

CERTIFICATE OF THE COURT IN RESPECT OF

SINDH HIGH COURT

Spl. Cr. A.T.A. NO. 14/2007 of C.C. 04/07.

Composition of Bench.

~~Single/D.B.~~

Justice Muhammed Kasim Khan Agha. J.

Dates of hearing: 25/03/20 and 26/03/20

Decided on (i) 09/04/20

(a) Judgment approved for reporting.

Yes
~~No~~



CERTIFICATE

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

*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

HIGH COURT OF SINDH AT KARACHI

Spl. Crl. Anti-Terrorism Appeal No.14 of 2007.
Confirmation Case No.04 of 2007.

Present:

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

Appellants 1. Aziz Khan son of Gella Khan
2. Mangla Khan son of Gella Khan both
through Shaikh Jawaid Mir, Advocate.

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

Date of hearing: 25.03.2020 and 26.03.2020

Date of Announcement 09.04.2020.

J U D G M E N T

Mohammad Karim Khan Agha, J:- Accused Aziz Khan son of Gella Khan and Mangla Khan son of Gella Khan were tried by learned Judge, Anti-Terrorism Court No.V, Karachi in Special Cases No. 37 of 2005 arising out of Crime No.145/2005 u/s. 302/324/427/109/34 PPC, 3/4 Explosive Substances Act 1908 r/w. Section 7 ATA 1997 registered at PS Artillery Maidan (South) Karachi. After trial vide judgment dated 31.05.2007 the appellants Aziz Khan and Mangla Khan were convicted and sentenced as under:-

- a) For causing death of deceased Sabz Ali, Iftikhar Ahmed, Jawed Iqbal and Noor Rehman, by bomb blast both the accused persons Abdul Aziz Khan and Mangla Khan are awarded death sentence on each count u/s. 7(a) of the Anti-Terrorism Act, 1997.
- b) For causing serious injuries to injured 1) Faisal s/o Dilawar Hussain, 2) Muhammad Aslam s/o Kafeel Ahmed, 3) Noor ur Rehman s/o Rahim u Din, 4) Ilyas so/o Farzand, 5) Allah Ditta s/o Saifal Khan 6) Asad Ali s/o Muhammad Amin, 7) Asif s/o Ahmed Ali, 8) Saeed Ahmed s/o Abdul Qadir, 9) Muhammad Sabir s/o Abdul Latif, 10) Muhammad Riaz s/o Sirraj, 11) Hassan Ali Khan s/o Rahmat-u-llah, 12) Sabz Ali s/o Zargoos Shah, 13) Iftikhar Ahmed s/o Mir Afzal, 14) Khan Bahadur s/o Nadir Khan, 15) Nasir s/o James Masih, 16) Sirraj s/o Noor Ali, 17) Mir Zaman s/o Noor-u-llah, 18) Javed Iqbal s/o Noor Khan, 19) Lious Meja, 20) Mst. Sadhwa w/o Pursee, and 21) Kashif Muhammad s/o Ikram-ur-

Rahman, punishable u/s.7(c) of Anti-Terrorism Act, 1997 are each sentenced to suffer R.I. for 10 (ten) years and pay the fine of Rs.50,000/- (Fifty Thousand) to each injured.

- c) For causing of explosive bomb blast punishable u/s. 3 of the Explosive Substances Act, 1908 both the accused persons sentenced to suffer imprisonment for life and their whole properties are directed to be forfeit to the Government as provided u/s. 5-A of the Explosive Substances Act, 1908.
- d) For causing explosion by bomb blast which damaged the building of Muslim Commercial Bank and PIDC House, so also to the 08 vehicles parked there punishable u/s.7(d) of Anti-Terrorism Act, 1997 and sentence each of them to suffer R.I. for 10(ten) years and to pay fine of Rs.50,000/- (Rupees Fifty Thousand) each.
- e) For committing an offence for creating sense of fear and insecurity in the minds of general public as well as business community punishable u/s. 7(i) of Anti-Terrorism Act, 1997 and sentence each of them to suffer R.I. for 05(five) years and to pay fine of Rs.10,000/- each.

All the sentences are directed to run concurrently. The sentence of death awarded to accused persons are subject to the confirmation by the High Court of Sindh.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.V, Karachi, the aforesaid appeals have been preferred by the appellants.

