

Suicide Bomber of Shia Maulvi

1 3 acquitted : 3 death sentence confirmed

529

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Sp. ATA 39 to 41 of 10 r/w Conf. Case 10/10

M. Ashfaq Qureshi vs. The State  
& others

HIGH COURT OF SINDH

Composition of Bench: ~~S. B.~~/D. B.

Mr. Justice Mohammad Karim Khan Agha,  
Mr. Justice Zulfikar Ali Sangi

Date(s) of Hearing: 03-12-19 & 04-12-19

Decide on: 16-12-2019

(a) Judgment approved for reporting:

Yes Ktg?

CERTIFICATE

Certified that the judgment\*/order is based upon or enunciates a principle of law \*/ decides a question of law which is of first impression / distinguishes / overrules / reverses / explains a previous decision.

\* Strike out whichever is not applicable.

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- NOTE:
- (i) This slip is only to be used when some action is to be taken.
  - (ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
  - (iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
  - (iv) Those directions which are not to be used should be deleted.

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**CR. ANTI TERRORISM APPEAL NO. 39 /2010**

**1-MUHAMMAD ASHFAQ QURESHI  
S/O. MUHAMMAD AKHLAQ,**

**2-MUHAMMAD AKBAR KHAN  
S/O. HAJI UMAR DIN KHAN,**

Both Muslims, adults, R/o. Karachi,  
At presently confined in  
Central Jail.....

**PRESENTED**

05-10-2010

*M. Javed*  
05/10/2010

By Registrar (J&S)

3760

**APPELLANTS**

**VERSUS**

**THE STATE.....RESPONDENT**

- 1- **F.I.R. NO. 85 OF 2006**  
U/S. 324/427/109/120/34 P.P.C.  
R/W SECTION 3/5 EXPLOSIVE  
SUBS. ACT 1908 R/W SECTION  
7(A) ATA 1997  
P.S. MUBINA TOWN
- 2- **F.I.R. NO. 332 OF 2006**  
U/S. 324/427/109/120/34 P.P.C.  
& SEC. 3/5 EXPL. SUBSTANCE ACT,  
1908, R/W SECTION 7(A) OF ATA 97  
P.S. SACHAL (AVCC) KARACHI.

**APPEAL UNDER SECTION 25(1) OF THE ANTI  
TERRORISM ACT, 1997**

Being aggrieved and dissatisfied with the  
*impugned Judgment dated 30<sup>th</sup> September, 2010 passed  
by the learned Judge of Anti Terrorism Court NO. III,  
Karachi, thereby convicting the sentencing the Appellant  
NO. 1 & 2 convicted Under Section 7(a) of Anti Terrorism  
Act, 1997 to the punishment for Imprisonment for life and  
each accused shall also pay fine of Rs.1,00,000/-(Rupees  
One Lac only).* In case of default they shall undergo R.I. for



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(5)

IN THE HIGH COURT OF SINDH, KARACHI

40

SPECIAL ANTI TERRORISM CRIMINAL APPEAL NO: /2010

1. MOHAMMED AMEEN s:o Mohammed Sheereen  
House NO:B/751, GALLI NO:4,  
Old Muzzaffar Abad Colony, Landhi, Karachi

**PRESENTED**  
05-10-2010  
M. Ameen  
05/10/2010  
Sp. Registrar (Judl)  
3756

2. MOHAMMED REHMAN s:o Jonder Khan  
House NO:D/371, Old Muzzaffar Abad Colony,  
Landhi, Karachi.

3. SULTAN MEHMOOD s:o Sayyed Taalib,  
House NO:A/112, GALLI NO:6,  
ASHRAF NAGAR, PAPOSH NAGAR, Nazimabad, Karachi

NOW confined at,  
CENTRAL PRISON, Karachi ..... CONVICTS/APPELLANTS  
v:s

The STATE ..... RESPONDENT

APPEAL, U/S 25, ANTI TERRORISM ACT

MOST RESPECTFULLY SHEWETH, THAT -

1. By his JUDGMENT, dated 30/09/2010, the learned Presiding Judge of Anti Terrorism Court NO:III, Karachi, has convicted the appellants, in SPECIAL CASES NO:24 and 25 of 2006 and has sentenced each appellant, as under -

- (A) TO SWING UPON THE GALLOWS - U/S 7(a), A.T. ACT, and also to pay a FINE of RS:ONE LAC, or in default, to undergo Further RI, for one Year more.
- (B) TO UNDERGO LIFE IMPRISONMENT - U/S 7(b), A.T. ACT and to pay a FINE of RS:50,000 or in default, to undergo RI for ONE YEAR
- (C) TO UNDERGO RI FOR 10 YEARS - U/S 7(c) and (d), A.T. ACT and to pay a FINE of RS:25,000 or indefault, to undergo RI for ONE YEAR more.

548

Memorandum of

532

1

**PRESENTED**

07-10-2010

M. Javed  
07/10/2010

By Registrar (Jud.)

IN THE HIGH COURT OF SINDH AT KARACHI. 3788

( SPECIAL CRIMINAL APPELLATE JURISDICTION )

SPECIAL CRIMINAL APPEAL NO: 41 OF 2010.

Rahim Ullah S/o Wilayat Khan,  
Muslim, Adult, presently confined &  
at Central Prison, Rolt House, Near Masjid Haganama R  
Karachi. .... Appellant.

Shree no 3, Data Nagri, Sect 14 B - &  
& Orangi Town, Karachi (As per charge sheet)  
Versus

The State. .... Respondent.

APPEAL UNDER SECTION 25 OF  
THE ANTI TERRORISM ACT, 1997.

Being aggrieved and dissatisfied with the judgment dated 30.9.2010 passed by the learned Anti Terrorism Court No.III at Karachi in Special Case No.24 and 25 of 2006 whereby the Appellant was awarded imprisonment for life U/S 7(a) Anti Terrorism Act, 1997 and also to pay a fine of Rs.1,00,000/- and in case of default to undergo R.I. for 5 years, imprisonment for life U/S 7(b) of Anti Terrorism Act, 1997 and also to pay fine of Rs.50,000/- and in case of default to undergo punishment for one year more and punishment of 10 years U/S 7(c) & (d) of Anti Terrorism Act, 1997 and fine to the extent of Rs.25,000/- and in case of default to undergo R.I. for one year more.

Office of the  
Prosecutor General  
Karachi



THE ANTI-TERRORISM COURT NO.III KARACHI HI.  
NO.ATC-III/K.DIV/ /2010, Karachi, Dated 04.10.2010

To,

The Registrar,  
High Court of Sindh,  
Karachi.

*Y. J. C.*  
\_\_\_\_\_  
Judge.

SUBJECT: REFERENCE U/S 374 CR.P.C. IN SPECIAL C.

