Shia Mosque Murder Suicide Border
Death Sentence upheld

509

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Sp. Cr. ATA 05 of 2007 a/w others

Syed M. Tahseen vs. The State

HIGH COURT OF SINDH

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

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

Date(s) of Hearing: 28-11-19 & 29-11-19

Decide on: 11-12 -2019

(a) Judgment approved for reporting: Yes

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 / over-rules / reverses / explains a previous decision.

* Strike out whichever is not applicable.

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.

476

510

IN THE HIGH COURT OF SINDH AT KARACHI

(CRIMINAL APPELLATE JURISDICTION)

5/1 **A.T.A APPEAL NO. 05 /2007.**

Syed Muhammad Tehseen,
S/o of Syed Muhammad Naseer Uddin,
Muslim, adult resident of Karachi
Presently Confined at Death Cell at
Central Prison at
Karachi.....**APPELLANT**

Mansoor 28/3/17.

Versus

The State.....**RESPONDENT.**

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

Being aggrieved by and dis-satisfied with the judgment dated 28.3.2007 passed by the Learned Judge of Anti Terrorism Court-III Mr. Saghar Husain Zaidi, in Special Case No. 18/2005, in (FIR No. 285/2005) dated 30.05.2005 of Police Station Gulashan-e-Iqbal at Karachi Under Section 353/324/302/427/34 of Pakistan Penal Code read With Section 3/5 of Explosive Substance Act and Section 6 & 7 of Anti-Terrorism Act, and In FIR bearing No. 286/2005 dated 30.05.2005, under Section 13-D Arms and Ordinance wide Special Case No. 18/2005. The State .... Versus ..... Syed Muhammad Tehseen and others, the Learned Judge while convicting the Present Appellant and acquitted the main accused namely Muhammad Altaf @ Mufti @ Shahid, Ghulam Sarwar while giving them benefit of doubt under section

511

...HE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 18 /2007

PRESENTED ON ...18...
Dy. Registrar

..., Maroof @ Mah Rukh,
... Syed Ali Shah @ Ali Mohammad
..., Adult, Resident of
... No.15, Block – 5,
... Mahtab-ul-Ilm,
...shan-e-Iqbal,
...achi. ... Appellant

Versus

1. Mohammad Altaf @ Mufti @ Shahid,
S/O Ghulam Sarwar, Muslim, Adult
R/O Dhani Bux Goth, House No.129,
Street – 3, Block – 9,
Gulistan-e-Jauhar,
Karachi. ... Respondents

2. The State

CRIMINAL ACQUITTAL APPEAL U/S – 25 (-A) OF A.T. ACT, 1997

Being aggrieved and dissatisfied with th...
22-03-2007 passed by the Anti-Terrorism Court at Kara...
No.18/2005 pursuant to FIR No.285/2005 ...
PPC r/w Sections – 3/5 of Explosive Sub...
of Anti-Terrorism Act, 1997 of Police Sta...
whereby one of the accused namely Moh...
Shahid/Respondent No.1 has been acqu...
...e this Hon'ble Court with the ...

5 11 (9)

BRANCH
DATE
HIGH COURT OF SINDH
KARACHI

IN THE ANTI TERRORISM COURT NO.III AT KARACHI
NO.A.T.C.III/K/ 60 /2007, KARACHI DATED 22.03.2007

To,

The Registrar,
Honourable High Court of Sindh,
Karachi.

SUBJECT: SUBMISSION OF R&Ps OF SPECIAL CASEs NO.18/2005 FIR NO.285/2005, U/S. 353/324/302/427/34 PPC R/W SECTION 6 & 7 OF ATA, 1997 OF P.S. GULSHAN-E-IQBAL, KARACHI (THE STATE VS SYED MUHAMMAD TAHSEEN & OTHERS). AND SPECIAL CASE NO.19/2005, FIR NO.286/2005, U/S. 13(d) OF ARMS OIRDINANCE, 1965 OF PS. GULSHAN-E-IQBAL, KARACHI (THE STATE VS SYED MUHAMMAD TAHSEEN).

The R&Ps of the aforesaid cases (which have been decided on 22.03.2007), are being sent herewith in view of Section 25(2) of Anti-Terrorism Act, 1997 for necessary action, and for confirmation of death sentence or otherwise.

Kindly acknowledge the receipt of the same.

Encl: As above.