3. The brief facts of the prosecution case are that on 15.11.2005 at about 1015 hours the complainant SHO Farooq Umer lodged FIR through his 154 Cr.P.C statement stating therein that he was patrolling the area along with his subordinates in police mobile van. That when he reached at Dr. Ziauddin Ahmed Road near Polo ground at about 0845 hours, he heard noise of blast from the side of PIDC House, Karachi and as such, he immediately reached there and saw that a car bearing Registration No.ACB-490 having Bogus No.AEG-087 (which he knew through its Engine No.B-214704) in which bomb was exploded in front of Muslim Commercial Bank, PIDC House, Karachi. Due to said explosion many vehicles were burnt i.e. Car Nos.ABZ 634, ACS-483, AFM-459, AFM-978, ACV-344, AGS-522, AJH-139 and AHN-643 whereas the car in which the explosive device was planted was totally destroyed. The passers by and security guards of PIDC house and Muslim Commercial Bank namely 1)

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Faisal s/o Dilawar Hussain, 2) Muhammad Aslam s/o Kafeel Ahmed, 3) Noor-ur-Rehman s/o Rahim-u-Din, 4) Ilyas s/o Farzand 5) Allah Ditta s/o Saifal Khan, 6) Asad Ali s/o Muhammad Amin, 7) Asif s/o Ahmed Ali, 8) Saeed Ahmed s/o Abdul Qadir, 9) Muhammad Sabir s/o Abdul Latif, 10) Muhammad Riaz s/o Sirraj, 11) Hassan Ali Khan s/o Rahmat-ullah, 12) Sabz Ali s/o Zargoos Shah, 13) Iftikhar Ahmed s/o Mir Afzal, 14) Khan Bahadur s/o Nadir Khan, 15) Nasir s/o James Masih, 16) Sirraj s/o Noor Ali, 17) Mir Zaman s/o Noor-ullah, 18) Javed Iqbal s/o Noor Khan, 19) Lious Meja, 20) Mst. Sadhwa w/o Pursee, and 21) Kashif Muhammad s/o Ikram-ur-Rahman received injuries as a result of the bomb blast. The nearby building of PIDC i.e. Muslim Commercial Bank and KFC were also damaged. Injured Sabz Ali, Iftikhar Ahmed, Javed Iqbal and Noor Rehman succumbed to their injuries prior to reaching hospital.

4. After registering the case the I.O. started investigation. On 16.11.2005 at about 1545 hours the I.O. came to know through SIO Police Station Gulshan-e-Iqbal, Karachi that accused of the instant crime are confined in another case Crime Nos.582/05 to 585/05 u/s 4/5 Explosive Substances Act and Arms Ordinance at Police Station Gulshan-e-Iqbal, Karachi. On interrogation by the I.O. both the accused persons admitted their involvement in this case, hence they were duly arrested in present case in presence of SIP Ajmal Awan and SIP Muhammad Islam after completing legal formalities.

5. After completion of the investigation the I.O. submitted charge sheet before the trial court and the trial court forwarded both accused persons in judicial custody whilst placing the names of absconding co-accused Behram Daagh son of Rehan Bugti and Abdul Hameed son of Ali Murad in column No.2 with red ink as absconders. Thereafter formal charge was framed and read over to the accused persons, to which they pleaded not guilty and claimed to be tried.

6. To prove its case the prosecution examined 30 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. Statements of the accused persons were recorded u/s 342 Cr.P.C in which they denied all the allegations leveled against them and pleaded false implication.

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7. Learned Judge, Anti-Terrorism Court No.V, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 31.05.2007, convicted and sentenced the appellants as stated above, hence these appeals have been filed by the appellants against their convictions.

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 appellants has contended that the whole of the evidence given by the prosecution witnesses has been manipulated by the police in that their timings are not precise, that there are contradictions where the engine was found, that the arrest of the accused was doubtful, that the appellants retracted judicial confessions were not made in accordance with the law laid down for making confessions and as such they cannot be relied upon, that the evidence of the eye witnesses cannot be relied upon, that even otherwise the identification parade is hopelessly flawed as it has not been carried out in accordance with the law and as such cannot be relied upon and as such the appellants for any of the above reasons should be acquitted of the charge by extending them the benefit of the doubt. In support of his contentions he placed reliance on **Irfan alias Shani v. The state and another** (2020 YLR 372), **Hakeem and others v. The State** (2017 SCMR 1546), **Usman Ali v. Additional Sessions Judge, Toba Tek Singh and 9 others** (2017 P.Cr.LJ 155), **Allah Warrayo v. Mst. Ladan and 3 others** (2020 MLD 334), **Abdul Haq and others v. The State** (2020 SCMR 116), **Naeem alias Titu and 4 others v. The state** (2020 YLR 74), **Noor Islam v. Ghani-ur-Rehman and another** (2020 SCMR 310), **Mst. Nazia Anwar v. The state and others** (2018 SCMR 911), **Sabir Ali alias Fauji v. The State** (2011 SCMR 563), **Shafqat Mehmood and others v. The State** (2011 SCMR 537), **Muhammad Ayaz and others v. The State** (2011 SCMR 769), **Nazir Ahmad v. Muhammad Iqbal and another** (2011 SCMR 527), **Sarfraz alias Mattu v. The State** (2005 YLR 980), **Pir Noroz Ali Shah v. The State** (2019 P.Cr.LJ 457), **Muhammad Akram v. The State** (2009 SCMR 230), **Muhammad Mansha v. The State** (2018 SCMR 772), **Kanwar Anwaar Ali, Special Judicial Magistrate: in the matter of Criminal**