- (i) NO.24/2006(FIRNo.85/2006)U/S.324/427/109/120/34 PPC & Section 3/5 Explosive Subs, Act. 1908 R/W Section 7(e) of ATA 1997 P/S. MUBINA TOWN (AVCC).
- (ii) NO.25/2006(FIRNO.332/2006)U/S.302/324/427/109/120/34 PPC & Section 3/5 Explosive Subs, Act. 1908 R/W Section 7(e) of ATA 1997 P/S. SACHAL, KARACHI.

It is to state that the aforesaid cases have been decided on 30.09.2010 wherein all the accused persons namely Muhammad Amin alias Khalid Shaheen alias Abdullah s/o Muhammad Sheeren, Sultan Meha and alia Saifullah alias Muslim s/o Syed Talib and Muhammad Rehman alias Mani s/o Jondar Khan are convicted for the punishment of death and Imprisonment for life also and accused Muhammad Ashfaq Qureshi s/o Muhammad Akhlaq, Muhammad Akber Khan s/o Haji Umaruddin Khan and Raheemullah alias Naeem alias Ali Hassan s/o Willayat Khan are also Convicted for the punishment of Imprisonment for life and other sentences have also been awarded. The Death sentences are subject to confirmation by the Honourable High Court under Section 374 Cr.P.C.

The R&Ps of the aforesaid special cases are sent herewith along with CDs Article "H & I" in view of Section 25(2) of Anti-Terrorism Act, 1997.

Kindly acknowledge the receipt of the same.

Encl: As above.



*(Signature)*  
(ANANDRAM HOTWANI)  
JUDGE  
ANTI-TERRORISM COURT NO.III,  
KARACHI.  
50003  
Terrorism Court No. III  
Karachi Division

**IN THE HIGH COURT OF SINDH AT KARACHI**

Special Crl. Anti-Terrorism Appeal No.39 of 2010.  
Special Crl. Anti-Terrorism Appeal No.40 of 2010.  
Special Crl. Anti-Terrorism Appeal No.41 of 2010.  
Confirmation Case No.10 of 2010.

**Present:**

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

Appellants: Muhammad Ashfaq Qureshi S/o. Muhammad Akhlaq, Sultan Mehmood S/o. Syed Talib, Raheemullah s/o Ali Hassan through Mr. Mushtaq Ahmed, Advocate.

Muhammad Amin S/o. Muhammad Sharman, Muhammad Rehman S/o. Jonder Khan through M/s. Salahuddin Khan Gandapur and Sabir Shah, Advocates.

Muhammad Akbar Khan son of Haji Umarddin Khan through Mr. Muhammad Akbar Khan and Ms. Fareeda Usmani, Advocates.

For Complainant: Syed Muhammad Ali Shah and Shafat Hussain through M/s. Muhammad Irfan and Mazhar Qayyum, Advocates.

For State: Through Mr. Muhammed Iqbal Awan and DPG and Abrar Ali Khichi, APG.

Date of hearing: 03.12.2019 and 04.12.2019.

Date of announcement: 16.12.2019

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

**Mohammad Karim Khan Agha, J.-** Appellants **Muhammad Amin** alias Khalid Shaheen alias Abdullah S/o. Muhammad Sharman, **Sultan Mehmood** alias Saifullah alias Muslim S/o. Syed Talib, **Muhammad Rehman** alias Mani S/o. Jondar Khan, **Muhammad Ashfaq Qureshi** S/o. Muhammad Akhlaq, **Muhammad Akbar Khan** S/o. Haji Umarddin Khan and **Rahimullah** alias Naeem alias Ali Hassan S/o. Willayat Khan have preferred these appeals against the impugned judgment dated 30.09.2010 passed by the learned Judge Anti-Terrorism Court No.III, Karachi in Special Case No.24 of 2006, F.I.R. No.85 of 2006 u/s. 324/427/109/120/34



PPC r/w section 7(a) of ATA, 1997 registered at P.S. Mubina Town (AVCC) and Special Case No.25 of 2006, F.I.R. No.332 of 2006 u/s. 324/427/109/120/34 PPC & section 3/5 Explosive Substance Act, 1908 r/w section 7(a) of ATA, 1997 registered at P.S. Sachal (AVCC), Karachi whereby the appellants have been convicted and sentenced as under:-

- (i) Accused **Muhammad Amin, Sultan Mehmood and Muhammad Rehman** were convicted and sentenced to death under section 7(a) of Anti-Terrorism Act, 1997 r/w Section 120(b) subject to confirmation by this court and fine of Rs.100,000/- each. In case of default in payment of fine they were ordered to undergo R.I. for 03 years more.
- (ii) Accused **Ashfaq, Akber Khan and Raheemullah** were convicted and sentenced to imprisonment for life under section 7(a) of Anti-Terrorism Act, 1997 along with fine of Rs.100,000/- each. In case of default in payment of fine they were ordered to undergo R.I. for 03 years more.
- (iii) Accused **Muhammad Amin, Sultan Mehmood, Muhammad Rehman, Ashfaq, Akber Khan and Raheemullah** were convicted and sentenced to imprisonment for life under section 7(b) of Anti-Terrorism Act, 1997 along with fine of Rs.50,000/- each. In case of default in payment of fine they were ordered to undergo imprisonment for one year more.
- (iv) Accused **Muhammad Amin, Sultan Mehmood, Muhammad Rehman, Ashfaq, Akber Khan and Raheemullah** were convicted and sentenced u/s 7(c) & (d) of Anti-Terrorism Act, 1997 for punishment of 10 years and fine of Rs.25,000/- In case of default in payment of fine they were ordered to undergo imprisonment for one year more.
- (v) Accused **Muhammad Amin, Sultan Mehmood, Muhammad Rehman**, were convicted and sentenced to imprisonment for life under section 7(ff) of Anti-Terrorism Act, 1997.

All the punishments of imprisonment were ordered to be run concurrently while benefit of Section 382(b) Cr.P.C. is awarded **only to accused Akber Khan.**

2. The brief facts of the prosecution case No.24/2006 according to 154 Cr.P.C. statement of Complainant Syed Muhammad Ali Shah S/o. Akbar Ali Shah dated 06.04.2006 is that at about 12:00 p.m. He along with Allama Hassan Turrabi, Murtaza Turrabi S/o. Hassan Turrabi, Gunmen P.C. Mashooq Ali and Deedar left the house of Allama Hassan Turrabi in Maroon coloured Toyota SUV vehicle bearing No.BB-9832 to attend



meeting of MMA held at Idarai-Noor-ul-Haq Dawood Engineering College towards Abul Hassan Isfahani Road through Miskan Chowrangi and Murtaza Turrabi was driving the vehicle and gunmen was sitting by his side. When the vehicle reached Sahafi bridge, opposite Bleez Garden on Abul Hassan Isfahani Road, a bomb blasted in a pushcart parked at the left side of bridge as a result of which Murtaza Turrabi and gunman Mashood received injuries but Allama Hassan Turrabi was safe while a motorcyclist and other persons passing by the side of the road also received injuries. A police mobile immediately reached there and shifted the passerby and another injured person to hospital. The vehicle was also damaged with its tyres and glasses being broken. He further stated that some unknown persons had made this blast with intention to kill Allama Hassan Turrabi and persons sitting in the vehicle by some explosive material and to damage the vehicle.

