

IN THE HIGH COURT OF SINDH, KARACHI

Presents:

Mr. Justice Sajjad Ali Shah
Mr. Justice Naimatullah Phulpoto

SPL. CR. ANTI TERRORISM APPEAL NO. 06 OF 2011

Shahid ZafarAppellant

Versus

The State.....Respondent

SPL. CR. ANTI TERRORISM APPEAL NO. 07 OF 2011

Afsar Khan.....Appellant

Versus

The State.....Respondent

SPL. CR. ANTI TERRORISM APPEAL NO. 08 OF 2011

Muhammad Tariq.....Appellant

Versus

The State.....Respondent

SPL. CR. ANTI TERRORISM APPEAL NO. 09 OF 2011

Muhammad Afzal & others.....Appellants

Versus

The State.....Respondent

Confirmation Case No. 04 of 2011

Reference made by the Judge, Anti Terrorism Court No.1, Karachi Vs. Shahid Zafar

Date of hearing : 28.03.2013, 24.04.2013, 30.04.2013, 15.05.2013, 16.05.2013,
22.05.2013, 28.05.2013, 29.05.2013, 30.05.2013

Date of announcement:: 21-01-2014

Mr. Shaukat Hayat Advocate for Appellant Shahid Zafar in appeal No. 06/2011
Mr. Ch. Amir Nawaz Waraich Advocate for appellant Afsar Khan in Appeal No. 07/2011
Mr. Hlabib Ahmed Advocate for Appellants Tariq and Manthar Ali in Appeal No. 08/2011
Mr. Mehmood Alam Rizvi Advocate for appellant Muhammad Afzal Khan, Baha-ur-Rehman and Liaquat Ali.
Mr. Khadim Hussain Khuharo, DPG
Mr. Amir Mansoob Qureshi Advocate for complainant

JUDGMENT

NAIMATULLAH PHULPOTO, J :- Aforesaid appeals under section 25 (1) of the Anti Terrorism Act, 1997 (hereinafter referred to as A.T.A.) at the instance of appellants are directed against the judgment dated 12.08.2011, passed by the learned Anti Terrorism Court-I, Karachi, whereby appellants have been convicted under section 7(a) of the A.T.A. read with section 302, 34 PPC and appellant Shahid Zaffar has been sentenced to death with direction to be hanged by neck till he is dead and remaining appellants namely Muhammad Afzal, Bahaur Rehman, Liaquat Ali, Muhammad Tariq, Manthar Ali and Afsar Khan were sentenced to imprisonment for life. Death sentence awarded to the appellant Shahid Zafar was subject to confirmation by this Court under Section 374 Cr.P.C. read with section 30(2) of A.T.A. 1997. All the appellants were directed to pay fine of Rs.2 lacs each and in case of default in payment of fine, they were ordered to

at 2345 hours SIP Mubashir Hussain appeared at Police station and produced two accused persons namely Shahid Zaffar and Mohammad Afzal. He arrested them in presence of mashirs namely SIP Riaz Hussain and PC Nazir and prepared such mashirnama. On 10.06.2011 Lance Naik Mohammad Ashfaq appeared at Police station and handed over G-3 Rifle No.1289 with 10 live bullets and two empties through letter. He secured the same in presence of mashirs HC Maula Bux and SI Nasrullah and prepared such mashirnama and sent said G-3 Rifle to Incharge FSL, Karachi on 11.6.2011, with two empties used in this crime for examination and report. I/O recorded 161 Cr.P.C statements of P.Ws. During investigation he added Section 7 ATA 1997.

4. Honourable Supreme Court of Pakistan had taken suo-moto action in this matter and in Suo-Moto Case No.10/2011 Mr. Sultan Ali Khawaja was directed to take over the charge of investigation while observing in order dated 10.6.2011 as under:-

“12. From the above noted facts and circumstances, it is not difficult to visualize that how this incident had taken place and the manner in which both the high-ups i.e. of the Police and the Rangers, had dealt with the same. It is classical case of highhandedness of the law enforcing agencies and instead of feeling sense of responsibility and showing uprightness and honesty, they are, even today, concealing the facts while appearing before this Court. Therefore, under these circumstances, we apprehend that the investigation of the case would not be conducted properly and impartially in presence of both these senior officers i.e. Mr. Fayyaz Ahmed Leghari, PPO Sindh and Mr. Muhammad Ejaz Chaudhry, DG Rangers (Sindh), as such through Attorney General of Pakistan, we direct that they should be posted out within a period of three days and in the meantime some alternate arrangements should be made. However, if after three days, the notifications in this regard are not issued, it is directed to withhold the salaries of above two officers as they would not be entitled for the same till the notification of their posting out is not issued. This part of our order shall be enforced/implemented by the Secretary Interior by proceeding according to relevant rules. Meanwhile, Mr. Sultan Khawaja, DIG Karachi, who is statedly a reputable officer, is directed to take over the charge of the investigation against all the culprits and complete the same within a period of seven days, by applying all appropriate provisions of law as the matter seems to attract *prima facie* Section 7 of the ATA, 1997, and shall send up challan before the Court of competent jurisdiction. He shall also submit progress report

of his investigation to the Registrar of this Court for our perusal in Chambers.

5. Thereafter investigation was transferred to DIG Sultan Ali Khawaja. Sultan Ali Khawaja, DIG constituted an investigation team with approval of CCPO, Karachi headed by him, statements of the PWs were recorded under Section 161 Cr.P.C, case properties were sent to Ballistic and Chemical Examiners for analysis and report, cell phones data used by the accused and deceased were collected. He had also received report from the Fire Arm Examiner, Karachi dated 17.6.2011, in crime No. 227/2011 under sections 302, 34 PPC, in which it was shown that pistol in question was not fire arm. He had also received report of the Chemical examiner showing that clothes of the deceased were stained with human blood. Report of the Ballistic Expert regarding other official weapons recovered from accused was also received. On the completion of the investigation, challan was submitted against appellants in the court of learned Administrative Judge ATC, Karachi under section 302, 34 PPC read with 7 ATA, 1997. Case was transferred to the Court of learned Anti-Terrorism Court No.I, Karachi for disposal according to law.

6. A formal charge against appellants/accused Shahid Zaffar, Mohammad Afzal Khan, Baha-ur-Rehman, Liaquat Ali, Mohammad Tariq, Manthar Ali and Afsar Khan was framed at Ex.10. To the charge accused pleaded not guilty and claimed trial.

7. At trial, prosecution examined, PW-1 Syed Salik Shah, P.W-2 SIP Riaz Hussain, PW-3 Muhammad Javed, PW-4 SIP Zulfiqar Ali, PW-5 Inspector Naseer Mohammad, PW-6 Mst. Gul Naz, PW-7 Mohammad Shaheen Javed, PW-8 SIP Abdul Haleem Kolachi, PW-9 Dr. Ayaz Ali Memon, PW-10 Abdul Rasheed, PW-11 SIP Nasrullah Khan, PW-12 Mohammad Shahid, PW-13 Mohammad Ramzan, PW-14 SIP Faqeer Dad, PW-15 Zahid Essa Khokhar, PW-16 Shakeel Ahmed Shaikh, PW-17 Inspector Mohammad Mubeen, PW-18 Abdul Salam Soomro, PW-19 DSP Altaf Hussain, PW-20 DIG Sultan Ali Khawaja.

8. Statements of appellants Shahid Zafar, Muhammad Afzal, Bahaur Rehman, Liaquat Ali, Mohammad Tariq, Manthar Ali and Afsar Khan were recorded under section 342 Cr.P.C at Ex. 32 to 38, in which appellants have denied prosecution allegations and pleaded innocence. Appellant

Shahid Zafar has stated that he has not committed murder of deceased Sarfraz Shah. However, he has admitted that on 8.6.2011, he along with other Rangers had gone to Shaheed Benazir Park for performing duty. He has also replied that he had no knowledge about the video clip of the incident shown on AWAZ TV on 8.6.2011. He has also denied that he had committed the act of terrorism. He further stated that PWs have deposed against him at the instance of complainant and I.O. He wanted to examine in defence Col. Salman, Pakistan Rangers, Mohammad Saleem, Driver CHEEPA Ambulance and Chief Engineer SAMA TV. Appellant Shahid Zafar did not examine himself on oath in disproof of prosecution allegations. In a question what else he has to say, he replied that he was innocent and has been falsely implicated in this case. Appellant Mohammad Afzal Khan has also pleaded innocence and denied the prosecution allegations and stated that PWs have deposed against him at the instance of I.O. Appellant Mohammad Afzal Khan did not examine himself on oath in disproof of prosecution allegations. He did not examine any witness in defence. Appellant Bahaur Rehman has also pleaded innocence and denied the prosecution allegations and stated that he had not committed act of terrorism and PWs have deposed against him at the instance of I.O. No evidence has been led by him in defence and he declined to give statement on oath in disproof of prosecution allegations. Appellant Liaquat Ali has also denied prosecution allegations and stated that he had not committed act of terrorism and PWs have deposed against him at the instance of I.O. No evidence in defence is produced by him and he did not examine himself on oath. Appellant Mohammad Tariq has also denied prosecution allegations and stated that he had appeared before I.O. himself. He has shown ignorance about video clip of incident. Appellant Mohammad Tariq has denied the commission of act of terrorism and stated that PWs have deposed against him at the instance of complainant and police. He wanted to examine in defence one Alam Zaib. Appellant did not examine himself on oath. Appellant Manthar has denied the prosecution allegations and stated that he had called accused Afsar Khan on his mobile. Other prosecution allegations have been denied by him. He wanted to examine in defence one Alam Zaib, however no evidence on oath was given by him. Appellant Afsar Khan has also denied all the incriminating pieces of

evidence brought on record against him and stated that no act of terrorism has been committed by him and PWs have deposed against him at the instance of complainant and PWs. He wanted to examine in defence DIG Sultan Ali Khuwaja, DSP Altaf Hussain and SIP Nasrullah. He declined to give statement on oath in disproof of prosecution allegations. In a question what else he has to say, he replied that he is innocent and has been falsely implicated in this case by the complainant because he had apprehended deceased and handed over to the Rangers personnel. DW-1 Alam Zaib Khan has deposed that on 8.6.2011 he had visited Shaheed Benazir park with his friend Miss Hira and he was sitting with her in park where one person appeared and pointed out pistol at them and asked to raise hands up and hand over to him all the belongings. He asked Miss Hira to handover him her mobile phone, thereafter culprit asked Alam Zaib Khan to handover him his mobile, to which he resisted and caused him butt blows and he fell down. In the meanwhile, appellant Afsar Khan came there and he handed over said person to appellant Afsar Khan and appellant Afsar Khan handed over his custody to law enforcing agency. In cross-examination he denied the suggestion that he was not present in Shaheed Benazir park on the day of incident along with Miss Hira. He has denied the suggestion that he was deposing falsely in order to save the accused from the conviction. DW-2 Col. Salman Ahmed Khan has deposed that on the day of incident accused were performing their duties in the area of Boat Basin. Before incident he came to know that accused persons were called by one civilian and they were handed over one person involved in commission of robbery. Above named DW came to know that accused persons asked culprit to sit down and raise his hands up but he tried to snatch weapon from accused persons and he died due to accidental fire. He has further stated that Rangers perform duty to maintain law and order at Karachi. No other defence witness has been examined by appellants and Advocates for the appellants/accused closed side.