Miscellaneous Application No.183 of 2019 in Criminal appeal No.259 of 2018 (PLD 2019 Supreme Court 488), **Mst. Asia Bibi v. The State and other** (PLD 2019 Supreme Court 64), **Mian Sohail Ahmed and others v. The State and others** (2019 SCMR 956), **Wazir v. The State and another** (2019 SCMR 1297), **Wajeeh-ul-Hassan v. The State** (2019 SCMR 1994), **Muhammad Ashraf alias Acchu v. The State** (2019 SCMR 652), **Abdul Jabbar and another v. The State** (2019 SCMR 129), **Gangoo Ram v. The State** (2003 P. Cr.LJ 1608), **Muhammad Afzal alias Abdullah and another v. State and others** (PLJ 2009 SC 333) and **Dhani Bux alias Dhanoo and 2 others v. The State** (2000 P Cr.LJ 239).

10. On the other hand learned APG appearing on behalf of the State has fully supported the impugned judgment and in particular contended there is no doubt where the engine was found as its chassis number is mentioned in the FIR which was lodged without delay and that the engine was recovered outside of the car as confirmed by the PW's, that it had been recovered by the time the BDU expert arrived, that the time differences were minor, that the retracted judicial confessions were made voluntarily and can be relied upon, that the eye witnesses were reliable, trust worthy and confidence inspiring and had correctly identified the appellants as being the persons who parked the car with the bomb in it and had correctly identified them at the identification parade which was carried out in accordance with the law; that the appellants were seen getting out of the car which held the car bomb which shortly thereafter exploded killing and injuring so many which engine was recovered, likewise the white corolla in which the appellants had made their escape good from the scene had been recovered on the arrest of the appellants whilst they were carrying unlicensed weapons and explosives, that the recoveries supported the prosecution case and as such the appeals against conviction should be dismissed and the confirmation reference answered in the affirmative. In support of his contentions he placed reliance on the **High Court Rules for conducting identification parades and recording confessions, Special Criminal ATA No.39, 40 and 41 of 2010 Muhammad Ashfaq & others V The State** dated 16.12.2019 (DB of Sindh High Court-Unreported), **Ghazanfar Ali @ Pappu and another V The State** (2012 SCMR 215), **Joygun Bibi V The State** (PLD SC 313), **Khan Muhammad and others V The State** (1999 SCMR 1818), **Muhammad Amin V The**

State (PLD 2006 SC 219), **The State V Minhun alias Gul Hassan** (PLD 1964 SC 813), and **Raz Muhammad V The State** (PLD 2002 SC 56).

11. 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.

12. In our view after our reassessment of the evidence based on the evidence of the PW's especially, PW MLO's, post mortem reports and other medical evidence, PW police witnesses especially the BDU expert and his report and IO, recoveries made by the BDU expert on the spot. other PWs' and engine of the car which was used as a car bomb along with No. plates of other damaged vehicles, damage to surrounding properties and the recovered CD which showed the blast we are satisfied that the prosecution has proved beyond a reasonable doubt that on 15.11.2005 at about 0845 hours a car bearing registration No.ACB-490 having Bogus No.AEG-087 planted with a bomb in front of Muslim Commercial Bank , PIDC House Karachi was exploded causing serious injuries to 1) Faisal s/o Dilawar Hussain, 2) Muhammad Aslam s/o Kafeel Ahmed, 3) Noor-ur-Rehman s/o Rahim-u-Din, 4) Ilyas s/o Farzand 5) Allah Ditta s/o Saifal Khan, 6) Asad Ali s/o Muhammad Amin, 7) Asif s/o Ahmed Ali, 8) Saeed Ahmed s/o Abdul Qadir, 9) Muhammad Sabir s/o Abdul Latif, 10) Muhammad Riaz s/o Sirraj, 11) Hassan Ali Khan s/o Rahmat-u-llah, 12) Sabz Ali s/o Zargoos Shah, 13) Iftikhar Ahmed s/o Mir Afzal, 14) Khan Bahadur s/o Nadir Khan, 15) Nasir s/o James Masih, 16) Sirraj s/o Noor Ali, 17) Mir Zaman s/o Noor-u-llah, 18) Javed Iqbal s/o Noor Khan, 19) Liou Meja, 20) Mst. Sathwa w/o Pursee, and 21) Kashif Muhammad s/o Ikram-ur-Rahman of whom injured Sabz Ali, Iftikhar Ahmed, Jawed Iqbal and Noor Rehman succumbed to their injuries and died prior to reaching hospital and damaging the building of Muslim Commercial Bank and PIDC House, and 08 vehicles parked there. This position is admitted by counsel for the appellants and APG.

