

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Cr. A.T. Jail Appeal No. 84 of 2023

Present:

Justice Zafar Ahmed Rajput

Justice Tasneem Sultana

Appellant : Imtiaz Hussain @ Muhammad Fayaz s/o
Muhammad Riaz Rind Baloch, through
Mr. Shaharyar Ali Daud, advocate.

Respondent : The State, through Mr. Abrar Ali Khichi,
Additional Prosecutor General, Sindh.

Date of hearing : 11.03.2025

Date of Judgment : _____

J U D G M E N T

TASNEEM SULTANA, J. Through this consolidated Spl. Cr. A.T. Jail Appeal, appellant, Imtiaz Hussain @ Muhammad Fayaz, has assailed the common judgment dated 05.04.2023, passed by the Anti-Terrorism Court No. XV, Karachi in Special Cases No. 30 and 30-A of 2022 (*Old Special Cases Nos. 1709 & 1710 of 2016*) arisen out of F.I.R. Nos. **357 of 2016** and **358 of 2016**, registered at P.S Korangi, Karachi, under sections 302/34, PPC r/w section 7, Anti-Terrorism Act, 1997 (“**Act of 1997**”) and section 23(1)(a), Sindh Arms Act, 2013 (“**Act of 2013**”), respectively, whereby he was convicted and sentenced, as under:-

- (i) *for offence under section 302(b), P.P.C., the appellant shall suffer imprisonment for life and pay compensation of Rs. 2,00,000/- to be paid to the LRs of the deceased as provided under section 544(A), Cr.P.C, and in default thereof, appellant shall undergo R.I. for six months more;*
- (ii) *for offence under section 7(1)(a) of A.T.A, 1997, appellant shall suffer imprisonment for life and pay compensation of Rs. 2,00,000/- to be paid to the LRs of the deceased as provided under section 544(A), Cr. P.C, and in default thereof, appellant to undergo R.I. for six months more;*
- (iii) *for the offence under section 23(1)(a) of the Sindh Arms Act, 2013, appellant shall undergo R.I for seven years and to pay a fine of Rs.50,000/-, in default thereof, appellant shall suffer S.I. for six months more.*

All the sentences were ordered to run concurrently and the benefit of section 382-B, Cr. P.C. was extended to appellant.

2. Briefly stated facts of the prosecution case are that, on 21.09.2016, complainant Muhammad Younis recorded his statement under section 154, Cr. P.C, which was later on incorporated into F.I.R. referred to above, wherein he disclosed that, on 20.09.2016, his brother Muhammad Yousuf left the house on his motorcycle at about 07.30 p.m. for getting the mobile phone of his son repaired, who received fire-shot on his head from behind made by two unknown persons boarded on a motorcycle at link road opposite Ittehad Floor Mill, Korangi No.04, Karachi; as a result thereof, he died and his dead body was taken by the persons present there through ambulance to Jinnah Hospital, Complainant also reached at hospital and found the dead body of his brother lying in mortuary.

3. Initially I.O. submitted charge sheet against the appellant by showing him as absconder. On 02.12.2016, appellant was arrested from Central Jail Bakhar, Punjab. On 22.12.2016, second I.O. submitted supplementary charge sheet against appellant. The necessary documents in compliance of section 265-C, Cr. P.C. were provided to him. An application under section 21-M of the Act of 1997 was moved by the District Public Prosecutor for amalgamation of both the cases for joint trial, which was allowed, vide order dated 10.10.2017. The Trial Court framed the formal charge against the appellant, to which he pleaded not guilty and claimed to be tried.

4. To prove its case, prosecution examined fourteen witnesses; **PW-1** Muhammad Younis, complainant, examined at Ex-7, he produced memo of inspection of dead body, inquest report, handing over the dead body to the brother of deceased, his 154 Cr.P.C. statement, FIR No.357 of 2016 and memo

