not be tampered with. In the case of Yusufalli Esmail Nagree v. State of Maharashtra, AIR 1968 SC 147, the court considered various aspects of the issue relating to admissibility of tape recorded conversation. The prosecution wanted to use tape recorded conversation as evidence against accused. The court emphatically laid down in unequivocal terms that the process of tape recording offers an accurate method of storing and later reproducing sounds. The imprint on the magnetic tape is direct effect of the relevant sounds. Like a photograph of a

relevant incident, a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible.

26. It is discernable from the record that appellant Sikandar Ali Lashari filed a Criminal Revision Application No.D-240 of 2014 to assail an order passed by Anti-Terrorism Court on 13.12.2014 in the main case No.91 of 2014 whereby the ATC court declined to supply USB and CD (same video footage) to him. The revision application was decided on 22.6.2015 which was a date prior to the commencement of trial. He took the plea that supplying copies of documents under Section 265-C Cr.P.C. is to facilitate the accused so that he may know the accusation and gauge the evidence against him. If the copy of Video CD is not provided, neither he would be able to defend the charge nor would be in a position to assess its voluntariness and genuineness. He had also avowed that without watching the CD and hearing the recorded conversation of Mst. Keenjer with the mother of deceased, no defence could be made out by the applicant. Vide aforesaid reported judgment authored by one of us (**Muhammad Ali Mazhar-J**) the Revision Application was allowed and consequently, the trial court was directed to supply the copies of video CD and USB to the Sikandar Lashari. **(Ref: Sikandar Ali Lashari verses The State & others 2016 YLR 62).** So in all fairness it is clear that the appellant was in knowledge of video statement and USB from the inception of trial.

27. In the case of Ishtiaq Ahmed Mirza (supra), the honourable Supreme Court further held that as the trial court in the case of Mian Muhammad Nawaz Sharif has already become functus officio and as his appeal against his conviction and sentence recorded by the trial court is presently pending before the Islamabad High Court, therefore, the only court which can take the relevant video in evidence of that case is the Islamabad High Court. An appellate Court can take additional evidence under section 428, Cr.P.C. The necessity of taking additional

evidence at the appellate stage must be felt by the appellate court itself and the same is not to depend upon what a party to the appeal thinks of such necessity. After feeling the necessity of taking additional evidence and after recording reasons for such necessity the appellate court may either take such evidence itself or direct it to be taken by a Magistrate or, when the appellate court is a High Court, by a Court of Session or a Magistrate. In the present appeals, the learned counsel for the complainant at the conclusion of arguments, moved an application under Section 428 Cr.P.C that in the view of the above judgment of Apex court, additional evidence may be taken for video statement recorded in CD. Here are slight distinguishing niceties. The disclosure of video statement of the judge of NAB court came into light after recording conviction and during pendency of appeal whereas in this case, from the very inception rather before commencement of trial, it was into the knowledge of Sikandar Lashari who himself applied to this court for copy of video CD and USB containing voice data of his daughter and mother of Aqib before framing of charge and that request was allowed vide order mentioned supra. The trail court also played video CD in court and ample opportunity was provided to accused during trial and we have also seen the video CD and convinced and confident that neither it is doctored nor dubbed. No specific plea was taken by Sikandar Lashari during trial that video statement does not comprise his voice nor anything said in his Section 342 Cr.P.C statement in this regard except complaining that statement was recorded without prior information/knowledge, therefore, we did not feel any necessity of taking additional evidence at appellate stage as held by Apex court that necessity of taking additional evidence at the appellate stage must be felt by the appellate court itself and the same is not to depend upon what a party to the appeal thinks of such necessity.

