

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Sp. Civ. ATA 312 to 14 of 18
also Conf. Case, 15 of 18

Samwal vs The State

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:

Decide on: 27-11-2019

(a) Judgment approved for reporting:

Yes

KLJ

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.

01-11-2018

425

[Signature]

3884

**IN THE HON'BLE HIGH COURT OF SINDH
AT KARACHI**

SPECIAL ATA APPEAL NO:

312

OF 2018

**SANWAL ALIAS CHARYA
SO RANA MUHAMMAD ISHAQ**

Muslim, adult, presently

Confined at Central Jail,

Karachi-----

APPELLANT

VERSUS

1. THE STATE

2. HON'BLE ANTI TERRORISM COURT NO. VI,

KARACHI-----

RESPONDENTS

(1) SPL.CASE NO .390 (iii)/2015
FIR NO.259/2012
U/S 302/34 PPC
R/W Section 7 ATA 1997
P.S. Saddar Karachi

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

Being aggrieved and dissatisfied by the judgment dated 23 Oct 2018
by the Anti Terrorism Court No VI KARACHI, It is most
humly prayed on behalf of the appellant, above named, that this
Court may be pleased to set aside the judgment Dated 23 OCT 2018
by the Anti-Terrorism Court No 06 ,Karachi In Special Case No
2015 under section 302/34 PPC R/w 7 ATA 1997 P.S Saddar
and acquit the appellant under the fact and circumstances

426
02.11.2018
[Signature]

3900

**IN THE HON'BLE HIGH COURT OF SINDH
AT KARACHI**

SPECIAL ATA APPEAL NO: *313* OF 2018

SANWAL ALIAS CHARYA
S/O RANA MUHAMMAD ISHAQ
Muslim, adult, presently
Confined at Central Jail,
Karachi-----

APPELLANT

VERSUS

1. THE STATE
2. HON'BLE ANTI TERRORISM COURT NO. VI,
KARACHI-----

RESPONDENTS

- (1) SPL. Case No.318 (iii) /2015
FIR NO.216 /2015
U/S 4/5 Explosive
Substance Act R/w
Section 7 ATA 1997
P.S.CTD/OPS, Karachi Sindh

APPEAL UNDER SECTION 25 OF
ANTI TERRORISM ACT, 1997

Being aggrieved and dissatisfied by the judgment dated 23 Oct 2018
passed by the Anti Terrorism Court No VI KARACHI, It is most
respectfully prayed on behalf of the appellant, above named, that this
Hon'ble Court may be pleased to set aside the judgment Dated 23 OCT 2018
passed by the Anti-Terrorism Court No 06 ,Karachi In Special Case Case
No 318(iii)/2015, under section 4/5 Explosive substance act R/W, Section 7
ATA 1997, P.s. CTD/OPS, Karachi Sindh and acquit the appellant under
the fact and circumstances mentioned below:-

3901

**IN THE HON'BLE HIGH COURT OF SINDH
AT KARACHI**

SPECIAL ATA APPEAL NO: 314 OF 2018

**SANWAL ALIAS CHARYA
S/O RANA MUHAMMAD ISHAQ**

Muslim, adult, presently
Confined at Central Jail,
Karachi-----

APPELLANT

VERSUS

1. THE STATE
2. HON'BLE ANTI TERRORISM COURT NO. VI,
KARACHI-----

RESPONDENTS

(1) SPL. Case NO.319 (iii) /2015
FIR NO.215/2015
U/S 23 (I) A S.A.A.
P.S.CTD/OPS, Karachi Sindh

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

Being aggrieved and dissatisfied by the judgment dated 23 Oct 2018
passed by the Anti Terrorism Court No VI KARACHI, It is most
respectfully prayed on behalf of the appellant, above named, that this
Hon'ble Court may be pleased to set aside the judgment Dated 23 OCT 2018
passed by the Anti-Terrorism Court No 06 ,Karachi In Special Case No
319(iii)/2015 under section 23(I) A.S.A.A P.S. CTD/OPS Karachi Sindh,
and acquit the appellant under the fact and circumstances mentioned
below:-

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OFFICE OF THE JUDGE, ANTI-TERRORISM COURT NO: VI, KARACHI.
No: ATC-VI/K-DIV/ 352 of 2018 Karachi dated: 23-10-2018

To,
The Registrar
Honorable High Court of Sindh
Karachi.

