

IN THE HIGH COURT OF SINDH, KARACHI

Before:

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

Special Criminal Anti-Terrorism Appeal No. 276 of 2016

Azhar Hussain S/o Allah Bux : Mr. Muhammad Riaz,
Appellant through Advocate

Respondent/The State : Mr. Mohammad Iqbal
Awan, DPG

Special Criminal Anti-Terrorism Appeal No.288 of 2016

Saddam Kakar S/o Saadullah : Mr. Shaukat Hayat
Appellant through Advocate

Respondent/The State : Mr. Mohammad Iqbal
Awan, DPG

Special Criminal Anti-Terrorism Appeal No.289 of 2016

Saddam Kakar S/o Saadullah : Mr. Shaukat Hayat
Appellant through Advocate

Respondent/The State : Mr. Mohammad Iqbal
Awan, DPG

Date of Hearing : 23-10-2019

Date of Judgment : 30-10-2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., This single judgment will dispose of three captioned Special Criminal Anti-Terrorism Appeals as the same have arisen out of the same judgment. Both the appellants in the above mentioned three Appeals were convicted by the learned Judge, Anti-Terrorism Court-VIII, Karachi in Special Case No.03(III)/2013 (New Special Case No.22/2014) and Special Case No.04(III)/2013 (New Special Case No.23/2014), FIR Nos.317/2012 & 318/2012 registered at PS Saddar, Karachi under Sections 302/114/109/34 PPC R/w Section 7 of ATA and under Section 13-

D of Arms Ordinance respectively; whereby both the appellants were convicted and sentenced to suffer life imprisonment for the offence punishable U/s 7(1)(a) of ATA, 1997 read with section 302/34 PPC. Both the appellants were also liable to pay fine of Rs.500,000/- each. In case of default of payment of fine, they will further undergo imprisonment for three years. Their properties as defined in section 2(Pa) of ATA, 1997 are also liable to be forfeited as provided U/s 7(2) of ATA, 1997. Appellant Saddam Kakar was also convicted and sentenced to undergo R.I. for seven (07) years. However, both the sentences of appellant Saddam Kakar were ordered to run concurrently. Benefit of Section 382-B Cr.P.C. was extended to them.

2. Brief facts leading to the prosecution case are that on 21.12.2012, complainant Muhammad Yaseen alongwith his friend Muhammad Imran and others were present at the house of his brother-in-law Abdul Rehman at Huma Heights, when at about 0730 hours, he received information that his brother-in-law Abdul Rehman had been injured in firing at Saddar and he was taken to Jinnah Hospital. On this information, he alongwith his friend named above went to Emergency Ward, Jinnah Hospital. At about 0800 hours, when they entered into Emergency Ward, they saw that Abdul Rehman was lying on stretcher in the lounge of Emergency Ward. The complainant further narrated that suddenly firing started in Emergency Ward and people started running and raised hue and cry. There were some persons duly armed with deadly weapons, meanwhile police and Rangers reached there, who apprehended one armed culprit along with Kalashnikov, whereas the rest of the culprits escaped away. The apprehended accused

disclosed his name as Saddam Kakar S/o Saadullah, who also disclosed name of two other escapes as Haji Fatah and Sahil. It is also stated that complainant and his friends can identify the culprits. Soon after the incident, police started investigation and recorded statement of one Yasin U/s 154 Cr.P.C. in Emergency Ward; police had caused arrest of accused Saddam Kakar at the spot. The I.O. collected empties from the place of incident, took CCTV recording and footage from it and FIR was lodged by complainant Muhammad Yasin on 22.12.2012 at 0800 hours. Police also completed formalities regarding the dead body of deceased Abdul Rehman. I.O. sent Kalashnikov recovered from the possession of accused Saddam Kakar and Kalashnikov left by co-accused who escaped away and empties collected from the place of incident for FSL and chemical examination. After completing investigation, submitted Challan in the Court of law, while showing accused Saddam Kakar in custody and accused Haji Fateh, Wasil Khan @ Sail, Abdul bari Kakar, Azhar Hussain @ Mullah Habibullah @ Habib and Mushtaq @ Master as absconders.