9. We have carefully heard the learned counsel for the parties and scanned the entire evidence.

10. In order to prove an unnatural death of deceased Sarfaraz Shah, prosecution has examined Dr. Ayaz Ali (P.W-9), who has stated that on 08.06.2011 he was performing his evening duty in the JPMC. At 6.00 p.m injured Sarfraz was brought in the hospital in the critical condition by Chippa driver namely Saleem. He examined him and found following injuries on his person:

1. Fire Arm puncture would 1 c.m in diameter over posterior aspect of upper one third of left forearm. Margins are inverted and no blackening present. Would of entry.
2. Fire Arm injury measuring size 8cmx5 cm over medial aspect of mid of left forearm. Margins are rough and averted. Would of exit.
3. Fire Arm punctured would 1 c.m in diameter over posterior aspect of lower one third of left forearm. Margins are inverted and no blackening present. Would of entry.
4. Fire arm injury measuring 5 c.m x 4 c.m over medial aspect of lower one third of left forearm. Margins are rough and averted. Would of exit.
5. Firearm injury measuring 20 c.m x 15 c.m over medio posterior aspect of right thigh, bursting in manner.
6. Firearm injury 4 c.m x 3 c.m over anterior aspect of left thigh, margins are inverted and no blacking present. Would of entry.
7. Firearm injury 12 c.m x 10 c.m, posterior aspect of left thigh, margins are rough and averted. Would of Exit.

Medical Officer after examination of injured issued such certificate and produced it at Ex.19/A. Thereafter injured expired and certificate of cause of his death was issued by Dr. Ghulam Mustafa of JMPC while opining that deceased had died due to cardio pulmonary failure as a result of firearm injuries. He produced such certificate at Ex.19/B. He had handed over clothes of deceased to SIP Muhammad Javed at P.S. Boat Basin. Evidence of the Medical Officer goes unchallenged and unrebutted in cross-examination. Only one question had been put up to the doctor and he replied that he did not find marks of fists or kicks blows on the body of deceased.

11. The number of injuries, nature and weapon used have not been disputed in cross-examination. Efficiency and Integrity of the Medical Officer have not been questioned. Therefore, we have no hesitation to hold

that deceased Sarfraz Shah died his unnatural death as described by Medical Officer.

12. Complainant Syed Salik Shah has stated that on 08.06.2011 at 5.30 p.m. he was present at his office situated at Techno City of Altaf Hussain Halli Road. He received call of his mother, she informed him that mohalla women have told her that there was some quarrel with Sarfraz Shah (deceased) at Shaheed Benazir Park. He was further informed that police and Rangers personnel were available at the place of incident. Complainant after receipt of such information, contacted Boat Basin police, but they had no knowledge about the incident. SIP Zulfiqar subsequently told to the complainant that consequent upon the quarrel of his brother he had received injuries and he had been shifted to the Jinnah Hospital. Complainant went there and found that the dead body of his brother was lying in emergency and some Rangers personnel were standing there. One Afzal belonging to Rangers was also standing there. He enquired him about murder of his brother, to which he replied that his brother has been murdered in the encounter with the Rangers. Complainant got dead body of his brother after postmortem examination and came to the C.M. house alongwith friends and relatives by taking the dead body for protest against such act of Rangers Officials. Protest continued for 6/7 hours and on the assurance of the police officials he went to the police station and lodged the report. He saw video clip of his brother on T.V. Channel but could not see it and lost his senses. He was cross-examined by learned Advocate of accused Shahid and Afzal and admitted that names of the culprits of the incident were not disclosed by mohalla women to his mother. He has stated that he had found accused Shahid Zafar and Mohammad Afzal in Rangers uniform in the hospital. Complainant has denied the suggestions that his brother was involved in committing robbery. In the cross-examination to learned Advocate for remaining accused, complainant has replied that his further statement was recorded after Juma prayer and he had not mentioned the names of the eyewitnesses in the F.I.R. or in further statement. He has denied the suggestions that pistol was recovered from the possession of his brother. He has also denied the suggestions that he was deposing falsely against the accused.

13. PW-2 S.I.P. Riaz Hussain Awan has stated that on 08.06.2011 he was performing his duty at P.S. Boat Basin. Complainant appeared at police station on the same day at 1215 hours for lodging his report against Rangers personnel. He recorded his statement and handed over copy of the F.I.R. to SIO for investigation purpose. On 09.06.2011 at 2345 hours SIP Mubashir Hussain of Rangers brought accused Shahid Zaffar and Muhammad Afzal. They were arrested by SIP Faqeer Dad, such mashirnama was prepared. He acted as mashir. Co-mashir was P.C Nazir Khattak. He has stated that his statement under Section 161 Cr.P.C. was recorded on 16.06.2011. His statement was also recorded by DIG Sultan Ali Khawaja I.O. of the case. In the cross-examination, he has replied that names of accused Baha-u-Rahman and Liaquat Ali are not mentioned in the F.I.R. It has also been admitted that names of the eyewitnesses are not mentioned in the F.I.R.

14. PW-3 S.I.P. Muhammad Javed Rajput has stated that on 08.06.2011 he was posted at P.S. Boat Basin. On the same day at 1835 hours he received telephonic message from S.I. Wilayat that he has been informed by Dr. Ayaz that one person namely Sarfraz Shah son of unknown aged about 25 years has expired in the hospital and he was required to reach at JPMC for completion of legal formalities. He reached in the hospital and found dead body of deceased Sarfraz Shah. At that time Shahid Zafar and Muhammad Afzal belonging to Rangers were standing near the dead body. He prepared mashirnama of inspection of dead body and inquest report and gave letter to the doctor about his opinion regarding cause of death of deceased. In the cross-examination he has denied the suggestion that he was deposing falsely.

14. PW-4 SIP Zulfiqar Ali Gujar has stated that on 08.06.2011 he was present at P.S. Boat Basin. At 6.35 p.m. SIP Javed received information in his presence that one person namely Sarfraz Shah has been brought to the hospital in the injured condition while he was committing dacoity. He informed S.H.O. P.S. Boat Basin about the incident. In the meanwhile SIP Javed proceeded to hospital and he lodged F.I.R. of Crime No.225/2011, under Sections 393, 353, 324 P.P.C. and F.I.R. No.226/2011, under Section 13(d) Arms Ordinance of the complainant Afsar Khan against Sarfraz

Shah. He produced F.I.Rs at Ex.14/A & 14/B. S.H.O. handed over one pistol of 30 bore, 3 live bullets and one empty, one purse, cash of Rs.750/- and a mobile to him. S.H.O. told him that articles have been handed over to him by Rangers Personnel, the same were recovered from the possession of deceased. He sealed pistol and bullets and handed over the case property to SIO P.S. Boat Basin for investigation purpose. On 09.06.2011 at 6.00 p.m. first I.O. SIP Faqeer Dad visited the place of vardhat in his presence and in presence of mashir P.C Nazir and prepared such mashirnama. He has stated that his statement was recorded by DIGP Sultan Ali Khawaja, Investigation Officer in this case. In the cross-examination he has admitted that his statement under Section 161 Cr.P.C. was recorded after eight days of the incident. He has denied the suggestions that he was deposing falsely against the accused at the instance of his superiors.

15. PW-5 Inspector Naseer Muhammad Tanoli has stated that on 08.06.2011 he was posted as S.H.O. P.S. Boat Basin. At 1840 hours he was performing his patrolling duty, he received information at mobile phone from SIP Zulfiqar of P.S. Boat Basin that one person has been seriously injured in the firing of Rangers personnel at Shaheed Benazir Bhutto park and he has been taken to JPMC. On such information, S.H.O. proceeded to place of vardhat, where number of persons were available, he enquired from them about incident, they informed the S.H.O. that one person has received the injuries caused by Rangers personnel and he has been shifted to JPMC. S.H.O. went to JPMC, where he met SIP Javed, who disclosed him that injured has expired. In the meanwhile, he received call from Deputy Superintendent Rangers namely Ali, who asked S.H.O. to reach at Rangers Headquarter 32 Wing Kalapul. He went there and met Superintendent Rangers, he called SIP Baha-u-Rahman, who handed over to him one pistol with magazine, three live bullets, one empty, one purse, cash Rs.750/- and one mobile phone through letter and stated that articles were recovered from deceased Sarfraz Shah. SIP Baha-u-Rahman further informed S.H.O. that during encounter deceased had fired upon them from the pistol. Superintendent Rangers namely Ali asked S.H.O. to take Afsar Khan at P.S. for lodging his report. He came to P.S. alongwith Afsar Khan and handed over articles to SIP Zulfiqar for legal proceedings. On 09.06.2011 he received telephone from duty officer SIP Riaz that one

media person had appeared at P.S. for registration of the F.I.R. against Rangers Personnel. He directed SIP Riaz to register F.I.R. of the complainant and F.I.R. No.227/2011 under Section 302, 34 P.P.C. was registered. In the cross-examination, S.H.O. has replied that prior to this incident deceased Sarfraz Shah was apprehended by him while committing robbery, but he was released at the request of his parents. He has denied the suggestions that he has deposed falsely against the accused at the instance of DIG Sultan Ali Khawaja.

16. PW-6 Mst. Gul Naz Tanoli has stated that she resides with her husband and children in her house situated in street No.21, Hijrat Colony, Karachi. She saw video clip at Samaa T.V. at 1.30 a.m. and saw six Rangers personnel and one private person had apprehended deceased, private person was causing fists and kicks blows to him and handed over him to Rangers Personnel at Shaheed Benazir Bhutto Park. She has further stated that boy was begging for his life and was praying for mercy before the Rangers Personnel and one Ranger was asking the other Rangers personnel/accused to open fire upon him. Deceased received fire at his hand and leg and fell down. He was bleeding. Deceased was requesting to the accused to shift him to the hospital but no one came forward. After seeing the video clip, she stated that she was confused and felt insecure and could not move freely and her children were also under fear and felt insecure. She was cross-examined. She denied the suggestions that she has deposed falsely against the accused at the instance of complainant.

