

Accused not named in charge

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CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Criminal Appeal NO. 248 of 2021
Confirmation Case No. 09 of 2021

Summair S/o Muhammad Hanif

Vs

The State

HIGH COURT OF SINDH

Composition of Bench.

D.B.

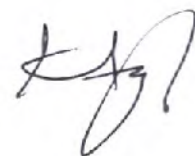
Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

Date(s) of hearing: 22-08-2022

Decided on : 26-08-2022

Judgment approved for Reporting

Yes



CERTIFICATE.

Composition:

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

Date(s) of hearing:

* Strike out whichever is not applicable.

Decided on:

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.

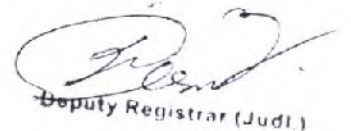
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IN THE HIGH COURT OF SINDH AT KARACHI

(Criminal Appellate Jurisdiction)

Criminal Appeal Number: -----/2021

PRESENTED ON
24.04.2021


Deputy Registrar (Judl.)

Summair son of Muhammad Hanif
Muslim adult resident of House No 256,
Sector 48-E, Korangi No 2/1/2
KARACHI presently Confined in Central prison
At Karachi Appellant

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Versus

1. The State
2. The Court of 1st Additional Sessions Judge
(Model Criminal Trial Court) Karachi----- .Respondents

FIR No: 637//2010
U/S; 302/397/396/302/34 PPC
PS : Korangi Industrial Area

CRIMINAL APPEAL UNDER SECTION 410 OF CRIMINAL PROCEDURE CODE

Being aggrieved and dissatisfied with the judgment dated 03 April 2021 passed by learned First Additional and District Session Judge Karachi East Karachi in session case No 810/2010 whereby convicting the appellant herein under section 392/397/396/302//34 PPC sentenced him to as follows :

- a. Convicted under section 392 read with section 397 PPC for committing robbery duly armed with deadly weapon, therefore , he is sentence rigorous imprisonment for ten years and fine Rs 50,000/- (Rupees fifty thousand only)
- b. Convicted under section 302 (b) PPC and sentenced o death . Accused shall be hanged by neck till he is death. He is also directed to pay commendation to legal heirs of te deceased to the tune of Rs 10,00,000/- (Rupees ten lac only) as required under section 544-A Cr P>C .
- c. Convicted and sentenced under section 324 PPC for causing firearm injury to complainant and sentenced him rigorous imprisonment for seven years with fine for amount of \Rs 50,000/- to be paid to the complainant as compensation as prescribed under section 545 Cr. P.C for **injury** caused to the complainant . All sentences are directed to run concurrently .

IN THE HIGH COURT OF SINDH, KARACHI

PRESENT:

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

CRIMINAL APPEAL NO.248 OF 2021
Confirmation Case No.09 of 2021

Appellant:	Summair S/o Muhammad Hanif through Mr. Qadir Hussain Khan, Advocate.
Respondent:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Date of Hearing:	22.08.2022
Date of Judgment:	26.08.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- Appellant Summair S/o, Muhammad Hanif was tried before the Model Criminal Trial Court/1st Additional District & Sessions Judge (East), Karachi in Session Case No.810/2020, FIR No.637/2020 registered at Police Station K.I.A. under Section 392/397/396/302/34 PPC vide judgment dated 03.04.2021; whereby he was convicted and sentenced as under:-

- i) Accused Summair was convicted under section 392 read with Section 397 for committing robbery duly armed with deadly weapon, therefore, he was sentenced rigorous imprisonment for ten years and fine of Rs.50000/-.
- ii) Accused Summair was also convicted under section 302(b) PPC and sentenced to death subject to confirmation by this court. He was also directed to pay compensation to legal heirs of the deceased to the tune of Rs.10,00,000/- (Rupees Ten Lac Only) as required u/s. 544-A Cr.PC.
- iii) Accused Summair was also convicted under section 324 PPC for causing firearm injury to complainant and sentenced him to rigorous imprisonment for seven years with fine of Rs.50000/- to be paid to the complainant as compensation as prescribed under section 544-A Cr.PC. for injury caused to the complainant.

All sentences were directed to run concurrently and the appellant was granted the benefit of Section 382-B Cr.P.C.