3. Both the cases, being Crime No: 317/2012 and Crime No.318/2012 against accused Saddam Kakar were ordered by trial court to be tried jointly having nexus with each other as provided u/s 21 M of ATA, 1997. A joint charge u/s 7(1)(a) of ATA, 1997 read with section 302/114/109/34 PPC and section 13-D of Arms Ordinance was framed against accused Saddam Kakar, to which he pleaded not guilty and claimed trial. At the trial, prosecution examined Muhammad Sharikh as PW-01. He produced memo of place of incident. He was the eye witness of the incident, and was declared as hostile, cross-examined by the State Counsel

meanwhile proclaimed offender Azhar Hussain was arrested on 25.05.2014 and joined the trial. Amended charge was framed to which they pleaded not guilty and claimed trial.

4. After framing of amended charge, prosecution examined ASI Gohar Mehmood (PW-2) at Ex.29, who produced roznamcha entry at Ex.29/A, memo of arrest and recovery. SIP Niaz Muhammad (PW-3) examined at Ex.30, who produced FIR at Ex.30/A, memo of inspection of place of incident at Ex.30/B, roznamcha entry at Ex.30/C. MLO Naveed Ali Baloch (PW-4) at Ex.31, who produced postmortem report at Ex.31/A. ASI Abdul Rehman (PW-5) at Ex.32, who produced roznamcha entry at Ex.32/A, letter issued to MLO for proceedings u/s 174 Cr.P.C. at Ex.32/B, inquest report at Ex.32/C, memo of dead body at Ex.32/D, receipt of dead body at Ex.32/E and arrival of roznamcha entry at Ex.32/F. ASI Amir Mehmood (PW-6) at Ex.33, who produced memo of arrest of accused Azhar Hussain at Ex.33/A. PC Muhammad Amir (PW-7) at Ex.35. ASI Imran Hussain (PW-8) at Ex.37, who produced memo of obtaining DVD including DVD at Ex.37/A & 37/B respectively. SIO Azam Ali (PW-9) at Ex.40, who produced three photographs of place of incident at Ex.41, four snaps of place of incident at Ex.42 to Ex.45, photograph of deceased at Ex.46, death certificate of deceased at Ex.47, letter for sending crime weapon to FSL at Ex.48 and letter sent to Chemical Examiner at Ex.49. Inspector (R) Muhammad Nawaz (PW-10) at Ex.50, who produced order of SSP under which investigation was entrusted to him at Ex.51, roznamcha entry at Ex.52, letter issued to CNBC News Channel for handing over footage of the place of incident at Ex.53, FSL report at Ex.54, FIR No.697/2012 registered at PS Preedy at Ex.55, order of

IG under which investigation was transferred to SP Gaddap at Ex.56 and roznamcha entry regarding handing over the case papers to SP Gaddap at Ex.57. Investigation Officer Peer Bux (PW11) at Ex.58, who produced orders of SDPO under which investigation was entrusted to him at Ex.59, roznamcha entry at Ex.60 and roznamcha entry regarding arrest of accused Saddam Kakar at Ex.61. Lastly, learned ADPP closed the prosecution side vide statement at Ex.62.

5. The statements of the accused persons were recorded under Section 342(1) Cr.P.C, in which they denied the allegations as leveled against them by the prosecution. They did not examine themselves nor lead any evidence in their defense.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellants vide judgment dated 01.11.2016 as stated above which is impugned before this Court by way of filing the instant Appeals.