17. PW-7 Muhammad Shaheen Javed has stated that on 09.06.2011 at 7.30 a.m. he came to the house from the duty and found mohalla people under fear and his family was also feeling insecure as Rangers personnel had committed murder of a boy. He switched on T.V. and saw video clip that one person in civil dress apprehended one person and handed over to Rangers personnel after causing him kicks blows. The boy was trying to sit in the police mobile and Rangers personnel dragged him down and pointed their weapons at him, in the meanwhile, he was fired upon by the Rangers personnel and deceased was begging for his life before the Rangers officials, but no one heard him. On seeing this footage on T.V. he has stated that he felt insecure. On 12.06.2011 his statement under Section 161

Cr.P.C. was recorded. He has stated that accused persons present in the Court were same, who were seen by him on T.V. video clip. He was cross-examined at length. He has denied the suggestions that he has deposed falsely at the instance of the complainant and police.

18. PW-8 SIP Abdul Haleem Kolachi has deposed that on 12.06.2011 he was posted as SIP in the investigation branch at P.S. Boat Basin. On the same day he received directions from the high officials to assist the investigation of Crime No.227/2011, under Section 302/34 P.P.C. Appellant/accused Afsar Shah was arrested in presence of mashirs. On same day Inspector Nadeem Anwar of Rangers appeared at police station and handed over two mobile sets of accused Manthar Ali and Afsar Khan. Same were secured and such mashirnama was prepared in presence of mashirs. On 13.06.2011, two persons namely Saleem and Muhammad Sultan of Chippa Welfare Association appeared at P.S. and produced two registers to I.O. In his cross-examination, he has denied the suggestions that he was deposing falsely against accused Afsar Khan.

19. PW-10 Abdul Rasheed Siddiqui has stated that on 08.06.2011 he was posted as D.D.O, Parks in City Government, Karachi. On the same date, at 2.30 p.m. he had received a telephone call from his office to make necessary arrangements at Shaheed Benazir Bhutto Park, Boat Basin, as talk show would be recorded by Awaz T.V. He reached in the park at 4.15 or 4.30 p.m. and called Muhammad Shahid Overseer and P.W Muhammad Ramzan Incharge of the park and directed them to keep the park neat and clean. In the meanwhile, he saw one person in civil dress having cap, had caught hold one person from his collar. He went behind said person and found one mobile of Rangers entered in the park speedily. Said person gave fists and kicks blows to the boy and handed over his custody to the Rangers personnel. He heard voices of "MARO MARO" and heard reports of two fires, which hit said boy and he fell down and was bleeding. On witnessing this incident he stated that he lost his senses due to waive of fear and left the place of incident. P.Ws. Muhammad Ramza, Muhammad Shahid and media persons of Awaz T.V. were there. P.W. Abdul Rasheed was called by DSP Altaf on the night of 12.06.2011 to the P.S. Boat Basin, where his statement was recorded under Section 161 Cr.P.C. on

13.06.2013. He had also received notice on 14.06.2011 for appearance before the Civil Judge & Judicial Magistrate, Karachi South and on 15.06.2011 his statement under Section 164 Cr.P.C. was recorded in presence of the accused persons and produced it in evidence at Ex.20/B. He has stated that accused persons present in Court are same who were seen by him in the park. He has admitted in the cross-examination that at the time of incident deceased was trying to hide his face from camera. He has denied the suggestions that he was deposing falsely against the accused persons. He has also denied the suggestion that he has not witnessed the incident.

20. PW-11 Nasrullah Khan Rajput has stated that on 08.06.2011 he was posted in the investigation branch at P.S. Boat Basin. He had received two F.I.Rs. bearing Crime No.225/2011 under Sections 393/324/353 P.P.C. and Crime No.226/2011 under Section 13(d) Arms Ordinance for investigation. He had also received mashirnama of recovery of the 30 bore pistol, three live bullets and one empty. He had also inspected dead body of deceased in presence of mashirs, received postmortem report and clothes of the deceased. He had also inspected place of vardhat on the pointation of complainant Afsar Khan of Crime No.225/2011 and prepared such mashirnama in presence of the mashirs. He had found bloodstained earth at place of vardhat but could not collect the same from the place of vardhat. On the following day of incident, he sent clothes of the deceased, pistol and bullets to the chemical examiner and FSL for analysis and report. He recorded statements of P.Ws. SIP Raja Javed, SIP Zulfiqar Ali, Abdul Rasheed DDO Parks, Muhammad Shahid, Muhammad Zaffar and Abdul Latif under section 161 Cr.P.C. On 10.06.2011 Naiq Muhammad Ashfaque of Rangers appeared at P.S. and handed over G 3 Rifle, two empties and 10 live bullets to SIP Nasrullah. He prepared such mashirnama in presence of mashirs, and his statement was recorded by SIP Faqeer Dad. Then investigation was transferred to DIG Sultan Ali Khuwaja. On 11.06.2011, he has stated that, on his pointation DSP Altaf Hussain visited place of vardhat in presence of mashirs and he produced G 3 rifle and ten live bullets and three empties to the investigation officer. In the cross-examination, he has denied the suggestions that he was deposing falsely against the appellants to show his efficiency.

21. PW-12 Muhammad Shahid Qureshi has stated that on 08.06.2011 at noon time P.W. Abdul Rasheed telephoned him and informed that T.V. talk show of Minister Shazia Mari would be held at Shaheed Benazir Bhutto Park and directions were issued to him to keep the park neat and clean. He reached at Shaheed Benazir Bhutto Park at 5.00 p.m. and saw a boy, he was caught hold by a person, he was taking him to the food side. At that time, P.W. Abdul Rasheed got him down from the vehicle at the distance of 100 feet away from the place of vardhat. He heard two fire reports, he alongwith gardener rushed to the place of incident and found a boy wearing pant shirt lying injured on the ground and Rangers personnel were available there and they had occupied their position. While seeing the incident P.W. Muhammad Shahid felt fear and went home from the place of incident and watched T.V. and saw video clip of the incident with family members. On 12.06.2011, his statement was recorded. He has stated that accused present in Court were same. He was cross-examined at the length. He has denied the suggestions that he was deposing falsely at the instance of police and P.W. Abdul Rasheed. He has also denied the suggestions that he has not witnessed the incident.

22. PW-13 Muhammad Ramzan has stated that on 08.06.2011 he was posted as Head Gardener in the Parks Department City Government, Karachi. On the same day, at 4.30 p.m. he received telephonic call from P.W. Abdul Rasheed DDO, who directed him to make necessary arrangements in the park, where T.V. program would be held. P.W. Muhammad Shahid came in the park at 5.00 p.m. and issued him some directions. He saw one person who had caught hold a person from his collar. In the meanwhile, Rangers personnel van entered into the park and a person who had captured a boy wearing shalwar kameez and cap handed over custody of the boy to the Rangers personnel. He heard two fire reports and rushed to the place of occurrence and found a boy lying on the ground he was bleeding and Rangers personnel had surrounded him. He was under fear after witnessing the incident and proceeded to offer prayer in the mosque. On the next morning, he watched T.V. with his family members and saw a video clip regarding incident which he had seen in the Shaheed Benazir Bhutto Park. He has stated that his statement was

present in Court are same so also case property. He was also cross-examined at length. He has denied the suggestion that present appellants / Rangers personnel had not committed crime and he was deposing falsely at the instance of his Superiors.

24. PW-15 Zahid Essa Khokhar has stated that at the time of incident he was Bureau Chief of Awaz T.V. On the day of incident, he alongwith camera man P.Ws. Abdul Salam, Abdul Hafeez and others reached at Shaheed Benazir Bhutto Park for coverage of talk show at 4.00 p.m. They were busy in searching location, it was 5.15 p.m. they say one person in a civil dress, he had captured one boy wearing pant shirt and was beating him and he had also seen something like pistol in the hand of the said person. He asked P.W. Abdul Salam to record scene in his video camera. In the meanwhile, Rangers mobile entered in the park. The same person after causing kicks to the boy handed over his custody to the Rangers personnel in the meanwhile he heard reports of two fires and heard words "MARO MARO". Deceased fell down. He has stated that they recorded incident and came back to the office and handed over cassette to the in charge news room. On 15.06.2011, his statement was recorded under Section 161 Cr.P.C. He has stated that accused who held the boy and remaining accused person in Court were same. In the cross-examination, he has denied the suggestion for deposing falsely. He has also denied the suggestions that he was not Bureau Chief in Awaz T.V. at the time of incident.

25. PW-16 Shakeel Ahmed Shaikh has stated that on 16.06.2011 he was present in his office. He was busy in his Auditing work in PTV He received a call from G.M. PTV. He went to his office, where DIG Sultan Ali Khawaja, SSP Niaz Ahmed Khoso and DSP Altaf Hussain were present. He verified the DVR cassette. He desealed it. Cassette was played and footage of the incident was seen. It was the film of two minutes 2 seconds. Video cassette was found to be genuine. Thereafter, cassette was sealed and he produced cassette (DVR) in evidence. In the cross-examination he has stated that he is Electronic Associate Engineer but replied that there was no notification for his appointment as expert in editing. He has denied the

suggestions that DVR was artificial and managed and he was deposing falsely at the instance of the police.

26. Inspector Muhammad Mubin (P.W.-17) has stated that on 11.06.2011 he was posted as SIO at Boat Basin P.S. at the same day at 1700 hours. He reached in office of DIG Sultan Ali Khawaja and attended the meeting held in connection with investigation of Crime No.225, 226 & 227 of 2011. Place of vardhat was visited by DSP Altaf Hussain in his presence and he secured bloodstained three bricks and one piece of brick. Such mashirnama was prepared. The bricks were sealed. His statement was recorded under Section 161 Cr.P.C. DIG Sultan Ali Khawaja, SSP Niaz Ahmed Khoso took him and DSP Altaf to the office of Awaz T.V. channel. DIG Sultan Ali Khawaja enquired from Awaz T.V. Incharge about the cassette (DVR) and he produced the same before investigation officer and it was sealed in his presence and such mashirnama was prepared. Thereafter, DIG Sultan Ali Khawaja went to the Rangers Office, 32 Wing Abdullah Shah Ghazi Rangers. DSR Rangers produced accused Baha-u-Rahman son of Israeel, Manthar, Muhammad Tariq and Liaquat. He had also produced SMG Rifle alongwith 30 rounds with magazine assigned to Baha-u-Rahman, one G 3 Rifle along with 60 rounds, three magazine assigned to accused Manthar, one MG, 250 Rounds belonging to accused Liaquat, G 3 Rifle, 60 rounds, three magazines issued to accused Muhammad Tariq, one G 3 Rifle, three magazine, 60 rounds of accused Sepoy Muhammad Afzal. Attested copy of the duty roster of accused persons dated 08.06.2011 was also produced before the DIG so also Toyota Mobile van used by accused persons on the date of incident. Mashirnama of arrest and recovery was prepared in presence of the mashirs and statements under Section 161 Cr.P.C. were also recorded. On 12.06.2011 DSP Altaf Hussain received information about the presence of accused Afsar Khan in Street No.9, Shireen Jinnah Colony, Karachi. He was arrested. P.W. Inspector Muhammad Mubin acted as mashir, co-mashir was SIP Abdul Haleem Kolachi. On 13.06.2011 DSP Altaf Hussain was present at P.S. alongwith other police officials, hawaldar Abdul Rahman of Rangers appeared and produced one toy pistol. It was secured by DSP Altaf Hussain. Mashirnama of its recovery was prepared. He acted as mashir. He has stated that accused present in Court were same. In the

cross-examination, he has denied the suggestion that he has given false evidence at the instance of DIG Sultan Ali Khawaja. He has also denied the suggestion that no offence has been committed by present accused.

