

Murder in Factory Bhutta Collection
Death Sentence confirmed

558

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Sp. ATANos. 323, 336 & 337 of 18 g/w Conf. Case 17/18

A. Raheem & others 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: 5th & 6th Dec. 2018

Decide on: 18 - 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.

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

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Sp. A.T. Appeal No. 323 of 2018

1. Abdul Raheem s/o Muhammad Akber

Muslim, Adult, R/o Bangali Para,
Kachiabadi New Karachi,
Presently confine in Center Prison, Karachi

PRESENTED ON
19.11.2018

[Signature]
Deputy Registrar (Judicial)

4052

2. Anwar @ Anwer Balcoh s/o Muhammad

Muslim, Adult, R/o Kachiabadi, Allah Wali
New Karachi,
Presently confine in Center Prison,
Karachi

APPLICANT

Versus

The State

RESPONDENT

FIR NO. 02/2015.

U.S. 302/384/385/34 PPC.

R/W SEC. 7 ATA, 1997.

P.S GABOL TOWN

SPECIAL CR. APPEAL UNDER SECTION 25 OF ANTI-TERRORISM ACT OF 1997 READ WITH SECTION 410 CR.P.C

Being aggrieved and dissatisfied with impugned consolidated Judgment dated 08.11.2018 passed by the learned Judge of Anti-Terrorism Court No:II, Karachi in Special Case No: B-320 of 2015 in Crime FIR No: 02/2015 of u/s 302/384/385/34 PPC R/W SEC. 7 ATA, 1997 in which the learned Judge did not consider the merits of the case and passed the sentence to the appellants/accused, (1) Accused Abdul Reheem is convicted U/s 302 of PPC, punishable U/s 6 Sub Section (2), Punishable U/s 7 Clause (a) to hang by neck till death, subject to confirmation by the Hon'ble High Court of Sindh and (2) accused Anwar is convicted for Imprisonment for life u/s 7(a) H of ATA, 1997. Accused Abdul Raheem to pay compensation of Rs. One lacs to the legal heirs of deceased in case his death sentence is

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Sp. A.T. Appeal No: 336 of 2018

PRESENTED ON

22.11.2018 (1)

Ahmed Hassan s/o Abdul Hakeem

Muslim, Adult, R/o Karachi.

Presently confine in Center Prison,
Karachi-----

[Signature]
Deputy Registrar (Judl.)

APPLICANT

4260

Versus

The State -----

RESPONDENT

FIR NO. 02/2015.

U.S. 302/384/385/34 PPC.

R/W SEC. 7 ATA, 1997.

P.S GABOL TOWN

SPECIAL CR. APPEAL UNDER SECTION 25 OF ANTI-TERRORISM ACT OF 1997 READ WITH SECTION 410 CR.P.C

Being aggrieved and dissatisfied with impugned consolidated Judgment dated 08.11.2018 passed by the learned Judge of Anti-Terrorism Court No:II, Karachi in Special Case No:B-320 of 2015 & B-921 of 2015 in Crime FIR No: 02/2015 & 30/2015 of u/s 302/384/385/34 PPC R/W SEC. 7 ATA, 1997 & 23(I)A.SAA in which the learned Judge did not consider the merits of the case and passed the sentence to the appellant/accused Ahmed Hasan is convicted for Imprisonment for life u/s 7(a) H of ATA, 1997 and u/s 23(i)A, 24 and 25 of Sindh Arms Act, 2013 for 14 years to rigorous imprisonment and accused Ahmed Hasan to pay Rs.50,000/- to the legal heirs of deceased. In default to undergo imprisonment for 02 years. The sentences of imprisonment under each head shall be concurrent.