7. Learned counsel for the appellant Saddam Kakar mainly contended that the trial court has no jurisdiction to decide the case as parties are on inimical terms and incident was took place due to personal vendetta. He relied upon the case of **Waris Ali and 5 others V. The State 2017 SCMR 1572** and **Province of Punjab through Secretary Punjab Public Prosecution Department and another V. Muhammad Rafique and others PLD 2018 SC 178**. He further contended that complainant and other private witnesses were not examined before the trial Court; that PW-1 Muhammad Sharikh has not supported the case and was declared as hostile witness; that only police personals appeared in witness box who

were interested and their evidence is not reliable; that no person from Rangers was examined: that no private mashir was associated in recovery proceedings; that no identification parade was held; that there is delay in sending weapons and empties to FSL and such delay has not been explained; that ocular evidence is in conflict with medical evidence; lastly he contended that appeal of appellant may be allowed and he may be acquitted. On merits he relied upon the cases of (1) 2007 SCMR 1631 [Shahbaz Masih vs. The State], (2) PLD 2004 Karachi 201 [Ghaus Bux vs. The State], (3) 2019 YLR 1470 [Azkar Hussain Shah vs. The State], (4) 2016 SCMR 274 [Azeem Khan and another vs. Mujahid Khan and others], (5) 2009 SCMR 230 [Muhammad Akram vs. The State], (6) 2017 PCRLJ 789 [Allah Ditta and others vs. The State and others], (7) SBLR 2010 SC 281 [Muhammad Ibrahim vs. Ahmed Ali & others], (8) 2007 SCMR 1812 [Barkat Ali vs. Muhammad Asif and others], (9) 2010 SCMR 97 [Noor Muhammad vs. The State and another], (10) 2018 SCMR 772 [Muhammad Mansha vs. The State], (11) 2016 SCMR 1144 [Nasir Javaid and another vs. The State], (12) 2018 SCMR 911 [Mst. Nazia Anwar vs. The State and others], (13) PLD 2006 698 [Khan Bacha vs. The State], (14) SBLR 2010 Balochistan 55 [Mithal alias Babal & another vs. The State], (15) 2017 SCMR 148 [Qaddan and others vs. The State], (16) 2011 SCMR 527 [Nazir Ahmad vs. Muhammad Iqbal and another] and (17) 2017 SCMR 1189 [Gulfam and another vs. The State].

8. Learned counsel for appellant Azhar Hussain contended that according to medical evidence cause of death was fire arm injuries;

whereas according to prosecution case, Azhar Hussain was armed with iron rod; that reporter of TV channel was not examined by the prosecution; that PW-1 was examined prior to arrest of appellant who did not name the appellant; while adopting the arguments of Mr. Shaukat Hayat he relied upon 2019 P.Cr.L.J 569, 2013 P.Cr.L.J 783 and prayed for acquittal of appellant.

9. Learned Deputy Prosecutor General contended that at trial stage application U/S 23 of Anti-terrorism Act, 1997 was filed on behalf of the appellant which was turned down by the trial court vide order dated: 05-09-2014. Such order was assailed before this court in Cr. Revision No.28 of 2015 which was dismissed vide order dated: 22-09-2015 and was not challenged before Honourable Supreme Court of Pakistan and thus attained finality hence the case was rightly tried by Anti-terrorism Court; that the prosecution proved the case beyond reasonable doubt; that due to the fear of appellants, other witnesses shifted to some unknown places to save their lives and, therefore, have not appeared before the trial court; that PW-1 supported the incident but did not identify the appellants therefore he was rightly declared hostile and Prosecutor cross-examined him; that there is no contradiction in ocular evidence and medical evidence; that appellant Saddam Kakar was arrested at spot along with Kalashnikov; that recovered KK and recovered empties from the place of occurrence were sent to FSL and report was positive which supports the prosecution case; that police officials are also eye witnesses of the incident and are natural witnesses; that no ill will or enmity suggested against the police officials for false implication; that no major contradiction is pointed

out by defense counsel which may make the case of prosecution doubtful; lastly he prayed for dismissal of the appeals.

10. We have heard the arguments of the learned counsel of the parties and pursued the material available on record.

11. The contentions of the learned counsel for the appellants about jurisdiction of the Anti-terrorism court, has no force as this court in the case in hand has already decided this issue in Cr. Revision No. 28 of 2015 vide order dated: 22-09-2015 and the same was not challenged by appellants before Honourable Supreme Court of Pakistan thus attained finality. Para No.6 of the order is re-produced as under:-

“ In the case in hand, the applicant alongwith others duly armed, entered the emergency ward, started firing, which yielded in creating and spreading panic and sense of fear amongst general public present there and the people started running outside the ward. As a result of firing, Abdul Rehman, already lying in injured condition in the emergency ward of Jinnah Hospital, received multiple fire arm injuries at the hands of accused persons and died. In order to see whether that particular act was an act of terrorism or not it is to be seen that whether it has spread panic, terror, sense of fear and insecurity in the people of a section of people. A bare reading of the FIR and evidence collected by the prosecution, coupled with the escape of armed accomplices of the applicant/accused from the scene by resorting to firing, we are clear in our mind that the alleged offence squarely falls within the ambit of Sections 6 and 7 of the Anti-Terrorism Act, 1997.”