22/03

(SYED SAGHAR HUSSAIN ZAIDI)
JUDGE
ANTI TERRORISM COURT NO.III
KARACHI

JUDGE
Anti-Terrorism Court No. III
Karachi Division

Shia murders in Karachi - Suicide Bomber
Death Sentence upheld

512

IN THE HIGH COURT OF SINDH AT KARACHI

Special Crl. Anti-Terrorism Appeal No.05 of 2007.
Special Crl. Anti-Terrorism Acquittal Appeal No.18 of 2007.
Confirmation Case No.01 of 2007.

Present:

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

Appeal Against Conviction

Appellant:	Syed Muhammad Tahseen S/o. Syed Muhammad Naseeruddin through Mr. Abdul Razzak, Advocate.
Complainant:	Mst. Maroof @ Mah Rukh through Syed Tasawur Hussain, Advocate.
For State:	Through Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.

Appeal Against Acquittal

For Appellant:	Mst. Maroof alias Mah Rukh (Nemo)
For Respondent	Muhammad Altaf alias Mufti alias Shahid (Nemo).
Date of hearing:	28.11.2019 and 29.11.2019
Date of announcement:	11.12. 2019

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellant Syed Muhammad Tahseen S/o. Muhammad Naseeruddin and Mst. Maroof @ Mah Rukhy W/o. Naad Ali Shah @ Ali Muhammad have preferred these appeals against the impugned judgment dated 22.03.2007 passed by the learned Judge Anti-Terrorism Court No.III, Karachi in Special Case No.18 of 2005, F.I.R. No.285 of 2005 u/s. 353/324/302/427/34 PPC r/w section 3/5 Explosive Substance Act & Section 6 & 7 of A.T.A. 1997 registered as P.S. Gulshan-e-Iqbal, Karachi whereby the appellant Syed Muhammad Tahseen was convicted and sentenced to death u/s. 302(b) r/w 34 PPC and r/w 7(a) of the Anti-Terrorism Act, 1997 subject to confirmation by this court. Accused Syed Muhammad Tahseen was also convicted and sentenced to Rigorous Imprisonment for 10 years under section 3 of the

Explosives Substance Act 1908 r/w 427 PPC. The accused was further sentenced to suffer R.I. for 07 years and fine of Rs.10,000/- under section 13-D of the Arms Act. In case of default in payment of fine he was ordered to suffer R.I. for one year more whereas accused Muhammad Altaf @ Mufti S/o Ghulam Sarwar was acquitted and ordered to be released forthwith if not required in any other case. Hence criminal Anti-Terrorism Acquittal Appeal No.18/2007 has been filed by Appellant Mst. Maroof alias Mahrukh.

2. The brief facts of the prosecution case as per FIR are that on 30.05.2005 at about 2100 hours the complainant Zafar Hussain Lodged FIR through his 154 Cr.P.C statement stating therein that he resides at A/309/2, Civic View Apartment Block-13/D Gulshan-e-Iqbal, Karachi and is trustee of Imambargah Madinatul ilim since the last 25 years. On 30.5.2005 at about 7:40 p.m he along with other namazies was offering his Maghribain prayer when suddenly firing started at the main gate of mosque / Imambargah. Due to that all the namazies broke their namaz and started scattering when just after a few seconds there was a heavy bomb blast in the courtyard of the said mosque thereafter the firing at the main gate was also stopped. He then rushed out-side the gate and saw that body searchers namely Raza Hiader and Azam were lying on the earth duly injured. Whereas one police HC was also lying in a pool of blood across the road in front of the main gate who was killed by the firing of terrorists and was promptly shifted to hospital along with other injured people. When he came back in the courtyard of Imambargah a lot of people had already gathered there. On enquiry he came to know that two terrorists forcibly entered into the Imambargah from the main gate and when they reached in the courtyard the bomb was exploded. One of the terrorist had affixed the bomb to his body, hence due to explosion the suicide bomber was killed and parts of his body viz neck etc. were scattered in the courtyard. There were pellet marks on all the three sides of the wall of Imambargah due to said explosion, and glasses of doors were broken and glasses of windows towards western side were also broken into pieces which explosion had caused injuries to Muhammad Ali and Fida Hussain and following other namazies namely Muhammad Ashraf, Ghufran Hyder, Ghazi, Rizwan Shah, Saleem Amir, Adnan, Amir Raza, Raja Nayyar Abbas, Abbas Hyder, Akhter Hussain, Syed Saghar