3. While the brief facts of the prosecution case No.25/2006 according to 154 Cr.P.C. statement of Complainant Shafat Hussain are that on 14.07.2006 his meeting was fixed with Allama Hassan Turrabi at 4:00 p.m. and as per promise of meeting he reached at house No.A/59, Abbas Town where he came to know that Allama Sahab had not reached at his house so he stood at a nearby shop awaiting his return and after about 5/6 minutes vehicle No.BB-9832 of Allama Hassan Turrabi Sahab came followed by a police mobile and it stopped in front of his house where after the complainant moved towards the house of Allama Hassan Turrabi and saw that Allama Sahab was moving towards his house in front of his vehicle. The Complainant saw a boy aged about 20/21 years move towards Allama Sahab but Imran Ali the nephew of Allama Sahab pushed the boy back where after a blast occurred and smoke spread in the area. He made cries and other persons gathered. Consequently Allama Sahab and police personnel who received injuries with the help of the complainant and of police driver and other persons shifted Allama Sahab who was seriously injured and guards who were also injured in police mobile and sent them to hospital. Imran Ali expired at the spot. He saw the boy who rushed towards Allama Sahab whose body after the blast was lying spread in the shape of pieces of flesh and his foot was lying at the corner of street but his head was complete which was lying on the spot. He also saw one hand grenade lying in front of house of Allama



Sahab and at the time of incident **Muhammad Yaqoob** and **Jaffar Raza** were also present. Allama Hassan Turrabi during treatment at Patel Hospital succumbed to his injuries. He further stated that the murder of Allama Hassan Turrabi was in continuity of the incident of Nishtar Park and murder of other Ulmas. He claimed that accused who died at the spot **and other secret hands** were behind the murder of Allama Sahab and Imran Ali and injured police guards by means of explosive material and damaged the vehicle No.BB-9832. Such statement u/s 154 Cr.P.C. was incorporated in the FIR of Crime No.332/2006 at P.S. Sachal Karachi.

4. After registration of the FIRs, usual investigations were carried out and on the conclusion of the investigations the matter was sent up for trial. The Charge was framed against the accused all of whom pled not guilty and claimed trial.

5. In order to prove its case the prosecution examined 37 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The statements of the six accused persons u/s 342(1) Cr.P.C. were recorded and all the accused denied the entire facts of the case claiming themselves to be innocent and stating that it was a case of false implication as the police were under pressure to arrest and convict some one in the case because it was a high profile one.

6. Learned Judge, Anti-Terrorism Court-III, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 30.09.2010, convicted and sentenced the appellants as stated above, hence these appeals have been filed by each appellant against his conviction and sentence as handed down in the impugned judgment.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for appellant Muhammed Akbar Khan has contended that he is completely innocent and that there is no evidence against him; that he did not make any judicial confession; that he has been



named by other co-accused in their judicial confessions which legality is doubtful and he cannot be convicted on such confessions unless there is strong unimpeachable corroborative evidence against him; that there is no corroborative or other evidence against him as there is no eye witness against him and no recovery has been made from him when he was arrested on a motor bike along with Muhammed Ashfaq and as such for any of the above reasons based on the benefit of the doubt being extended to him he should be acquitted of the charge. In support of his contentions he has placed reliance on **Kachkol V The State** (1997 P Cr. L J 352), **Sheer Shah and another V. The State** (1997 P Cr. L J 153), **Bahadur Khan V. The State** (PLD 1995 SC 336), **Alif Gul V. Noor Afzal and others** (PLD 2009 Peshawar 20), **Mumtaz Bibi and others V. Ghulam Akbar** (PLD 1995 Peshawar 81), **Anwar Bibi and others V. Raja** (1997 SCMR 1081), **Mah Gul V. The State** (2009 SCMR 4), **Muhammad Yamin alias Raja V. The State** (2009 SCMR 84) and **Mursal Kazmi alias Qamar Shah V. The State** (2009 SCMR 1410).

9. Learned counsel for appellant Muhammed Ashfaq has contended that he is completely innocent and that there is no evidence against him; that he did not make any judicial confession; that he has been named by other co-accused in their judicial confessions which legality is doubtful and he cannot be convicted on such confessions; that there is no corroborative or other evidence against him as there is no eye witness against him and no recovery has been made from him when he was arrested along with appellant Muhammed Akbar Khan and as such based on the benefit of the doubt being extended to him he should be acquitted of the charge. Learned counsel for appellant Rahimullah has contended that he is completely innocent and that there is no evidence against him; that he did not make any judicial confession; that has been named by other co-accused in their judicial confessions which legality is doubtful and he cannot be convicted on such confessions; that there is no evidence against him in respect of the first incident; that the only other evidence against him concerns the second incident which lead to the death of the deceased whereby PW 2 Shafat and PW 19 Jaffa Raza identified him at the place of incident but even otherwise their identification of him cannot be safely relied upon as when they picked him out at the identification parade no role had been assigned to him and as such for any of the above



reasons based on the benefit of the doubt being extended to him he should be acquitted of the charge.

10. Learned counsel for appellant Sultan Mahmood has contended that his confession is inadmissible in evidence because it was neither made voluntarily and nor is it true; that his confession was recorded after a delay of 6 days after his arrest whilst in police custody; that there were numerous procedural defects in his confession such as him not being informed that he would not be returned to police custody if he failed to confess; that in respect of the first incident of the attempted murder the two eye witnesses against him (PW 7 Rana Qasim and PW 8 Muhammed Faisal) were chance witnesses, that the identification parade was made 15 days after his arrest and that they had not assigned him any role in the offense and as such their eye witness evidence could not be safely relied upon; that with regard to the second incident which lead to the death of the deceased all the eye witnesses against him (PW 1 Yaqoob, PW 2 Shafat, PW 16 HC Muktar, PW 19 Jaffa Raza; PW 26 PC Altaf and PW 27 Jawed) were chance witnesses; that none of the identification parades could be safely relied upon as they were joint identification parades and no role had been assigned to him and there was also procedural defects in all the identification parades which lead to any reliance of them being unsafe and as such for any of the above reasons based on the benefit of the doubt being extended to him he should be acquitted of the charge. In support of his contentions he placed reliance on **Kanwar Anwaar Ali** (PLD 2019 SC 488), **Javed Khan alias Bacha V. The State** (2017 SCMR 524), **Azhar Mehmood V. The State** (2017 SCMR 135), **Sabir Ali alias Fauji V The State** (2011 SCMR 563), **Muhammad Ayaz V. The State** (2011 SCMR 769), **Kamal Din alias Kamala V The State** (2018 SCMR 577), **Nazir Ahmad V Muhammad Iqbal** (2011 SCMR 527), **Azeem Khan V Mujahid Khan** (2016 SCMR 274), **Muhammad Azhar Hussain V The State** (PLD 2019 SC 595), **Muhammad Pervez V The State** (2007 SCMR 670), **Mehro Khan V Anwar and 2 others** (2017 P Cr. L J Note 233), **Ghous Bux V Saleem and 3 others** (2017 P Cr. L J 836), **Tariq V The State** (2013 P Cr. L J 1786), **Noor Muhammad V The State** (2017 P Cr. L J 479), **Mah Gul V The State** (2009 SCMR 4), **Abdul Jabbar V The State** (2019 SCMR 129), **Basharat Ali V Muhammad Safdar** (2017 SCMR 1601), **Muhammad Zubair V The State** (2010 P Cr.L J 1892), **Muhammad Fazil V Bashir**



**Ahmad** (2009 SCMR 1382), **Muhammad Asif V The State** (2017 SCMR 486), **Muhammad Akram V The State** (2009 SCMR 230) and **Tariq Pervez V The State** (1995 SCMR 1345).