28. According to Black's Law Dictionary; abetment means to encourage and assist someone, especially in the commission of a crime, or to support a crime by active assistance. Abetment is a preparatory act and connotes active complicity on the part of the abettor at a point of time prior to the actual commission of the offence. In our considerate view, the fundamental preconditions are that there must be an abettor; he must abet; the abetment must be an offence. A person is said to instigate and activate another to a criminal act by way of emboldening, soliciting, provoking and or inciting. So if a person engrosses and engages with one or more person or persons in any conspiracy and stratagem for the doing of a thing and some act or illegal omission takes place in pursuance thereof, he can be punished not only as coconspirator/collaborator but also a partner in crime.

29. Beyond reasonable doubt did not mean any doubt but it must be accompanied by reasons, sufficient to persuade a judicial mind for placing reliance on the same. According to the dictum laid down by the Apex court in the case of Muhammad Asghar alias Nannah (supra) it was held that there is no doubt that onus rests on the prosecution to prove guilt of accused beyond a reasonable doubt throughout the trial and it never shifts to accused. Two concepts i.e. proof beyond reasonable doubt and presumption of innocence are so closely linked together that the same must be presented as a unit. Presumption of innocence is a golden thread of criminal justice then proof beyond a reasonable doubt is silver and these two threads are forever intertwined in the fabric of criminal justice. Reasonable doubt is real doubt, an honest doubt, a doubt that has its foundation in the evidence or lack of evidence, it is the doubt that is honestly entertained and is reasonable in the light of evidence after a fair comparison and careful examination of entire evidence. In the case of **Imran alias Dully & another vs. The State & others (2015 SCMR 155),** Apex court has held that extra judicial confession was not sufficient for recording conviction

on a capital charge unless it was strongly corroborated by tangible evidence coming from unimpeachable source. Caution to be exercised by court. When any case rested entirely on circumstantial evidence then, each piece of evidence collected must provide all links making out one straight chain where one end of its noose fitted in the neck of the accused and the other end touched the dead body. Any link missing from the chain would disconnect and break the whole chain and in that event conviction could not be safely recorded and that too on a capital charge. Whereas in the case of **Devi Lal vs. State of Rajasthan [AIR 2019 SC 688),** it was held that the classic enunciation of law pertaining to circumstantial evidence, its relevance and decisiveness, as a proof of charge of a criminal offence, is amongst others traceable decision of the Court in ***Sharad Birdhichand Sarda v. State of Maharashtra*** MANU/SC/0111/1984-1984 (4) SCC 116. The relevant excerpts from para 153 of the decision is assuredly apposite:

> **153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an Accused can be said to be fully established:**
>
> **(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.**
>
> **It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade & Anr.* v. *State of Maharashtra* [MANU/SC/0167/1973 : (1973) 2 SCC 793 where the observations were made:**
>
> **Certainly, it is a primary principle that the Accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."**
>
> **(2) the facts so established should be consistent only with the hypothesis of the guilt of the Accused, that is to say, they should not be explainable on any other hypothesis except that the Accused is guilty,**
>
> **(3) the circumstances should be of a conclusive nature and tendency,**
>
> **(4) they should exclude every possible hypothesis except the one to be proved, and**
>
> **(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the Accused and must show that in all human probability the act must have been done by the Accused.**

30. Masterminds are characters and eccentrics other than the arrested assassins who played a major role in the murder or some alternate crime, either by ordering the crime or by helping the arrested killers who committed or perpetrated the crime. Mastermind means a person who is responsible for planning and organizing it. In this case it has been unequivocally proved that appellant Sikandar Ali Lashari was the mastermind of entire episode and he is an abettor without any reasonable doubt in terms of Section 107 P.P.C. which provides that a person abets the doing of a thing, who instigates any person to do that thing; or engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or intentionally aids, by any act or illegal omission, the doing of that thing. Whereas Section 109 P.P.C explicates that whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by the Code, for the punishment of such abetment, be punished with the punishment provided for the offence.