13. The only issue therefore, in our view, left before us is whether the appellants were the persons who left the car bomb in front of Muslim Commercial Bank, PIDC House Karachi which exploded causing serious

injuries to 17 people mentioned above and murdered 4 other people mentioned above and caused damage to property.

14. In our view after our reassessment of the evidence we find that the prosecution has been able to prove beyond a reasonable doubt that the appellants (Aziz Khan and Mangla Khan) were two of the persons who left the car bomb in front of Muslim Commercial Bank, PIDC House Karachi which exploded causing serious injuries to 17 people mentioned above and murdered 4 other people mentioned above and damaged property as mentioned above for the following reasons;

- (a) In our view there is no unexplained delay in lodging the FIR after the incident which could have lead to concocting a false case against the appellants. The FIR was lodged with promptitude bearing in mind the chaos and confusion then prevailing with the priority to get people to hospital and save their lives. The FIR did not name anybody and hence there was no attempt to fix anybody in a false case. The slight time differences given by the prosecution witnesses are only minor in nature and are to be expected over the passage of time and the fact of the chaos then prevailing and in our view are inconsequential and do not lead to the conclusion that the prosecution witnesses manipulated the case. With regard to the engine of the blown up car the evidence on record reveals that this was found at the scene over 107 feet from the car used in the blast as confirmed by the sketch prepared by the tapedar. The chassis no. is mentioned in the FIR which was lodged promptly, the engine was recovered and a careful reading of the prosecution evidence especially PW 4 Farooq Umer where he states that it was incorrect that the engine was 100 feet away and the engine was fitted in the car and not inside the car at the time reveals that there is no contradiction regarding the engine being inside the car after the explosion
- (b) In our view the foundation of the prosecution case against the appellants rests on **two key** pieces of evidence (i) Whether we can safely rely on the retracted judicial confessions of both the appellants **and** (ii) the eye witnesses evidence in terms of whether the eye witnesses have been able to correctly identify the appellants. We will deal with each aspect individually in turn.

(c)Turning firstly to the retracted judicial confessions:

(i) the two later retracted judicial confessions made by appellants (Aziz Khan and Mangla Khan) for ease of reference are set out below:

S.164 Statement of Aziz Khan.

"We have committed this offense on the insistence of Sardar people. I Abdul Aziz accompanied with Behram, Hameed and Mangla Khan had parked the white vehicle laden with explosive alongside PIDC and went away"(bold added)

S.164 Statement of Mangla Khan.

"We have committed this bomb blast on the insistence of Sardar Bugti" (bold added)

(ii) It is settled law that a retracted judicial confession can be legally admissible and used against its maker in certain circumstances. In the case of **Muhammad Amin v. The State** (PLD 2006 Supreme Court 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)

(iii) 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**.

(iv) Notably it was also held that if both (a) and (b) were satisfied that even if there were some irregularities in recording of a confession it would not warrant disregarding of the same.

(v) 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 effected the voluntariness or truthfulness of the confession.

(vi) In our view based on the evidence of **PW 24 Khushi Muhammed** who was the judicial magistrate who recorded the confessions of the appellants the judicial confessions have been made voluntarily without threat or inducement and the confessions are truthful when based in the context of the prosecution case and other corroborative material which we will discuss later. Even the appellants in their S.342 Cr.PC statements did not claim that the statements had not been made voluntarily and it was not suggested otherwise during cross examination of the judicial magistrate. Likewise the appellants only claim in their S.342 Cr.PC statements that they were not taken out of the police mobile for their identification parades. **They do not mention not being present at the time of their confessions.** Instead they claim that they either signed blank pieces of paper or they did not understand urdu as they were Balochi. The judicial magistrate has denied that the appellants could not understand urdu likewise PW 30 Muhammed Tariq who was the IO.