Hussain, Iraqi Hussain, Muhammad Ali, Sajjad Hussain, Owais, Muhammad Shakeel, Muhammad Bilal, S.M. Hyder Naqvi, Shifaat Ali and a child namely Faheem also received severe injuries who were sent to hospital for their treatment. In the meantime Bomb Disposal Escort as well as other police officials reached the spot and they collected different things including the neck and other parts of the body of the suicide bomber which they took away along with them. He then came at the main gate and saw that one terrorist was killed by the police in encounter while the other accused received injuries who was apprehended by SHO Irfan Zaman along with a pistol duly loaded with a magazine with two live bullets and an empty magazine. Whereas six live bullets duly loaded in magazine were also recovered from the pocket of the other unknown terrorist who was killed during the encounter with the police. Both the terrorists were seen firing at the gate by body searchers as well as other people. He claimed and lodged report against three unknown persons for causing injuries to both the body searchers as well as other injured persons by firing and to kill the police HC deputed at the gate of Imambargah/Masjid Madinatul Ilim so also providing cover and helping in making bomb blast whereby 30/32 namazies of the said Imambargah received injuries and property was damaged.

3. Subsequent to the registration of this case under Section 7 ATA 1997 r/w Section 353/324/302/427/34 PPC and 3/5 Explosive Substance Act, another FIR bearing No.286/2005 was also registered against the accused Syed Muhammad Tahseen under Section 13(d) of Arms Ordinance, 1965.

4. After usual investigation the challan against both the accused persons, was submitted before the Administrative Judge for ATCs (Special Courts) who assigned the same to the Anti-Terrorism Court No.III, Karachi for trial according to law. Charge was framed against the accused which was later amended to which they plead not guilty and claimed trial

5. In order to prove its case the prosecution examined 28 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under S.342 Cr.PC whereby he claimed that he was a passer by at the time of the incident who had been

injured by the bomb blast and had been falsely implicated in the case by the police. He did not examine himself on oath and did not call any witnesses in support of his defense case.

6. Learned Judge, Anti-Terrorism Court-XX, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 22.03.2007, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

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 the appellant has contended that the none of the eye witnesses are named in the FIR; that none of the so called eye witnesses was actually present at the scene of the incident; that they are put up witnesses; in the alternative they are chance witnesses who cannot be believed especially as their behavior does not appeal to natural human conduct as some of them did not even go to help the injured; that there was a delay in recording the S.161 statements of the eyewitnesses and as such their evidence can be ignored; that there is no reliable identification of the appellant; that the identification parade was defective; that under the ATA the IO was not authorised to carry out the investigation as he was a Sub-Inspector as opposed to an Inspector; that although the appellant was present at the scene he was simply a passer by who was injured by the blast and has been falsely implicated in this case by the police in order to show their efficiency to their high ups; that there is neither any direct or circumstantial evidence against him; that the co-accused has been acquitted on identical evidence and he was therefore also entitled to be acquitted and thus for any one of the above reasons he be acquitted by being extended the benefit of the doubt. In support of his contentions he has placed reliance on **Muhammad Zaman V The State** (2014 SCMR 749), **Akhtar Ali V The State** (2008 SCMR 6), **Tariq Pervez V The State** (1995 SCMR 1345), **Muhammad Saleem V The State** (2010 SCMR 374), **Mst. Sughra Begum and another V Qaiser Pervez and others** (2015 SCMR 1142), **Muhammad Ali V The State** (2015 SCMR 137), **Mir**

Muhammad alias MIRO V The State (2009 SCMR 1188), **Umar Farooque V The State** (2006 SCMR 1605), **Muzaffar Ali V The State** (PLD 1964 (W.P) Lahore 32), **Farman Ahmed V Muhammad Inayat** (2007 SCMR 1825), **Imran Ashraf and 7 others V The State** (2001 SCMR 424), **Gul Hassan V The State** (2008 MLD 668), **Muhammad Ishaqu V Farman Shah** (PLD 1964 (W.P) Peshawar 58), **Sohail Abbas and others V Kashif and others** (PLD 2001 Supreme Court 546) **Shafqat Mehmood and others V The State** (2011 SCMR 537), **Sabir Ali alias FAUJI V The State** (2011 SCMR 563), **Sabir Ali V The State** (2011 SCMR 629), **Muhammad Ayaz V The State** (2011 SCMR 769), **Hamid Nadeem V The State** (2011 SCMR 1233), **Maula Bux and others V Chief Administrator of AUQAF, Lahore** (2011 SCMR 207), **Malik Muhammad Iqbal V The State** (2005 P Cr. L J 768), **Atta Muhammad V The State** (1968 P Cr. L J 962), **Wahab Ali V The State** (2010 P Cr. L J 157), **Bukhshu V The State** (2009 P Cr. L J 405) and **Muhammad Uzair V The State** (2005 YLR 1533).