27. PW-18 Abdul Salam Soomro, camera man, important witness of the case has stated that on 08.06.2011 he reached in Shaheed Benazir Bhutto Park at 4.15 p.m. alongwith team of Awaz T.V, consisting of Zahid Eisa Khokhar, Sikandar and Irshad Solangi for recording talk show. He has stated that they were busy in searching proper location when P.W. Zahid Eisa Khokhar asked him to record scene as one person in civil dress wearing cap was beating one boy wearing pant shirt. He started recording of incident and found that said person after causing kicks blows to the boy handed over his custody to the Rangers personnel. They encircled boy, one of them pointed his weapon on his neck. The boy was praying for mercy. At that time, Rangers personnel pushed him and other Ranger personnel fired two shots upon him, which hit him and he fell down and was bleeding. After recording incident media persons came back to the office and informed about the incident to Director Altaf of news and showed him the film of the incident. On the following day morning he came in the office as usual and came to know that deceased was brother of the reporter Samaa T.V. and he went to the provincial assembly for the coverage of proceedings. At 9.47 a.m, he received a call on his mobile from unknown person, who issued threats to him. On 12.06.2011, Chief Executive Officer of Awaz T.V. informed him that he has received call from police to appear before the police on 13.06.2011. He appeared before Investigation Officer Sultan Ali Khawaja and his statement was recorded. His statement under Section 164 Cr.P.C. was also recorded before the Magistrate. This camera man clearly stated that accused present in Court were same. Video clip was also same, which he had recorded. He was cross-examined at length. He has denied the suggestions that video was not recorded by him and the same has been managed. He has also denied the suggestions that he was deposing falsely at the instance of complainant and police.

28. PW-19 DSP Altaf Hussain Shaikh has stated that on 11.06.2011 he was posted as SPO Khawaja Ajmair Nagri, West Zone, Karachi. At 5.00 p.m. he was called in the office of DIG Sultan Ali Khawaja and was

informed that he has been made a part of the investigation team for the investigation of Crime Nos.225, 226 & 227 of 2011 at the directions of the Honourable Supreme Court. He was asked by DIG to assist him in the investigation of Crime No.227/2011. Thereafter, he alongwith Inspector Muhammad Mubin left office of DIG at 6.00 p.m. and went to P.S. Boat Basin and took SIP Nasrullah, SIP Haleem Kolachi, SIP Aslam Jatt and Inspector Mubeen for investigation of the place of vardhat. Place of vardhat was visited and from place of vardhat three bloodstained bricks and a piece of the brick were collected in presence of the mashirs. Such mashirnama was prepared. Bricks were sealed. Thereafter, he has stated that investigation officer DIG Sultan Ali Khawaja recorded statements under Section 161 Cr.P.C. of the police officials so also Awaz T.V. media persons. The DVR and film, which were also shown on T.V., were sealed in presence of the mashirs. Such mashirnama was prepared. Statements under Section 161 Cr.P.C. of the P.Ws. were recorded. Thereafter he alongwith DIG and other police officials held press conference. On 12.06.2011 Rangers Officers produced accused Baha-u-Rahman, Liaquat Ali, Tariq and Manthar alongwith their arms and ammunition. They were arrested, mashirnama of arrest and mashirnama of arms and ammunition were prepared in the presence of mashirs. Statements under Section 161 Cr.P.C. were recorded. He received report of the ballistic expert and it was produced in evidence. He received spy information on 12.06.2011 at 2.30 p.m. about presence of accused Afsar Khan. He proceeded alongwith mashirs to the pointed place and arrested accused Afsar Khan from the Shireen Jinnah Colony. On 12.06.2011 at 2240 hours Inspector Nadeem Anwar of Rangers appeared at P.S. and produced one mobile phone used by accused Manthar Ali and two mobile phones belonging to accused Afsar Khan, same were received, such mashirnama was prepared. On 13.06.2011 he was called by DIG Sultan Ali Khawaja at P.S. Benazir Bhutto Park and informed him that Hawaldar Abdul Rahman had brought a toy pistol. He took the same and prepared such mashirnama in presence of mashirs and recorded statement under Section 161 Cr.P.C. He had also received chemical report regarding pieces of the bricks. On 17.06.2011 DIG Sultan Ali Khawaja recovered six registers of Rangers regarding duty of the accused. He secured the same and prepared such mashirnama. He was

cross-examined at length by learned counsel for appellants / accused. He has denied the suggestion that his investigation was not fair and he was deposing falsely against the accused at the instance of DIG Sultan Ali Khawaja and complainant Salik Shah. He has also denied the suggestion that recoveries have been foisted upon the accused. He has also denied the suggestion that appellants / accused have been falsely implicated in this case.

29. PW-20 Sultan Ali Khawaja, DIG Karachi West, was appointed as I.O on the orders of Hon'ble Supreme Court on 10.06.2011 for investigation of case. DIG Sultan Khawaja perused FIR No.227/2011 under section 302/34 PPC and came to know that I.O Faqeer Dad had already visited place of wardat and arrested accused Shahid Zafar and Mohammad Afzal and they were under remand upto 15.6.2011. Section 7 ATA on the basis of the letter of Assistant District Public Prosecutor was added. Empties and weapon were already sent by the previous I.O to FSL for report. Sultan Khawaja also perused FIRs Nos.225/2011 and 226/2011 and came to know SIP Nasrullah had secured one pistol, three live bullets, one empty and clothes of deceased same were already sent to the Chemical Examiner by SIP Nasrullah. On 11.06.2011, with the approval of CCPO Karachi, he constituted Team comprising of Mr. Niaz Ahmed Khoso SSP, Mr. Altaf Hussain DSP, Inspectors Mohammad Mubeen and Mohammad Khalid for his assistance. On 11.06.2011, he issued letter to S.P Investigation-I, South to handover custody of two accused. On the same date, he asked Director General Rangers Sindh to handover custody of the accused and their weapons as well as mobile van. On the same date, DIG Khawaja asked Director News of Awaz T.V to handover original DVR. On 11.06.2011, he visited place of wardat, secured blood stained three bricks and one small piece of brick and prepared such mashirnama in presence of mashirs. He also prepared sketch of the place of wardat in presence of the mashirs. On the same date, he along with SSP Niaz Hussain Khoso, DSP Altaf Hussain and Inspector Mohammad Mobeen went to the office of Awaz T.V and met Syed Inayatullah Shah Chief Executive officer of Awaz T.V and asked him to produce original DVR of incident. Mr. Khawaja watched the film of incident and sealed the DVR in presence of Inspector Mohammad Mobeen and Chief Executive officer Syed Inayatullah Shah by

making such mashirnama. Then he went to the Conference Hall of DIG South and called complainant Salik Shah, they went to 32 Wing Rangers situated near Navel Heights, where DSR Ahmed Kaleem Awan produced accused Baha-ur-Rehman, Manthar, Tariq and Liaquat along with their official weapons as well as mobile van and attested copies of the duty roster registers and Kot Registers. DIG Sultan sealed the weapons, arrested accused in presence of the mashirs and prepared such mashirnama. He had recorded u/s 161 Cr.P.C statements of the P.Ws. On 12.06.2011, he asked Director Parks CDGK Karachi dated 12.06.2011 to produce P.W Abdul Rasheed and Abdul Ghafoor for recording their statements. On 12.06.2011 he issued letter to DIG, CID Sindh Karachi for data analysis of Sims/Cell Phones, details of the incoming/outgoing calls including SMS, MMS of accused Manthar Ali Cell No.0313-2573571, mobile of Sarfaraz Shah No.0342-2411322, mobile of accused Afsar Khan No.0342-2000412 and 0324-2850085. In the evening of 11/06/2011, he invited general public through message on T.V to appear at P.S Boat Basin for recording their statements regarding incident. In response to that message 8 male and 1 female appeared at P.S where their statements were recorded. On 12.06.2011 he addressed a letter to General Manager PTV Karachi to report about the editing in the DVR of incident. On 13.06.2011, he recorded 161 Cr.P.C statements of PW Abdul Salam, Abdul Rasheed and Mohammad Shahid. He received incoming/outgoing call record of mobiles from DIG CID along with record of SMS and MMS. On 13.06.2011 he recorded statement of driver of Chheepa Ambulance. On 14.06.2011, he received letter from Deputy Director-I, Parks CDGK Karachi in which it was mentioned that accused Afsar Khan son of Gul Muhi-u-Din was not an employee of the Parks nor he was awarded contract to charge parking fee at Shaheed Benazir Bhutto Park, Boat Basin. On 14.06.2011 he submitted an application to the Judicial Magistrate-II, South, Karachi for recording the statements of P.Ws Abdul Salam Soomro and Abdul Rasheed u/s 164 Cr.P.C. On 15.06.2011 accused were produced in the court of Judicial Magistrate-II, South Karachi, where statements of P.Ws Abdul Saleem Soomro and Abdul Rasheed were recorded u/s 164 Cr.P.C. On 15.06.2011 he had recorded statement of P.W Zahid Eisa Khokhar u/s 161 Cr.P.C. On 13.06.2011 S.I Abdul Rahman of Rangers had produced