(vii) In our view if there are any irregularities in recording the confessions these are only minor in nature for example the appellants were both sent to judicial custody after recording their confessions although they were not informed of this prior to making their confessions and have no bearing on the voluntariness and truthfulness of the confessions and can be ignored **and thus we rely on both of the retracted judicial confessions to the extent of both the appellants parking the car bomb outside the PIDC building shortly before it exploded** injuring 17 people and murdering 4 people. In the case of **Raz Muhammad v. The State** (PLD 2002 Supreme Court 56) it was held that a delay in recording a judicial confession would not be fatal. In this case the judicial confessions were made within 3 weeks of the arrest of the appellants

(viii) Other corroborative material in respect of the retracted judicial confessions of the appellants can be found in the fact that the blast came from a car parked outside PIDC house and that car was filled with explosives as per the evidence of most of the police PW's and in particular PW 22 Muhammed Iqbal the

BDU expert, his recoveries at the scene being "1. Coiled Spring for Timer, 2. Electrical coil with length of wire, 3. Pieces of metal recovered near the crater (No other residue after full-fledged blast found), Detail of Crater: One and half feet into 04 feet. All round at the place of blast" and his report and the CD which was recovered on the spot and showed the blast.

(d)Turning to the identification of the appellants.

(i) **Eye witness PW 25 Zahir Shah** was a taxi driver for the last 40 years who according to his evidence on the day of the incident (15.11.2005) had picked up a passenger and had dropped him at PIDC house near MCB at about 8.45 am and was waiting outside PIDC house for his passenger who did not have change to go to his office and return to pay his fare. Whilst he was waiting a biscuity coloured Suzuki Mehran came which was parked by two persons. The police asked him to move his taxi (which corroborates the next PW eye witness traffic police men Muhammed Ashraf). Whilst he was standing in front of the MCB he saw two persons get out of the biscuity coloured Suzuki Mehran who got into a white corolla car and left towards the bridge. (The sketch of the incident drawn up by PW 17 Jamil Ahmed shows the MCB to be just in front of where the eye witness and his taxi was waiting and was where the Suzuki car was parked by the appellants). He saw the bomb explode in the biscuity coloured Suzuki Mehran from which the two men he saw had alighted and got into the white corolla. The engine of the car fell near his taxi. He gave his S.161 Cr.PC statement on the same day within a few hours and stated that he could recognize the persons if they were again brought before him. His presence at the scene is also corroborated by PW 30 Muhammed Tariq who is the IO who states in his evidence that after reaching the scene, "I started getting information from the public mean while one taxi driver Zahir Shah informed the detail of incident in whose presence the incident took place. I recorded his S.161 Cr.PC statement." In our view he was not a chance witness, he was an independent witness, it was a day light incident and eye witness PW 25 Zahir Shah got a good look at the men in the bisucity colored car which he was standing close to and said he could identify them if he saw them again. He had no enmity towards the appellants and had no reason to falsely implicate them in this case. He correctly picked out the appellant Aziz Khan at the identification parade and again in court. The fact that he failed to identify Mangla Khan and Abdul Jabbar in our view goes to his honesty in identifying the people he could remember at the identification parade which was carried out 7 days after

the incident. There may be some deficiencies in the conduct of the identification parade but in our view based on the particular facts and circumstances of this particular witnesses identification of the appellants these deficiencies are not particularly relevant as in our view the identification parade was not mandatory based on the particular facts and circumstances of this case. In this respect reliance is placed on **Ghazanfar Ali V The State** (2012 SCMR 215) which in relevant part at Para 13 at P.224 reads as under;

"Even otherwise the holding of identification parade is not mandatory and it is merely a corroborative piece of evidence. If the statement of a witness qua the identity of an accused even in Court inspires confidence, if he is consistent on all material particulars and there is nothing in evidence to suggest that he is deposing falsely, the absence of holding of identification parade would not be fatal to the prosecution. In Harbajan Singh v. State of Jammu and Kashmir ((1975) 4 Supreme Court Cases 480), the Court upheld the conviction where no identification parade had been held and observed that the failure to hold identification parade would not be fatal in cases where enough corroborative and conclusive evidence was available. A similar view was taken in Jadunath Singh v. State of U.P. ((1970) 3 Supreme Court Cases 518). (bold added)

With regard to deficiencies in the identification parade reliance is placed on **Muhammed Siddique V State** (2020 SCMR 342) which held as under at Para 5 which is set out below;

"5. Castigating severely the evidence of test identification parade, the learned counsel relied upon the guidelines laid down in the case of Kanwar Anwar Ali (PLD 2019 Supreme Court 488) to urge exclusion thereof. The supra case indeed a fine piece of juridical literature, nonetheless, does not extend much help to the convicts; it mainly addressed laconic approach adopted by a Magistrate in holding the test identification parade in the said case while highlighting general principles of law on the subject.