12. Next contention that complainant and other private witnesses of the case have not appeared before the trial court for recording their evidence, has no force too as PW-2/Gohar Muhammad and PW-3/Niaz Muhammad though are the police personnel are the eye-witnesses of incident, moreover CW-3/ Inspector Peer Bux was

examined before the trial court and deposed that he received BW for service upon the complainant namely Muhammad Yaseen S/O Muhammad Ali to produce him for evidence. He went in the area of Hazara Goth Gulshan-e-Iqbal where he came to know that complainant shifted to unknown place due to enmity or endanger of his life. He also produced such report at Ex: CW/-3/A in these circumstances non-appearance of the complainant is not fatal to the prosecution in the present case especially as other eye witnesses are available.

13. It is well settled principal of law that the prosecution has to prove the case by producing confidence inspiring and trustworthy evidence. Sole evidence of a material witness is always sufficient to establish the guilt of accused, if the same is confidence inspiring and trustworthy supported with other independent source of evidence because law requires quality of evidence not quantity to prove the charge. Reliance can be placed on the case of ***Namoos Khan and another V. The State 2017 P.Cr.L.J 34, Behram V. The State 2015 YLR 150, Niaz-ud-Din and another V. The State 2011 SCMR 725.***

14. In the present case PW-2/Gohar Muhammad and PW-3/Niaz Muhammad who were the police officials and were present at the time of incident in hospital; they arrived there on information about the availability of injured persons and in their presence this incident took place. Thus, they are not chance witnesses and they had no enmity with the appellants and had no reason to falsely implicate them and their evidence is in line with each other supported by the evidence of Dr. Naveed Ali Baloch who conducted the post mortem of deceased, ASI Abdul Razzak who conducted

proceedings U/S 174 Cr.P.C, ASI Aamir Memon who was witness of arrest of the appellant Azahar Hussain, PC Muhammad Amir in his presence ASI Abdul Razzak inspected the dead body of deceased, ASI Imran Hussain who supported the recovery of CD regarding the footage of incident produced by Khuram Ali CNBC TV reporter to I.O Fayaz, SIO Azam Ali who on information inspected the place of incident, collected the empties, found marks of firing around the wall of hospital, took snapshots of the place of incident, examined the CCTV cameras installed in the hospital and collected snapshots of the incident from CCTV cameras and sent crime weapons and recovered empties to FSL. On transfer of investigation, investigation papers were handed over to SIO Muhammad Fayaz who supported the prosecution case by deposing that he collected the news clips/ video of the incident from CNBC channel and recorded the statements of witnesses, collected the report from FSL which supports the case of prosecution.

15. The Police officials are as good as private witnesses and their testimony could not be discarded merely for the reason that they were police officials, unless the defense would succeed in giving dent to the statements of prosecution witnesses and prove their mala fide or ill-will against accused. All the witnesses furnish ocular evidence and supported the case of prosecution, no enmity was suggested against the appellants, they were cross-examined at length but we do not find any major contradiction in their evidence which lead us to believe that they are not trustworthy.

16. Evidence of Dr. Naveed Ahmed Baloch is also in line with the ocular evidence furnished by PW Gohar Muhammad and PW Niaz

Muhammad and others. In his examination-in-chief stated that on 21-12-2012 dead body was sent by SHO Saddar through ASI Abdul Razzak which was identified by Gul Din and Muhammad Amir for post mortem which was conducted by him and he found following injuries:-

Injury No: 1:- Rounded lacerated wound on 0.5 cm size entry on left temporal region and exit wound on frontal region of skull above fore head.