It is respectfully prayed on behalf of above named applicants/accused that this Honorable Court may graciously be pleased to set aside the above impugned Judgment dated 09.11.2018 as well as to acquit the appellants/accused, on consideration of the following facts and grounds:-

(The certified copy of Judgment dated: 08.11.2018 is enclosed as Annexure 'A')

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Sp. A.T. Appeal No: 337 of 2018

PRESENTED ON
22-11-2018

Ahmed Hassan s/o Abdul Hakeem

Muslim, Adult, R/o Karachi.

Presently confine in Center Prison,
Karachi-----


Deputy Registrar (Judl.)

APPLICANT

4261

Versus

The State -----

RESPONDENT

FIR NO. 30/2015

U.S. 23(I).S.A.A of 2013

P.S Sir Syed

SPECIAL CR. APPEAL UNDER SECTION 25 OF ANTI-TERRORISM ACT OF 1997 READ WITH SECTION 410 CR.P.C

Being aggrieved and dissatisfied with impugned consolidated Judgment dated 08.11.2018 passed by the learned Judge of Anti-Terrorism Court No:II, Karachi in Special Case No: B-921 of 2015 in Crime/FIR No: 30/2015 of u/s 23(I)A.SAA in which the learned Judge did not consider the merits of the case and passed the sentence to the appellant/accused Ahmed Hassan is convicted u/s 23(i)A, 24 and 25 of Sindh Arms Act, 2013 for 14 years to rigorous imprisonment and accused Ahmed Hassan to pay Rs.50,000/- to the legal heirs of deceased. In default to undergo imprisonment for 02 years. The sentences of imprisonment under each head shall be concurrent.

It is respectfully prayed on behalf of above named applicants/accused that this Honorable Court may graciously be pleased to set aside the above impugned Judgment dated 09.11.2018 as well as to acquit the appellants/accused, on consideration of the following facts and grounds:-

(The certified copy of Judgment dated: 08.11.2018 is enclosed as Annexure 'A')

OFFICE OF THE JUDGE, ANTI-TERRORISM COURT NO.II, KARACHI
No.ATC-II/K.Div/ 12-11 /2018, Karachi, Dated: 08.11.2018

To,

The Registrar,
Honourable High Court of Sindh,
Karachi.

INWARD TO 1825
BRANCH C.R.E
DATE 19/11/18
HIGH COURT OF SINDH AT KARACHI

SUBJECT: REFERENCE UNDER SECTION 374 CR.P.C.
SPL.CASE NO. B-320/2015, FIR NO. 02/2015 U/S.
302/384/385/542/34 PPC, R/W SEC. 7 ATA, 1997 AND
SPL.CASE NO. B-921/2015, FIR NO. 30/2015, U/S.
23(i)A S.A.ACT OF P/S GABOL TOWN STATE
VERSUS ABDUL RAHEEM & ORS, UNDER
SECTION 25(2) OF A.T.A. 1997.

It is to state that the aforesaid case has been decided on
08.11.2018 and the accused Abdul Raheem S/o Abdul Hakeem has
been awarded death sentence including other sentences subject
however to confirmation by the Hon'ble High Court of Sindh,
Karachi Under Section 374 Cr.P.C.

The R&P of the aforesaid special cases are sent herewith in
view of Section 25(2) of ATA 1997 for confirmation of death
sentence of above accused or otherwise.

Kindly acknowledge the receipt of the same.

Encl: As above.

Khalida Yaseen
8.11.18
(Ms. KHALIDA YASEEN)
JUDGE
ANTI-TERRORISM COURT NO:II,
KARACHI

IN THE HIGH COURT OF SINDH AT KARACHI

Special Crl. Anti-Terrorism Appeal No.323 of 2018.
Special Crl. Anti-Terrorism Appeal No.336 of 2018.
Special Crl. Anti-Terrorism Appeal No.337 of 2018.
Confirmation Case No.17 of 2018.