INWARD TO 1747
BRANCH CR
DATE 06/11/18
HIGH COURT OF SINDH KARACHI

**Subject:- REFERENCE FOR CONFIRMATION OF DEATH SENTENCE
U/S 374 CRPC IN SPECIAL CASE NO. 390 (III) OF 2015, FIR NO. 259
OF 2015, U/S 302/34 PPC OF PS SADDAR, KARACHI.**
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Respected Sir,

With reference to the above noted subject matter, I have the honor to submit that in the Special case No.390 (III) of 2015, FIR No.259 of 2015, u/s 302/34 PPC of PS Saddar Karachi, judgment passed thereon by the undersigned vide judgment dated 23rd October 2018, against accused namely Sanwal alias Charya s/o Rana Muhammad Ishaque, who has been convicted and sentenced as under:-

1. Accused Sanwal alias Charya s/o Rana Muhammad Ishaque is convicted u/s 7(1)(a) ATA 1997, r/w section 302 (b) PPC and he is awarded death sentence, to be hanged till to his death, with compensation of Rs.200,000/- (Two Lacs) to be paid to the legal heirs of the victim.
2. Accused Sanwal alias Charya s/o Rana Muhammad Ishaque is also convicted u/s 4/5 explosive substance act 1908, r/w section 6(2)(ee) and punishable u/s 7(1)(ff) of Anti-Terrorism Act 1997 & 7 (2) of Anti-Terrorism Act 1997 and he is sentenced to undergo Rigorous Imprisonment of 14 years and forfeiture of his property.
3. Accused Sanwal alias Charya s/o Rana Muhammad Ishaque is also convicted u/s 23(1)(A) Sindh Arms Act of 2013 and he is sentenced to undergo for R.I 07 years and with fine of Rs.10,000/- and in case of default in payment of the fine then he shall suffer a Simple Imprisonment of another 6 months.

The record and the proceedings of the case are submitted for confirmation of death sentence of accused Sanwal alias Charya as required u/s 374 Cr.P.C.

Karachi,
Dated:-23-10-2018



23/10/18
(MUNIR BAKHSH BHUTTO)
Judge
Anti-Terrorism Court No-VI,
Karachi.

IN THE HIGH COURT OF SINDH AT KARACHI

Special Cr. Anti-Terrorism Appeal No.312 of 2018
Special Cr. Anti-Terrorism Appeal No.313 of 2018
Special Cr. Anti-Terrorism Appeal No.314 of 2018
Confirmation Case No.15 of 2018

Present:

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

Appellant: Sanwal alias Charya through Mr. Qadir Hussain Khan, Advocate.

Respondent: The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General Sindh

Date of hearing: 13.11.2019 and 14.11.2019.

Date of announcement: 27.11.2019

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellant Sanwal alias Charya son of Rana Muhammad Ishaque has preferred the above appeals against the impugned judgment dated 23.10.2018 passed by the learned Judge Anti-Terrorism Court No.VI, Karachi in Special Case No.390(III) of 2015, F.I.R No.259/2012 u/s.302/34 PPC r/w section 7 of ATA, 1997, registered at PS Saddar, Karachi, Special Case No.B-318(III) of 2015 F.I.R No.216/2015 u/s.4/5 Explosive Substance Act read with section 7 of ATA, 1997 registered at PS CTD/OPS, Karachi Sindh, and Special Case No.B-319(III) of 2015 FIR No.215/2015 u/s.23(1)-A, Sindh Arms Act of 2013, registered at PS CTD/OPS, Karachi Sindh whereby the appellant has been convicted and sentenced as under:-

- i) Accused Sanwal alias Charya s/o Rana Muhammad Ishaque is convicted u/s.7(1)(a) ATA 1997, r/w Section 302 (b) PPC and he is awarded death sentence subject to confirmation by this court with compensation of Rs.2,00,000 (Two lacs) to be paid to the legal heirs of the victim.
- ii) Accused Sanwal alias Charya s/o Rana Muhammad Ishaque is convicted u/s.4/5 Explosive Substance Act, 1908, r/w. section 6(2)(ee) and punishable u/s. 7(1)(ff) of Anti-Terrorism Act 1997 & 7 (2) of Anti-Terrorism Act 1997 and he is sentenced to undergo Rigorous Imprisonment for 14 years and forfeiture of his property.

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- iii) Accused Sanwal alias Charya s/o Rana Muhammad Ishaque is convicted u/s. 23(1)(A) Sindh Arms Act of 2013 and he is sentenced to undergo R.I. for 07 years and with fine of Rs.10,000/- and in case of default in payment of the fine then he shall suffer simple imprisonment of another 06 months.