9. On the other hand learned Deputy Prosecutor General has contended that the prosecution has proved its case against the accused beyond a reasonable doubt and that the impugned judgment does not require interference and that the appeal should be dismissed and the death sentence maintained. He has submitted that that the accused was arrested on the spot in an injured condition with a pistol in his hand outside the mosque; that the eye witnesses are reliable and saw him in the mosque along with the suicide bomber and that the medical evidence fully supports the prosecution case. In support of his contentions he has placed reliance on **Dadullah V The State** (PLJ 2015 SC 628), **Rafaqat Ali V The State** (2016 SCMR 1766), **Niaz-ud-din V The State** (2011 SCMR 725), **Muhammad Ashraf V The State** (2011 SCMR 1046), **Abdul Haq V The State** (2015 SCMR 1326), **Manjeet Singh V The State** (PLD 2006 SC 30), **Muhammad Zaman V The State** (2007 SCMR 813), **Aijaz Nawaz alias BABA V The State** (2019 P.Cr. L.J 1775), and **Rehman Ali alias BABA V The State** (2002 YLR 3860). Learned counsel for the Complainant adopted the arguments of the DPG.

10. 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.

11. Before proceeding further we have noted from the record that the charge was framed on 02.08.2006 and after the prosecution had lead most of its evidence the charge was amended on 20.12.2006 with the consent of the both the prosecution and defense counsel. Thereafter no witness was re examined. It appears that the charge was amended to add one specific paragraph which aimed to fully bring the case within the ambit of the ATA.

12. It is apparent that the intent behind the amended charge was to show that the offenses fell squarely within the ATA. In our view such amendment was not necessary as the original charge made it clear that the offenses concerned were also under the ATA. No new accused was added to the trial and all the evidence had been recorded in front of both the accused who cross examined the witnesses and conducted their defenses cases based on this case falling under the ATA. Thus, in our view no prejudice has been caused to the accused by amending the charge which the accused through their defense counsel consented to before the trial court and made no application to recall any PW. Before commencing these proceedings we categorically asked counsel for the accused, the DPG and the complainant whether the above situation warranted the case to be remanded as a matter of law and all of them confirmed that it did not and even otherwise learned counsel for the appellant specifically stated that the appellant had not been prejudiced at trial and that he wanted the appeal to be decided on merits and the case not to be remanded since the appellant had already been in custody for a very long time. Thus, based on the above discussion we find that no prejudice has been caused to the appellant by amending the charge after most of the prosecution evidence had been recorded and these PW's were not recalled to give their evidence after the framing of the amended charge and such this is not a case of remand and we will decide the same on merits.

13. 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 many 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 barring in order to cause maximum injuries to casualties and damage to property , recoveries of empties and pellets at the scene, blast damage, BDU report, and other evidence on

record we are satisfied that the prosecution has proved beyond a reasonable doubt that on 30.05.2005 at about 7.40pm an unknown suicide bomber along with his armed accomplices started firing on the main gate of masjid/Imanbargah Madinatul-Ilim and entered the same and as a result of the firing and detonating the suicide bomb at least 3 people were killed (HC Raja Irshad, Muhammed Ali and Fida Hussain) and at least 20 others were injured and a large amount of damage was also caused to property. This position is not disputed by the appellant.

14. The only issue therefore, in our view, left before us is whether the appellant was one of the persons who forced his way into the masjid whilst firing at the guards of the masjid and others inside the mosque along with the suicide bomber who blew himself up in the court yard of the masjid and thereby through common intention caused the death of at least three people in and out side the masjid and injured over 20 others in the masjid.

