

Death to life: Under who fired shot

464

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Sp. ATA 252 to 255 of 18 a/w Conf. Case 12/18

Imran Khan vs. The State
& another

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: 21-11-18 & 22-11-18

Decide on: 04-12-2019

(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 / overrules / 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.

465
PRESENTED ON
17-08-2018

Deputy Registrar (Jd.Jl.)

IN THE HIGH COURT OF SINDH
AT KARACHI

3238

Special Anti Terrorism Appeal No ²⁵² of 2018

1. Imran Khan S/o Hameed
&
2. Shabir Ahmed S/o Javed
Both Muslims, Adults,
Residents of Karachi,
Presently incarcerated at Central Prison,
Karachi.....Appellants

Vs

The State.....Respondent

FIR No. 11 of 2018
U/S 397/302/324/34 PPC
R/w Section 7 ATA
P.S Quaidabad Karachi

APPEAL UNDER SECTION 25 OF THE
ANTI TERRORISM ACT 1997

Being aggrieved and disgruntled by the Judgment passed in Case No. 288 of 2018 by the Learned Special Judge Anti Terrorism Court No. XVIII, Karachi, whereby the appellants were convicted and were awarded capital punishment U/S 302 (b) PPC and a fine of Rs.1,00,000/- in default thereof to further undergo S.I for six months, also convicted and were awarded capital punishment U/S 7 (1) (a) of ATA 1997 and a fine of Rs.50,000/- in default thereof shall undergo S.I for three months, also convicted and sentenced U/S 393 PPC for seven years R.I and a fine of Rs.25,000/- in default thereof shall undergo S.I for three months, also convicted and sentenced U/S 324 PPC for seven years R.I and a fine of Rs.20,000/- in default thereof shall undergo S.I for three months, also convicted and sentenced U/S 337-F (iii) for three years R.I and shall pay Rs.20,000/- as ~~penalty~~ in default thereof shall undergo S.I for three months, also convicted and sentenced U/S 7 (1) (c) of ATA 1997 for ten years R.I and a fine of Rs.25,000/- in default thereof shall undergo S.I for six months. The appellants now hereby most respectfully prefer this appeal with the prayer that the impugned judgment may be set aside as stern miscarriage of justice has taken place, inter alia among others, in deliberation of the following facts and grounds: -

466
PRESENTED ON

17-08-2018

[Signature]
Deputy Registrar (Judl.)

3239
IN THE HIGH COURT OF SINDH
AT KARACHI

Special Anti Terrorism Appeal No 253 of 2018

Muhammad Irfan S/o Khanzada
Muslim, Adult, Resident of Karachi,
Presently incarcerated at Central Prison,
Karachi.....Appellant

Vs

The State.....Respondent

FIR No. 11 of 2018
U/S 397/302/324/34 PPC
R/w Section 7 ATA
P.S Quaidabad Karachi

APPEAL UNDER SECTION 25 OF THE
ANTI TERRORISM ACT 1997

Being aggrieved and disgruntled by the Judgment passed in Case No. 288 of 2018 by the Learned Special Judge Anti Terrorism Court No. XVIII, Karachi, whereby the appellant was convicted and was awarded capital punishment U/S 302 PPC and a fine of Rs.1,00,000/- in default thereof to further undergo S.I for six months, also convicted and was awarded capital punishment U/S 7 (1) (a) of ATA 1997 and a fine of Rs.50,000/- in default thereof shall undergo S.I for three months, also convicted and sentenced U/S 393 PPC for seven years R.I and a fine of Rs.25,000/- in default thereof shall undergo S.I for three months, also convicted and sentenced U/S 324 PPC for seven years R.I and a fine of Rs.20,000/- in default thereof shall undergo S.I for three months, also convicted and sentenced U/S 337-F (iii) for three years R.I and shall pay Rs.20,000/- as daman in default thereof shall undergo S.I for three months, also convicted and sentenced U/S 7 (1) (c) of ATA 1997 for ten years R.I and a fine of Rs.25,000/- in default thereof shall undergo S.I for six months. The appellant now hereby most respectfully prefers this appeal with the prayer that the impugned judgment may be set aside as stern miscarriage of justice has taken place, inter alia among others, on deliberation of the following facts and grounds: -

(Certified copy of the judgment is attached herewith and marked as Annexure "A")

467
PRESENTED ON
17-08-2018

[Signature]
Deputy Registrar (Judicial)