11. Learned counsel for appellants Muhammed Amin and Muhammed Rehman adopted the arguments of learned counsel for the appellant Sultan Mahmood whose cases were on a similar footing and also in addition contended that the appellants were already in custody in respect of an offense under the Arms Ordinance when they were arrested in this case and that the arms had been foisted on them in order to falsely implicate them in this case; that the raid which lead to their arrest was in fact fabricated which was shown by the fact that despite the house where they were allegedly arrested from being in a thickly populated area no independent mushir was associated in violation of S.103 Cr.PC; that there were contradictions in the statements of the PW's regarding the second incident which lead to the death of the deceased in that PW 14 HC Azhar Hussain had stated that the deceased went into his house after the blast and then came out in an injured condition where as other PW eye witnesses had stated that the deceased had not gone into the house after the blast; that the parts of the suicide bomber were not produced in court and neither were the mother or the son who the suicide bomber's CD was recovered from examined as PW's; that the investigation had been conducted by an ASI as opposed to an Inspector which was the requirement under the ATA and as such for any of the above reasons based on the benefit of the doubt being extended to them both the appellants be acquitted of the charge. In support of his contentions he has placed reliance on **Tariq Pervez V The State** (1995 SCMR 1345), **Abdul Jabbar V The State** (2019 SCMR 129), **Mehmood Ahmad V The State** (1995 SCMR 127), **Mursal Kazmi alias Qamar Shah V The State** (2009 SCMR 1410), **Mah Gul V The State** (2009 SCMR 4), **Rahat Ali V The State** (2010 SCMR 584) and **Muhammad Ali V The State** (2002 P Cr.L J 1631).

12. Learned DPG has contended that the prosecution has proved its case against all the appellants beyond a reasonable doubt and that the impugned judgment should be upheld and the sentences handed down to all the appellants be maintained and the appeals dismissed. In particular he has stressed upon the confessions of three appellants all of which have been carried out in accordance with law and even otherwise slight defects



in the same may be over looked; that all the appellants have been identified by numerous eye witnesses in respect of both the first and second incidents all of whose evidence is reliable, trust worthy and confidence inspiring especially in connection with the identification of the appellants and that all the eye witnesses picked out the accused from the identification parades which were carried out in accordance with the law and even if such identification parades had some minor procedural defects we could still safely rely on them under the law. In support of his contentions he placed reliance on **Muhammad Zaman v. The State** (2007 SCMR 813), **Raz Muhammad v. The State** (PLD 2002 Supreme Court 56), **Nazeer alias Wazeer v. The State** (PLD 2007 Supreme Court 202), **Manjeet Singh v. The State** (PLD 2006 Supreme Court 30), **Khan Muhammad and others v. The State** (1999 SCMR 1818) **Rehmat Ali alias Baba and another v. The State** (2002 YLR 3860), **Abdul Haq and another v. The State** (2015 SCMR 1326), **Dadullah and another v. The State** (2015 SCMR 856) and **Majeed v. The State** (2010 SCMR 55). Learned counsel for the complainant adopted the arguments of the learned DPG and fully supported the same.

13. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

14. It appears that the case of the prosecution in a nut shell is that the appellants had conspired to murder the deceased and that they initially planned to murder him by planting an explosive device in a hand cart which was detonated in the presence of and with the active involvement of some of the accused when his car passed by on the road but that this attempt failed and resulted in the bomb blast causing a few injuries to some persons near the place of incident but with the deceased being left unharmed. That having failed in this initial attempt to murder the deceased the accused then again in continuation of their earlier conspiracy again conspired to murder the deceased by a plan to murder him through a suicide bomber after he returned to his house after attending a function. On this occasion the plan was successful as the suicide bomber activated his device in the presence of and with the active involvement of the accused when the deceased got out his car which bomb blast of the suicide



bomber murdered the deceased as planned as well as his nephew and caused injuries to at least 3 police guards.

15. Thus, as can be seen, the prosecution case essentially breaks down into three parts which were in continuation of the same conspiracy/intention to murder the deceased. Firstly, the conspiracy to murder the deceased, secondly the failed attempt to murder the deceased in pursuance of that conspiracy and finally in pursuance of that conspiracy the successful murder of the deceased through a suicide bomber.

16. In our view after our reassessment of the evidence based on the evidence of the PW's and other evidence on record we are satisfied that the prosecution has proved beyond a reasonable doubt that on 06-04-2006 at about 1210 hours at Abul Hassan Isphahani Road adjacent to Breeze Garden Karachi an attempt was made to murder the deceased by causing a bomb blast whilst he was proceeding in his vehicle. **This position is not disputed by the appellants**

17. In our view after our reassessment of the evidence based on the evidence of the PW's including the PW MLO's, inquest reports u/s 174 Cr.PC, the fact that a number of PW's suffered injuries caused by pellets which are commonly used in suicide bomber attacks as they are often placed in the suicide vest along with ball barrings in order to cause maximum casualties and damage to property, recoveries of pellets at the scene, blast damage to the vehicle of the deceased, BDU report and other evidence on record we are satisfied that the prosecution has proved beyond a reasonable doubt that on 14-07-2006 at about 4.05pm a suicide bomber named Karim Bungali along with the assistance of his accomplices detonated his suicide bomb in front of house No.A/59 Abbas Town which caused the intentional death of the deceased and his nephew Imran Ali and injured at least 3 others which also caused damage to property. **This position is not disputed by the appellants.**

18. The issues therefore, in our view, left before us to determine are (a) whether there was a criminal conspiracy by the accused to murder the deceased which lead the accused to plan and execute both the attacks on the deceased, (b) whether any of the accused played any role in that



conspiracy which lead to the attempt to murder the deceased which failed and (c) whether any of the accused played any role in the conspiracy to murder the deceased which was successful.

19. In our view after our reassessment of the evidence we find that the most important aspects in dealing with the above issues are (a) the confessions of three of the accused and (b) the identification of the accused at the scene of either the attempted murder and/or the actual murder of the deceased.

**Turning firstly to the issue of conspiracy.**

20. In our view the confessions of the accused lay at the heart of proving this aspect of the matter in addition to the first failed attempt to murder the deceased and the later successful murder of the deceased.