Injury No: 2:- Entry wounds of 0.5 cm in diameter about 5 in number seen in left flank and lumber region with exit wounds on right side corresponding.

Injury No: 3:- Right forearm de gloving and gutter type injury exposing mussel and tending on medial aspect with fracture of bone.

Injury No: 4:- Rounded lacerated wounds on entry on upper thigh medially 0.5 cm in diameter, exit wound lateral to entry wounds gutter type around 10 by 5 in size.

Injury No: 5:- Rounded lacerated wound right upper thigh 1 by 1 cm in size exit wound parallel in to entry wounds 1.5 cm in size.

Injury No: 6:- Rounded lacerated wound of entry 0.5 cm in size exit wound on right anterior axillary line 1 cm in diameter.

Fracture skull of temporal bone and frontal bone with accumulation of blood noted in cranial cavity.

Thorax:- super facial and fascia and mussel on the right side of the chest were damaged.

Abdomen:- Multiple puncturing wounds entering form left flank rupturing intestine and left kidney with exit wound on the right side of body. Blood accumulated in abdominal cavity.

Time between injuries and death was instantaneously.

Time between death and postmortem was between 3 to 4 hours.

Cause of death is cardio-respiratory failure due to neurogenic and hemorrhagic shock resulting from multiple fire projectile injuries.

17. The recovery from the appellant Saddam Kakar and the recovered empties were also sent to FSL for examination which report was also exhibited in evidence and the opinion in the report is as under:-

“OPINION:

The microscopic examination of the case has led that:

- i. **Seven 7.62mm bore crime empties now marked as “ CI to C7” were fired from the above mentioned 7.62mm bore rifle No: 1965MB9034 marked as “A” in question, in view of the fact that major points i-e striker pin marks, breech face marks and chamber marks are “Similar”.**
- ii. **Two 7.62mm bore crime empties now marked as “C8 to C9” were “fired” from the above mentioned 7.62mm bore rifle No: 15629005570 marked as “B” in question, in view of the fact that major points i-e striker pin marks, breech face marks and chamber marks are “Similar”.**
- iii. **Ten 7.62mm bore crime empties now marked as “C10 to 19” were “Not fired” from the above mentioned two 7.62mm bore rifles marked as “A,B” in question, in view of the fact that major points i-e striker pin marks, breech face marks and chamber marks are “dissimilar”.**
- iv. **Six 7.62mm bore crime bullets marked as “B1 to B6” are fired bullets of 7.62mm bore fire arm/ weapon.**
- v. **One steel cover marked as “S” is steel cover fired bullet.**

18. The Judgment relied upon by the counsel of appellants are not helpful to him as the facts and circumstances of such cases are very different from the facts and circumstances of the case in hand.

It is well settled principal of law that each and every case is to be decided on its own particular facts and circumstances.

In case of ***Shahbaz Masih Vs. The State 2007 SCMR 1631***, there was a police encounter, it was night time incident, the witnesses examined before the trial Court whose names were not appeared in the calendar of witnesses. Major contradictions appeared in the evidence of witnesses. Whereas, in the present case, no major contradictions are pointed out, present incident is daytime incident, appellant Saddam was arrested with Kalashnikov at the spot. In case of ***Ghaus Bux Vs. The State PLD 2004 Karachi 201***, best piece of evidence was withheld by prosecution, it was case of Narcotic Substance and the facts are different from the present case hence in our humble view is not applicable in the present case. In case of ***Azkar Hussain Shah Vs. The State through Advocate-General Azad Jammu and Kashmir and another 2019 YLR 1470***, allegations of sodomy were levelled and prior to sodomy victim was inflicted some injuries which were not supported by medical evidence. Whereas, in the present case ocular evidence is fully supported by the medical evidence so also report of FSL and facts are very different from the present case. In case of ***Azeem Khan and another Vs. Mujahid Khan and others 2016 SCMR 274***, there was unseen incident based on confessional statements of accused, this was the case of abduction with murder based on circumstantial evidence. Whereas, present case is based on direct evidence, appellant was arrested at spot alongwith crime weapon which was used by him while killing the innocent person. In case of ***Muhammad Akram Vs. The State 2009 SCMR 230***, facts are different in that case as it was the case of abduction for