IN THE HIGH COURT OF SINDH
AT KARACHI

3240

284
Special Anti Terrorism Appeal No. _____ of 2018

Imran Khan S/o Hameed
Muslim, Adult,
Resident of Karachi,
Presently incarcerated at Central Prison,
Karachi.....Appellant

Vs

The State.....Respondent

FIR No. 12 of 2018
U/S 23 (1) (a) SAA 2013
P.S Quaidabad Karachi

APPEAL UNDER SECTION 25 OF THE
ANTI TERRORISM ACT 1997

Being aggrieved and disgruntled by the Judgment passed in Case No. 289 of 2018 by the Learned Special Judge Anti Terrorism Court No. XVIII, Karachi, whereby the appellant was convicted and sentenced in the main case bearing No. 288 of 2018, he was also convicted and sentenced to seven years R.I and a fine of Rs.10,000/- in default thereof, shall further undergo S.I for three months under section 23 (1) (a) of the Sindh Arms Act 2013 in the instant case. The appellant now, having also preferred an appeal in the main case, hereby most respectfully prefers this appeal in the instant case with the prayer that the impugned judgment may be set aside as stern miscarriage of justice has taken place, inter alia among others, on deliberation of the following facts and grounds: -

(Certified copy of the judgment is attached herewith and marked as Annexure "A")

FACTS

The brief facts of the prosecution case as narrated in FIR are that the appellant Muhammad Zahiqa stated that his son Abdur Rauf was posted as Constable 44 Wing SBR at Mirpur Mathelo Sindh and had come to Karachi on a leave. On the same day, he along with his son's friends Umar Wahid (Police Constable), relatives Suleman and Noorul Bashir came at 89 Quetta Hashmi

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

Special Anti Terrorism Appeal No 255 of 2018

Shabir Ahmed S/o JavedAppellant


Vs


The StateRespondent

**APPEAL UNDER SECTION 25 OF THE
ANTI TERRORISM ACT 1997**

I N D E X

S. No.	Description of Documents	Annexure	Pages
01.	Memo of Appeal		1-13
02.	Copy of the Judgment	"A"	15-83
03.			
04.			
05.			
	Vakalatnama		

Karachi. 
Dated: Sept ___ 2018


Advocate for the Appellant
(JAMIL LAW ASSOCIATES)

468

IN THE ANTI - TERRORISM COURT NO. XVIII, KARACHI (DIVISION)
No: ATC-XVIII/KHI-DIV/677 / 2018, Karachi Dated: 07.09.2018.

Special Case No. 288/2018.

The State

Versus

Imran Khan & Others.....Accused

FIR No. 11/2018

U/S: 397,302,324,34 PPC R/w

Section 7 ATA

P.S: Quaidabad, Karachi.

To,

The Registrar,
Hon'ble High Court of Sindh,
Karachi.

INWARD TO

BRANCH

DATE

HIGH COURT OF SINDH KARACHI

SUBJECT MURDER REFERENCE UNDER SECTION 374 CR.P.C R/W
SECTION 30 OF ATA, 1997

I have the honour to submit that accused (1) Imran Khan S/o Hameed Iqbal, (2) Shabir Ahmed S/o Jawed Iqbal, (3) Muhammad Irfan S/o Janzada were tried by this court in special case No. 288/2018, crime No. 11/2018, under section 397, 302, 324, 34 PPC R/w section 7, ATA, 1997 of Police Station Quaidabad, Karachi. After the full dress trial, judgment pronounced in open court on 06th September 2018, hence above named accused were convicted under section 265-H(ii) Cr.P.C, as such besides the other sentences in different cases and sections of law, all above named accused were awarded death sentences for committing murder of deceased Abdur Rauf on two counts, i.e under section 302(b) PPC as well as 7 (1) (a) of ATA, 1997. However, the execution of death sentence was subjected to the confirmation of murder reference as provided under section 374 Cr.P.C R/w section 30 of ATA, 1997.

The murder reference in above case is submitted for confirmation of death sentences or otherwise alongwith R &Ps of the above case.

(MAHBOOB ALI DAYO)

Judge

Anti Terrorism Court No. XVIII
Karachi.

Death to life : Unclear who fired the shot

470

IN THE HIGH COURT OF SINDH AT KARACHI

Special Crl. Anti-Terrorism Appeal No.252 of 2018.
Special Crl. Anti-Terrorism Appeal No.253 of 2018.
Special Crl. Anti-Terrorism Appeal No.254 of 2018.
Special Crl. Anti-Terrorism Appeal No.255 of 2018.
Confirmation Case No.12 of 2018.