Present:

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

Appellants	Abdul Raheem s/o. Muhammad Akber through Mr. Nadeem Ahmed Azar, Advocate and Anwar @ Anwar Baloch s/o. Muhammad and Ahmed Hassan s/o. Abdul Hakeem through Mr. Abdul Razzak, Advocate
State	Through Mr. Siraj Ali K. Chandio, Addl. Prosecutor General.
Date of hearing:	05.12.2019 and 06.12.2019.
Date of announcement:	18.12.2019

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellants Abdul Raheem s/o. Muhammad Akber, Anwar @ Anwar Baloch s/o. Muhammad and Ahmed Hassan s/o. Abdul Hakeem have preferred these appeals against the impugned judgment dated 08.11.2018 passed by the learned Judge Anti-Terrorism Court No.II, Karachi in Special Case No.B-320 of 2015, F.I.R. No.02 of 2018 u/s. 302/384/385/34 PPC r/w section 7 of ATA, 1997 and Special Case No.B-921 of 2015, F.I.R. No.30 of 2015 u/s. 23(i)(a) of Sindh Arms Act, 2013 registered as P.S. Gabol Town, Karachi whereby the appellants have been convicted and sentenced as under:-

"Accused Abdul Raheem is convicted u/s. 302 of PPC punishable U/s.6 Sub Section (2), Punishable U/s.7 Clause (a) and is sentenced to death subject to confirmation by the Hon'ble High Court of Sindh. For one murder I cannot award punishment to three accused to hang to death, therefore, the accused Ahmed Hassan is sentenced to Imprisonment for life u/s.7 (a) ATA, 1997 and u/s.23 (i) A, 24 & 25 of Sindh Arms Act, 2013 for 14 years to rigorous imprisonment and accused Anwar is sentenced for imprisonment for life u/s.7 (a) H of ATA, 1997. Accused Abdul Raheem to pay compensation of rupees one lac to the legal heirs of deceased in case his death

sentence is commuted to Imprisonment for life. Whereas accused Ahmed Hassan and Anwar to pay Rs.50,000/- to the legal heirs of deceased. In default to undergo imprisonment for 02 years more. The sentences of imprisonment under each head shall run concurrently.

2. The brief facts of the case as per FIR No.02/2015 PS Gabol Town, registered by complainant Rehan Naseem on 07.01.2015 are that he lives in House No.11/2 5E, Paposh Nagar, Nazimabad, Karachi with his family and had phone number 0300-5489005 and has a private job. At about 4:00 pm his maternal aunt informed him that her husband has been murdered in the factory and has been shifted to Abbasi Shaheed Hospital where he went and saw his maternal uncle Saleem's dead body in the mortuary. The dead body was handed over to him. He had stated that his maternal uncle does not have any enmity and that unknown persons had fired at his uncle for unknown enmity or reasons.

3. After registration of the FIRs, usual investigations were carried out and thereafter the case was sent for trial. The charge was framed against the accused persons to which they pleaded not guilty and claimed trial. Accused Anwar Baloch was declared Proclaimed Offender on 26.05.2015. However, accused Anwar Baloch was arrested on 04.12.2016 and thereafter amended charge was framed against him to which he also pleaded not guilty and claimed trial of the case.

4. In order to prove its case the prosecution examined 18 PW's, who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The statement of all the accused were recorded u/s 342 Cr.P.C. None of the accused examined themselves on Oath. Accused Abdul Raheem produced one DW in support of his defense case and accused Ahmed Hassan produced 02 DW's in support of his defence case. In essence the defense of all the accused was that they were innocent and had been falsely implicated in this case by the police.

5. Learned Judge, Anti-Terrorism Court-II, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 08.11.2018, convicted and

sentenced the appellants as stated above, hence these appeals have been separately filed by each appellant against his sentence and conviction.

6. 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.