**The confessions.**

21. Three of the appellants made confessions all on 01-08-2006 being 6 days after their arrest whilst in police custody namely, Muhammed Amin, Sultan Mahmood and Muhammed Rehman which not only fully implicated themselves in the criminal conspiracy to murder the deceased but also the three other appellants Muhammed Akber Khan, Muhammed Ashfaq and Rahimullah.

22. All the three confessions are similar but are not identical so for ease of reference only the confession of **Muhammed Amin** is set out below;

**“Question:-** What have you to say?

**Answer:** I do hereby state in perfect state of my full senses without any inducement that I **Muhammad Amin** alias Khalid Shaheen alias Abdullah s/o Muhammad Sheerin Caste Yousuf Zai Pathan R/o House No.B-751 Lane No.27 Muzafarabad Colony Landhi, Karachi, originally resident of village Gorani Tehsil Bari Kot District Swat, and now I reside in Karachi as tenant since last 5/6 years, state that; I belong to **Harkatul Mujahideen** and involved in **Afghanistan Jihad**. Mufti Ilyas, Sultan, Muhammad Rehman, Akber Khan, Hazrat Ali, Ali Hassan, Khalild, Suhail Siddique, Ashfaq and me are involved in the murder plan of **Allama Hassan Turrabi**. Meeting all of us were held at my house in April, 2006. Hazrat Ali brought Remote Control Bomb and a fixed in the cart. Other companion tried to kill Allama Turrabi, but failed. Subsequently we made plan of suicide attack. In June, Hazrat Ali and Mufti Ilyas held meeting, which we all attended.



In the month of July Ashfaq has narrated to Sultan that Karim Bungali is ready for Suicide attack. Sultan and Ashfaq brought him at my house and handed over to Akber Khan, Hazrat Ali and Mufti Riaz. After some days, Hazrat Ali has disclosed that Suicide person is ready. Two days earlier before attack they all came at my house after Zohar Prayer. Hazrat Ali and Mufti Ilyas were handed over explosive jacket wrapped in cloth sheet to Sultan. Ali Hassan also brought four grenades. Akber Khan brought video camera with him. I recorded CD regarding WILL the Suicide attacker Karim Bungali, and while remaining all supervised. Akber Khan, Mufti Ilyas and Hazrat Ali deputed Suhail and Ashfaq for Surveillance of Allama while later on we all inspected the house and streets etc. of Allama. On Friday 14<sup>th</sup> July, 2006, Ali Hassan, Abdur Rehman and Khalid alongwith Suicide attacker Karim Bungali got him worn the Explosive jacket and beggar's dress reached at the place of occurrence in a red coloured Car, while Sultan arrived there on motor cycle encouraged to Karim. In the meanwhile, the vehicle of Allam Turrabi arrived there. We all good bye to Karim by saying that he (Allama) should not spare/save today. Karim Bugali went to near Allama and made blast. Allama killed there alongwith his nephew. We all by riding on motorcycle congratulate to Ali Hassan, Suhail and Ashfaq standing at the corner of the street. We were happy on the mission success, and went away to our respective homes. On 25.07.2006 the police raided at my home before Fajar prayer and arrested me, Sultan and Rehman, while Suhail run away. One T.T Pistol, four live bullets and one grenade recovered from me. Explosive substance weighing 25 kilo and one Detonator also recovered. Computer, "WILL CD" with another CD Key board and Video Cameras were also recovered by the police. This much is my statement". (bold added)

Sd/-(In English)  
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#### Law on retraction of judicial confessions.

23. After a review of the relevant law on the legal validity of judicial confessions the Hon'ble Supreme court in the case of Ch.Muhammad Yaqoob V The State (1992 SCMR 1983) reached the following conclusion:

*"The legal position, which has emerged from the above reports, seems to be that in order to judge the evidentiary value of retracted confession, the Court is to advert to the question, whether the same appears to have been made voluntarily, without any inducement, duress or coercion with the object to state the truth. If the Court is satisfied on the above aspect, the mere fact that there were some irregularities in recording of a confession, would not warrant disregarding of the same".*  
(bold added)



24. It is settled law that a retracted judicial confession can be legally admissible and used against its maker in certain circumstances. In the later case of **Muhammad Amin v. The State** (2006 PLD SC 219), it was held at P.224 Para 9 as under;

*"9. There is no cavil to the proposition that conviction could have been awarded on the basis of retracted confession which proposition was examined in case of Mst. Joygun Bibi v. The State PLD 1960 (SC (Pak) 313 as under:-*

*"We are unable to support the proposition of law laid down by the learned Judges in this regard. The retraction of a confession is a circumstance which has no bearing whatsoever upon the question whether in the first instance it was voluntarily made, and on the further question whether it is true. The fact that the maker of the confession later does not adhere to it cannot by itself have any effect upon the findings reached as to whether the confession was voluntary, and if so, whether it was true, for to withdraw from a self-accusing statement in direct face of the consequences of the accusation, is explicable fully by the proximity of those consequences and need have no connection whatsoever with either its voluntary nature, or the truth of the facts stated. The learned Judges were perfectly right in first deciding these two questions, and the answers being in the affirmative, in declaring that the confession by itself was sufficient, taken with the other facts and circumstances to support Abdul Majid's conviction. The retraction of the confession was wholly immaterial once it was found that it was voluntary as well as true."*

10. Similarly in the case of the State v. Minhun alias Gul Hassan PLD 1964 SC 813 this Court has observed as under:-

*"As for the confessions the High Court, it appears, was duly conscious of the fact that retracted confession whether judicial or extra judicial, could legally be taken into consideration against the maker of those confessions himself, and if the confessions were found to be true and voluntary, then there was no need at all to look for further corroboration. **It is well-settled that as against the maker himself his confession, judicial or extra judicial, whether retracted or not retracted, can in law validly form the sole basis of his conviction, if the Court is satisfied and believes that it was true and voluntary and was not obtained by torture or coercion or inducement.**" (bold added)*

25. Thus, the court laid down a two pronged test as under (a) whether the retracted judicial confession appears to have been made voluntarily, without any inducement, duress or coercion and (b) was made with the object to state the truth.

26. Notably it was also held that if both (a) and (b) were satisfied that even if there were some irregularities in recording of a confession it would not warrant disregarding of the same. In our view however following the case of **Azeem Khan V Muhahid Khan** (2016 SCMR 274) such irregularities must be of a minor nature and must not have detracted from either the voluntariness or truthfulness of the confession.

27. In the case of **Bahadur V State** (PLD 1996 SC 336) although it was suggested that a judicial confession alone can be made the basis of conviction the safer course was to look to see if there was any corroborative material available to determine its truthfulness

28. In the case of **Manjeet Singh V State** (PLD 2006 SC 30) a further requirement seemed to be added that in determining the truthfulness of the confession it had to be placed within the context of the whole of the prosecution evidence/case.