Test identification parade is a method of proof contemplated by Article 22 of the Qanun-i-Shahadat Order, 1984, reproduced below for the convenience of reference:-

"Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant

fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose".

The above framework provides enough space to admit evidence in prosecution of offenders **previously unacquainted with the victims or the witnesses**; appraisal of such evidence is subject to same principles as are universally applicable to any piece of evidence, under consideration in a criminal trial; there are no additional barricades as is evident from the plain reading of the Article *ibid*; without prejudice to the safeguards available to an accused at each stage of trial, essentially fair as guaranteed under the Constitution, nonetheless, it does **not** cast an artificially heavier onus on the prosecution to meet standards of proof beyond human capacity. **Each criminal case is to be decided having regard to its own peculiar facts and circumstances. A test to be essentially applied in one case may absolutely be irrelevant in another, as the crimes are seldom committed in identical situations; there may be cases wherein prosecution must assign distinct roles played during the occurrence by the culprits for determination of their guilt as well as consequences thereof, however, there are cases in which totality of transaction may not warrant reparability for such determination, like the one in hand. Cases involving abductions, dacoities and sudden assaults, more often than not, constitute episodes wherein different roles played by the culprits merge into integral totality of the crime, thus, it would be too harsh as well as unrealistic to demand exact reenactment of roles by the witnesses. Capacities even intellectually most sharp dwindle drastically in calamitous situations, therefore, the administration of criminal justice, in such peculiar situations, has to be dynamically balanced upon fair trial without prejudice to the accused as well as due weightage to the prosecution evidence without being swayed by illusory notions, subjectively structured upon hypothetical beliefs**

Having found the witnesses with no axe to grind, in a comfortable unison on all the salient features of the prosecution case as well as events collateral therewith, we do not feel persuaded by the arguments, **couched on hyper technical premise. Petitions fail. Dismissed.**" (bold added)

The case which we are currently deciding attracts the above dicta as it is a case of sudden assault. Even a delay in holding the identification parade of over a year was not fatal to the identifier correctly identifying the accused whilst in this case the identification parade was carried out within 7 days of the incident. In this respect reliance is placed on the case of **Solat Ali Khan v. The State** (2002 SCMR 820) and in any event evidence flowing from an identification parade is **only a corroborative piece of evidence** and cannot supersede reliable, trustworthy, confidence inspiring direct evidence. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857).

The eye witnesses presence at the scene was not challenged. He had an unobstructed view of the appellants when they got out of the Suzuki mehran car as is indicated in his evidence and the sketch. His evidence was not shattered during lengthy cross examination and we find his evidence to be reliable, trust worthy and confidence inspiring and **thus we believe the evidence of this witness in terms of his correct identification of both the appellants as being the persons who drove and got out of the car which later exploded injuring over 17 people and murdering 4 people and we rely on such evidence based solely on his eye witness testimony having given little weight to the identification parade as it was a joint identification parade.**

(ii) **Eye witness PW 26 Muhammed Ashraf** was a traffic constable on duty outside PIDC house at the time of the incident. According to his evidence at about 8.45 am on the day of the incident (15.11.2005) he was in front of NBP PIDC house when he saw 5 to 6 cars, a taxi and a **white corolla** illegally parked outside MCB. He told the **taxi driver** to move but the taxi driver said he was waiting for his fare (corroborates eye witness PW 25 Zahir Shah who was that taxi driver). He also told the **white corolla** to move but the driver said **he was waiting for his two companions who were parking there Suzuki car.** In his evidence he sates that he saw two persons getting out of the Suzuki Mehran car and get in the **white corolla** car which then left just prior to the **blast.** His presence on duty is corroborated by PW 21 Tariq Javed who deputed him to the PIDC traffic signal and produced **eye witness PW 26 Muhammed Ashraf's** daily dairy showing his presence. His presence is also corroborated by **PW 30 Muhammed Tariq** who was the IO and recorded his statement at the traffic chowki within hours of the incident on the same day and his presence at the scene was not challenged by the appellants. In our view he was not