7. Learned counsel for appellant Abdul Raheem has contended that the retracted confessional statement of Abdul Raheem cannot be relied upon as it was retracted and has not been made in accordance with law and as such no reliance can be placed upon it; that even otherwise no mention of the word bhatta has been used in the confessional statement so as to bring the case within the purview of the ATA; that the case property was not present at the time when the accused made his statement under S.342 Cr.PC; that the medical report does not support the ocular evidence; that the CCTV footage cannot be relied upon as no one has identified the accused in the CCTV footage; that the CDR data does not link the accused to the offense; that no recovery was made from him at the time of his arrest and that for any of the above reasons the accused should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on **Qaddan and others v. The State** (2017 SCMR 148), **Muhammad Shah v. The State** (2010 SCMR 1009), **Haris Nasim alias Khalid and another v. The State and another** (2019 P. CrI. LJ 535), **Muhammad Ayyaz v. The State** (2018 P. CrI. LJ 132), **Sher Bahadur v. Fayyaz and another** (2015 SCMR 955) and an unreported judgment of this Court in the case of **Bilal Hussain v. The State** (Criminal Appeal No.292 of 2016 dated 10.12.2018).

8. Learned counsel for the appellants Anwar Baloch and Ahmed Hassan has contended that this case does not fall under the purview of the ATA as there is no evidence that any demand for bhatta has been made and that the investigation was carried out by a sub-inspector instead of an Inspector in contravention of the ATA; that with regard to appellant Anwar Baloch there is no evidence against him whatsoever apart from the judicial confession of appellant Abdul Raheem the legality of which is doubtful and even otherwise there is no other evidence against him to

corroborate that confession and as such the appellant Anwar Baloch should be acquitted of the charge by extending him the benefit of the doubt. With regard to appellant Ahmed Hassan he contended that he was not named in the confessional statement of Abdul Raheem; that no one has identified him as being present at the time of the murder; that no phone records have been produced against him; that the pistol was foisted upon him and that he was arrested from his home; that there was no safe custody of the empties; that there was no safe custody of the pistol and as such the positive FSL report is irrelevant and thus for any of the above reasons he should be acquitted of the charge by extending to him the benefit of the doubt. In support of his contentions he has placed reliance on *Nasir Mehmood and another v. The State* (2015 SCMR 423), *Muhammad Pervez and others v. The State and others* (2007 SCMR 670), *Nadeem Ahmed Khan and others v. The State* (2007 P. Cr. LJ 233), *Hakam Deen v. The State through Advocate General and 15 others* (PLD 2006 Supreme Court (AJ&K) 43), *State through Advocate-General Sindh, Karachi v. Farman Hussan and others* (PLD 1995 Supreme Court 1), *Maula Jan v. The State* (2014 SCMR 862), *Israr Ali v. The State* (2007 SCMR 525), *Tahir Mehmood @ Achoo v. the State and another* (2018 SCMR 169), *Muhammad Ismail and others v. The State* (2017 SCMR 898), *Muhammad Nadeem alias Banka v. The State* (2011 SCMR 1517), *Hayatullah v. The State* (2018 SCMR 2092), *Wahab Ali and another v. The State* (2010 P. Cr. LJ 157), *The State of Gujarat v. Adam Fateh Mhmed Umatiya and others* (1971(3) Supreme Court Cases 208), *Sabir Ali v. The State* (2011 SCMR 629) and *Muhammad Shah v. The State* (2010 SCMR 1009).

9. Learned APG who was also representing the complainant has contended that with regard to appellant Abdul Raheem his confession is in accordance with the law and as such he can be convicted on this evidence alone which confession also clearly shows that it was a case concerning the collection of bhatta which fell squarely within the ATA; that the involvement of Abdul Raheem is further proven through the CCTV footage which has shown him shooting the deceased and his mother's recognition of him; that with regard to appellant Anwar Baloch he is named in the confessional statement of Abdul Raheem as being actively involved in the bhatta collection and murder of the deceased who