29. In our view therefore we are not in any doubt that a retracted confession before a magistrate can be the basis of convicting in a capital case however it must be;

(a) Voluntary i.e. without threat or inducement and

(b) Its object must be to state the truth; assistance for which can be ascertained from (i) whether the confession appears truthful within the context of the prosecution case and (ii) whether there is any other evidence on record which tends to corroborate the truthfulness of the confession and

(c) Only minor irregularities regarding the rules concerning the recording of judicial confessions can be permitted as determined on a case to case basis the main criteria being that such irregularities have not adversely affected the voluntariness or truthfulness of the confession.

30. Thus, we are of the view that a slight delay in recording the confession after the arrest of the accused will not effect its legality and our ability to rely on it. In this respect reliance is placed on **Khan Muhammed's case** (Supra) and **Majeed's case** (Supra). Likewise the fact that the confession is recorded on oath will not effect its legality and our ability to rely on it. In this respect reliance is placed on **Nazeer's case** (Supra). In our view as per the



case law as discussed above the overriding factors to be adhered to when determining whether a retracted judicial confession can be relied upon is whether it has been made voluntarily, is truthful and fits in with the prosecution case and these factors have not been effected by any procedural irregularity.

31. Based on the particular facts and circumstances of this case we find (a) there is no cogent evidence on record that the confessions were not made voluntarily i.e by threat or inducement **and** (b) the object of the confessions appears to be to tell the truth as it fits in with the prosecution case and is corroborated by other evidence on record which we will come to later **and** that (c) although there may be some irregularities in the recording of the confessions as pointed out by the appellants after our review of the warnings given and the evidence of PW 9 Pervaiz Qadir the judicial magistrate before whom the confessions were recorded such irregularities have neither effected the voluntariness or truthfulness of the confessions and as such we hold all three confessions to be admissible and can form the basis of convicting those appellants who made them and potentially those named in them provided that by way of abundant caution we find some corroborative evidence against the appellants.

**The law on criminal conspiracy.**

32. The appellants have been charged under S.120 PPC for conspiracy which for ease of reference is set out below;

**"120-A. Definition of criminal conspiracy.-** When two or more persons agree to do, or cause to be done,

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

**Explanation.** It is immaterial whether the illegal act is ultimate object of such agreement, or is merely incidental to that object.

**120-B. Punishment of criminal conspiracy.-** (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death (imprisonment for life) or rigorous imprisonment for a term of two years, or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

33. Thus, based on the judicial confessions of all three appellants (Muhammed Amin, Sultan Mahmood and Muhammed Rehman) we find that their actions all fall within the definition of criminal conspiracy as set out in the charge. Since the other appellants (Mohammed Akbar Khan, Muhammed Ashfaq and Rahimullah have been named as co-conspirators in the confessions in our view for them to be guilty for this offense some further corroboration is required to see whether they played any actual part in the conspiracy to either (a) attempt to murder the deceased which attempt failed or (b) later murder the deceased.

Turning to those appellants who did not give judicial confessions and are only named in the judicial confessions by their co-accused to see if there is any further corroborative or supportive evidence against them in connection with the failed attempt to murder the deceased and/or the later successful murder of the deceased.

Turning to the case of appellant Muhammed Akbar Khan who was arrested whilst on a motor bike with Muhammed Ashfaq on 15-08-2006 one month after the murder of the deceased.

34. With regard to the first failed attempt to murder the deceased we have not found any evidence against him on record.

35. With regard to the second incident whereby the deceased was murdered the only evidence against him appears to be his identification by PW 27 Jawed who gave him no role at the identification parade and the recovery of the motor bike which he was allegedly on when the second incident took place.

36. As such we find virtually no evidence to corroborate his co-



accused's confessions that he was involved in or participated in any criminal conspiracy to murder the deceased and as such the appellant Muhammed Akbar Khan is acquitted of the charge and shall be released unless wanted in any other custody case.

**Turning to the case of appellant Muhammed Ashfaq who was arrested whilst on a motor bike with Muhammed Akbar Khan on 15-08-2006 one month after the murder of the deceased.**

37. The same findings are made in respect of appellant Muhammed Ashfaq as have been made above for Muhammed Akbar Khan and as such the appellant Muhammed Ashfaq is acquitted of the charge and shall be released unless wanted in any other custody case.

**Turning to the case of appellant Rahimullah who was arrested almost two years after the murder of the deceased.**

38. With regard to the first failed attempt to murder the deceased we have not found any evidence against him on record.

39. With regard to the second incident whereby the deceased was murdered he was picked out of an identification parade by PW 2 Shafat and PW 19 Jaffa Raza however no role was assigned to him which in our view makes the identification evidence against him rather weak especially as the two above mentioned PW's had not seen him before the incident and the identification parade was carried out **over two years** after the second incident and **more importantly** he was **not** picked out at a different identification parade by PW 16 Mukhtar Ahmed who was a member of the deceased's security detail who took the deceased to hospital.

40. Thus, we find that there is insufficient evidence to corroborate the confessions of the co-accused to come to the conclusion that the prosecution has proved the charge against the appellant Rahimullah beyond a reasonable doubt and thus by extending to him the benefit of the doubt the appellant Rahimullah is acquitted of the charge and shall be released unless wanted in any other custody case.

**Turning to the cases of appellant's Muhammed Amin, Sultan Mhamood and Mohammed Rehman.**



41. In our view these appellants are on a different footing to the other appellants as we have found their confessions to have been made voluntarily, to be truthful and to fit in with the prosecution case and as such we are relying on them against each of the appellants despite them being retracted as discussed earlier in this judgment.

42. We have found the following **additional evidence** in support of the charge against them;

(a) The FIR has been lodged without undue delay despite the chaos which followed the incident which explains any delay in lodging the FIR which their might have been especially as the deceased did not die on the spot but was taken to hospital where he expired and as such there was no time for any concoction to falsely implicate anyone. The FIR has been lodged by an eye witness and the fact that it does not nominate who the perpetrators were supports the fact that the appellants have not been falsely implicated. It is also logical that the names of the perpetrators have not been named as the complainant would not have known them prior to this incident.

(b) That they were all arrested on 25-07-2006 at the house address given in Amin's confession. That at the time of arrest they were all armed with pistols and in the same room in an iron box was recovered 25 KG's of potassium, one KG of explosive substance, two detonators and a computer which was in the use of Mohammed Amin. (PW 35 Inspector Khuda Bux). This recovery ties in with the prosecution case that the appellants were involved in causing explosions and suicide bombing. The appellants were booked in a case under the Arms Ordinance after the raid

(c) What is of **crucial significance** is that on the arrest of appellant Sultan Mahmood he led the police party to a house in Federal B Area where the mother of the suicide bomber was residing and who confirmed her son was missing. She handed over a CD which she had not watched and went with her son to the PS where the CD was played and she recognized her son Abdul Karim who was missing on the CD. She then identified her son at the Edhi morgue where his head had been preserved. Later a positive DNA test proved that she was related to the suicide bomber Karim. All the above evidence ties in with the confession that a CD of Karim was made before he went on the suicide mission which was recorded before the appellants at their meeting with the appellants as discussed in their confessions. **More significantly**, the police would have had no idea who the suicide bomber was and where he lived so that information could only have been provided by one of the persons who planned the suicide bombing namely appellant Sultan Mahmood who lead them to the suicide bombers house on his pointation (PW 35 Inspector Khuda Bux)