a chance witness, it was a day light incident and eye witness PW 26 Muhammed Ashraf got a good look at the men in the Suzuki Mehran car which he was standing close to and said he could identify them if he saw them again. His S.161 statement was recorded within a matter of hours on the same day. He had no enmity towards the appellants and had no reason to falsely implicate the appellants in this case. He correctly picked out both the appellants at the identification parade and again in court. **The fact that he failed to identify Abdul Jabbar at the identification parade in our view goes to his honesty** in identifying the people he could remember at the identification parade which was carried out 7 days after the incident. Based on the particular facts and circumstances of this case keeping in view that each criminal case turns on its own particular facts and circumstances there was no need for an identification parade which in such circumstances was not mandatory. In this respect as mentioned above reliance is placed on **Ghazanfar Ali V The State** (2012 SCMR 215). There may be some deficiencies in the conduct of the identification parade but in our view based on the particular facts and circumstances of this particular witnesses identification of the appellants these deficiencies are not particularly relevant. In this respect reliance is again placed on **Muhammed Siddique V State** (2020) as mentioned above.

The case which we are currently deciding attracts the above dicta as it is a case of sudden assault. Even a delay in holding the identification parade of over a year was not fatal to the identifier correctly identifying the accused. In this respect reliance is placed on the case of **Solat Ali Khan v. The State** (2002 SCMR 820) and in this case the identification parade was carried out within a week of the incident and in any event evidence flowing from an identification parade is **only a corroborative piece of evidence and cannot supersede reliable, trustworthy, confidence inspiring direct evidence**. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857).

His evidence was not shattered during lengthy cross examination and we find his evidence to be reliable, trust worthy and confidence inspiring and **thus we believe the evidence of this eye witness in terms of his correct identification of both the appellants as being the persons who parked and got out of the car outside PIDC house which later exploded injuring over 17 people and murdering 4 people and we rely on such evidence based solely on his eye witness testimony having given little weight to the identification parade as it was a joint identification**

parade.

(iii) eye witness **PW 26 Khushi Muhammed** is the judicial magistrate who recorded the confessions of the appellants and also conducted their identification parade. He recognized both the appellants in court as the accused whose judicial confessions he recorded and who were picked out of the identification parades which he held.

(e) All PW's corroborate themselves in all material respects. Even if there are any contradictions in their evidence and that of any other prosecution witness 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 appellants. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793)

(f) It is well settled by now that police witnesses are 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 there was none and the police witnesses had no reason to falsely implicate the appellants. No such enmity, ill will, malafide or personal interest was even suggested to the police witnesses or any other PW during their cross examination including the eye witnesses.

(g) That it was a day light incident.

(h) That when the appellants were arrested the next day they were found with illegal arms and ammunition and explosives in a white corolla.

(i) Although it is for the prosecution to prove its case beyond a reasonable doubt we have also considered the defense case which in effect is false implication. We disbelieve this defense case as the appellants claim to have been arrested in Hyderabad by law enforcement agencies yet they produced neither any witness nor any application to any competent authority to support this line of defense. It was simply a bald assertion. They do not deny being produced before the magistrate to make their confessions but only indicate either that they could not understand the confession as it was in urdu which they could not understand or they signed a blank piece of paper. Even otherwise **PW 30 Muhammed Tariq** who was the IO of the case who knew the appellants well as it was he who had interrogated them and took them before the magistrate for both their identification parades and confessions and has given evidence that they did understand urdu and **PW 26 Khushi Muhammed** in his evidence specifically denies that the accused did not understand urdu and he recorded their confessions and as such signing on blank paper does not arise. Furthermore, it does not appeal to reason, logic or commonsense that the appellants only spoke and understood Balochi as how would they have been able to explain anything to any body from the time of their arrest a day

after the incident? Neither of the appellants examined themselves on oath or called a single witness in support of his defense case and as such in the face of the overwhelming evidence against them especially in terms of their correct identification by reliable, trust worthy and confidence inspiring eye witnesses we disbelieve the defense case which has not raised a single doubt in our minds about the appellant's guilt and simply appears to be an after thought in order to save their skins.

15. Thus, for the reasons mentioned and discussed above and in particular the confessions of the appellants and their correct identification at the scene parking the car bomb and leaving just before it exploded by reliable, trust worthy and confidence inspiring eye witnesses and other corroborative evidence on record we find that the prosecution has proved its case beyond a reasonable doubt against both of the appellants and the convictions in the impugned judgment are upheld.