2. The brief facts of the prosecution case as per the complainant are that he used to work at a scrap shop situated at Plot No.A-12 Sector 8/A, Gali No.1, Hazrat Bilal Colony. On 29.06.2010 the complainant along with his brother Ejaz (deceased) was present at his scrap shop at about 1400 hours taking lunch with other employees. Meanwhile, two persons entered the shop, one of them was duly armed with weapon. They snatched amount of Rs.25000/30000 and two mobile phones from the deceased, Rs.2500, mobile phone from the complainant, Rs.1000/- and mobile from Bilal and Rs.300 to Rs.400/ from another employee Tariq. After committing robbery one of the accused, who was holding pistol fired at the deceased on his face and tried to slip away. The complainant chased the culprit on his motorcycle on which the culprit again fired at the complainant, which hit him on his left leg, but he apprehended him. Meanwhile, mohallah people gathered and apprehended the armed accused. In the meantime, police party came and apprehended the accused who disclosed his name as Sumair son of Muhammad Hanif. From his possession one pistol 30 bore with three live rounds and one Nokia Mobile was recovered. The deceased was shifted to hospital for treatment and the complainant recorded his statement under section 154 Cr.PC on the spot which was incorporated in the aforesaid FIR.

3. After thorough investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 09 PWs and exhibited various documents and other items. The statement of accused person was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him. He did not give evidence on oath or call any DW in support of his defence case.

5. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 03.04.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7.

Learned counsel for the appellant has contended that he is completely innocent; that the sole eye witness cannot be safely relied upon as he chased the wrong person on his motorbike; that the medical evidence does not support the ocular evidence; that there are material contradictions in the evidence of the PW's which renders their evidence unreliable; that the pistol which was allegedly recovered from the appellant was foisted on him by the police; that no post mortem report was carried out on the deceased and as such for any or all of the above reasons the appellant by being extended the benefit of the doubt should be acquitted of the charge and the confirmation reference answered in the negative. In support of his contentions he placed reliance on the cases of **Riaz Ahmad v The State** (2016 P Cr. L J 114), **Muhammad Nawaz v The State** (PLD 2005 SC 40), **Dost Muhammad v The State** (PLJ 1982 Cr.C. Karachi -201), **Naseeb ur Rehman v Muqarab Khan** (2013 MLD 836), **Hakeem v The State** (2017 SCMR 1546), **Khalid Javed v The State** (2003 SCMR 1419), **Abdul Ghafoor v The State** (2013 P Cr.L J 1185) and **Ishtiaq Ahmed V The State** (2020 P. Cr. L J Note 43).

8. On the other hand, learned Addl. Prosecutor General Sindh has fully supported the impugned judgment and has in particular contended that the sole eye witness has correctly identified the appellant as being the person who fired on and murdered the deceased and also fired on and injured himself; that the appellant was arrested on the spot from which a pistol was recovered from him which lead to a positive FSL report when matched with the empties recovered at the scene; that the medical evidence supported the prosecution case; that there was no material contradictions in the prosecution evidence and as such the prosecution had proved its case against the appellant beyond a reasonable doubt. He contended that the death sentence should also be upheld as this was a brutal murder during a robbery with no mitigating circumstances. In support of his contentions he placed reliance on the cases of **Muhammad**

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Mansha v The State (2001 SCMR 199), Majhi v The State (1970 SCMR 331), Noor Muhammad v The State (1999 SCMR 2722), Farooq Khan v The State 92008 SCMR 917), Abdul Majeed v The State 92008 SCMR 1228), Aijaz Nawaz alias Baba v The State (2019 P. Cr.L J 1775), Muhammad Ilyas v The State (2011 SCMR 460), Dadullah v The State (2015 SCMR 856), Sikandar v The State (2006 SCMR 1786), Ijaz Ahmed v The State (2009 SCMR 99) and Nasir Iqbal v The State (2016 SCMR 2152).

9. We have heard the arguments of the learned counsel for the appellant as well as learned Additional Prosecutor General and have gone through the entire evidence which has been read out by learned counsel for the appellant, and the impugned judgment with the able assistance of learned counsel and have considered the relevant law including the case-laws cited at the bar.

10. Before proceeding further we would like to deal with a procedural issue which arose during the hearing of this appeal. Originally the appellant was charged on 25.11.2010 in open court to which he plead not guilty. Before any evidence could be recorded however one of the absconding co-accused Muhammed Mubeen was arrested which lead to an amended charge being framed on 17.08.2016 in the same terms but only against Muhammed Mubeen the newly arrested co-accused which charge did not include the appellant in this case which it ought to have done but it appears that the appellant's name was omitted from the amended charge by mistake by the trial court. It appears that the appellant was convicted on account of the amended charge. This court therefore prima facie had the option of remanding back the whole case for a complete retrial of the appellant or hearing the appeal.