15. In our view after our reassessment of the evidence we find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the following reasons;

(a) That the FIR has been lodged promptly within one and a half hours of the incident by PW 1 Zafar Hussain who was the trustee of the masjid for about 25 years and was present at the time of the blast. It covers all material aspects of the prosecution case including the names of some of the injured who he would know as he had been attending the masjid for the last 25 years and importantly states that one terrorist had been captured in injured condition within the court yard of the mosque. He does not nominate any person in the FIR which is against 3 unknown accused persons. This is logical as he would not know the names of the persons who carried out the attack. Since the FIR has been lodged promptly we are of the view that there has been no chance of any concoction especially as there are so many PW's to the incident. The fact that the accused are not nominated also shows that he had no intention of falsely implicating any particular person in the case. Significantly, he has stated about the presence of the injured terrorist who was captured at the scene of the incident by SHO Irfan Zaman. It is true that he has not named the eye witnesses in the FIR but we do not consider this as being of great significance as at the time he would not have known who the eye witnesses were although one of them did turn out to be one of the injured named in the FIR being **key eye witness PW 11 Syed Muhammad Zaidi**.

(b) With regard to the offenses charged in our view the case will mainly turn on whether we find the evidence of the PW eye

witnesses to be reliable, trustworthy and confidence inspiring especially **in terms of their identification of the accused as being one of the person's who carried out the attack on the mosque as opposed to being an innocent passer by who was inadvertently caught up in the blast which is the defense case.** Thus, we will need to assess the evidence of each eye witness very carefully keeping in view the prevailing chaotic circumstances which took place during the attack by firearm and then subsequent bomb blast which injured many people at the masjid.

Before turning to the individual evidence of each eye witness however we would like to address the identification parade. From the evidence it has come on record that this was a **joint identification parade** and as such no reliance can be placed on it. In this respect reliance is placed on **Kamal Din V State** (2018 SCMR 577).

Even otherwise we have also noted a number of procedural defects in the identification parade such as there being about 20 dummies, that the dummies were not all alike and in particular that the accused was the only person who had a face injury amongst the other dummies and as such any identification of the accused at the identification parade in our view cannot be safely relied upon. In this respect we place reliance on **Kanwar Anwar Ali** (PLD 2019 SC 488).

The question then arises as to whether we can convict on the basis of an eye witness who did not know the accused before the incident and had not seen him for a particularly long time without the holding of an identification parade. In our view we can based on the particular facts and circumstances of this case where the accused was arrested on the spot and as such the question of mistaken identity does not arise. In this respect reliance is placed on **Rafaqat Ali** (Supra) and **Dadullah** (Supra)

Turning to the evidence of each eye witness vis a vis the identification of the accused and his role in the offense.

1. Eye witness PW 4 Muhammad Irfan Zaman. He was SHO PS Gulshan-e-Iqbal (Gulshan) who reached the scene shortly after the incident. In his evidence he states that saw an unconscious person who was bleeding from different parts of the body who also had a pistol of 30 bore in his hand who was also accompanying deceased accused (terrorist).He took the pistol which had 2 live bullets in its magazine and found an empty magazine on him whilst taking his personal search. He states in his evidence that he came to know that the injured accused who was arrested from the spot was named Tehseen who he identified in court. His S.161 statement was recorded on the next day which is less than 24 hours after the incident as he reached the place of incident at about 8pm and as such there was no delay in recording his S.161 statement.

In his memo of arrest and recovery dated 30-05-05 at 8.05pm he has specifically noted that he saw one killed terrorist lying on the ground and near to him one injured terrorist in semi conscious condition holding in his hand one TT pistol 30 bore black with 2

live bullets and one empty magazine who was unable to disclose his name. **Hulia of the accused was also given in the memo which matched that of the accused.** The accused was arrested, his pistol and bullets seized and sealed on the spot and the accused was sent for medical treatment through police mobile and a case u/s 13 (D) of the Arms Ordinance was lodged against him.

This PW eye witness has no enmity or ill against the accused and had no reason to falsely implicate him in this case. He was not dented despite lengthy cross examination and in our view he has correctly identified the accused **who he arrested in an injured condition on the spot with a firearm.** We consider him to be a reliable, trustworthy and confidence inspiring witness and we have no reason to doubt his evidence especially regarding the arrest of the accused on the spot with a weapon in his hand which in our view clearly indicates that he was a person who was involved in the attack on the masjid and was not an innocent passer by. His finding of the accused in an injured condition with a pistol in his hand is also corroborated by **PW 1 Zaffar Hussain** who is the complainant in this case and who once again is an independent person who had no ill will or enmity with the accused and no reason to falsely implicate him in this case. **Both PW 1 Zaffar Hussain** who was a trustee of the masjid and **PW 4 Muhammed Irfan Zaman** who is SHO PS Gulshan are natural witnesses and not chance witnesses. We can convict the accused based on this evidence provided it is corroborated by some supportive evidence. In this respect reliance is placed on **Ehsan v. The State** (2006 SCMR 1857) although notably in the case of **Muhammad Afzal and 2 others v. The State** (2003 SCMR 1678) it was held that corroboration was not a mandatory requirement of eye witnesses evidence but was only required by way of abundant caution and was only required if the eye witness evidence was doubtful or lacking in veracity. In this case we do not find the eye witnesses identification of the accused being found in an injured condition on the spot holding a pistol as being doubtful or lacking in veracity but instead to be entirely believable. In the case of **Niazuddin** (Supra) it was even held that we could convict on the basis of the evidence of a single eye witness in a murder case if we considered his evidence to be reliable and of a good quality. Again this legal position is entirely logical as under the law a person can be convicted in a capital case based on circumstantial evidence alone without their being any direct evidence against him.**Thus, based on the evidence of this witness we find that the accused was not a passer by but a person who played an active part in the attack on the masjid.**