31. Without further ado, this is not the prosecution case that Sikandar Ali Lashari personally committed the murder or he was present at the scene of offence but he was mastermind which fact has proved satisfactorily. Entire evidence is heading towards the direction that the murder was committed on scheming and conspiracy of Sikandar Lashri and who arranged or hired the killers to accomplish the job with the aim of satisfying his ego and vengeance. As a father of a young girl, he might be annoyed or exasperated on knowing the love affair or romantic or passionate attachment of his daughter with Aqib but at the same time he was also a District and Session Judge who served the judiciary for a long time so there must be a distinction within a common or an uneducated person and a District and Session Judge sentiments who is considered to be custodian of law to dispense justice in

populace but he was in no way expected to take the law in his own hands for evil designs rather than legal recourse. He was conscientiously acquainted and well-versed to the consequences of contravention of law with an ultimate outcome of committing crime but despite knowing the consequences, he became instrumental and mastermind of a murder of young son of his colleague District and Session Judge with no empathy or compassion. Due to brutal, spiteful and acrimonious homicide, a young man lost his life in a tender age leaving behind forever grief and misery to his parents and other family members. A notorious act of honour killing is branded as karo-kari which menace is cancerous and tumorous to our society, humanity and the populace. In fact this is an act of murder in which a person is killed for his or her actual or perceived immoral deeds and comportments. Such alleged depraved manners and postures may take the form of alleged marital betrayal, denial to acquiesce an arranged marriage, wanting marriage or divorce, seeming flirtatious demeanor or being raped etc.

32. As far as the role of Appellant Irfan is concerned all the eye witnesses deposed that he was the same person who pulled out Aqib from car and enfolded his hands from the back side and thereafter another person Ghulam Abbas Siyal fired on Aqib who fallen down thereafter further fires were shot on him. Despite lengthy cross-examination, the actual testimony could not be shaken that it was not Irfan who held Aqib’s hands from his back, thereafter, firing was started on him but it was vehemently argued by the learned counsel for Irfan that if the fire was shot on Aqib this could have been hit to Irfan also who was holding his hands from the back side but this is not the case here that all shots were fired in the same condition when Irfan was holding hands Aqib from back side. This plea was never taken in the trial court. Dr.Baldevo Maheshwari conducted the postmortem and according to the postmortem report 18 lacerated punctures were found on the dead body of Aqib. The record shows that counsel for

appellant Irfan adopted the cross-examination of Mr. Mushtaq, Advocate but he did not cross examine the doctor who conducted the postmortem where he could have asked questions relevant to injuries and entry and exit wounds but no cross examination was conducted. All four eyewitnesses appeared and confirmed in their statements that Irfan was the person who pinioned Aqib from backside. In totality and the composite effect of ocular testimony of witnesses demonstrate unequivocally that the testimony of eyewitnesses was not shaken or shivered with regard to the substantive points involved in this case. On mere hypothetical and imaginary contentions which were not taken even in the trial court, the ocular testimony which is inspiring confidence cannot be ruled out or brushed aside. Appellant Irfan is equally responsible for the murder under the principle of constructive liability that not only abetted the offence but also facilitated and enabled the perpetrators/killers as accomplice who came with common intention to murder Aqib. He took only a plea in his 342 Cr.P.C statement that he was arrested in presence of family members and neighbors in Karachi but neither gave this statement on oath nor called any such witness in his defence to prove his plea.

33. The principle of constructive liability expounded under Section 34, P.P.C elucidates that if several persons would unite with common purpose to do any criminal offence, all those who assist in the completion of their object, would be equally guilty. Foundation for constructive liability was the common intention in meeting the accused to do the criminal act and the doing of such act in furtherance of common intention to commit the offence. In order to constitute an offence under section 34, P.P.C., it is not required that a person should necessarily perform any act with his own hand. If several persons had the common intention of doing a particular criminal act and if, in furtherance of their common intention all of them join together and aided or abetted each other in the commission of an act, then one out of them could not actually with his own hand, do the act but if he helps by his

presence or by other act in the commission of an act, he would be held to have himself done that act within the meaning of section 34, P.P.C. Paramount consideration is whether the offence has been committed in furtherance of common object. It is well settled elucidation and exposition of law that each criminal case has its own peculiar facts and circumstances and it is the question of satisfaction of the court which depends upon evidence produced by the parties.