All the sentences by way of imprisonment shall run concurrently.

2. The brief facts of the prosecution case with regard to murder are that with reference to roznamacha entry 37, ASI/Duty Officer Tariq Mehmood after conducting the proceedings u/s.174, Cr.P.C recorded the statement u/s. 154 Cr.P.C of complainant Mst. Tahseen Fatima w/o Jahangir Hussain, which was incorporated in FIR No.259 of 2012 at about 0030 hours, stating therein that she is a housewife, residing in House No.A/299, Block H, North Nazimabad, Karachi and belongs to Shia Sect. She was present in her home, at about 2145 when she was informed by Jinnah Hospital over mobile phone that her husband had been shot dead by unknown person (Persons) and his dead body was lying at Jinnah Hospital, Karachi. On receiving such information, she arrived at mortuary of Jinnah Hospital, where the dead body was lying. Her husband worked in the Summit Bank, I. I Chundrigar Road, Karachi and used a motorcycle for conveyance. She further came to know that while returning home from the bank at 2100 hours, some person/persons had killed him by firing a shot in his head. Her claim is against unknown person/persons for committing the murder of her husband Jahangir Hassan. ASI Tariq Mehmood met with MLO/Dr. Kaleem, after getting permission, conducted the proceedings u/s. 174 Cr.P.C, obtained PM NO.963/12, cause of death, sealed bundle of parchajat, blood stained earth and other articles. ASI Tariq Mehmood handed over the dead body of the deceased to the complainant and then the FIR was lodged. After registration of the case, the initial investigation was entrusted to PI/SIO Muhammad Riaz, who obtained the papers, proceedings u/s. 174 Cr.P.C., PM report, memo of seizure, blood stained motorcycle No.KBD-5173, one empty and helmet of the deceased, which were secured/sealed by ASI Tariq Mehmood. PI/SIO Muhammad Riaz prepared visual sketch of the place of incident and took photographs of the deceased and the place of incident. He also recorded statements u/s 161 Cr.P.C. of the PWs. On 10.10.2012, he sent the parchajat of the deceased and blood soaked earth for chemical

analysis/report. On 15.10.2012, he handed over the motorcycle of the deceased to Abdul Razzak s/o. Muhammad Ramzan. He also obtained the mobile data of the deceased as well as the chemical and FSL reports. After that he submitted the report under class A. On 10.07.2015, Inspector Sajjad Ali, interrogated the accused Sanwal alias Charya, the accused disclosed his involvement in various crimes of different police stations. PI Sajjad informed those police stations over telephone.

3. On 12.07.2015, Inspector Javed Hussain Shaikh interrogated accused Sanwal alias Charya, who disclosed his guilt in the instant offence, therefore, he was formally arrested in the instant crime. On 13.07.2015, PI Javed Hussain Shaikh filed an application before Court of IVth Civil Judge & Judicial Magistrate for reopening the crime bearing No.259/2012, which was accorded. On 15.07.2015, the I.O. had visited the place of incident on the pointation of the accused and prepared such memo. On 30.07.2015, the investigation was entrusted to I.O/PI Imtiaz Ahmed vide order dated 31.07.2017. He obtained the CRO of accused Sanwal alias Charya and sent a letter to FSL for the purpose of matching empty with weapons recovered from accused Sanwal alias Charya. He obtained the report of FSL as similar with the recovered weapon bearing No.CAG-29502 of FIR No.215/2015. After completion of investigation, he submitted the challan before the Court of law against the accused Sanwal alias Charya so as well against co-accused Rohan Ali alias Bhatti S/o. Mubarak Ali and Rashid Qadri S/o. unknown was put in column number two with blue ink, which was accepted on 19.10.2015.

4. The brief facts of the prosecution case of FIR No.215 and 216 of 2015 are that SIP Muhammad Saleem lodged FIR No.215 and 216 of 2015 u/s 4/5 Explosive Substance Act, 1908 and u/s 23-1-A, Sindh Arms Act, 2013 at CTD/OPS, Karachi, stating therein that on 10.07.2015 he during investigation of accused Sanwal alias Charya, who was already under arrest in FIR No.201/2015 u/s 353/324/34 PPC and FIR No.202/2015 u/s. 12-1-A, Sindh arms Act, 2013 of PS CTD Garden Sindh, Karachi during interrogation accused Sanwal alias Charya disclosed that he was affiliated with the banned organization Sunni Tehreek and had buried arms and ammunition belonging to Suni Tehreek in a PMT Room of KESC and could produce the same. On such disclosure of the accused,