(d) **Importantly** two CD's were also recovered from appellant Muhammed Amin one of which was blank and the other contained



the message of the suicide bomber which again ties in with his confessional statement as according to him he recorded the death statement of the suicide bomber and kept a copy (PW 37 Ch. Abdul Shakoor)

(e) **With regard to the first incident** where an attempt was made to murder the deceased by placing a bomb in a push cart eye witnesses PW 7 Rana Qasim and PW 8 Muhammed Faisal recognized all three appellants at the scene of the incident. According to their evidence these PW's were fruit vendors who came to park their pushcart in its usual place however as the appellants also had a push cart who wanted to park in their push cart in the pitch of the PW's not only did the two PW's get into a dispute with the appellants and came to blows with them when the appellants had taken their pitch but the two aforesaid eye witnesses were watching the appellants very closely since as they had had a heated argument with them they were expecting more trouble from them. Thus they got a good close up look of all three appellants especially as they came to blows in broad day light at 11.45 in the morning where the light was good. They gave huila's of the three appellants (although PW 7 Rana Qasim's huila was in more detail) and their S.161 statements were recorded on the same day. We consider them to be natural witnesses as opposed to chance witnesses who corroborated each other in all material particulars and were not damaged despite a lengthy cross examination. We find their evidence concerning the identification of the 3 appellants to be believable. Although they had not seen the appellants before an identification parade is not always mandatory. Even otherwise they each picked out all 3 of the appellants at the identification parade which we must stress is only a **corroborative rather than substantive piece of evidence** and cannot take the place of reliable identification by eye witnesses. In this respect reliance is placed on **Kanwar Anwaar Ali's case** (Supra). Although they gave no role to each of the appellants at the identification parade we do not believe that this flaw in the identification parade is sufficient to lead us to discard their correct identification of each of the appellants at the scene keeping in view our earlier discussion on their eye witness evidence. Thus, based on the confessional statements of the appellants and other evidence mentioned above we are of the view that the prosecution has proven beyond reasonable doubt that the 3 appellants as per their confession coupled with their presence at the scene played an active role in conspiring to murder the deceased which on this occasion resulted in an attempt to murder as although their explosive device under their pushcart detonated it did not murder the deceased but only caused minor injuries to those near him

(f) **Turning to the second incident** when the deceased was murdered through suicide bomber Karim. In this respect the appellants are identified by numerous eye witnesses at 3 identification parades held at different times which we shall now consider;

(g) **Turning to the first eye witness and first identification parade.** PW 16 Mukhtar Ahmed was a member of the deceased's security



detail who took the deceased to hospital. In his evidence he saw all 3 of the appellants and gave some huila. Importantly he corroborated the presence of other eye witnesses **Shafat and Jaffer who he knew at the scene** and we will consider their evidence later. He is a natural witness since he was one of the deceased's guards and was sitting outside the house of the deceased and had a good look at the three appellants especially as he was watching them come in a car and motorbike and speak to each other. It was a day time incident. He has no enmity with the 3 appellants and no reason to falsely implicate them and thus we find his evidence in respect of the identification of the appellants to be reliable, trustworthy and confidence inspiring and we believe that he has correctly identified the appellants although admittedly he gave his S.161 statement 4 days after the incident. As mentioned earlier an identification parade is not always mandatory even if the persons were previously unknown however it does lead to a safer identification of any of the accused. We however give little weight to his identification of the 3 appellants at the identification parade as this parade contained over 50 dummies and was a joint identification parade. We however for the reasons mentioned earlier are not going to discard his identification evidence completely but simply give it lesser weight and see if it is supported by any other identification evidence of the appellants.

**(h)Turning to two other eye witnesses and the second identification parade.** PW 26 Muhammed Altaf was a guard of the deceased who was a part of his escort. On his return back to the house of the deceased he saw the 3 appellants standing near the General store near the residence of the deceased. He was a natural witness being a part of the escort and again got a good look at the appellants as it was day light and stated that he could recognize the 3 appellants if he saw them again. He had no enmity with the 3 appellants and had no reason to falsely implicate them and we have no reason to doubt his identification of the appellants although he also gave his S.161 statement 4 days after the incident. PW 27 Muhammed Jawed who like PW 26 Muhammed Altaf was apart of the deceased's escort and was in fact the mobile driver. The same discussion as to PW 26 Muhammed Altaf is also applicable to him. At the identification parade neither of these witnesses ascribed any role to any of the appellants and PW 27 only picked out appellant Sultan Mahmood. As such once again we give very little weight to the identification of the appellants at the identification parade. We however as for the reasons mentioned earlier are not going to discard their identification evidence completely but simply give it lesser weight and see if it is supported by any other identification evidence of the appellant.

**(i)Turning to two other eye witnesses and the third identification parade.** PW 1 Muhammed Yaqoob (who was named in the FIR) was a follower of the deceased and had an appointment to meet the deceased at 4pm. He was waiting for the deceased outside his house for his appointment. His presence is corroborated by PW 2 Shafat, PW 19 Jaffer Raza, PW 24 Syed Muhammed Imran the owner of the general store who was a natural witness. He gave huila of all 3 appellants and gave his S.161 statement within 3 days



of the incident. As he was waiting for the deceased he got a good look at the 3 appellants who were also waiting around especially as it was day light. He had no enmity with the appellants and had no reason to falsely implicate them in this case and thus we find his evidence in respect of the identification of the appellants to be reliable, trustworthy and confidence inspiring and we believe that he has correctly identified the appellants. At the identification parade he correctly identified all three of the appellants which identification parade was carried out in accordance with the law. **The same considerations apply to PW 19 Jaffer Raza who was also named in the FIR.**

(j) That the PW's are all corroborative of each other and there are no major contradictions in their evidence which would adversely impact on the prosecution case. Admittedly a number of the PW's are police witnesses (including eye witnesses). However it is well settled by now that a police witness is as good as any other witness provided that no ill will, enmity, malafide or personal interest is proven against him vis a vis the appellant. In this respect reliance is placed on **Riaz Ahmad V State** (2004 SCMR 988), **Zafar V State** (2008 SCMR 1254) and **Abbas V State** (2008 SCMR 108). In this case no ill will or enmity has been suggested against any police officer as would lead to him falsely implicating the accused in this case. All the other PW's (including eye witnesses) are independent persons who did not know the accused prior to this incident and none of them had any ill will or enmity or other reason to falsely implicate the accused.

(k) Even if there are any contradictions in the evidence of the PW's we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to affect the prosecution case and the conviction of the appellants. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793)

(l) That the prosecution evidence provides a believable chain of evidence from the time of the appellants and their accomplices meeting and conspiring to murder the deceased by bomb blast to the first failed attempt to murder him, to their second meeting where they planned to murder the deceased by suicide bomber in front of his house, to the successful murder of the deceased, to their arrest and recovery of a massive amount of explosives and one appellant taking them to the house of the suicide bomber which was otherwise unknown by the police.