34. It is deep-rooted revelation of law that the purpose of F.I.R. is to set criminal law in motion and to obtain first hand spontaneous information of occurrence in order to exclude possibility of fabrication of story or consultation or deliberation to devise or contrive anything to the advantage. It is also considered as a corner stone of the prosecution case unless it is shown that on account of some mala fide intention a wrong version of the complainant was recorded by the investigating agency with a view to allow the real culprits to go escort free. The learned counsel for the appellant argued that their clients were not nominated in the FIR. If the present appellants were not nominated in the FIR this does not mean in any way that they deserve acquittal or the entire prosecution case is liable to be extinguished on this sole point rather than the court has to see what evidence has been led and what involvement revealed through investigation. More than enough evidence against both the appellants is available on record. Fiat Justitia is the catchphrase of the court which means let justice be done. In order to appreciate the ocular testimony, the court has to bear in mind that the presence of such witness or witnesses at the time and place of the occurrence is not doubtful and they have no reason to omit the real culprits and implicate falsely the accused persons. It is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Each criminal case has its own peculiar facts. If the eye-witness account is found reliable and trustworthy then there is

hardly any need to look for any corroboration. ***(Ref. Judgment authored by one of us M. Ali Mazhar-J reported PLJ 2019 Cr.c 944 = SBLR 2019 Sindh 1538)***

35. The learned counsel for the Sikandar Lashari endeavored to establish mala fide of SSP Pir Fareed Jan Sirhindi that some adverse orders were passed by Sikandar Lashari against him in past, therefore, due to personal vendetta and grudge he has falsely implicated Sikandar Lashari but the evidence produced on record do not show any such mala fide intention and in view of the overwhelming evidence available on record it is not enough to vouch for or reinforce that to take revenge of passing some adverse orders in past, the SSP hatched such a big conspiracy against Sikandar Lashari to satisfy his egoism. On the contrary, learned counsel for the complainant produced certified copy of bailable warrant of Pir Fareed Jan Sirhindi issued by Mr.Khalid Shahani, (father of deceased) as ADJ in Sessions Case No.210/2010 and letter dated 19.07.2012 issued by him as Additional Session Judge Kotri to Chief Secretary, Government of Sindh for stoppage of salary of Pir Fareed Jan Sirhindi and execution of NBW against him. This action was taken by Khalid Hussain Shahani as Additional District Judge against the same SSP. The counsel for the complainant also produced the certified copy of some diary sheets and the copy of order dated 24.05.2012 passed in the same Sessions Case to show that application filed by accused in crime No. 183/2010 including Pir Fareed Jan Sirhindi for their acquittal was dismissed by same ADJ. If the argument of learned counsel for the Sikandar Ali Lashari on this premise is taken into consideration then the similar situation could have been done with Mr.Khalid Shahani and the SSP could ruin or make defective the investigation with mala fide intention in personal vendetta with Mr.Khalid Shahani also.

36. Sardar Latif Khosa, the learned counsel for the appellant Sikandar Ali Lashari also cited the recent judgment of honourable Supreme Court rendered in the case of **Ghulam**

Hussain & others versus The State & others (PLD 2020 Supreme Court 61) in which a larger bench was constituted by the Apex court to revisit the meanings, scope and import of the term 'terrorism' defined in Section 6 of the Anti-Terrorism Act 1997, as amended from time to time. The apex court in the aforesaid judgment held as under:-