dummy pistol and such mashirnama was prepared in presence of mashirs. Statements of P.Ws were recorded. The toy pistol was referred to the FSL for report. DSP Altaf had received expert opinion of DVR from General Manager PTV. On 17.06.2011 DIG Sultan and his team went to 32 Rangers Wing near Navel Heights where DSR Ahmed Kaleem produced 8 original registers which were sealed by him in presence of mashirs. On 17.06.2011 he received FSL Report about toy pistol. It was mentioned in the report that pistol in question was not a fire arm. He has also produced report of FSL with reference to Crime No.225 and 226 of 2011. On 17.06.2011 Director Laboratory sent a report in respect of black colour jeans, black colour shirt and white colour banyan of deceased Sarfaraz Shah. The same were stained with human blood. Article No.1 to 4 were also stained with human blood. I.O. Sultan Ali after investigation of FIR No.225/2011 u/s 353/393/324 PPC and FIR No.226/2011 u/s 13(d) A.O found cases false and submitted report before Judicial Magistrate-II, Karachi South in "B" class. After examination of call data record he came to know that appellant/accused Afsar Khan had made call from his cell to the cell phone of accused Manthar at 1717 hours on 08.06.2011. I.O also came to know that accused Afsar Khan again made call from his cell to appellant Manthar to reach at Food Court Shaheed Benazir Bhutto Park directly. I.O Sultan stated that he had seen the video clip of incident, deceased before death was saying that his pistol was a toy. Accused Afsar Khan caused kick blow to the deceased and handed over him to Rangers personnel/accused. In the meantime, all the accused persons encircled deceased and appellant/accused Shahid Zafar pointed out his weapon upon deceased. All the accused pushed the deceased back and uttered words "MAR DO MAR DO NEECHAY GOLI MARDO". In the meantime two fires were made upon deceased Sarfaraz Shah by accused Shahid Zafar, who fell down and was begging to shift him to the hospital, in the name of Allah. I.O came to know through CDR that accused Manthar made call from his cell at 1733 hours to accused Afsar Khan to call Chheepa Ambulance. Accused Afsar Khan called Chheepa Ambulance on their telephone. I.O perused the register of Chheepa Ambulance. He also came to know during investigation that deceased was taken by accused Shahid Zafar and Mohammad Afzal in Chheepa Ambulance to Jinnah Hospital, "

if deceased had been shifted to the hospital in the Rangers mobile, his life would have been saved". I.O has further stated that accused had no intention/preparation to commit act of terrorism. On 27.06.2011 report was prepared and he produced attested copy of Joint Investigation Team report. After usual investigation challan was submitted on 18.06.2011 before learned Administrative Judge, ATCs, High Court of Sindh Karachi.

30. Learned trial court on the conclusion of trial heard counsel for parties and after assessment of evidence convicted and sentenced the appellants, as stated above.

31. Mr. Shaukat Hayat, learned Advocate for the appellant Shahid Zafar has argued that the FIR was registered under section 302 PPC and section 7 of ATA, 1997 was added mala fide during investigation. Ingredients of section 6 of ATA, 1997 were not attracted in this case. Appellant Shahid Zafar was performing his official duty. Deceased Sarfraz Shah was handed over to appellant Shahid Zafar and others by appellant Afsar as he was involved in a crime. He further submitted that fires were made by appellant Shahid Zafar on the lower part of the deceased. He had no intention to kill him. Case was not triable by Anti-terrorism Court under the provisions of ATA 1997. According to learned defence counsel element of terrorism was missing in this case. Lastly, it was argued that it was not the case of death sentence as the ingredients of section 302 PPC read with section 7 ATA, 1997 are not attracted from the evidence on record. Mr. Mehmood Alam Rizvi, learned Advocate for the appellant Muhammad Afzal Khan, Baha-ur-Rehman, Liaquat Ali, Muhammad Tarique and Manthar Ali, argued that Anti-Terrorism Act, 1997 provides for prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for the matters connected therewith and incidental thereto and submitted that Rangers personnel were performing official duty and a criminal Sarfraz Shah was produced before them and was directed by appellants to surrender and deceased did not surrender. Appellant Shahid Zafar fired upon him at his leg and argued that remaining appellants had not shared common intention with appellant Shahid Zafar for commission of offence. He has argued that prosecution has failed to bring on record evidence against appellants that they shared common intention with

appellant Shahid Zafar. Mr. Rizvi lastly argued that trial court did not appreciate evidence according to law and prosecution case was doubtful against the appellants. M/s Ch. Amir Nawaz Waraich, Advocate for appellant Afsar Khan and Habib Ahmed, Advocate for appellants Muhammad Tariq and another, argued that no act of terrorism had been committed by the appellants and trial by Anti-terrorism Court was coram non judge. It is argued that no evidence has been brought on record by prosecution to prove that the appellants had shared common intention with main accused Shahid Zafar. Lastly, it was argued that no overact has been attributed to appellants except Shahid Zafar. Case against appellants was doubtful.

In support of contentions, learned Advocates for the appellants have placed reliance upon the following cases:

i). In the case of **Niranjan Singh Karam Singh Punjabi Advocate vs. Jitendra Bhimraj Bijja and others (AIR 1990 S.C 1962)**, the Indian Supreme Court has held as under:-

"11. We have carefully considered the statements of the witnesses on which the prosecution relies in support of its contention that the accused had committed an offence under Section 3(1) of the Act. We think that the Designated Court was right in coming to the conclusion that the intention of the accused persons was to eliminate Raju and Keshav for gaining supremacy in the underworld. A mere statement to the effect that the show of such violence would create terror or fear in the minds of the people and none would dare to oppose them cannot constitute an offence under Section 3(1) of the Act. That may indeed be the fall out of the violent act but that cannot be said to be the intention of the perpetrators of the crime. It is clear from the statement extracted earlier that the intention of the accused persons was to eliminate the rivals and gain supremacy in the underworld so that they may be known as the bullies of the locality and would be dreaded as such. But it cannot be said that their intention was to strike terror in the people or a section of the people and thereby commit a terrorist act. It is clear that there was rivalry between the party of the accused on the one hand and Raju and Keshav on the other."

ii). In the case of **Mehram Ali and others vs. Federation of Pakistan and others (PLD 1998 S.C 1445)**, the Honourable Supreme Court has held as under:-

“However, it may be observed that the offences mentioned in the Schedule should have nexus with the object of the Act and the offences covered by sections 6, 7 and 8 thereof. It may be stated that section 6 defines terrorist acts, section 7 provides punishment for such acts, and section 8 prohibits acts intended or likely to stir up sectarian hatred mentioned in clauses (a) to (d) thereof. If an offence included in the Schedule has no nexus with the above sections, in that event notification including such an offence to that extent will be ultra vires.”

- iii). In the case of **Muhammad Afzal and others vs. S.H.O and others (1999 P.Cr.L.J 929)**, it is held as under:-

“A matter, ordinarily, has to be dealt with in general jurisdiction and unless a case falls squarely within special jurisdiction, the forums created under special jurisdiction, cannot even touch those matters.

The case in hand relates to abduction of married woman which offence, prima facie, would be punishable by section 16 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. A vague allegation about employment/show of fire-arm was levelled by the complainant in the crime report but that would hardly make that a terrorist act. The offence committed by the accused, obviously, had no nexus with object of the Anti-Terrorism Act, 1997 and cognizance of the case could not have been taken by the Special Court.”

- iv). In the case of **Basharat Ali vs. Special Judge, Anti-Terrorism Court-II, Gujranwala (PLD 2004 Lahore 199)**, the Lahore High Court has held as under:-

“.....Ch. Bashir Ahmed v. Naveed Iqbal and 7 others (PLD 2001 SC 521) the case in hand, despite the brutality displayed by the culprits and the consequent horror, shock, fear and insecurity likely to be created by the savagery perpetrated by the offenders, has not appeared to us to be a case of terrorism as the motive for the alleged offences was nothing but personal enmity and private vendetta and the motivation on the part of the accused party was not to overawe or intimidate the Government, etc. or to destabilize the society at large or to advance any sectarian cause etc. The intention of the accused party did not depict or manifest any ‘design’ or ‘purpose’ as contemplated by the provisions of section 6(1)(b) or (c) of the Anti-Terrorism Act, 1997 and, thus, the actus reus attributed to it was not accompanied by the necessary mens rea so as to brand its actions as terrorism triable exclusively by a Special Court constituted under the Anti-Terrorism Act, 1997. The stand taken before us by the learned Assistant Advocate General appearing for the State also proceeds on the same lines and it is for these very reasons that the State has chosen not to oppose this petition. This writ petition is, therefore, allowed the impugned

order passed by the learned Judge, Anti-Terrorism Court-II, Gujranwala on 4-10-2003 is declared to be without lawful authority and of no legal effect and the same is set aside, the application filed by the petitioner before the said Court under section 23 of the Anti-Terrorism Act, 1997 is accepted and the petitioner's case is declared to be triable by a Court of ordinary jurisdiction. The learned Judge, Anti-Terrorism Court-II, Gujranwala is directed to transmit the record of the petitioner's case to the learned District and Sessions Judge, Gujranwala forthwith for further proceedings in the matter. There shall be no order as to costs."

v). In the case of **Amir Khan vs. The State (PLD 2005 Karachi 344)** this Court has held as under:-

"24. Thus, the essential ingredients of terrorism as defined in subsection(1)(b) or (c) are as under:-

- (a) Use or threat of action shall fall within the meaning of subsection(2)(a) to (n) and
- (b) The use or threat is intended or expected with its natural and inevitable consequences of coercing and intimidating or overawing the Government or the public or a section of the public or community or sect or creating a sense of fear and insecurity in the society, or
- (c) The use or threat is made for the purpose of advancing the religious, sectarian or ethnic cause.

25. The requirements of terrorism as defined in subsection (3) are as under:-

- (i) The use of action or threat of action shall fall within the scope of subsection (2)(a) to (n).
- (ii) The action falling under subsection (2)(a) to (n) shall involve the use of fire-arms, explosives or any other weapon.
- (iii) Above act will become terrorism regardless of the fulfilment or satisfaction of the circumstances or purpose mentioned in subsection (1)(c).
- (iv) The above act should have nexus with the object of the Act, 1997."

vi). In the case of **Mirza Shaukat Baig and others vs. Shahid Jamil and others (PLD 2005 S.C 530)**, the Honourable Supreme Court has held as under:-

“The panel calls for a definition which would make it clear that “any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from doing any act”.