Present:

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

Appellants: Imran Khan S/o. Hameed and Shabir Ahmed
S/o. Javed through Mr. Muhammad Jamil,
Advocate.
Muhammad Irfan S/o. Khanzada through
Mr. Zulfiqar Ali Shaikh, Advocate.

For State: Mr. Muhammad Iqbal Awan, Deputy
Prosecutor General.

For the complainant: Mr. Muhammad Tariq, Advocate

Date of hearing: 21.11.2019 and 22.11.2019.

Date of announcement: 04.12.2019

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellants Imran Khan S/o. Hameed, Shabir Ahmed S/o. Javed and Muhammad Irfan S/o. Khanzada have preferred these appeals against the impugned judgment dated 06.09.2018 passed by the learned Judge Anti-Terrorism Court No.XVIII, Karachi Division in Special Case No.288 of 2018, F.I.R. No.11 of 2018 u/s. 397/302/324/34 PPC r/w section 7 of ATA, 1997, Special Case No.289 of 2018, F.I.R. No.12 of 2018 u/s. 23(1)(a) of Sindh Arms Act, 2013 and Special Case No.290 of 2018, F.I.R. No.13 of 2018 u/s. 23(1)(a) of Sindh Arms Act, 2013 registered as P.S. Quaidabad, Karachi whereby the appellants have been convicted and sentenced as under:-

1. Accused **Imran Khan S/o. Hameed Iqbal** was convicted and sentenced to death for committing offence u/s 302(b) PPC along with fine of Rs.1,00,000/- if recovered to be paid to the legal heirs of deceased Abdur Rauf as compensation as provided u/s 544-A. In case of default in payment of fine he was ordered to under to S.I. for six months. He was also convicted under

section 7(1)(a) of ATA, 1997 and sentenced to death and fine of Rs.50,000/-, in default thereof ordered to undergo S.I. for three months for Qatl-e-Amd of deceased Abdur Rauf. The accused was also sentenced R.I. for seven years and fine of Rs.25,000/-, in default thereof he shall further undergo S.I. for three months for committing attempt to robbery under section 393 PPC. He was also convicted under section 324 PPC and sentenced to R.I. for seven years with fine of Rs.20,000/-, in default there he shall further undergo S.I. for three months. He was also convicted for causing injury to PW Umar Wahid under section 337-F (iii) PPC and sentenced to R.I. for three years with fine of Rs.20,000/- as daman to victim, in case of default thereof he was ordered to undergo S.I. for three months more. He was convicted under section 7(1)(c) of ATA, 1997 and sentenced to R.I. for ten years and fine of Rs.25,000/- in default thereof he was ordered to undergo S.I. for six months. The accused was also convicted under section 23(1)(a) of Sindh Arms Act, 2013 and sentenced to R.I. for seven years and fine of Rs.10,000/-, in default thereof, he was ordered to further undergo S.I. for three months.

2. Accused **Shabir Ahmed S/o. Jawed Iqbal** was convicted and sentenced to death for committing offence u/s 302(b) PPC along with fine of Rs.1,00,000/- if recovered to be paid to the legal heirs of deceased Abdur Rauf as compensation as provided u/s 544-A. In case of default in payment of fine he was ordered to undergo S.I. for six months. He was also convicted under section 7(1)(a) of ATA, 1997 and sentenced to death and fine of Rs.50,000/-, in default thereof ordered to undergo S.I. for three months for Qatl-e-Amd of deceased Abdur Rauf. The accused was also sentenced to R.I. for seven years and fine of Rs.25,000/-, in default thereof he shall further undergo S.I. for three months for committing attempt to robbery under section 393 PPC. He was also convicted under section 324 PPC and sentenced to R.I. for seven years with fine of Rs.20,000/-, in default there he shall further undergo S.I. for three months. He was also convicted for causing injury to PW Umar Wahid under section 337-F (iii) PPC and sentenced to R.I. for three years with fine of Rs.20,000/- as daman to victim, in case of default thereof he was ordered to undergo S.I. for three months more. He was convicted under section 7(1)(c) of ATA, 1997 and sentenced to R.I. for ten years and fine of Rs.25,000/- in default thereof he was ordered to undergo S.I. for six months. The accused was also convicted under section 23(1)(a) of Sindh Arms Act, 2013 and sentenced to R.I. for seven years and fine of Rs.10,000/-, in default thereof, he was ordered to further undergo S.I. for three months.
3. Accused **Muhammad Irfan S/o. Khanzada** was convicted and sentenced to death for committing offence u/s 302(b) PPC along with fine of Rs.1,00,000/- if recovered to be paid to the legal heirs of deceased Abdur Rauf as compensation as provided u/s 544-A. In case of default in payment of fine he was ordered to undergo S.I. for six months. He was also convicted under section 7(1)(a) of ATA, 1997 and sentenced to death and fine of Rs.50,000/-, in default thereof ordered to undergo S.I. for three