> **16. For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.**
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> **17. Before parting with this judgment we may observe that the definition of 'terrorism' contained in section 6 of the Anti-Terrorism Act, 1997 as it stands at present is too wide and the same includes so many actions, designs and purposes which have no nexus with the generally recognized concept of what terrorism is. Apart from that including some other heinous offences in the Preamble and the Third Schedule to that Act for trial of such offences by an Anti-Terrorism Court when such other offences do not qualify to be included in the definition of terrorism puts an extra and unnecessary burden on such courts and causes delay in trial of actual cases of terrorism. It is, therefore, recommended that the Parliament may consider substituting the present definition of 'terrorism' by a more succinct definition bringing it in line with the international perspectives of that offence and focusing on violent activities aimed at achieving political, ideological or religious objectives. We further recommend that the Parliament may also consider suitably amending the Preamble to the Act and removing all those offences from the Third Schedule to the Act which offences have no nexus with the offence of terrorism.**

37. The record reflects that at an earlier time, appellant Sikandar Ali Lashari moved an application in the trial court for transferring the case in the ordinary court of jurisdiction but such application was dismissed and the order of trial court was challenged in this court vide Criminal Revision Application No.96/2015 but the revision application was also dismissed. Being dissatisfied, the applicant/appellant had also filed Criminal Petition No.822/2017 in the Supreme Court of Pakistan which was disposed of on 02.08.2017 with the following observations:

> **"4. A look at the impugned order reveals that it was passed at the time when no evidence was recorded. The data then available may have spelt out a case triable by the Anti-Terrorism Court but what does the evidence on the record spell out is yet to be seen. Learned ASC contended that the evidence which has so far been recorded does not show it to be a case falling within the ambit of Section 6(1)(b) of ATA. The contention may have some substance but this Court at this stage cannot give any opinion without deeper appraisal of the evidence. Section 23 of the ATA caters for a situation of this type. The court which has recorded evidence can at any stage transfer the case for trial to a court of competent jurisdiction according to the nature of the case. We thus, do not feel persuaded to interfere with the impugned orders. However, if the trial Court on appraising the evidence comes to the conclusion that it is not a case triable under the ATA, it would be at liberty to send it to the Court of ordinary jurisdiction without being influenced by any of the observations made in the impugned orders. The petitioner would thus be at liberty to move an application in this behalf if in his view the evidence recorded shows that it is not a case triable by Anti-Terrorism Court."**

38. The same appellant again moved an application under Section 23 of the Anti-Terrorism Act 1997 in the trial court which was again dismissed and the order was challenged through Cr. Rev. Application No.155 of 2017, however during course of hearing, the learned counsel for the applicant/appellant, complainant and the learned D.P.G. all had confirmed that in the trial court, proceedings have already been concluded and the judgment is reserved. The counsel for the complainant and DPG further added that the counsel for the applicant has also agitated the question of jurisdiction in the trial court. In this backdrop, the learned counsel for the applicant/appellant argued that the revision application may be disposed of with the observations that if the conviction is recorded, the applicant may be allowed to raise the question of jurisdiction in the appeal with all other available grounds. It is clearly manifesting from the impugned judgment of the trial court, that question of jurisdiction was taken up and it has been dealt with appositely by the learned trial court in paragraph 187 to 196 of the impugned judgment.

39. We have got the drift from record that the trial court earlier dismissed applications moved under Section 23 ATA 1997 twice and in the main judgment again considered the issue of jurisdiction. However in the case of Ghulam Hussain (supra), the

honourable Supreme Court revisited earlier judgments on the subject and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. It was also clarified by the apex court that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It was further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta. The honourable Supreme Court has also recommended that the Parliament may consider substituting the present definition of 'terrorism' by a more succinct definition bringing it in line with the international perspectives of that offence and focusing on violent activities aimed at achieving political, ideological or religious objectives and also recommended that the Parliament may also consider suitably amending the Preamble to the Act and removing all those offences from the Third Schedule to the Act which offences have no nexus with the offence of terrorism.