16. Now turning to the sentences to be imposed keeping in view that we have come to the conclusion that the prosecution has proved its case beyond a reasonable doubt against the appellants in terms of causing serious injury to 17 persons and murdering 4 persons in cold blood most of whom were civilians simply going about their daily business at 8.45am in the morning.

17. We have no doubt that this was a brutal and barbaric attack aimed at murdering innocent civilians in broad day light in a busy part of Karachi used by bankers and other office workers which was intended and designed to create fear and terror amongst the civilian and business community of the city and actually created such fear and terror and as such find that this was an act of terrorism falling under the purview of the ATA 1997.

18. The object of punishment under criminal law and penal jurisprudence can be for a number of purposes for example, reformatory, deterrent or retributive. The sentence which is handed down will depend on the particular facts and circumstances of each case and the individual accused and the manner in which he committed the crime, the heinousness of the crime and the motivation behind the crime, whether there are any mitigating or aggravating factors amongst other things and as such sentencing can never be mechanical. In this respect reliance is

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placed on **Muhammad Juman V State** (2018 SCMR 318).

19. Based on the facts and circumstances of this case keeping in view the brutality of the crimes which was to in effect set a car bomb off in broad day light in a busy business area of Karachi which seriously injured 17 and murdered 4 most of whom were innocent civilians going about their daily business and the total disregard for human life (be it man women or child) and property the motivation of which was to create terror and fear amongst a certain segment of the society, the complete lack of mitigating circumstances and in fact the presence of aggravating circumstances as mentioned earlier and the need to discourage such kind of offenses in Karachi which regrettably were most common at the time when these offenses were committed we are of the view that a deterrent sentence is the appropriate one and that no leniency is permissible.

20. In this respect reliance is placed on **Dadullah V State** (2015 SCMR 856) which at P.862 Para 9 held as under;

"9. Conceptually punishment to an accused is awarded on the concept of retribution, deterrence or reformation. The purpose behind infliction of sentence is two fold. Firstly, it would create such atmosphere, which could become a deterrence for the people who have inclination towards crime and; secondly, to work as a medium in reforming the offence. **Deterrent punishment is not only to maintain balance with gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society.** Concept of minor punishment in law is to make an attempt to reform an individual wrongdoer. However, in such like cases, where the appellants have committed a pre-planned dacoity and killed two person, no leniency should be shown to the culprits. Sentence of death would create a deterrence in the society due to which no other person would dare to commit the offence of murder. If in any proved case lenient view is taken, then peace, tranquility and harmony of society would be jeopardized and vandalism would prevail in the society. The Courts should not hesitate in awarding the maximum punishment in such like cases where it has been proved beyond any shadow of doubt that the accused was involved in the offence. Deterrence is a factor to be taken into consideration while awarding sentence, specially the **sentence of death.** Very wide discretion in the matter of sentence has been given to the courts, which must be exercised judiciously. **Death sentence in a murder case is a normal penalty and the Courts while diverting towards lesser sentence should have to give detailed reasons.** The appellants have committed the murder of two innocent citizens and also looted the bank in a wanton, cruel and callous manner. Now a days the crime in the society has reached an alarming situation and the mental propensity towards

the commission of the crime with impunity is increasing. Sense of fear in the mind of a criminal before embarking upon its commission could only be inculcated when he is certain of its punishment provided by law and it is only then that the purpose and object of punishment could be assiduously achieved. If a Court of law at any stage relaxes its grip, the hardened criminal would take the society on the same page, allowing the habitual recidivist to run away scot-free or with punishment not commensurate with the proposition of crime, bringing the administration of criminal justice to ridicule and contempt. Courts could not sacrifice such deterrence and retribution in the name of mercy and expediency. Sparing the accused with death sentence is causing a grave miscarriage of justice and in order to restore its supremacy, sentence of death should be imposed on the culprits where the case has been proved.

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

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

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

21. Likewise in the more recent cases of *Tariq Iqbal V State* (2017 SCMR 594) and *Khalid Mehmood V State* (2017 SCMR 201) the Supreme Court has confirmed the death penalty in cases of a brutal and merciless nature as in this case.

22. As such we uphold all the sentences for each offense in the

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impugned judgment and answer the confirmation reference 04/2007 in respect of appellants Aziz Khan and Mangala Khan in the affirmative and uphold the death sentences handed down to the appellants in the impugned judgment whilst dismissing these appeals.

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

MAKPS