months for Qatl-e-Amd of deceased Abdur Rauf. The accused was also sentenced to R.I. for seven years and fine of Rs.25,000/-, in default thereof he shall further undergo S.I. for three months for committing attempt to robbery under section 393 PPC. He was also convicted under section 324 PPC and sentenced to R.I. for seven years with fine of Rs.20,000/-, in default there he shall further undergo S.I. for three months. He was also convicted for causing injury to PW Umar Wahid under section 337-F (iii) PPC and sentenced to R.I. for three years with fine of Rs.20,000/- as daman to victim, in case of default thereof he was ordered to undergo S.I. for three months more. He was convicted under section 7(1)(c) of ATA, 1997 and sentenced to R.I. for ten years and fine of Rs.25,000/- in default thereof he was ordered to undergo S.I. for six months.

All the sentences were ordered to be run concurrently except fine and daman. However, benefit of section 382-B Cr.P.C. was extended to the appellants.

2. The brief facts of the case are that on 29.01.2018 at about 2300 hours SHO P.S. Quaidabad Inspector Muhammad Ali Marwat returned at P.S. with reference to daily diary entry No.43 at about 2125 hours along with arrested accused Imran and Shabir as well as arms, ammunition, one motorcycle and 154 Cr.P.C. statement of complainant Muhammad Zahiq wherein he narrated that his son Abdur Rauf was posted as Constable No.148207 at 44 Wind SBR Mirpur Mathelo Sindh, who came to Karachi in order to avail leave. On the same day he along with his son's friend Umar Wahid (police constable) relatives Suleman and Noorul Bashir came at 89 Quetta Hashmi Hotel for having cup of tea. It was about 9:15 p.m. when his son Abdur Rauf along with Umar Wahid went outside the hotel at the distance of ten paces at main road opposite Taj Electronics shop for some talk. Both were talking with each other when all of a sudden three culprits duly armed with pistols came on the motorcycle bearing No.KIU-7877. They by show of force put both of them in fear and directed them to hand over their valuables. However, Abdur Rauf and Umar Wahid resisted the robbery. All three accused started straightway firing upon them in order to commit their Qatl-e-amd as well as to create terror in the general public. As a result thereof, Abdur Rauf and Umar Wahid sustained firearm injuries and fell down. The complainant and the public rushed towards the culprits and succeeded to catch hold of two robbers, while the third one managed his escape by firing in the air. The public who had captured the culprits maltreated them before the police arrived. In the meanwhile SHO Police Station Quaidabad Inspector Muhammad Ali Marwat along

with other police officials arrived at the spot and apprehended both the captured accused. He also recovered pistols from them as well as secured four empty bullets of 30 bore and one motorcycle bearing No.KIU-7877 of black colour from the spot. Injured Abdur Rauf and Umar Wahid were dispatched to JPMC in Edhi Ambulance. Injured Abdur Rauf succumbed to his injuries on the way to hospital. On inquiry by the SHO accused disclosed their names as Imran S/o. Hameed Gul and Shabir S/o. Javed while the name of absconding accused was disclosed as Irfan S/o. Khanzada. The SHO prepared the memo of arrest and recovery so also recorded statement of complainant under section 154 Cr.P.C. at the spot. He sealed the pistols, bullets and empties at the spot, while seal was signed by complainant and PW Muhammad Salman and Noorul Bashir. SHO Inspector Muhammad Ali Marwat returned back to the Police Station along with arrested accused and case property, where he incorporated the statement of complainant in book of 154 Cr.P.C. maintained at P.S. He also registered two separate FIRs against both the accused under section 23(1)(a) of Sindh Arms Act, 2013 for possession of unlicensed arms and ammunition.