Interestingly, it is suggested in cross examination to this PW that the appellant was not arrested at the spot but was arrested later on which contradicts the appellant's own case as set out in his S.342 Cr.PC statement that he was present at the spot but he was an innocent passer by who got inadvertently hit by the blast rather than one of the perpetrators of the crime.

2. **Eye witness PW 8 Liaquat Ali.** He was a PC of Gulshan who on the day of the incident was on guard duty at the Masjid with HC

Raja Arshad who was killed during the attack on the mosque and PC Toufeeq. In his evidence he states that he shot one of the persons who was firing at the mosque and thereafter another person duly injured also came from the **inside** of the mosque and fell down on the road who he caught hold of and then his superiors came. He corroborates **PW 4 Muhammed Irfan Zaman** that the injured accused was arrested, the pistol and magazine was recovered from him and that he was then sent to hospital for treatment. He recorded his S.161 statement on the same day. He identified the accused in court as being the same person.

The same considerations apply to him as **PW 4 Muhammad Irfan Zaman** is terms of the injured accused being arrested in an injured condition outside the masjid with a pistol in his hand **and importantly he also states that this accused came from inside the mosque in an injured connection.** In or view the evidence of this PW again disproves the defense case that the accused was an innocent passer by as he was seen coming injured **from inside** the mosque **after** the blast.

It is also interesting that no one else who was outside the mosque as the accused claimed to be as he was a passer by was injured by the blast. This again supports the prosecution case that the accused was not an innocent passer by but was **inside** the mosque at the time of the blast which caused him blast injuries as confirmed by his medical report. In noting this we stress that we are fully cognizant of the fact that it is not for the accused to prove his innocence but for the prosecution to prove the charge against him beyond a reasonable doubt and disproving the defense case will not discharge that burden as the prosecution will have to prove its own case beyond a reasonable doubt through reliable, trustworthy and cogent evidence.

3. **Eye witness PW 9 Syed Safdar Abbas Rizvi.** Had gone to the masjid to offer his prayers. He was inside the mosque when he saw the person who was the suicide bomber come into the courtyard of the mosque with a man with a pistol behind him. **They were raising anti shia slogans**. He saw the suicide bomber blow himself up and also saw that the person behind the suicide bomber with a pistol was injured by pellets from the blast who then ran outside the mosque holding his face in an injured condition. He went outside the mosque gate and saw the injured person who had a pistol who was behind the suicide bomber laying injured outside the mosque. He recognized the accused in court as the person who he saw behind the suicide bomber who was injured on account of the blast and then fled the mosque who he found outside injured. He was present when the empties, pellets etc were secured from the spot. His account of the incident ties in with the other PW's who were present at the time of the blast. This witness was a natural witness as he was on his way home and stopped to say his payers. His S.161 Statement was recorded on the same day a few hours after the incident. Again he has no enmity or ill will towards the accused and has no reason to falsely implicate him. He is an independent witness. He was not dented at all during cross examination and we have no reason to doubt his evidence which

although containing some improvements from his S.161 statement when in the light of the other evidence of the PW's and its consistency with such evidence we believe his evidence. **The important aspect of his evidence is that he saw the accused inside the mosque with a pistol close to the suicide bomber and that he saw him being injured after the blast and run out of the mosque where he again saw him in an injured condition.**

Whereas the earlier eye witness evidence although disproving the appellant's defense that the accused was a passer by **the evidence of this PW puts the accused inside the mosque close to the suicide bomber carrying a pistol and clearly indicates that he played an active role in the attack on the mosque.**