the complainant along with his staff, took the accused in police mobile SP-3337 and on the pointation of the accused the police arrived in the jurisdiction of PS Risala Meat Market near Jamia Masjid-e-Khizra (Haree Masjid), on 10.07.2015 at about 0010 hours, where the police mobile was asked to stop by the accused. The accused then led the police party inside a room of KESC and took out a key, hidden underneath a water pipe, unlocked the door and entered into the room, where PMT/transformer laid on the floor. After removing a cemented slab, from space like duct shape, two feet wide and three feet in depth, a kit-bag green and golden colored, which contained, 1) 12 bore repeated inscribed "EXPERT NEW MODEL KHYBER ARMS CO. PESHAWAR", 2) 12 bore repeated inscribed "Squires Bingham", "12 GA2 CHAMBER TASTED" & "SQUIRES BINGHAM MFTD BY ARMS CORPORATION OF THE PHILIPPINESS", 3) 12 bore repeated inscribed "TRANS PAK", 4) 12 bore repeater inscribed "Super Shaheen (N9)", 5) 222 bore rifle number 82T67278, 6) 222 bore rifle number 2712, 7) 8 MM rifle number 4510673, 8) rifle without magazine, number 39286), 9) 30 bore mouser without number inscribed "MADE IN PAKISTAN CAL 7-63MM 30 PISTAL", 10) 30 bore pistol number CAC 29502, 11) 30 bore pistol without number wrapped in blue jeans fabric were recovered. 1) 44 bore rifle semiautomatic, number FKK 890080, 2) Kalashnikov number 1975G33003, without magazine and opening cover, 3) 222 rifle semiautomatic number A-9369, 4), Kalashnikov number 1915K8855, 5) Kalashnikov number 10652, 6) 7 MM rifle without number and magazine marked "CAL 7MM PAK MADE Semi Auto Automatic Special Gift", 7) 100 live rounds of Kalashnikov, 22 live rounds of 44 bore, 30 live rounds of 30 bore, 50 live rounds of 12 bore repeater and one hand grenade, embossed the words "22-85y3prm-2" on its clip, were recovered. Due to non-availability of private witnesses, SIP Ayaz Ahmed and PC Khursheed were made mushirs of recovery and arrest. Thereafter, the arms and ammunition were sealed separately in two bags. The hand grenade was also taken into safe custody and mashirnama of seizure of above arms ammunition and arrest of accused was prepared at the spot. Subsequently, accused and case property were taken to PS and FIRs were registered. After registration of cases bearing FIR No.215 and 216 of 2015 the investigation was entrusted to PI Sajjad Ali. He inspected the place of recovery and recorded the statement u/s 161 Cr.P.C. of PWs. He also called the BDU

expert and obtained the report of BDU. He also interrogated accused Sanwal alias Charya, the accused admitted regarding the instant recovery and further disclosed his affiliation with Sunni Tehreek and involvement in murder, kidnapping and other heinous offences within local limits of different police stations. He informed such disclosures to those concerned police stations over telephone. He sent arms and ammunition to FSL and obtained the report of FSL. After completion of investigation, he submitted the challan before the court of law.

5. All the cases were ordered to be proceeded by joint trial in terms of section 21-M of Anti-Terrorism Act, 1997 (ATA) by the then Presiding Officer, ATC-VI. The charge was framed against the accused Sanwal alias Charya to which he pleaded not guilty and claimed to be tried.

6. In order to prove its case the prosecution examined 11 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The accused person recorded his statement under S.342 Cr.PC whereby he denied all the allegations leveled against him and claimed false implication. He however neither examined himself on oath nor produced any witness in support of his defense case.

7. Learned Judge, Anti-Terrorism Court-VI, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 23.10.2018 convicted and sentenced the appellant as stated above, hence these appeals have been separately filed by the appellant against his respective convictions. By this common judgment we intend to decide the same.

8. 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.