3. After registration of the FIRs, usual investigations were carried out as such on the conclusion of the investigations I.O. submitted the charge sheets against the accused before the Administrative Judge, Anti-Terrorism Courts, Karachi. However, name of accused Muhammad Irfan was placed in column No.2 of charge sheet with red ink as absconder. Later on he was also arrested on 22.02.2018 in consequence of an encounter with the police. His identification parade was conducted before the Magistrate and subsequently, he was sent up through supplementary charge sheet dated 09.03.2018 for trial.

4. The charge was framed against the accused persons to which they pleaded not guilty and claimed their trial.

5. In order to prove its case the prosecution examined 10 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 all the accused Imran Khan, Shabir Ahmed and Muhammad Irfan as envisaged u/s 342 Cr.P.C. were recorded wherein they denied the allegations against them and claimed false implication. The accused Imran

Khan and Shabir Ahmed neither examined themselves on oath nor called any witness in support of their defense case. Accused Muhammad Irfan however, examined himself on oath and called two DW's in support of his defense case of false implication by the police and the rangers.

6. Learned Judge, Anti-Terrorism Court-XVIII, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 06.09.2018, convicted and sentenced the appellants as stated above, hence these appeals have been filed by each of the accused 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 appellants Imran Khan, Shabir Ahmed and Muhammad Irfan after the reading out of the evidence and the impugned judgment initially tried to argue the appellants' case on merits however in the face of the overwhelming evidence against all the appellants on record they decided not to press the appeals on merits but instead prayed for reduction of the sentence from the death penalty to one of life imprisonment based on the following mitigating circumstances (a) that it was unclear as to who fired the fatal shot which killed the deceased (b) that the very slightest of doubt in the prosecution case although not sufficient a doubt to lead to the acquittal of the appellants was enough to impose the alternate sentence of life imprisonment instead of death which was present in this case. In support of their contentions for a reduction in sentence from death to that of life imprisonment they placed reliance on **Nadeem Ramzan V The State** (2018 SCMR 149) and **Muhammad Latif V Muhammad Hanif & 2 others** (1989 SCMR 1105).

9. Learned DPG and the complainant both contended that based on the evidence on record the prosecution had proved its case against all the appellants beyond a reasonable doubt and as such the impugned judgment did not require interference. When, however, the DPG was asked by the court whether the mitigating circumstances raised by the appellants justified a reduction in sentence he candidly conceded that as a

matter of law they did justify a reduction from the death penalty to that of life imprisonment which was also the position taken by the complainant.

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. Having gone through the evidence on record we have no doubt that the prosecution has been able to prove its case against all the appellants beyond a reasonable doubt for the offenses for which they have been charged. For the following reasons;

(a) that there was no delay in registering the FIR as the S.154 statement which was later recorded in the FIR book was recorded by PW 2 Muhammad Zahiqa (the complainant and eye witness) on the spot immediately after the incident and thus there was no time to cook up a false case against anyone.

(b) the appellants Imran and Shabir are named in the FIR with specific roles. That on their arrest at the spot they immediately disclosed the name of Muhammad Irfan as their accomplice who the police were able to track down and arrest.

(c) that eye witnesses PW 2 Muhammad Zahiqa who was also the complainant; PW 6 Umer Wahid who was shot during the robbery and PW 8 Muhammad Suleman all saw the appellants attempting to rob the deceased and PW 6 Umer Wahid was even one of the persons who was being robbed who was shot by the appellant's on his resistance.

(d) That PW 6 Umer Wahid who was shot during the robbery by the appellants also saw the appellants shoot the deceased when they both put up resistance to the robbery. PW 6 Umer Wahid was a trained policeman and the deceased was a trained ranger albeit off duty so it was quite natural due to their training for them to resist the robbery. There is no doubt that he was shot as proved by the evidence of PW MLO who gave evidence and produced medical reports to that effect. PW 6 Umer Wahid also remained in Jinnah Hospital for his treatment. That PW 2 Muhammad Zahiqa and PW 8 Muhammad Suleman also saw the appellants shoot both PW 6 Umer Wahid and the deceased. It is clear from the eye witness evidence that the appellants shot the deceased and that he later died on account of his firearm injury as confirmed by the evidence of the PW MLO and his post mortem report.

(e) That the eye witnesses had a reason for being where they were at the time of the incident as they were drinking tea at the Quetta Hotel in order to catch up with the deceased who was a ranger and had come home on leave. They all lived locally and were all related

to the deceased except PW 6 Umer Wahid who was a friend of the deceased and as such in our view they were natural witnesses and not chance witnesses.