of visiting of place of incident at Ex-7/A to 7/F respectively; **PW-2** SIP Muhammad Akram Qaimkhani examined at Ex-9, he produced entry No.24, letter issued to the MLO for post mortem of deceased, recovery of an empty of 30 bore pistol from place of incident and entry No.25 at Ex-9/A to Ex-9/D respectively; **PW-3** Abdul Hakeem, Judicial Magistrate examined at Ex-10, he produced request letter of I.O., order passed thereon and identification test at Ex-10/A and Ex-10/B respectively; **PW-4** Nadir Ali Khan Lodhi examined at Ex-11; **PW-5** Syed Ali Raza examined at Ex-12; **PW-6** Arsalan Shaikh examined at Ex-14; **PW-7** Inspector of FSL, Rana Hassan Javed examined at Ex-15, he produced letter dated 26.09.2016 of the then I.O. and examination report of arms and ammunitions at Ex-15/A and Ex-15/B respectively; **PW-8** ASI Zulfiqar Ali examined at Ex-16, he produced entry No.30, memo of arrest and recovery of accused, entry No.32, FIR No.358 of 2016, memo of place of incident at Ex-16/A to Ex-16/E, respectively; **PW-9** Inspector Abdul Wasay Jokhio examined at Ex-17, he produced entries Nos.26 & 29, application moved to JM-XXI, Karachi-East for identification test, notices issued to PWs Arsalan Ahmed and Syed Ali Raza, notice issued to both the accused, letter issued to FSL Incharge, notice issued to Incharge CIA/CRO, CRO of accused Imtiaz Hussain, application moved to Incharge CPLC, entry No.8 and letter of DIGP, East Zone, Karachi dated 22.1.2014 at Ex-17/A to Ex-17/L, respectively; **PW-10** PC Fahad examined at Ex-18; **PW-11** MLO Dr. Shahzad Ali examined at Ex-19, he produced postmortem report and death certificate of deceased Muhammad Yousuf Lodhi at Ex-19/A and Ex-19/B, respectively; **PW-12** ASI Ali Akbar examined at Ex-21, he produced departure entry for Punjab bearing No.29, memorandum of arrest of appellant Imtiaz Hussain and entry No.18 at Ex. 21/A to Ex-21/C, respectively; **PW-13** SIP Muhammad Abid examined at Ex-25, he produced permission for sending police party outside Province containing 6 leaves, permission from District & Sessions Judge Bakhar and

Magistrate of Tehsil Bakhar at Ex-25/A to Ex-25/C respectively; **PW-14**, I.O DSP Parvez Akhtar examined at Ex-26, he produced order of SSP Investigation-III, Korangi East Zone, Karachi regarding entrusting of the investigation to him, letter issued to Chemical Examiner Sindh, Karachi, chemical report of clothes, FSL report of 30 bore empty, FSL report of the arms and ammunitions recovered from the accused person, request to SSP Investigation Korangi-III, Karachi for departure to Punjab and remand order dated 10.12.2016 of accused Imtiaz Hussain at Ex. 26/A to Ex-26/G, respectively. The Trial Court recorded the statement of the appellant under section 342, Cr. P.C and after hearing the learned counsel for the respective parties and perusing the record found the appellant guilty of the charge and thus convicted and sentenced him vide judgment, dated 28.09.2020. Being aggrieved by the said judgment, the appellant filed Special Criminal Anti-Terrorism Jail Appeal No. 200 of 2020, which was allowed by this Court, vide order dated 28.03.2022, setting aside the said judgment and remanding the case to the Trial Court for limited purposes of re-recording the evidence of PWs-06 & 12 in the presence of the counsel for the appellant and appellant's 342, Cr. P.C statement and to render fresh judgment. The Trial Court, thereafter, recorded the evidence of PWs-6 & 12, so also, statement of appellant under section 342, Cr. P.C, wherein he denied the allegations against him and claimed to be innocent. He, however, neither examined himself on oath to disprove prosecution's allegations, nor even led any evidence in his defence. The Trial Court after hearing the learned counsel for the appellant as well as A.P.G convicted the appellant and sentenced him as mentioned above, vide impugned judgment, dated 05.04.2023.

5. We have heard the learned counsel for the appellant as well as Addl. P. G and scanned the material available on record with their assistance.