4. **Eye witness PW 10 Syed Ibrar Hussain Abdi**. He was coming to say his prayers when he witnessed the exchange of fire between the police guards and the attackers outside the masjid. He corroborated the evidence of **eye witness PW 8 Liaquat Ali** who was the police guard who after the blast he saw shoot one terrorist and then saw the injured accused come **from inside** the mosque and lay down. He also witnessed the recovery by the police of the pistol and live bullets and magazine from the accused. He recognized in court the accused who had come out of the mosque in injured condition and was arrested by the police. He recorded his S.161 statement on the same day. He lives close to the Masjid and as such cannot be regarded as a chance witness. He was not dented in cross examination. He had no ill will or enmity with the accused or any reasons to falsely implicate him in this case. He was close to the firing outside the mosque and had a clear view of it being only about 25/30 paces away. He was not dented during a lengthy cross examination and we find his evidence to fit in with the evidence of the other PW's and we believe the same.

Yet again this witness proves that the accused was not injured whilst being an innocent passer by but **rather he came out of the mosque after the blast in an injured condition and was armed with a pistol.** Interestingly, no relative or any other person came forward as a witness to support his contention that he was a passer by rather than a culprit which would be expected if his defense was true.

5. **Eye witness PW 11 Syed Muhammad Zaidi**. He was **inside** the mosque saying his prayers when he heard firing outside the gate of the masjid. According to his evidence he went out side the mosque and into the courtyard and saw two persons one of whom had a pistol **and was shouting against the shia's**. He pushed the other person and they both fell down and thereafter there was a bomb blast and he became unconscious and came to after about 4 or 5 days and found himself in the Patel hospital as he had been seriously injured. He could not speak due to his injuries and he remained in the hospital for one month. When he was able to he gave his S.161 statement to the police on 23.06.2005 whilst still in hospital. He remained bedridden for 4 months on account of his injuries and a particle of bomb was removed from his stomach by surgeons. **In court he identified the accused as being the person who was the person with the pistol behind the bomb blaster at**

the time of the incident. He was about 1 and ½ feet away from the suicide bomber at the time of the blast and as such his ability to identify the accused cannot be doubted. Although there are some improvements in his evidence we find this PW to be a natural witness who like the other PW's had no reason to falsely implicate the accused. **He is also named as an injured in the FIR.** The fact that he was so badly injured supports his evidence that he was very close to the suicide bomber and got a good look at the accused who was behind the suicide bomber who was also seriously injured by the bomb blast. He was not particularly dented during his cross examination and we believe his evidence which we find to be reliable trustworthy and confidence inspiring. **He is a key witness who actually saw and identified the accused with the suicide bomber playing an active role in the attack on the mosque.**

Thus, when we consider all the PW eye witness evidence in a holistic manner, although we are aware that the Supreme Court has deprecated although not completely ruled out in court identification based on the particular facts and circumstances of the case where the accused was **arrested on the spot** in an injured condition arising out of a bomb blast **holding a TT pistol** after coming from **inside** the mosque where he was seen armed along with the suicide bomber shouting anti shia slogans we have no doubt that the accused was not a passer by but instead took part in the attack on the masjid. The eye witness evidence shows that he was present at the front of the mosque, forced his way inside the mosque with a pistol along with the suicide bomber, that he was shouting anti shia slogans, that he was an accomplice of the suicide bomber and that he himself was injured in the blast and not by firearm, that after the blast being badly injured in the face he left the masjid and collapsed outside the masjid where he was arrested on the spot in an injured condition and his pistol was recovered from him.

The next issue is whether there is any corroborative evidence to support the oral evidence against the accused.

(c) That the medical evidence provided by PW 14 Dr. Abdul Shakoor proves that the accused reached JPMC at about 8.45 pm shortly after the blast and that he was suffering from blast injuries which lead to him being hospitalized and operated on 03-06-2005 and then moved to PNS Shifa for his recovery. This corroborates the fact that the accused was **inside** the mosque at the time of the bomb blast as he received blast injuries to his face and was **not** a passer by **outside** the mosque and supports the oral PW evidence in this respect.

(d) That pistol empties, SMG empties and pellets usually used by suicide bombers were recovered at the scene which supports the evidence of the PW's

(e) That some of the recovered pistol empties were fired from the pistol which was recovered from the appellant as proved by a positive FSL report. There may have been some delay in sending the empties but this becomes of little significance when faced with the otherwise overwhelming evidence against the accused. Reliance

in this respect is placed on the case of **Muhammed Ashraf** (Supra)

(f) That the motive by design, object and intent was to murder and injury as many members of the shia sect/community as possible through an act of terrorism which was achieved.