Abdul Raheem was instigated to shoot on his instructions; that with regard to appellant Ahmed Hassan he was fully involved with the other appellants in order to collect bhatta from the deceased and to murder him when he refused to do so; that the empties recovered from the scene of the murder matched the pistol recovered from him on his arrest and as such he was fully involved in the murder of the deceased as it was he to whom the murder weapon had ultimately been returned for which the appellant did not have a license. As such he submitted that there was more than enough evidence on record to prove that all the appellants had committed the offenses as charged and had been rightly convicted and sentenced as per the impugned judgment and that their appeals should be dismissed and their convictions and sentences maintained. In support of his contentions he has placed reliance on **Shaukat Ali v. The State and others** (PLD 2019 Supreme Court 577), **Rashid Aslam and another v. The State** (2017 YLR 2052), **Mehboob v. The State** (2018 MLD 345), **Muhammad Aslam v. The State** (2018 MLD 761), **Muhammad Ishaque v. The State** (2018 YLR 786), **Shoaib Ahmad and others v. The State and others** (2019 P. Cr. LJ 57), an unreported case **Abdul Raheem & others v. The State** (Appeal No.ATA 323/2018), **Sher Muhammed Baloch V State** (2008 SCMR 32) and **Khan Muhammed V State** (1999 SCMR 1818).

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 appellants 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 there after the prosecution had lead some of its evidence. The charge was amended on 20.12.2006 because Anwar Baloch who had been absconding was arrested and had to face trial. Learned counsel for Anwar Baloch before the trial court did not want the PW's who had already been called to be recalled and only requested that one PW be recalled so that he could cross examine that PW which was allowed by the trial court. None of the learned counsel before us have contended that this is a case of remand and in particular learned counsel for Anwar Baloch as according to him the accused Anwar Baloch had not been prejudiced. We are inclined to agree with learned counsel for the

accused who also requested this court to decide the appeals on merit as some of the accused had been in custody for quite some time especially as in our view no prejudice has been caused to any of the appellants (including Anwar Baloch as admitted by his counsel) at trial as a result of the amended charge and as such we proceed to decide these appeals on merits.

12. In our view after our reassessment of the evidence based on the evidence of the PW's including the PW MLO, inquest report u/s 174 Cr.PC, recoveries of empties and blood stained earth at the scene, recovery of pistol and the CCTV footage and other evidence on record we are satisfied that the prosecution has proved beyond a reasonable doubt that on 07.01.2015 at about 16.45pm at Factory Dyers point at Sector 16-B Gopal Town Saleemuddin (the deceased) was shot and murdered by firearm.

13. The only issues therefore, in our view, left before us are (a) whether the appellants played any role in the murder of the deceased and (b) whether the deceased was murdered because he refused to pay bhatta (extortion money) to the accused.

14. In our view after our reassessment of the evidence we find that the most important aspects in dealing with the above issues are (a) the confession of appellant Abdul Raheem and (b) the CCTV/CD footage recovered from the scene of the murder.

Turning firstly to appellant Abdul Raheem's confession.

15. Abdul Raheem's confession reads as under;

"About three weeks back, I alongwith one **Ayaz** S/o not known went to a garment factory at Gabol Town, Karachi and met with the owner of factory in his office and conveyed to him the message of **Anwar** that **Anwar** had sent us to him for receiving Rs.2000/-. He replied that **Anwar** should meet in person with him in evening. In the same spur of moment **Anwar** talked with me on my cell phone and instigated me for opening fires upon the owner of factory. The pistol was in my hand which **Anwar** had given me. I had opened total three fires upon the owner of factory. Now I am feeling guilty." (bold added)

16. Abdul Raheem was arrested on 25.01.2015 and his confession was recorded 4 to 5 days later by the magistrate.

Law on retraction of judicial confessions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Its object must be to state the truth; assistance for which can be ascertained from (i) whether the confession

appears truthful within the context of the prosecution case and (ii) whether there is any other evidence on record which tends to corroborate the truthfulness of the confession **and**

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

24. Thus, we are of the view that a slight delay in recording the confession after the arrest of the accused will not effect its legality and our ability to rely on it. In this respect reliance is placed on **Khan Muhammed's case** (Supra) and **Majeed v. The State** (2010 SCMR 55). In our view as per the case law as discussed above the overriding factors to be adhered to when determining whether a retracted judicial confession can be relied upon is whether it has been made voluntarily, is truthful and fits in with the prosecution case and these factors have not been effected by any procedural irregularity.