It may, however, be pointed out that an almost identical description of terrorism is contained in the International Convention for the Suppression of fighting Terrorism as well as in the Security Council Resolution 1566 (2004) and, as such, the definition proposed by the panel is not likely to break the impasse on this issue that has lasted for decades.”

vii). In the case of **Fazal Dad vs. Col (Rtd) Ghulam Muhammad Malik and others (PLD 2007 S.C 571)**, the Honourable Supreme Court has held as under:-

“5. In case the aforesaid provisions and contents of F.I.R are put a in juxta position then section 6 of the said ordinance is not attracted. It is a settled law that preamble is always key to interpret the statute. The very object to promulgate the Anti-Terrorism Act, 1997 was to control the acts of terrorism, sectarian violence and other heinous offences as defined in section 6 of the Act and their speedy trial to bring the offence within the ambit of the act, it is essential to examine that the said offence should have nexus with the object of the act and offences covered by its relevant provisions such as section 6.”

viii). In the case of **Bashir Ahmed vs. Muhammad Siddique and others (PLD 2009 S.C 11)**, the Honourable Supreme Court has held as under:-

“6. In order to determine as to whether an offence would fall within the ambit of section 6 of the Anti-Terrorism Act, 1997, it would be essential to have a glance over the allegations made in the F.I.R, record of the case and surrounding circumstances. It is also necessary to examine that the ingredients of alleged offence have any nexus with the object of the case as contemplated under sections 6, 7 and 8 thereof. Whether a particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said act is to be seen. It is also to be seen as to whether the said act has created a sense of fear and insecurity in the public or any section of the public or community or in any sect. Examining the case in hand on the above touchstone, it is manifest on the face of it that the alleged offence took place because of previous enmity and private vendetta.”

ix). In the case of **Tariq Hakim vs. The State and 2 others (2011 YLR 19)**, the Lahore High Court has held as under:-

“6. As far as the argument of the learned counsel for the complainant that the act of the assailants falls within the ambit of section 6 of the Anti-Terrorism Act, 1997 as the said assailants took the lives of three and injured three other innocent persons and there was no previous enmity or personal vendetta of those innocent persons with the assailants is concerned, suffice it to observe that from the bare perusal of the F.I.R, it is crystal clear that the complainant stated in the F.I.R that the assailants after identifying his brother Asif Ashraf made firing on his vehicle which shows the clear intention of the assailants to do away with only Asif Ashraf and not others but they could not be saved due to their accompanying with Asif Ashraf in the same vehicle.”

x). In the case of **Sripathi & Ors. Vs. State of Karnataka (AIR 2010 S.C 249)**, the Indian Supreme Court has held as under:-

“9. Section 34 has been enacted on the principle of joint liability in the commission of a criminal act. The Section is only a rule of evidence and does not create a substantive offence.”

32. Mr. Khadim Hussain Khuharo learned DPG appeared on behalf of the State and argued that provisions of section 6 of ATA are fully attracted in this case. Incident was committed in a brutal manner in public park and an innocent young boy who was empty handed was murdered. Deceased was bagging for his life, but appellants, not only caused him fire arm injuries, but did not take injured in Rangers mobile and waited for his death which resulted due to heavy loss of blood. Mr. Khuharo argued that effect of the incident was such entire society terrorized. He has referred to the evidence of witnesses who felt insecure after watching scene of the incident on the television. On the point of sharing common intention, it is argued that overt act has been attributed to all appellants with principal accused Shahid Zafar. They facilitated him and made it possible for appellant Shahid Zafar to fire upon the deceased who was empty handed. It is submitted that prosecution has proved its case against the appellants.

Trial court has properly appreciated evidence brought on the record. In support of his contentions, relied upon the following authorities:-

i). In the case of **Ch. Bashir Ahmad vs. Naveed Iqbal and 7 others (PLD 2001 S.C 521)**, the Honourable Supreme Court has held as under:-

"8. A person would commit a terrorist act if in order to, or if the effect of his actions will be to strike terror or create a sense of fear and insecurity in the people, or any section of the people.....". In the instant case as the facts of the case reveal, the alleged sprinkling of the spirit on the person of the victim was within the boundary walls of the appellant's house. It was not in public and, therefore, the element of striking terror or creating sense of fear and insecurity in the people, or any section of the people is not made discernible in the F.I.R and for that matter on the record of the case as a whole. Similarly the perusal of the Schedule to the Act also indicates that the element of striking terror or creation of sense of fear and insecurity in the people or any section of the people by doing an act or thing by using bombs, dynamite or other explosive or inflammable substances etc. is a sine qua non for the attraction of the provisions of section 6 of and the Schedule to the Act (underling is provided by us for emphasis).

ii). In the case of **Mst. Raheela Nasreen vs. The State and another (2002 SCMR 908)**, the Honourable Supreme Court has held as under:-

"6. We are afraid, the argument in our considered view is wholly fallacious. In order to determine whether a particular act of the accused for which he is being tried for criminal offence falls within the ambit of any of the provisions of the Act, it is not necessary to record evidence of the witnesses to establish that the said act had, in fact, created terror or feeling of insecurity whereas the question of applicability of any of the provisions of the Act has to be decided by application of mind to the facts alleged in the F.I.R and other attending circumstances.

7. From a bare reading of section 6(b) of the Act, it is manifest that it is not necessary that the offence as alleged had in fact, caused terror as the requirement of the said provision of law could be adequately satisfied if the same was likely to strike terror or sense of fear and insecurity in the people.

8. The learned Judges of the High Court came to the conclusion that a Batman who was a trusted person of an army officer if he kills as alleged his master in connivance with his (master's) wife, the same was likely to strike terror or feeling of insecurity among the army officers which reasonings in our view are based on relevant consideration having logical nexus with the relevant law and do not suffer from any legal infirmity."

iii). In the case of **Muhammad Mushtaq vs. Muhammad Ashiq and others (PLD 2002 S.C 841)**, the Honourable Supreme Court has held as under:-

"It would thus appear that ordinary crimes are not to be dealt with under the Act. A physical harm to the victim is not the sole criterion to determine the question of terrorism. What is to be seen is the psychological effect produced by the violent action or with the potential of producing such an effect on the society as a whole or a section thereof. There may be a death or injury caused in the process. Thus where a criminal act is designed to create a sense of fear or insecurity in the minds of the general public disturbing even tempo of life and tranquillity of the society, the same may be treated to be a terrorist act. There may be just a few killings, random or targeted, resorted to with single mindedness of purpose. But nevertheless the impact of the same may be to terrorise thousands of people by creating a panic or fear in their minds.

8. In the present case, we, *prima facie*, find that the occurrence took place during the peak hours of the day on the busy Court Road near the District Courts, Lahore, wherein four persons while on their way to attend the Court were allegedly murdered by the use of Kalashnikovs. The cumulative fall-out of the occurrence as to the time, place and manner of the act created a sense of the fear and insecurity in society. The case was, therefore, triable by the Anti-Terrorism Court established under the said Act in view of its peculiar facts and circumstances as also the law and order situation prevailing in the country. In the case *Ziaullah (supra)* a similar view as taken by this Court in somewhat similar circumstances."

iv). In the case of **Nooruddin vs. Nazeer Ahmed and 4 others (2011 P.Cr.L.J 1370)**, this Court has held as under:-

"16. Examining the case in hand on the above touchstone, we cannot subscribe the view articulated by the learned counsel for the respondent that the case is triable by the Sessions Court only for the reason that it is a case of previous enmity. It is clearly deducible that the offence was committed in the manner, which was enough to create a sense of insecurity or to destabilize the public at large and amounts to terrorism as enumerated in section 6 of the Act."

v). In the case of **Nazeer Ahmed and others vs. Nooruddin and another (2012 SCMR 517)**, the Honourable Supreme Court has held as under:-

"3. We have heard the learned Advocate Supreme Court and have perused the record. The learned High Court has examined the material at length and has rightly concluded that the act of the petitioners created sense of insecurity amongst the villagers and did destabilize the public at large and, therefore, attracts the provisions of section 6 of the Anti-Terrorism Act. The learned Advocate Supreme Court in support of his contentions has relied upon the Judgments reported in the case of *Mohabat Ali v. The State* reported in 2007 SCMR 142 and the case of *Bashir Ahmed v. Muhammad Siddiq*, reported in PLD 2009 SC 11, which are distinguishable on facts. Neither the motive nor intent for commission of the offence is relevant for the purpose of conferring jurisdiction on the Anti-Terrorism Court. It is the act which is designed to create sense of insecurity and or to destabilize the public at large, which attract the provisions of section 6 of the AT Act, which in the case in hand was designed to create sense of insecurity amongst the co-villagers."

vi) In the case of **Niaz Ahmed vs. The State (2013 P.Cr.L.J 429)**, this Court has held as under:-

"9. After going through the above dicta laid down by honourable court, it is manifest that authoritative proposition of law is while deciding applicability of sections 6 and 7 of the Act the "action" is of more consideration than the "designed to". In the instant case a Civil Judge in compliance of order, issued by Sessions Judge visited the pointed place, where detenu was found confined. The applicant, being an officer of the police, cannot be said to be unaware of the consequences of his deliberate actions. He being a police officer, was supposed to act in a manner to create an impression of his being guard against an offence but the material available reflects that applicant/accused, in violation of law kept the detenu in illegal custody at private place though he was under legal obligation to act strictly in accordance with law which prima facie proves that applicant acted contrary to law hence committed offence of malfeasance by detaining the private person in his custody. Not only this but per record the applicant subsequently caused serious deterrence in the legal duty of Magistrate, by making direct firing and snatched the custody of detenu from the custody of Magistrate hence the manner of these all offences is sufficient to hold that prima facie applicant is guilty of committing serious offence of Terrorism. Needless to add here that the police officer(s) are always supposed to act in aid of innocence as the powers, jurisdiction and authority, vested in them is never meant to exploit the same but they have been entrusted the sacred duty of creating a sense of security and peace among the individual while creating a sense of terror and fear among the criminals hence if the police officer(s) will fall in such like of actions/offences then there would remain no concept of "Society" hence actions of the police officer(s) are not to be seen in the manner as that of other(s).

33. In this case, crucial point for determination is as to whether Anti-Terrorism Court had jurisdiction to try the case. For this purpose,

whether an offence would fall within the ambit of section 6 of Anti-Terrorism Act, 1997 it would be essential to have a glance over the allegations made in the FIR, pieces of evidence and surrounding circumstances. It is also essential to examine whether alleged offence have any nexus with the object of the case as contemplated under sections 6, 7 and 8 thereof. Whether act of accused was an act of terrorism or not, the motivation, object, design and purpose behind the said act is to be examined. It is also to be seen as to whether the said act has created a sense of fear and insecurity in the public or in a section of the public or community or in any sect. There can be no second opinion that where action results in striking terror or creating fear, panic, sensation, helplessness and sense of insecurity among the people in the particular area it amounts to terror and such an action squarely falls within the ambit of section 6 of the Anti-Terrorism Act, 1997 and shall be triable by a Special Court constituted for such purpose.