(f) That none of the eye witnesses or any other PW had any enmity with the appellants and had no reason to falsely implicate them in this case especially the complainant who was the father of the deceased and would have wanted the actual murderers of his son to face justice and not some other random person.

(g) That both the appellants Imran and Shabbir were arrested on the spot and as such no question of their misidentification arises.

(h) That appellant Muhammad Irfan after his arrest was correctly picked out at the identification parade by three eye witnesses and was assigned a specific role whose evidence we consider to be reliable, trust worthy and confidence inspiring and in particular in terms of the identification of Muhammed Irfan and the other two appellants Imran and Shabir

(i) That the pistols from each of the appellants Imran and Shabir were recovered on the spot whilst the pistol used by Muhammad Irfan was recovered on his later arrest by the police.

(j) That empties and blood stained earth were recovered from the spot.

(k) That the empties matched the recovered pistols through a positive FSL report.

(l) That the chemical examination of the blood stained earth was positive

(m) That the medical evidence supports the oral evidence. The fact that there was no blackening surrounding the wound indicates that the shooting took place from 3 feet away or more which also fits in with the prosecution case.

(n) That the bike which the appellants came on in order to rob the deceased and PW 6 Umer Wahid was recovered from the spot.

(o) That since the appellants Imran and Shabir were apprehended on the spot after the attempted robbery and murder of the deceased by some of the PW's along with members of the public this would account for the injuries which the appellants received. This is because it is not uncommon in our society that if such a person is caught red handed by the public the public very often beat him and in some cases beat the apprehended culprit to death. In this case a police PW who was the police men who immediately reached the spot after the incident rescued the appellants from the anger of the public and prevented their further beating.

(p) That all the PW's corroborative each other in all material respects and 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)

(q) That the prosecution evidence provides a believable chain of evidence from the time of the deceased and PW 6 Umer Wahid drinking tea at the Quetta hotel with their relatives and friends to their attempted robbery, murder of the deceased by fire arm and firearm injury to PW 6 Umer Wahid to the arrest of the appellants Imran and Shabir on the spot which is supported by the medical evidence; the recovery of the murder weapons (pistols) from them along with empties and blood stained earth and positive FSL and chemical reports. The same is the case for appellant Muhammad Irfan except that he was not arrested on the spot.

(r) That the exhibited CRO of each appellant shows him to be a habitual and hardened and dangerous criminal

(s) That although it is for the prosecution to prove its case beyond a reasonable doubt and it is not for the accused to prove his innocence we do not find the defense of the appellants that they were falsely implicated in this case believable in the face of the overwhelming evidence against them and for the reasons discussed above.

Turning to the question of sentence and whether there are any mitigating circumstances, which justifies a reduction in the same keeping in view that both the DPG and the complainant have not objected to a reduction in sentence.

12. The impugned judgment for murder has sentenced each of the appellants to death. In our view the prosecution has not been able to prove which of the appellants fired the fatal shot that killed the deceased and generally in such type of cases the superior courts have allowed a reduction in sentence from that of the death penalty to life imprisonment. Thus, under these circumstances we consider it appropriate to reduce the death sentence to that of imprisonment for life in respect of each of the appellants. In this respect reliance is placed on the case of **Ali Bux V State** (2018 SCMR 354) which held as under at P.358;

"that a sentence of death may ordinarily be withheld where it is not clear from the record as to which of the culprits had caused the fatal injury to the deceased. For all the reasons recorded above we have decided to exercise caution in the matter of the appellants' sentences of death."

13. The concept of exercising judicial caution when deciding whether to award the death penalty or the alternative of life imprisonment was

also reiterated in the recent Supreme Court case of **Ghulam Mohyuddin V State** (2014 SCMR 1034).

14. Thus, keeping in view the above legal position and by exercising judicial caution we hereby uphold the impugned judgment and dismiss the appeals with the only variation being that the sentences handed down to the appellants for death shall be reduced to that of life imprisonment in respect of each appellant and apart from this modification in sentence in the impugned judgment all other convictions and sentences, fines, penalties imposed etc are upheld which sentences shall run concurrently and the appellants shall have the benefit of S.382 B Cr.PC and the confirmation reference is answered in the negative.

15. The appeals and confirmation reference are disposed of in the above terms

Arif