ransom, witnesses had given contradictory evidence. In the case of **Allah Ditta and others Vs. The State 2017 P.Cr.L.J 789**, incident was unseen, last seen and based on circumstantial evidence which too is not helpful for the appellants in the present case. In the case of **Muhammad Ibrahim Vs. Ahad Ali and others SBLR S.C 281**, incident was of night time, no source of light was shown by the prosecution, main conflict was on availability of dead body at hospital and at the home of PW. Several defects were available in that case which are lacking in the case in hand. In the case of **Barkat Ali Vs. Muhammad Asif and others 2007 SCMR 1812**, presence of prosecution witnesses at the time of occurrence was not proved, empties recovered from the spot did not tally with the weapon recovered from the accused. FSL report was held to be not reliable as was not supporting thus the facts are totally different from present case. In the case of **Noor Muhammad Vs. The State and another 2010 SCMR 97**, there were contradictions in the evidence of complainant and other witnesses, conflict of medical evidence with ocular evidence. FIR was delayed, recovery of crime weapon was recovered from the house of accused in his absence, whereas, the facts of the present case are different. In the case of **Muhammad Mansha Vs. The State 2018 SCMR 772**, conflict was found in the FIR and private complainant, recovery was found to be un-corroboratory in absence of FSL report. Co-accused were already acquitted. In the case of **Nasir Javaid and another Vs. The State 2016 SCMR 1144**, there was unseen incident and based on circumstantial evidence and recoveries, which facts too are different from the present case. In case of **Mst. Nazia Anwar Vs. The State and others 2018 SCMR 911**, by a majority view appeal was dismissed to the extent of the appellant's conviction for

the offence under Section 302(b) PPC but the same is partly allowed to the extent of sentence of death which is reduced to imprisonment for life, thus this judgment is against the appellant and trial Court in the present case already taken lenient view in awarding conviction to the appellants. In the case of ***Khan Bacha VS. The State PLD 2006 Karachi 698***, facts are different from the present case. Case is of Narcotics Substance, whereas, the case in hand is a murder case thus not applicable. In the case of ***Mithal alias Babal and another Vs. The State SBLR 2010 Balochistan 55***, accused was not nominated in the FIR, accused persons were not identified at spot, dark night incident, recovery of KK was not proved, KK and empties were sent to FSL after several months of recovery thus the facts and circumstances of the present case are on different footings. In the case of ***Qaddam and others Vs. the State 2017 SCMR 148***, recovery of weapon has been discarded by the High Court, motive was not put to accused in statement under Section 342 Cr.P.C, appellant was remained in jail more than 16 years and death was reduced to imprisonment for life by the Honourable Supreme Court of Pakistan which may be considered against the appellant in the case in hand. In the case of ***Gulfam and another Vs. The State 2017 SCMR 1189***, incident was of night time, identification was on electric bulbs, there was defective identification therefore, and this Judgment is also not helpful to the appellants. In the case of ***Nazir Ahmed Vs. Muhammad Iqbal and another 2011 SCMR 527***, night time incident, identification on electric bulbs, the facts of the present case are also different from the case in hand.

19. All the witnesses supported the case of prosecution, Ocular evidence in the present case is supported by medical evidence so

also circumstantial evidence, incident was day time incident, no mistake in identification of accused, arrest of appellant Saddam Kakar at the spot with crime weapon used in the commission of offence, recovery of crime weapon and empties supported by FSL report, abscondence of appellant Azhar Hussain, his presence at the time of offence duly armed with iron rod which is evident from the CCTV footage and CD exhibited in the evidence and the same were not challenged by both the appellants shows that the prosecution has proved its case beyond any reasonable shadow of doubt.

20. Based on the above discussion we do not find any merit in the instant appeals, therefore the impugned judgment is upheld and the conviction/sentences awarded by the trial court to the appellants are hereby maintained and appeals are dismissed.

JUDGE

JUDGE