11. In our view the main object of the charge is to put the accused on notice of the offences for which he must defend himself so that he is not taken by surprise at the trial and is therefore not prejudiced in his ability to defend himself.

12. In the section of the Cr.PC which deals at Chapter XLV of irregular proceedings we note that Section.535 provides as under;

"S.535. Effect of Omission to prepare charge
(1) No finding or sentence pronounced or passed

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shall be deemed invalid merely on the ground that no charge was framed, **unless, in the opinion of the Court of appeal or revision failure of justice has in fact been occasioned thereby.**

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, **it shall order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge"** (bold added).

13. Section 535 Cr.PC seems to indicate that even if no charge is framed **the case will not be remanded unless** such failure has occasioned a failure of justice.

14. In this case the charge was read out to the accused before it was amended and the amended charge was roughly in the same terms and as such the accused had full notice of the offences which he had to defend himself against. The accused fully participated in the trial by cross examining all the PW's and giving his statement under S.342 Cr.PC and thus in our view taking guidance from S.535 Cr.PC no failure of justice has occurred on account of this irregularity as no prejudice had been caused to the accused in terms of his right to a fair trial. Furthermore, the accused had already spent 11 years behind bars and we were of the view that it would not meet the ends of justice to remand the case back for a retrial after the charge was again framed against the accused which trial might take a number of years and still lead to the same result which we considered would be more of a prejudice to him when the case could be decided now and the accused could then move on after the judgment in this case. In addition both learned counsel for the appellant and the learned APG when asked whether they wanted the case remanded for a fresh trial both stated that they did not and would rather argue the matter before this court as a remand in their view would only further potentially prejudice the accused by keeping him in jail even longer. As such keeping in view the above considerations and being guided by S.535 Cr.PC we have proceeded to hear and decide the case on merits.

15. Based on our reassessment of the evidence of the PW's especially the medical evidence and other medical reports, recovery of empties at the scene of the robbery and the recovery of the pistol from the accused on his

arrest we find that the prosecution has proved beyond a reasonable doubt that Ejaz (the deceased) was shot and murdered by firearm on 29.06.2010 at about 1400 hours at his junk shop situated in Plot No.A/12 gali No.1 Sector 8/A Hazrat Bilal Coloney, KIA Karachi during the course of the robbery of his shop and that thereafter the complainant was shot whilst he tried to apprehend one of the robbers whilst giving chase outside the junk shop.

16. The only question left before us therefore is who took part in the robbery of the shop, murdered the deceased by firearm at the said time, date and location and injured the complainant by firearm just outside the said location on the same date a few moments thereafter?

17. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for the following reasons keeping in view that each criminal case must be decided on its own particular facts and circumstances;

(a) That the S.154 Cr.PC statement of the complainant which became the FIR was recorded just 10 minutes after the incident as the complainant had chased down the appellant and apprehended him with members of the public just after the robbery and murder of the deceased. The police recorded his S.154 Cr.PC on the spot and formal FIR was lodged one hour later and thus the FIR was lodged with extreme promptitude and left no time for the complainant to cook up a false case against the accused in league with the police or any one else.

(b) We find that the prosecution's case primarily rests on the sole eye witness to the robbery and murder of the deceased and in particular his correct identification of the appellant as the person who took part in the robbery of the shop, who shot and murdered the deceased and also shot him when he apprehended the accused with the assistance of members of the public whose evidence we shall consider in detail below;

(i) Eye witness PW 2 Muhammed Sajjad. He is the owner of the scrap shop which was robbed and brother of the deceased Ejaz. According to his evidence on 29.06.2010 he was at his shop with his brother Ejaz when at about 1.45/2pm two persons entered the shop. One was armed whilst the other was unarmed. The unarmed person robbed them of their cash and mobile phones whilst the armed person kept them covered with his pistol. The empty handed person left the shop with the cash whilst the armed person pointed his pistol at them while the unarmed person escaped. The deceased tried to come forward on which the

armed person shot him (Ejaz) in the face and then tried to escape. The eye witness chased the armed person on his motorbike and hit the armed person who fell down and as he grabbed him he shot the eye witness in his knee after which the mohalla people grabbed hold of the person who fired at him and started beating him. The police arrived and arrested the person who shot at him and his pistol was handed over to the police who searched the accused. He was made aware of memo of arrest and recovery and recorded his S.154 Cr.PC statement before the police on the spot.