25. Based on the particular facts and circumstances of this case we find (a) there is no cogent evidence on record that the confession were not made voluntarily i.e by threat or inducement **and** (b) the object of the confession appears to be to tell the truth as it fits in with the prosecution case and is corroborated by other evidence on record which we will come to later **and** that (c) although there may be some irregularities in the recording of the confession as pointed out by the learned counsel for the appellant after our review of the warnings given and the evidence of PW 4 Rajkumar the judicial magistrate before whom the confession was recorded such irregularities have neither effected the voluntariness or truthfulness of the confession and as such we find the confession of Abdul Raheem to be admissible and can form the basis to convict him and potentially those other appellants named in the confession provided that by way of abundant caution we find some corroborative evidence against the appellants.

26. The next piece of evidence against Abdul Raheem is the CCTV footage/CD whereby he was picked out by his mother as

being the person who shot the deceased. We find that there was no threat or inducement behind the mother picking out her son Abdul Raheem from the CCTV footage as questions concerning such influence/pressure were not raised before any PW and in our view such evidence is simply an after thought made in an attempt to save the skin of her son. As such we find that the appellant Abdul Raheem has been correctly identified by his mother in the CCTV footage/CD as the person who shot and murdered the deceased at his factory. It is also of significance that it was only on his mother's identification of her son appellant Abdul Raheem that the police were able to arrest him from his home and where after he confessed to the murder. If his mother had not identified him then the police would have had no idea of his involvement in the crime as his confession only came **after** his arrest. It is also significant that the mother made no complaint to any body including the remand judge or filed any petition before any court regarding her treatment by the police in order to falsely implicate her son and for the first time came out with such a story during her evidence at trial.

27. It is also significant that she states in her evidence that the police had no enmity with her son and as such had no reason to falsely implicate him in this case.

28. The confession which we have earlier found can be used against the appellant Abdul Raheem also fits in with the entire prosecution case and in our view shows that this case concerned the collection of bhatta from the deceased which lead to his murder by Abdul Raheem when he refused to pay the same and as such the case falls squarely under the purview of the ATA. This finding is also supported by simple common sense in that since Abdul Raheem had no enmity with the deceased and had no other reason to go to the factory based on his own confession and the CCTV footage the only logical and common sense conclusion which can be drawn is that Abdul Raheem and his accomplices went to the factory in order to extort bhatta from the deceased which resulted in appellant Abdul Raheem murdering him once he refused to pay up. The fact that the investigation was carried out by an SI instead

of an Inspector as provided in the ATA we find to be inconsequential based on the particular facts and circumstances of this case as it is well settled by now that the law always prefers that matters be decided on merit as opposed to technicalities. In this respect reliance is placed on the case of **Sher Muhammed Baloch** (Supra)

29. Based on the above discussion we are satisfied that the prosecution has proved its case against the appellant Abdul Raheem beyond a reasonable doubt and as such up hold his conviction in the impugned judgment.

30. **The next issue is what the appropriate sentence should be for appellant Abdul Raheem.** We have found that the appellant Abdul Raheem who was an adult at the time of the offense as proven from the record demanded bhatta from the deceased and when the deceased refused to pay he shot him 2 to 3 times in cold blood. The motive for the murder that the deceased was murdered because he refused to pay bhatta stands proven and that the appellant was the sole murderer whose firing lead to the deceased's death. This was a cold bloodied murder carried out in a brutal fashion which in our view had behind it the object, design and intent to send a signal to all businessmen that if they refused to pay bhatta then they would meet the same fate as the deceased and thus was designed to create insecurity, fear and terror within the business community. In such cases no leniency can be shown by the courts and a deterrent sentence is the appropriate one in order to send a loud and clear message to all persons who engage in such heinous crimes that they can expect no leniency from the courts and that if they engage in such heinous crimes it is done so at their own peril. Such persons must be made aware that if you play with fire then you can get burnt. In this respect reliance is placed on the case of **Dadullah and another v. The State** (2015 SCMR 856)

31. As such we uphold the sentences handed down to appellant Abdul Raheem whose death sentence is upheld and the confirmation reference is answered in the affirmative.