40. When the latest judgment of honourable Supreme Court come to light, the trial court had already passed the judgment challenged in the present appeals in view of earlier interpretation of the phrase terrorism and guidelines laid down in the judgments of superior courts. In all fairness, when the apex court pronounced its judgment, the matter in the trial court had become past and closed. When we confronted to the learned counsel for appellant

Sardar Latif Khan Khosa, that transformation of forum from ATC to ordinary court at any stage does not mean the culmination of prosecution case or a probability that accused are not guilty of any offence on which, the learned counsel categorically augmented that now the whole case has already been decided by the trial court therefore he does not want to prefer or solicit any de novo trial nor press for the remand of case but prefer to address other grounds of appeal on merits which we have already taken into consideration and addressed. On the question of Doctrine of prospective overruling originated in the American Judicial System, the literal meaning of the term 'overruling' is to overturn or set aside a precedent by expressly deciding that it should no longer be controlling law. Similarly 'prospective' means operative or effective in the future. In the case of **Sakhi Muhammad and another vs. Capital Development Authority, Islamabad (PLD 1991 S.C 777),** it was held that consequence of the Supreme Court judgment was that as from the date of decision all courts subordinate to the Supreme Court and all executive and quasi-judicial authorities were obliged by virtue of the Constitution to apply the rule laid down by the Supreme Court in cases coming up before them for decision. Decision of the Supreme Court did not have and it could not be contended that it had, the effect of altering the law as from the commencement of relevant law so as to render void of its own force all relevant orders of the Authority or of the High Court made in the light of the earlier interpretation. Whereas in another case reported as **2018 SCMR 1956 (Pakistan Medical and Dental Council & others vs. Muhammad Fahad Malik & others),** the apex court held judgment of the Supreme Court, unless declared otherwise, operated prospectively. Whilst in the case of **Pir Bakhsh and others vs. The Chairman, Allotment Committee and others, (PLD 1987 S.C. 145),** apex court held that the fact that Supreme Court in an appeal, titled *Abdul Hafiz v. Rehabilitation Commissioner and others,* against the judgment of the High Court set aside the same judgment in another writ petition would not

reopen the concluded rights of the parties under the decision of the High Courts against which no appeal was filed nor could the appellants who were respondents in that writ petition avail the benefit of the law laid down by the Supreme Court under Article 189 of the Constitution. The fact that the law laid down by this Court (supreme court) is prospective also cannot be doubted.

41. The learned counsel for appellant Sikandar Lashari also referred to paragraph 79 of impugned judgment (page 23) and attributed as if these are the findings of the trial court which may help out and alleviate the appellant. On the contrary, it is in fact a reproduction of paragraph 28 of judgment reported as 2010 P.Cr.L.J 1281 (Aurangzeb versus The State) which the trial court has also referred to in paragraph 78 and clarified in paragraph 80 of its judgment and found it distinguishable. The learned counsel also referred to paragraph 89 of the impugned judgment where the trial court held that video statement cannot be accepted as judicial confession but it can be treated as interrogation and or conversation between a police officer and accused which we have already dealt with in extenso. The whys and wherefores lead us to a denouement and finale that the prosecution has proved the guilt of both the appellants beyond a reasonable doubt and each piece of evidence i.e. ocular testimony against appellant Irfan, clear admission of guilt through video CD statement, revelation of material and uncontroverted facts through CDR which proved the communication of Sikandar Lashari and the killers within proximity of time before and after murder on the fateful day and other evidence collected and brought on record by the prosecution is providing all links making out one straight chain where one end of its noose fitted in the neck of the accused persons and the other end touched to the dead body of Aqib and no link is missing from the chain which may disconnect and break the whole chain.

42. As a result of above discussions, Special Cr. A.T. Appeal No.261 of 2018, Special Cr. A.T. Appeal No.262 of 2018 and Special Cr. A.T. Jail Appeal No.311 of 2018 are dismissed. Conf.Case (A.T.A) No.13 of 2018 is answered in affirmative and death penalty is confirmed. Pending applications are also disposed of accordingly.

Karachi:

Dated.20.4.2020 **Judge**

Judge