The witness was not a chance witness as he was the owner of the shop which was robbed and as such was a natural witness. It is true that he is the brother of the deceased however since he had no enmity or ill will towards the accused we have no reason to discount his evidence. In this respect reliance is placed on the cases of **Nasir Iqbal** (Supra) and **Ijaz Ahmed** (Supra). It was a daylight robbery and murder and the accused was standing 3 feet away from the accused in the shop whilst the robbery was taking place. The robbery took about 10 to 15 minutes and as such he would have got a good look at the accused from close range in good light over a sustained period of time. He also saw the accused shoot his brother in the face. He chased the accused who shot him in the leg after he knocked him down a short distance from the shop who was then beaten by the mohalla people before being arrested by the police on the spot. As such we have no doubt that the accused was the person who robbed the shop by firearm and shot and murdered Ejaz and also shot the complainant. The complainant's evidence is corroborated by PW 5 Ghulam Ali who according to his evidence whilst on patrol on 29.06.2010 at about 2pm when he reached Bilal Colony, Sector 8 KIA he heard the shout of Daku Daku from the public. On hearing such commotion he went to that place and found the public beating up a person who was the accused who he rescued from the public. PW 2 Sajjad was also there who had sustained a fire arm injury and narrated his S.154 Cr.PC statement on the spot concerning the accused's robbery of his shop and murder of his brother by firearm. The S.154 Cr.PC statement was not materially improved on from the eye witnesses evidence at trial and the eye witness had no reason to falsely implicate the accused as he had no enmity or ill will towards him. PW 7 Dileep Katri who was the MLO who examined the accused also found that when he examined the accused his injuries were consistent with him being beaten by the public which further corroborates PW2 Sajjad's eye witness evidence and the evidence of PW 5 Ghulam Ali about the accused being beaten by members of the public. PW 1 Abdul Razzak who was the MLO who examined the injured eye witness Sajjad also stated in his evidence that Sajjad had been shot in his knee which corroborates the evidence of PW 2 eye witness Sajjad and of PW 5 Ghulam Ali who was the officer who arrested the accused on the spot where he also saw eye witness Sajjad's injury to his knee. The eye witness remained

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undented in his evidence despite a lengthy cross examination like wise PW 5 Ghulam Ali and as such we believe the evidence of the sole eye witness as to the robbery by the accused, the accused shooting his brother which lead to his death and the accused shooting the eye witness while trying to flee and that he has correctly identified the accused who was arrested on the spot as the person who committed the robbery, shot and murdered the deceased and shot the eye witness.

Thus, for the reasons mentioned above we find the evidence of the eyewitness to be reliable, trustworthy and confidence inspiring and we believe the same especially with regard to the correct identification of the appellant as the person who robbed the shop with a co-accused and shot and murdered the deceased and who shot and injured the eye witness and can convict on the evidence of this sole eye witness alone though it would be of assistance by way of caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That what is of significance is the quality of the evidence and not its quantity and in this case we find the evidence of this sole eye witness to be of good quality and believe the same especially in terms of the correct identification of the accused who robbed the shop, fired on and murdered the deceased and fired on and injured the complainant.

Thus, based on our believing the evidence of the PW eyewitness especially in terms of him correctly identifying the appellant as the person who robbed his shop along with his co-accused, murdered the deceased by firearm and injured him by firearm what other supportive/corroborative material is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of **Muhammad Waris v The State** (2008 SCMR 784)

(c) That the medical evidence and medical reports as discussed above fully support the eye-witness/ prosecution evidence. It confirms that the deceased was hit at least in either neck, jaw or face by firearm which are in similar position to that stated by the eye witness, that the accused injuries were on account of being beaten by the public and the complainant's injury was caused by firearm shot to his knee. In any event it is well settled that ocular evidence takes preference over medical evidence which is only of a corroboratory nature and can only tell you the place of injury and kind of weapon used and not identify the culprit. The fact that no post mortem was carried out on the deceased in the light of the other ocular and medical evidence is of no assistance to the appellant. In this respect reliance is placed on the case of **Sikander** (Supra)

(d) That the accused was arrested on the spot and a firearm was recovered from him which when matched with the empties recovered at the scene of the murder lead to a positive FSL report.

(e) In deciding criminal cases we must also consider the environment in which we live and the associated ground realities and consider the same with commonsense. For example, in Pakistan it is quite common for members of the public to grab hold of robbers before the police come and beat them up and even potentially try to beat them to death unless restrained by the police as happened in this case. In this case there were only two possible persons for the public to grab hold of. Either the person being chased or the person running away who was brought to the ground and shot the other in order to escape. In such circumstances it was only natural that the public grabbed hold of the accused who was the culprit in their eyes.