34. Section 6 of the Anti-Terrorism Act, 1997 provides the definition of "terrorism". In order to better appreciate the legal position, section 6 of the said Act which defines a "terrorist act" is reproduced as under:

"6. Terrorism. --- (1) In this Act, "terrorism" means the use or threat of action where:

(a) the action falls within the meaning of sub-section (2), and

(b) the use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or

(c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause.

(2) An "action" shall fall within the meaning of sub-section (1), if it:

(a) involves the doing of anything that causes death;

(b) involves grievous violence against a person or grievous bodily injury or harm to a person;

(c) involves grievous damage to property;

(d) involves the doing of anything that is likely to cause death or endangers a person's life;

(e) involves kidnapping for ransom, hostage-taking or hijacking;

(f) incites hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;

- (g) involves stoning, brick-bating or any other forms of mischief to spread panic;
 - (h) involves firing on religious congregations, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;
 - (i) creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civic, life;
 - (j) involves the burning of vehicles or any other serious form of arson;
 - (k) involves extortion of money ("bhatta") or property;
 - (l) is designed to seriously interfere with or seriously disrupt a communications system or public utility service;
 - (m) involved serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties; or
 - (n) involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant.
- (3) The use or threat of use of any action falling within sub-section (2), which involves the use of fire-arms, explosives or any other weapon, is terrorism, whether or not sub-section 1(c) is satisfied.
- (4) In this section "action" includes an act or a series of acts.
- (5) In this Act, terrorism, includes any act done for the benefit of a proscribed organization.
- (6) A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.
- (7) In this Act, a "terrorist" means;
- (a) a person who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation or instigation of acts of terrorism;
 - (b) a person who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation or instigation of acts of terrorism, shall also be included in the meaning given in clause (a) above."]

A bare reading of the above quoted provision of law makes it crystal clear that Courts have only to see whether the "terrorist act" was such which would have the tendency to create sense of fear and insecurity in the minds of the people or any section of the society.

35. On the point of jurisdiction of Anti-Terrorism Court regarding killing of a taxi driver at Karachi by Rangers, Honourable Supreme Court vide order dated 26.07.2013, passed in **Constitutional Petition No.37 of 2013** enunciated the law as under:-

“2. It has also been informed that in respect of another incident dated 04.06.2013, a case has also been registered wherein the Rangers were found to be involved in the killing of deceased-Ghulam Haider and the matter has been challaned against the accused persons to answer the charge under Section 302 PPC. This Court is conscious of the fact that any observation, as this stage, is likely to cause prejudice to either of the party, therefore, we leave it for the learned Attorney General for Pakistan, who shall look into the matter personally with the consultation of all the concerned officers of police as well as the rangers, Advocate General and the Prosecutor General of the Province of Sindh. However, we observe that the Courts before whom the matters are pending for trial of the accused shall proceed to decide the cases within a period not more than 7- days from the date of submission of the challan.

3. However, keeping in view the sensitivity of the matter, which has caused sensation in the Society, the accused shall be tried under the relevant provisions of the Anti-Terrorism Act, 1997, and the trial must be completed, as envisaged under Section 19(7) of the said Act, read with the principles laid down by this Court in the case of Sh. Liaquat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others (PLD 1999 SC 504).”

36. In the present case, PWs Abdul Rasheed DDO, Mohammad Shahid Overseer and Mohammad Ramzan, Incharge of the park, have categorically stated that on 8.6.2011, at about 4:15 or 4:30 pm, they were present in park as they had received directions for making arrangements at Shaheed Benazir Bhutto Park, they saw one person in civil dress wearing a cap had caught hold one person (deceased) from his collar. In the meanwhile, a mobile of Rangers personnel entered in the park speedily. Said person after causing kicks blows to the boy handed over him to the Rangers personnel. At that time, PW- Abdul Rasheed heard words of “MARO MARO” and heard reports of two fires which hit said boy and he fell down and was bleeding. Abdul Rasheed DDO while seeing the incident lost his senses and felt fear and went away from the place of incident. He further stated that PWs- Mohammad Ramzan and Mohammad Shahid and team of Awaz T.V were present at that time. PWs- Mohammad Shahid Overseer and Mohammad Ramzan have also implicated the appellants in the same manner and identified the appellants in the court. Awaz T.V. cameraman, namely, Abdul Salam who captured the scene in which it has been shown that all the accused encircled the deceased and appellant Shahid Zafar opened two fires upon him, has also fully implicated the appellants and audio-video cassette was played in the court in presence of counsel for the

parties in order to appreciate the evidence properly. Lady PW-Mst. Gulnaz and Mohammad Shaheen Javed watched the TV and felt insecure to visit public parks and sense of insecurity prevailed upon the society. We have no hesitation to come to the conclusion that confidence inspiring evidence has been brought on record to satisfy the court that the appellants who belong to Rangers, being armed with official arms and ammunitions encircled and overpowered Sarfraz Shah (deceased) and directed him to raise face upwards and one of the appellants, namely, Shahid Zafar fired upon him and another fire after sometime was repeated by him, as a result of such fires, deceased received fir arm injuries and fell down and started crying and was begging for his life and requesting the accused to shift him to the hospital but they did not hear him. Consequently, due to heavy loss of blood injured died in the hospital. From the evidence it has been brought on record that it can be easily visualized that the manner in which murder of a young boy was committed in a public park it was nothing but act of terrorism. Obviously, act of accused who exploited Rangers uniform was to design the sense of insecurity and did destabilize the public at large, who watched the scene of offence on TV and were present in the public park. Looking to the peculiar circumstances, neither motive nor intent for commission of offence was relevant factor for the purpose of conferring jurisdiction to Anti-Terrorism Court. In this case, it is manifests and proved by cogent evidence that the act was designed to create sense of insecurity in the society. It was classical highhandedness of law enforcing agency, who are bound to provide protection to the citizens of Pakistan, not to eliminate them contrary to law. It is settled proposition of law that Rangers had no authority at all to open fire upon the accused person unless accused person fired upon them. Reference in this respect can be made to the case of *Mehram Ali versus Federation of Pakistan and others (PLD 1998 SC 1445)* wherein Honourable Supreme Court has held that Rangers had no authority to open fire. The act of the accused/Rangers was designed to create sense of insecurity among the public at large by committing brutal murder of Sarfraz Shah, a helpless young boy, who was begging for his life. It was not necessary that action of accused must have taken place within the view of general public so as to bring it within the encompass of Act, 1997 but in the present case action created fear,

insecurity and psychological impact upon the minds of people. Anti-terrorism Act, 1997 provides for the prevention of terrorism sectarian violence and for speedy trial of heinous offences and for matters connected herewith and incidental. In the present case element of terrorism is there and heinous offence has been committed by appellants during day time in a public park. While relying upon the principles laid down in the above cited authorities, we have no hesitation to hold that the sensitivity of the incident, which had caused sensation in the Society by the act of the Rangers by firing at helpless boy, the case of the accused is triable under the relevant provisions of Anti-Terrorism Act, 1997. The cumulative fall out of the occurrence as to time, place and manner of act created sense of fear and insecurity in the society, which attracted the provisions of Section 6 of the Anti-Terrorism Act, 1997. Learned trial Court had rightly assumed the jurisdiction and decided case under the provisions of Anti-Terrorism Act, 1997.

37. We have scanned the entire evidence. At the outset, it may be stated that the learned counsel for the appellants did not dispute the incident and the manner in which it took place as well as participation of appellants in the crime but what they emphasis was that appellants had acted while discharging their duty assigned to them to maintain law and order situation in Karachi. It is further contended that deceased was snatching purse from Ms. Hira and he was caught hold by appellant Afsar and produced before Rangers personnel/accused. It is also contended that appellant Shahid Zafar fired two shots at the leg of the deceased and his intention was not to kill but to cause injury to the deceased. It is also contended that remaining appellants had not actively participated in the incident. Though participation of appellants in the incident has been admitted despite that we believe that it is the primary duty of prosecution to prove its case against the appellants beyond any shadow of doubt. From the evidence of PWs- Abdul Rasheed DDO, Mohammad Shahid Overseer and Mohammad Ramzan, Incharge of the Park, it is proved that deceased was caught hold by appellant Afsar Khan and he was made over to Rangers personnel/accused. Appellants were armed with official weapons, they encircled deceased, issued Lalkara that "MARO MARO" and appellant Shahid Zafar fired upon deceased at his leg and another fire was also made

to deceased after one or two seconds. It has come in evidence that due to heavy blood loss of deceased and deliberate delay in shifting the injured to the hospital in Rangers van, he succumbed to the injuries. It has also come in evidence that after causing fire arm injuries to deceased, no accused person went near to the deceased to save his life and he was left to die. PWs- Mst. Gulnaz, Mohammad Shaheen Javed and other prosecution witnesses after watching incident on TV felt insecure and society was generally terrorized by such inhuman act. It was obviously act of terrorism and heinous offence. Evidence of above named prosecution witnesses is fully corroborated by medical evidence and positive report of chemical examiner. All appellants in their statements recorded under section 342 Cr.P.C have admitted the incident and raised plea that deceased was involved in crime. DW-Alam Zaib has stated that on 8.6.2011, he was sitting with his girlfriend Miss Hira. Deceased snatched mobile, purse, cash etc. We are unable to believe defence evidence of DW-Alam Zaib for the reasons that Miss Hira from whom mobile and purse were snatched has also not been examined by appellants in defence. DW-Alam Zaib has not given probable cause of his presence at the time of incident and suppressed relevant facts. Defence theory appears to be unnatural for the reasons that in the public park, snatching of purse was normally not possible. DW- Col. Salman Ahmed has admitted prosecution case but deposed that deceased was involved in the commission of robbery. He was handed over by one civilian to the Rangers/accused. He was directed to surrender but deceased tried to snatch weapon from the accused and he was fired by accused and it was accidental fire. This clearly shows that incident has been admitted. Defence theory is nothing but admission of accused that offence has been committed by them. Evidence of PWs is quite natural, straight forward, confidence inspiring and corroborated by medical evidence, therefore, same has been rightly relied upon by the trial court for conviction against appellants. It has been contended that appellant Shahid Zafar has fired upon deceased and other appellants had not shared common intention. To charge a person for sharing common intention with another, ordinarily common intention presupposes prior concert but it may well develop at the spur of the moment, either immediately before the commission of the offence or during its commission depending upon circumstances of each