6. The learned counsel for the appellant *inter-alia* has contended that the Trial Court failed to appreciate law and facts involved in this case and it has not considered the material contradictions in the statements of the prosecution witnesses, which have created serious doubts in the prosecution case; that the name of accused did not transpire in the contents of FIR and even the complainant is not an eye-witness of the incident; that both the alleged eye-witnesses, namely, Ali Raza and Arsalan have failed to establish their presence at the crime scene at the time of alleged incident through reliable evidence; that the evidence produced by the prosecution is inconsistent and since the prosecution failed to establish its case against the appellant, the conviction recorded and the sentence awarded by the Trial Court on the basis of such evidence is bad in law and facts. In support of his contentions, he has placed his reliance on case law reported as Maqsood Alam & others v. The State (2024 SCMR 156), Muhammad Riaz v. Khurram Shahzad (2024 SCMR 51) and Imtiaz Latif v. The State (2024 SCMR 1169).

7. Conversely, learned Addl. P.G. while supporting the impugned judgment, has maintained that the prosecution has proved its case through ocular, circumstantial and medical evidence; that the appellant with the collusion of another deceased accused Abdul Malik had acted like a hardened criminal and as a result of firing HC Muhammad Yousuf Lodhi was killed; that after arrest of the appellant and co-accused, the I.O. produced them before the Administrative Judge, ATCs, Karachi for remand and in the meanwhile pistol of I.O was stolen, and when the appellant and co-accused were being brought back to police station, they reached Causeway, Malir Nadi, where appellant fired at police party from the said pistol, causing murder of PC Rafique and injuries to PC Daim Khan; that after committing another offence the accused persons escaped away from police custody, for which FIR No.842 of 2016 was

registered at same police station and the appellant was then arrested on 02.12.2016 and, thereafter, the trial was commenced and he was convicted.

8. Before reappraisal of evidence, we deem it appropriate to mention the case of prosecution in chronological order, as under: -

i. On 21.09.2016, at 2110 hours, complainant lodged the FIR against unknown accused for murder of his brother HC Muhammad Yousuf Lodhi. Date, time and place of incident were mentioned in the FIR. Numbers of accused persons were disclosed as two, who were riding on a motorcycle.

ii. On 21.09.2016, in evening, eye-witnesses Ali Raza and Arsalan appeared before the I.O Abdul Wasay and disclosed that they were available at the spot and witnessed the incident.

iii. On 22.09.2016, ASI Zulfiqar of same Police Station on spy information apprehended the appellant and co-accused Abdul Malik from inside road of Sector 34/3, Korangi No. 2 1/2, Karachi and recovered unlicensed weapons from their possession.

iv. On 27.09.2016, PWs Ali Raza and Arsalan identified the appellant and co-accused Abdul Malik, as accused in the identification test held before Judicial Magistrate.

9. In the case vide **Crime No. 357 of 2016**, there is no other view that the deceased died unnatural death. In this regard, medical evidence has been brought on record by PW-11 Dr. Shahzad Ali, who has produced post-mortem report (Ex.19/A), which suggests that the victim received firearm injury on occipital region, causing his death.

10. The ocular account of the incident has been furnished by PW-5 Ali Raza (Ex.12) and PW-6 Arsalan (Ex.14). PW Ali Raza has deposed that on 20.09.2016, at about 8.45 pm, he was waiting at CPLC Check Post for transport, when he noticed that two motorcycles passed in-front of him; that

on first motorcycle, a person wearing light green shalwar kameez with “P” cap was riding and, next to his motorcycle, two boys were sitting on another motorcycle, who speedily reached beside the motorcycle going ahead; that the pillion rider of the second motorcycle, took out a pistol and made a fire-shot on the motorcyclist wearing “P” cap, who after receiving fire-shot on his neck fell down on the ground and the accused ran away. PW-6 Arsalan has deposed that on 20.09.2016, at about 8.45 pm, after attending his duty, he was waiting for his friend outside the factory on the road near CPLC Check Post, where alleged incident took place. He has corroborated the evidence of P.W-5, Ali Raza. Both eye-witnesses have identified the present appellant before the Trial Court by stating that he was riding on the motorcycle at the time of incident. During lengthy cross-examination, the evidence of said eye-witnesses remained unshattered, steadfast and unmoved on their stand about the incident and role of appellant. Hence, the ocular account given by these two witnesses appears to be true, natural, trustworthy and confidence inspiring, while the defence failed to extricate anything harmful to the prosecution case. Both PWs satisfactorily explained their presence at the crime scene; their testimony being chance witnesses is natural and in conformity with the ocular, circumstantial and medical evidence, which cannot be discarded on any ground. Admittedly the said eye-witnesses did not know the appellant and co-accused before the incident; neither they had any relation with the victim or complainant. Even no suggestion from defence is available that the complainant or the police arranged them malafidely, and there is no reason whatsoever for falsely implicating the appellant by them.