(f) That it does not appeal to logic, commonsense or reason that a real brother would let the real murderer of his real brother get away scott free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758)

(g) That the police PW's had no enmity or ill will towards the appellant and had no reason to falsely implicate him in this case for instance by foisting a pistol on him and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on **Mushtaq Ahmed V The State** (2020 SCMR 474).

(h) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the accused robbing the shop with his co-accused to him shooting the deceased to the recovery of empties at the scene to the accused being caught red handed on the spot by the complainant who he shot in order to escape to the accused being beaten by the public before being arrested by the police from whom a pistol was recovered which empties recovered at the scene matched the recovered pistol through a positive FSL report.

(i) The fact that the appellant's co-accused was acquitted is of no assistance to the appellant as their cases are on a completely different footing in that the only evidence against the co-accused was that the appellant had implicated him in this case.

(j) It is not without significance that when the accused first recorded his S.342 Cr.PC statement before this case was remanded

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he made the following reply to question 3 which is produced as under for ease of reference;

Ques 3: It has also come in the evidence that on the same day complainant was chasing you on his motorcycle and upon seeing you the complainant hit motorcycle on your leg and tried to catch you but you made a fire shot upon him and the bullet was hit on the left leg of complainant. What you have to say?

Ans: Sir, it was lunch time and I was working there in company and I came cross the road and the complainant hit me motorcycle and 8/10 persons who beaten me and then I become unconscious and when I regained in senses I found myself in Police Station.

He also stated as under on oath as follows:-

"It was one 1 p.m. on 28.06.2010, I was working in Fatma Garments Factory situated at VITA Chowrangi, Korangi Industrial area and after lunch break I came out from the factory for having a lunch and crossed the road one person who was on motorcycle and hit me. The 8/10 persons who also beaten me and I became unconscious, when I regain my senses and found myself at Police Station and then I inquired from the police and they informed me that I have committed murder and they demanded two lacs from me for my release. I could not pay the money to the police and I was involved in this murder case".

Thus, at the initial trial before remand in both his S.342 Cr.PC statement and his evidence under oath he admits being hit by a bike and being got hold of by the public before being handed over to the police (as is the prosecution case) but on remand conveniently he kept mum on this aspect of the case.

(k) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can caste doubt on or dent the prosecution case. The defence case is simply one of false implication by the police. The appellant did not give evidence on oath after remand of the case and did not produce any DW in support of his defence case or produce any other evidence which could dent the prosecution case. Thus, for the reasons mentioned above we disbelieve the defense case as an afterthought in the face of a reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

18. Thus, , we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted and hereby maintain his convictions in the impugned judgment.

19. With regard to sentencing the motive for the murder was that the deceased tried to resist during a robbery of his shop which lead to the appellant shooting him dead in cold blood without a thought for his life, his family or how his family would suffer following his death in terms of the love of a husband/father and the financial security of his family. He also did not hesitate to shoot the complainant in his attempt to escape.

20. Today in Karachi we either read or see nearly every day in either the print or electronic media about a robbery escalating into murder on resistance to such an extent that it appears that a human life be it man women or child, young or old, is of no more value than a mobile phone. In such cases deterrent sentences are warranted in order to protect the public and dissuade would be robbers from robbery in the first place let alone shooting victims on resisting such robbery. As was held in the case of Dadullah (Supra);

"Death sentence in a murder case is a normal penalty and the Courts while diverting towards lesser sentence should have to give detailed reasons. The appellants have committed the murder of two innocent citizens and also looted the bank in a wanton, cruel and callous manner. Now a days the crime in the society has reached an alarming situation and the mental propensity towards the commission of the crime with impunity is increasing. Sense of fear in the mind of a criminal before embarking upon its commission could only be inculcated when he is certain of its punishment provided by law and it is only then that the purpose and object of punishment could be assiduously achieved. If a Court of law at any stage relaxes its grip, the hardened criminal would take the society on the same page, allowing the habitual recidivist to run away scot-free or with punishment not commensurate with the proposition of crime, bringing the administration of criminal justice to ridicule and contempt. Courts could not sacrifice such deterrence and retribution in the name of mercy and expediency. Sparing the accused with death sentence is causing a grave miscarriage of justice and in order to restore its supremacy, sentence of death should be imposed on the culprits where the case has been proved.

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

"However, we may observe that the people are losing faith in the dispensation of criminal justice by the ordinary

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

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

21. Thus, all the sentences handed down to the appellant are maintained and the confirmation reference is answered in the affirmative.
22. The appeal and confirmation reference are disposed of in the above terms.

KJR
JUDGE 26/08/22

Ali
JUDGE
26/08/2022.