(g) That the PW's are all corroborative of each other and that 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. 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 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.

(h) 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 appellant. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793)

(i) That the case of the appellant is not the same as the case of his co-accused who was acquitted. As a matter of fact and evidence they are on a much different footing. For example, the appellant was arrested on the spot in an injured condition and a pistol was recovered from him on the spot whereas the co-accused was not arrested on the spot, he was uninjured and no recovery was made from him and as such the evidence against each of the accused is somewhat different.

(j) That the prosecution evidence provides a believable chain of evidence from the time of the accused and his accomplices entering the masjid by force of arms to the detonating of the suicide bomb to the accused bring injured by the bomb blast, making his way out of the masjid where he collapsed on account of his bomb blast injuries where after he was arrested and sent for medical treatment for bomb blast injuries to his identification by the eye witness PW's as being part of the armed group which attacked the masjid which detonated a suicide device therein which killed at least 3 people and injured over 20.

(k) 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.

16. **Turning to the offenses under the ATA**. After our reassessment of the evidence we are of the view that the object, design and intent to attack the mosque and detonate the suicide bomb inside the mosque was in order to create terror and insecurity in the minds of the public and in particular on sectarian grounds in order to create fear and terror amongst the shia sect/community and even make them too afraid even to conjugate at their place of worship and as such the offense so charged falls squarely within the purview of the ATA. If the accused had an individual grievance with a particular member of the shia sect then he would have murdered him alone at some other place or alone in the mosque rather than targeting the whole local shia sect in the mosque at prayer time where the maximum number of local members of the shia sect were gathered at one place with a suicide bomber whilst shouting anti shia slogans. In this respect reliance is placed on the recent Supreme Court case of **Ghulam Hussain V State** (unreported) dated 30-10-2019 in Criminal Appeals 95 and 96 of 2019 and Civil Appeal No.10 L of 2017 and Criminal Appeal 63 of 2013.

17. **The next issue is of sentencing**. Based on the evidence we find that the accused along with his accomplices carried out acts of multiple premeditated murder, including of policemen and members of the public on sectarian grounds who had peacefully gathered for religious purposes of whom at least 20 were also injured including a young boy through both firearms and a suicide bomb blast which was planned with the design, object and intent to target the shia sect/community and cause fear, terror and a panic not only amongst them but also amongst the general public which object was achieved and amounted to an act of terrorism.

18. Keeping in view the barbaric, brutal and heinous nature of this pre mediated attack which by object, design and intent murdered 3 innocent people and seriously injured 20 others including a young child (and was intended to murder and injury many more) and which crated fear and panic and terror amongst a certain segment of society based on religious grounds which was carried out at a place of worship which was also severely damaged 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.

19. 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.
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> 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).

20. 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.

21. As such we uphold all the sentences for each offense in the impugned judgment and confirm the death sentence handed down to the appellant whilst dismissing his appeal against conviction.

22. The appeals against conviction and confirmation reference are disposed of in the above terms.

23. With regard to the appeal against acquittal in respect of the respondent Muhammad Altaf who was acquitted by the impugned judgment we note from the order sheets that this appeal does not appear to have been admitted to regular hearing. No one has put in an appearance for the appellant in this appeal for many years despite notice being given. We note from the order sheets that pre admission notices were issued on this appeal against acquittal on 09.07.2007 largely on

account of the fact that according to the appellant on the same set of evidence the respondent had been acquitted whilst the appellant had been convicted and as such the respondent should also have been convicted. By order dated 30.08.2007 that pre admission notice was recalled and it appears the position has remained the same till date and the appeal against acquittal has not been admitted. Be that as may we have read the impugned judgment and have found that the respondents case was on a different footing to the appellants case. Namely, that he was not arrested from the spot, he was not injured and no recovery was made from him and having already discarded the identification parade in this Judgment we are of the view that the appeal against acquittal does not justify admission and even if it was admitted for regular hearing there is no such infirmity in the impugned judgment as would enable it to meet the very narrow legal scope which would enable an appeal against acquittal to succeed and as such the appeal against acquittal is dismissed.

In summary.

1. The appeal against conviction is dismissed and the confirmation reference is answered in the affirmative.
2. The appeal against acquittal is dismissed

24. The appeals stand disposed of in the above terms.

MAK/PS**