Turning to the case of appellant Ahmed Hassan.

32. We note that he has **not** been named in the confession of appellant Abdul Raheem. He has also not been picked out as being a person who was present in the CCTV/CD footage of the murder of the deceased. In connection with the demand for bhatta and the murder of the deceased the only evidence against him appears to be that on his arrest he was found with an unlicensed pistol and that the empties recovered at the murder scene matched that pistol through a positive FSL report.

33. We have carefully analyzed the prosecution evidence in detail concerning the arrest of the appellant and recovery of the pistol from him in terms of PW 7 Mohammed Arain, PW 8 Taj Muhammed, PW 9 Muhammed Ashraf Arain and PW 16 Ghulam Akbar along with the arrest and recovery memo. The appellants own wife (Mst Misbah Bibi) who gave evidence as a DW has stated in her own evidence that her husband did not have any enmity with the police and thus the police had no reason to falsely implicate her husband in this case. 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. The police PW's in their evidence corroborate each other in all material respects and it is settled by now that minor contradictions in evidence can be ignored. We reject the evidence of his wife and brother in law that he was arrested from home which appears to us to have been given just so her husband can be saved from the clutches of the law. Thus, based on our analysis of the evidence of the above PW's and the memo of arrest and recovery we are satisfied that the prosecution has proved its case beyond a reasonable doubt that the appellant was caught in possession of an unlicensed fire arm and

hence his conviction and sentence are upheld in the impugned judgment in that respect.

34. We however find that the prosecution has not produced sufficient corroborative evidence to connect the appellant to the demand of bhatta and the murder of the deceased. This is because the key connecting evidence is the empties matching with the pistol which was recovered from him. We note however that appellant Ahmed Hassan was arrested on 28-01-2015 but the recovered empties were not sent until 11-08-2015 along with the pistol for FSL report and during this period of 7 months there was no evidence of safe custody of the empties and as such the possibility of bullets being discharged from the pistol after its recovery from the accused and the empties of the same being sent along for FSL in order to manufacture a positive FSL report cannot be ruled out and thus by extending the benefit of the doubt to the appellant Ahmed Hassan we hereby acquit him of the charge of murder and of demanding bhatta.

Turing to the case of appellant Anwar Baloch.

35. He is named in the confessional statement of appellant Abdul Raheem. So we need to see what corroborative evidence there is against him. He has not been picked out as being a person who was present in the CCTV/CD footage of the murder of the deceased or named by any other PW as being involved in this crime. No recovery has been made from him. No CDR data connects him to the offense. Since in our view it would be unsafe to convict the appellant Anwar Baloch on the confession of a co-accused without independent corroborative evidence since we have not found any such evidence we hereby acquit the appellant Anwar Baloch of the charge who shall be released forthwith unless wanted in any other custody case.

36. In summary.

- (a) The appeal of Abdul Raheem is dismissed and his convictions and sentences are upheld and as such the confirmation reference is answered in the affirmative.

(b) The appeal of Ahmed Hassan is partly allowed in that he is acquitted of all charges **except** for the offense under S.23(i) A, and 24 of the Sindh Arms Act 2013 for which his conviction and sentence is upheld. He shall be entitled to the benefit of S.382 B Cr.PC.

(c) The appeal of Anwar Baloch is allowed and he is acquitted of the charge and shall be released unless wanted in any other custody case.

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

MAK/PS