(m) With regard to the fact that the investigation was carried out by an ASI instead of an Inspector we are of the view that such a minor irregularity in such a heinous offense can be over looked as the law always prefers for cases to be decided on merits rather than technicalities.

43. Thus, when we consider all the evidence against the appellants in a holistic manner and consider it in its entirety we find that there are 3 legally admissible confessions (one from each of the appellants Amin, Muhammed Sultan and Muhammed Rehman) which prove a criminal



conspiracy to murder the deceased, that the 3 appellants were arrested together in appellant Muhammed Amin's house where a huge quantity of potassium used for making explosives (which quantity in our view was too large to be foisted) and other explosive making equipment was recovered, that appellant Sultan Mahmood took the police to the suicide bombers house which only he would have known of and not the police where a CD was recovered of a the suicide bomber who was identified by his mother, that a similar CD of the suicide bomber's death statement was recovered from appellant Muhammed Amin which fits in with his confession of filming the suicide bomber, that based on the eye witness evidence it stands proven that the appellants were at the scene of the incident when the first blast took place and there was an attempt to kill the deceased, that when the eye witness evidence concerning the second incident where the deceased was murdered by a suicide bomber where the three appellants were identified by numerous natural witnesses at the scene of the crime when the evidence of all these 5 natural eye witnesses is taken in its entirety not withstanding some flaws in the corroborative identification parades we are satisfied that the three appellants have been correctly identified as being present at the scene of the second incident when the suicide bomber blew himself up murdering the deceased and that this was in furtherance of their conspiracy to murder the deceased pursuant to their own confessions keeping in view the fact that a person can be convicted in a capital case based on the evidence of a solitary eye witness provided that his statement inspires confidence. In this respect reliance is placed on **Muhammed Pervez's case** (Supra).

44. Thus based on the above discussion we are satisfied that the prosecution has proved the charge against the appellants Muhammed Amin, Sultan Mehmood and Muhammed Rehman beyond a reasonable doubt and uphold their convictions.

45. **The next issue is one of sentencing of the three appellants Muhammed Amin, Sultan Mahmood and Muhammed Rehman.** In our view the murder was based on sectarian grounds and there is sufficient evidence on record to prove this and that the object, design and intention of the conspiracy was to murder the deceased and create fear, insecurity and terror amongst the shia sect, which it did, and as such the offense falls squarely within the ATA.



46. Keeping in view the barbaric, brutal and heinous nature of this pre mediated attack which by object, design and intent murdered 2 innocent people and injured 3 others (and could have easily through such reckless endangerment lead to the murder and injury of many more) and which crated fear and panic and terror amongst a certain segment of society based on religious grounds which also severely damaged property with no mitigating circumstances but rather only aggravating circumstances we consider that a case of this nature deserves no leniency and that a deterrent punishment is called for to dissuade others from carrying out such acts.

47. In this respect reliance is placed on **Dadullah's case** (Supra) which at P.862 Para 9 held as under;

"9. Conceptually punishment to an accused is awarded on the concept of retribution, deterrence or reformation. The purpose behind infliction of sentence is two fold. Firstly, it would create such atmosphere, which could become a deterrence for the people who have inclination towards crime and; secondly, to work as a medium in reforming the offence. **Deterrent punishment is not only to maintain balance with gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society.** Concept of minor punishment in law is to make an attempt to reform an individual wrongdoer. However, in such like cases, where the appellants have committed a pre-planned dacoity and killed two person, no leniency should be shown to the culprits. Sentence of death would create in the society due to which no other person would dare to commit the offence of murder. If in any proved case lenient view is taken, then peace, tranquility and harmony of society would be jeopardized and vandalism would prevail in the society. The Courts should not hesitate in awarding the maximum punishment in such like cases where it has been proved beyond any shadow of doubt that the accused was involved in the offence. Deterrence is a factor to be taken into consideration while awarding sentence, specially the sentence of death. Very wide discretion in the matter of sentence has been given to the courts, which must be exercised judiciously. Death sentence in a murder case is a normal penalty and the Courts while diverting towards lesser sentence should have to give detailed reasons. The appellants have committed the murder of two innocent citizens and also looted the bank in a wanton, cruel and callous manner. Now a days the crime in the society has reached an alarming situation and the mental propensity towards the commission of the crime with impunity is increasing. Sense of fear in the mind of a criminal before embarking upon its commission could only be inculcated when he is certain of its punishment provided by law and it is only then that the purpose and object of punishment could be assiduously achieved. If a Court of law at any stage relaxes its grip, the hardened criminal



would take the society on the same page, allowing the habitual recidivist to run away scot-free or with punishment not commensurate with the proposition of crime, bringing the administration of criminal justice to ridicule and contempt. Courts could not sacrifice such deterrence and retribution in the name of mercy and expediency. Sparing the accused with death sentence is causing a grave miscarriage of justice and in order to restore its supremacy, sentence of death should be imposed on the culprits where the case has been proved.

10. This Court in Noor Muhammad v. State (1999 SCMR 2722) has also adverted to this aspect of the matter and has observed as under:-

“However, we may observe that the people are losing faith in the dispensation of criminal justice by the ordinary criminal courts for the reason that they either acquit the accused persons on technical grounds or take a lenient view in awarding sentence. **It is high time that the Courts should realize that they owe duty to the legal heirs/relations of the victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of offences.** One of us (Ajmal Mian, C.J., as he then was) has highlighted this aspect, inter alia in the case of State through the Advocate General Sindh, Karachi v. Farman Hussain and others (PLD 1995 SC 1), relevant portion whereof at page 19 reads as follows:-

(3) It is a matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling unsecured. The learned trial Court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. **The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice”.** (bold added).

48. Likewise in the more recent cases of Tariq Iqbal V State (2017 SCMR 594) and Khalid Mehmood V State (2017 SCMR 201) the Supreme Court has confirmed the death penalty in cases of a brutal and merciless nature as in this case.

49. As such we uphold all the sentences for each offense in the impugned judgment in respect of Muhammed Amin, Sultan Mahmood and Muhammed Rehman and confirm the death sentences handed down to appellants Muhammed Amin, Sultan Mahmood and Muhammed Rehman whilst dismissing their appeal against conviction.



**In summary.**

50. The appeals against conviction of Muhammed Akbar Khan, Muhammed Ashfaq and Rahimullah are allowed and they all stand acquitted of the charge and shall be released unless wanted in any other custody case.

51. The appeals against conviction of Muhammed Amin, Sultan Mahmood and Muhammed Rehman are dismissed and their convictions and sentences in the impugned judgment are maintained and the confirmation reference in respect of each of them is answered in the affirmative. Each of the appellants shall have the benefit of S.382 B Cr.PC and their sentences shall run concurrently.

52. The appeals along with confirmation reference are disposed of in the above terms.