9. Learned counsel for the appellant contended with regard to the appellants conviction for murder that the appellant was completely innocent; that the FIR was lodged by his wife who did not give evidence; that the appellant's confession before the police was inadmissible; that there was no eye witness and that in short the prosecution had failed to

prove its case against the appellant and that he should be acquitted of the charge by this court extending to him the benefit of the doubt. Learned counsel for the appellant contended with regard to the appellants conviction under S.4/5 Explosive substance Act 1908 and the Sindh Arms Act 2013 that it was not a case falling within the purview of the ATA; that all the PW's were police officials whose evidence could not be safely relied upon; that there was no evidence that the appellant belonged to any banned group; that the recovery was not linked to the accused; that S.103 Cr.PC had been violated and the prosecution had failed to prove its case against him and that he should be acquitted of the charge by this court extending to him the benefit of the doubt. In support of his contentions he placed reliance on *Mehr Ali and others v. The State* (2007 P. Cr.LJ 187), unreported judgment in Spl. CrL. A.T. Appeal No.07 of 2017 dated 22.08.2017, *Abdul Sattar and others v. The State* (2002 P. Cr.LJ 51), *Tahir Khan v. The State* (2011 SCMR 646), *Central Prison, Hyderabad v. The State* (1999 P. Cr.LJ 595), *Ashique Ali v. The State* (2002 P. Cr.LJ 450), *Tariq Pervez v. The State* (1995 SCMR 1345), *Bacha Zeb v. The State* (2010 SCMR 1189), an unreported judgment of High Court of Sindh in Criminal Jail Appeal No.108/2014, Criminal Appeal No.71 and 72 of 2014 dated 20.04.2016, *Muhammad Shah v. The State* (2010 SCMR 1009), *Shabbir Ahmed v. The State* (2011 SCMR 1142), an unreported judgment of High Court of Sindh in Criminal Appeal No.226 of 2016.

10. Learned APG half heartedly contended that with regard to the murder case there was sufficient evidence to show that the prosecution had proved its case beyond a reasonable doubt against the appellant based on his confession before the police; the recovery of the empty and the positive FSL report and as such his conviction and sentence should be maintained in respect of the murder case and the appeal dismissed. Learned APG, contended that with regard to the appellant's conviction under S.4/5 Explosive substance Act 1908 and the Sindh Arms Act that the cases had been fully made out through the evidence of the PW's; that there was no violation of S.103 Cr.PC as it did not apply in ATA cases; that no license had been produced for any of the weapons or ammunition which had been recovered on the pointation of the appellant and as such the appellant's convictions and sentences should be maintained under S.4/5 Explosive Substance Act 1908 and the Sindh Arms Act 2013 and his

appeals dismissed. In support of his contentions he placed reliance on **Santas Maria Teresa v. The State** (1991 MLD 2576), **Muhammad Hanif v. The State** (2003 SCMR 1237) and **Muhammed Arif V State** (2003 PSC (Crl.) 928).

11. The record reflects that numerous efforts were made to serve the complainant however without success and since the appellant is facing the death sentence we have proceeded with the matter with the APG representing the interests of the complainant.

12. 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.

13. We shall deal with the appellant's conviction u/s 302 PPC for murder and under S.4/5 Explosive Substances Act 1908 and the Sindh Arms Act separately as also the sections referring to the ATA

Turning to the appellants conviction u/s 302 (b) PPC for murder,

14. In our view after our reassessment of the evidence based on the evidence of the Police PW's including the IO, the PW MLO, post mortem reports and other medical evidence we are satisfied that the prosecution has proved beyond a reasonable doubt that on 09.10.2012 at about 2100 hours at CDGK Parking Plaza, Karachi Jahanghir Hassan (the deceased) was shot and murdered by firearm.

15. The only issue therefore left before us is whether based on the evidence on record the appellant was the person who murdered the deceased.

16. In our view after our reassessment of the evidence we find that the prosecution has **not** been able to prove beyond a reasonable doubt that the appellant murdered the deceased on the above mentioned date, time and place for the following reasons; that admittedly there was no eye witness to the murder; that the appellant's confession before the police is inadmissible and was in any event retracted; turning to the circumstantial evidence against the appellant even this is completely lacking in that no PW could even put the appellant in the location of the murder on the date

time and place; that there was no last seen evidence; that the recovery of the empty alone even with a positive FSL report is only supportive/corroboratory evidence which is insufficient to convict the appellant on its own especially as the alleged murder weapon was recovered a number of years after the incident and there is no evidence that the recovered empty was kept in safe custody throughout this three year period; that again the medical evidence is only supportive or corroboratory of direct evidence and can only tell us, amongst other things, the cause of death of the deceased and possibly what kind of weapon/instrument caused the death of the deceased. It **cannot** tell us who murdered the deceased. Thus, even the very limited circumstantial evidence which is available is insufficient to meet the legal requirement of convicting an accused based on circumstantial evidence being that it must link the body of the deceased to the neck of the accused through an unbroken chain of evidence leading to the inference that the accused was the only person who could have murdered the deceased which as mentioned earlier is badly lacking in this case. In this respect reliance is placed on **Azeem Khan and another v. Mujahid Khan and others** (2016 SCMR 274) and **Wazir Muhammad and another v. The State** (2005 SCMR 277). Thus, since there is neither any direct oral evidence against the appellant and what little circumstantial evidence there may be is insufficient to link the accused to the murder of the deceased we hereby acquit the appellant of the charge of murdering the deceased under S.302 PPC.