case. It is difficult to procure direct evidence to prove the intention of an individual and, therefore, it has to be inferred from the act or conduct of the participants or other relevant circumstances of the case. In this case, deceased was empty handed and accused were armed with official weapons. There was no probability that deceased would cause any harm to the accused persons or snatch weapons from accused persons. There was also no possibility that deceased would escape away. Despite that in a very brutal manner, he was fired by appellant Shahid Zafar not once but another fire was also made upon him. Blood was oozing but accused persons did not bother to go near to the deceased. Rangers' mobile was also with the appellants despite begging for his life and request for shifting to the hospital, deceased was not immediately shifted to the hospital. Conduct of participants shows that the intention of the appellants was to kill the deceased. Only plea has been raised that deceased tried to snatch weapon from accused and he was fired and deceased died due to accidental fire. We are unable to accept such defence plea for the reasons that deceased was empty handed when appellant Afsar Khan brought him before remaining appellants, whereas appellants were armed with sophisticated automatic weapons. Plea of snatching official weapon was unbelievable. Appellants have failed to substantiate defence plea. Report of Joint Investigation Team has been produced in evidence by PW No.20 Sultan Ali Khuwaja D.I.G. In the findings of Joint Investigation Team, cases registered against the deceased bearing crime No. 225 of 2011, under sections 353, 393, 324 PPC and crime No. 226 of 2011, under section 13(d) Arms Ordinance, 1965 of Police Station Boat Basin were found to be false. It has been clearly stated that there was no encounter, deceased Sarfraz Shah was carrying dummy pistol. Plea of the appellants that they were performing the duty to maintain law and order but under the law as held in case of **Mehram** (supra), member of Armed Forces can fire upon an accused person if he has been himself fired upon by him. In the present case deceased had not fired upon the accused persons and there was not even a remote chance of firing upon the appellant as he was empty handed and was encircled by the appellants, who all were armed with sophisticated weapons. Now question arises whether co-accused shared common intention with principal accused Shahid Zafar. The conduct of the appellants except Liaquat Ali that they

encircled the deceased being armed with official arms raised Lalkara and facilitated the commission of crime, intentionally took no efforts to rescue life of deceased are the relevant factors to prove that above appellants had shared common intention with main accused Shahid Zafar. Case of appellant Afsar Khan is not distinguishable for the reason that he had not only made over deceased to the Rangers/accused, but caused him fists and kicks blows and immediately called appellant Manthar Ali to reach at Shaheed Benazir park. The common intention of accused Afsar Khan is further evident from the fact that he himself was just a "Car Washer" whereas the person whom the deceased allegedly attempted to rob i.e. D.W-I was a police official and was armed with pistol and according to his deposition he hit the butt blow of the pistol to accused who fell down and this D.W. over powered him. At the time of firing upon the deceased by principal accused, he had facilitated him in the commission of offence alongwith other appellants. The overt act of appellant Afsar Khan clearly shows that he had common intention to commit the crime. It is immaterial as to what part was played by appellant Afsar Khan but it is proved that he had stood together alongwith co-accused, therefore, under the principle of law that where two or more persons acted with common intention, each is liable for the act committed as if it had been committed by him alone. Moreover, appellant Afsar Khan in his statement recorded U/s 342 Cr.P.C. has admitted his presence at the time of occurrence. Appellant Afsar Khan alongwith other appellants encircled deceased at the time of incident, as it is evident in DVD cassette, produced by SIO Muhammad Mubin, and uttered words ——— (" Maro" "Maro"). Evidence in DVD cassette/ video recording produced in trial Court is admissible in evidence under Article 164 of Qanun-e-Shahadat (10 of 1984). Reference can be made to the case of Shaikh Aijazur Rehman v. The State (PLD 2006 Karachi 629). Supreme Court of India in case of **Ramchandran and others v. State of Kerala (2012 SCMR 1156)** on common object has observed as under:

"For "common object", it is not necessary that there should be a prior concert in the sense of a meeting of the members of the unlawful assembly, the common object may form on spur of the moment, it is enough if it is adopted by all the members and is shared by all of them. In order that the case may fall under the first part the offence committed must be connected immediately with the common object of the

unlawful assembly of which the accused were members. (Vide: Bhanwar Singh and others v. State of M.P., (2008) 16 SCC 657) (AIR 2009 SC 768)".

The Hon'ble Supreme Court of Pakistan in case of *Sh. Muhammad Abid v. The State (2011 SCMR 1148)* has observed that once it is found that accused had common intention to commit the crime it is immaterial as to what part was played by whom as law as to vicarious liability was that who had stood together, must have fallen together. Relevant parts are reproduced as under:

"9. We have given anxious consideration to the submissions made by learned counsel for the appellant and find that apparently, in the circumstances of the case, it was very difficult for the complainant and the eye-witnesses to give account of each fire specifying that whose fire hit on which part of the bodies of the deceased, when indiscriminate firing was made by the appellant and the absconding accused.

10. Once it is found that the accused persons had common intention to commit the crime, it is immaterial as to what part was played by whom as law as to vicarious liability is that those who stand together, must fall together. The question what injuries were inflicted by a particular accused in cases to which section 34, P.P.C applies is immaterial, the principle underlying the section being that where two or more persons acted with a common intention each is liable for the act committed as if it had been done by him alone.

11. The trial Court as well as the High Court have believed the ocular evidence in the case which found confidence inspiring and there is no reasons for us to disagree with the appreciation of the evidence by the two courts below".

38. Honourable Supreme Court in more than one cases has held that approach of the Court while deciding the criminal matters should be dynamic and it should take into consideration the surrounding situation and should not lightly set aside a conviction on technical ground if the Court's conscience is satisfied that factually the convict was guilty of the offence. In this regard, reference may be made to the case of *STATE through Advocate-General, Sindh, Karachi v. Farman Hussain and others (P L D 1995 SC 1)*.

39. For the above stated reasons and while relying upon the above cited judgment of the Hon'ble Supreme Court of Pakistan, we have no hesitation to hold that the prosecution has proved its case against appellants except

appellant Liaquat Ali beyond any shadow of doubt. Learned trial court has rightly awarded death sentence to appellant Shahid Zafar who caused fire arm injuries to deceased and remaining appellants except Liaquat Ali were also rightly sentenced to imprisonment for life on the basis of evidence connecting them in the commission of offence as discussed above. Therefore, reference made by trial court for confirmation of death sentence awarded to appellant Shahid Zafar is answered in affirmative and the conviction and sentence recorded by the trial court by judgment dated 12.8.2011 against remaining appellants except Liaquat Ali are maintained. We believe that it is the duty of the court to sift the grain from the chaff. As appellant Liaquat Ali was standing on Rangers van duly armed with official weapon, neither he raised Lalkara nor committed any overact. There is absolutely no evidence to show that he shared common intention with main accused Shahid Zafar. Prosecution has failed to prove its case against appellants Liaquat Ali beyond any shadow of doubt. Therefore, we extend benefit of doubt to appellant Liaquat Ali and acquit him of the charge. He shall be released forthwith, if not required in other case. It may be mentioned here that the criminal revision filed by complainant for enhancement of sentence against appellants, namely, Muhammad Afzal, Bahaur Rehman, Liaquat Ali, Mohammad Tariq, Manthar Ali and Afsar Khan has already been dismissed as withdrawn. Consequently, appeals filed by appellants Shahid Zafar, Muhammad Afzal, Bahaur Rehman, Mohammad Tariq, Manthar Ali and Afsar Khan are hereby dismissed.

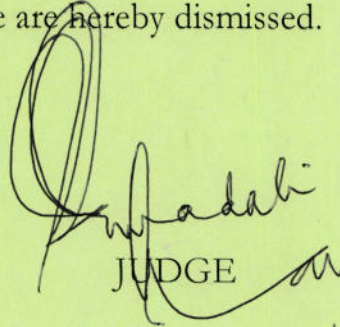
40. Before parting with this judgment, it is mentioned here that during pendency of appeals, compromise applications were filed by complainant/Legal heirs of deceased Sarfraz Shah. After hearing the learned counsel for the appellants, we have come to the conclusion that offence under section 302 PPC is compoundable by legal heirs of the victim whereas offence under section 7 of ATA, 1997 have not been shown in the first and second column of table of section 345 Cr.P.C, such offence is not compoundable under the provisions of section 345 Cr.P.C. Reference can be made to the case of *Muhammad Rawab v. The State (2004 SCMR 1170)*, which reads as under:

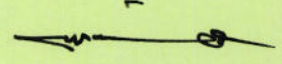
“Heard Dr. Babar Awan, learned Advocate Supreme Court on behalf of appellant and learned Advocate-Generals for the State.

The pivotal question which needs determination would be as to whether parties can be allowed to compound the offences which are not compoundable by virtue of the provisions as contemplated in section 345, Cr.P.C. specially in view of the specific bar as mentioned in subsection (7) of section 345, Cr.P.C. There is no denying the fact that section 365-A, P.P.C read with section 7(e) of the Anti-Terrorism Act, 1997 is not compoundable. The provisions as contained in section 345(7), Cr.P.C. have been couched in such a plain and simple language that there is hardly any scope for any interpretation except that a non-compoundable offence cannot be made compoundable by this Court for the simple reason that no amendment, deletion, insertion or addition could be made by this Court and it could only be done by the Legislature as this aspect of the matter falls in its exclusive domain of jurisdiction. The provisions as contained in section 345, Cr.P.C. cannot be stretched too far by including the non-compoundable offence therein under the garb of humanitarian grounds or any other extraneous consideration. The offences committed by the appellant are not of grave and alarming nature but the same are against the society as a whole and cannot be permitted to compound by any individual on any score whatsoever. It may be noted that tabulation of the offences as made under section 345, Cr.P.C. being unambiguous remove all doubts, uncertainty and must be taken as complete and comprehensive guide for compounding the offences. The judicial consensus seems to be that "The Legislature has laid down in this section the test for determining the classes of offences which concern individuals only as distinguished from those which have reference to the interests of the State and Courts of law cannot go beyond that test and substitute for it one of their own. It is against public policy to compound a non-compoundable offence, keeping in view the state of facts existing on the date of application to compound. No offences shall be compounded except where the provisions of section 345, Cr.P.C. are satisfied as to all matters mentioned in the section".

41. As regards the legal position, to compound an offence punishable under section 7(a) of the Anti-Terrorism Act, 1997 is concerned, such offence is non-compoundable and it is against public policy to compound a non-compoundable offence. The provisions as contained in section 345 Cr.P.C. cannot be stretched too far by including therein a non-compoundable offence under the garb of humanitarian grounds or on the ground that appellants belong to Rangers. The manner, in which brutal murder of the deceased was committed, caused sensation in Society. Such offence was against Society and it cannot be permitted to be compounded by an individual/legal heirs of the deceased on any score whatsoever.

Therefore, compromise applications (MA-2613/2013 and MA-2614/2013) are without legal force and same are hereby dismissed.


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