Turning to the appellant's conviction under S.4/5 Explosive Substance Act 1908 and the Sindh Arms Act 2013.

17. In our view after our reassessment of the evidence we find that the prosecution has been able to prove its case against the appellant beyond a reasonable doubt that he committed the offenses under S.4/5 Explosive Substance Act 1908 and the Sindh Arms Act 2013 for the following reasons; that although the appellants confession about having hidden the arms, ammunition and grenade is inadmissible the fact that the appellant lead the police to the cache of arms, ammunition and the grenade is highly significant based upon the particular facts and circumstances of the case. This is because the police would have had no idea where such cache of arms, ammunition and grenade were hidden; that the cache of arms,

ammunition and grenade were really well hidden in a professional and organized manner being at the back side of the PMT Room of KESC, where the key was hidden under a concrete pipe and on entering the PMT the cache of arms, ammunition and grenade were hidden under concrete in such a manner that any thing which was hidden under the concrete was not discernible to the naked eye; that the large amount of weapons and ammunition which was recovered was too large to have been foisted on the appellant and even the police would not have had such an array of weapons readily available with them; that if the police wanted to fix the appellant in a false arms case they could have simply planted a pistol on him without going to such bother which does not appeal to reason, logic or commonsense; that both departure and arrival entries have been exhibited along with all other relevant police entries; that all the recovered weapons were correctly recorded and identified by description and in many cases number and marking in the mashirnama of recovery; that the PW's (PW 7 Ayaz Ahmed Khan and PW 9 Muhammed Saleem) on the recovery of the cache of arms, ammunition and grenade corroborated each other in all material respects in their evidence and there are no material contradictions in their evidence as would caste any doubt on the prosecution case; that it is well settled by now that the evidence of police witnesses is as good as any other witness provided that no ill will, enmity or personal interest has been shown between them and the appellant and in this case there is no evidence of ill will, enmity or personal interest on the part of the police against the appellant; that the cache of arms and ammunition were sealed on the spot and were kept in safe custody at the malkhana before being sent for FSL report which was positive; that based on the particular facts and circumstances of the case the violation of S.103 Cr.PC in our view is inconsequential as at 0010 hours at night there was nobody around who was able, let alone willing, to be mushir and even otherwise there is no such requirement under the ATA and the Sind Arms Act; With regard to the recovery of the hand grenade this was also recovered at the spot along with the arms and ammunition; and it was also inspected by the BDU expert which showed it as being of an explosive substance which was ready for use. In our view the same conditions apply as to its recovery as for the cache of arms and ammunition and in our view based on the above evidence after our re assessment of the same we are satisfied that the prosecution has proved its

case beyond a reasonable doubt in connection with the appellant having been convicted and sentenced in the impugned judgment for offenses under S.4/5 Explosive Substance Act 1908 and the Sindh Arms Act 2013 and as such these sentences and convictions in the impugned judgment are upheld and maintained subject to the convictions under the ATA being deleted as we have not found these offenses to come within the purview of the ATA based on the particular facts and circumstances of the case.

In summary;

- (a) The appellant is acquitted of the charge u/s.7(1)(a) ATA 1997, r/w Section 302 (b) PPC and the confirmation reference is answered in the negative and in respect of this offense the appeal is allowed.
- (b) The appellant's conviction and sentence u/s.4/5 Explosive Substance Act, 1908 is upheld and maintained and in respect of this offense the appeal is dismissed.
- (c) The appellant's conviction and sentence u/s. 23(1)(A) Sindh Arms Act of 2013 is upheld and maintained and in respect of this offense the appeal is dismissed.
- (d) That the appellant is acquitted in respect of any offense falling under the ATA
- (e) All sentences of imprisonment shall run concurrently and the appellant shall have the benefit of S.382-B Cr.PC.

18. The appeals and confirmation reference stand disposed of in the above terms.