11. The identification test was held on 27.09.2016, wherein eye-witnesses, namely, PW-5 Ali Raza (Ex.12) and PW-6 Arsalan (Ex.14) duly identified the appellant. PW-3 Abdul Hakeem, Judicial Magistrate has mentioned requisite

details in identification test proforma (Ex.10/B) and he re-iterated such facts in his evidence at (Ex.10).

12. The prosecution case also rests on circumstantial evidence i.e. recovery of empty from crime scene by PW-2 SIP Muhammad Akram (Ex.9), who has deposed that he visited crime scene and secured one empty of 30 bore under memo (Ex.9/C). PW-7 Inspector Rana Hassan Javed, produced FSL report (Ex.15/B), which verifies that one 30 bore empty secured from crime scene matched with the pistol recovered from co-accused Abdul Malik. It is worth noting that appellant was arrested on the same day and place from where said co-accused was also arrested. The appellant was driving the motorcycle when said co-accused, riding on pillion seat, fired on the victim. The appellant shared common intention as provided under section 34, PPC, which deals with the acts done by several persons in furtherance of common intention. It is well-settled now that when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for the act in the same manner as if it were done by him alone.

13. It also appears that, on 30.09.2016, when the appellant and co-accused Abdul Malik were brought for remand, they managed to steal pistol of I.O Abdul Wasay and fired on the police party, which resulted in death of PC Rafique and causing injuries to PC Daim. They then fled away from the police custody by snatching motorcycle from a passerby. For the said ghastly acts, two FIRs were registered against them bearing Nos. 842 & 843 of 2016 at P.S. Korangi, Karachi. Subsequently, co-accused Abdul Malik was arrested and on his pointation a raid was conducted for the arrest of appellant, which resulted in police encounter, wherein co-accused Abdul Malik died, however, appellant again made his escape good, who was then arrested from Central Jail Bakhar,

Punjab, where he was confined in number of criminal cases; he was brought to Karachi to face trial in the cases against him.

14. Record suggests that the appellant along with co-accused Abdul Malik committed qatl-e-amd of the deceased police official. The overall conduct of appellant shows that he is desperate and dangerous criminal and the facts and circumstances prove that his guilt comes within the purview of clause (o) of sub-section (2) of section 6 of the Act of 1997.

15. As regard case vide **Crime No. 358 of 2016**, it appears from the record that, on 22.09.2016, the appellant was arrested by PW-8 ASI Zulfiqar Ali (Ex-16) vide memo of arrest and recovery (Ex.16/B). At the time of his arrest, police recovered one unlicensed 30 bore pistol with magazine loaded with three live bullets from the possession of the appellant. PW-10, PC Fahad (Ex.18) and ASI Jan Muhammad acted as mashirs. PW-9 Inspector Abdul Wasay Jokhio, First I.O. (Ex-17) vide letter dated 26.09.2016 (Ex-17/A) sent the recovered arms and ammunition to Incharge FSL, Karachi. PW-7 Rana Hassan Javed, Inspector of FSL (Ex-15), has produced examination report of arms and ammunitions at Ex-15/B, which reflects that the pistole recovered from the possession of the appellant was in working condition. Both PW-8 ASI Zulfiqar Ali and PW-10, PC Fahad have fully implicated the appellant for possessing unlicensed pistol.

16. The case-laws relied on by learned counsel for the appellant are distinguishable from the facts of this case. In the case of *Maqsood Akhund* (supra) co-accused was already acquitted on same set of evidence and the parties in spite of knowing each other had not disclosed the names of accused. While, in the case of *Muhammad Riaz* (supra), an acquittal appeal, the Apex Court has observed that in appeal against acquittal the accused carries a

double presumption of innocence. In case of *Imtiaz Latif* (supra), the Apex Court has discussed the scope of A.T.C Law and merits of the said case.

17. In his arguments, learned counsel for the appellant has referred to some minor discrepancies and contradictions in the statement of the eye-witnesses. It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. If omission or discrepancy goes to the root of the matter, the defence can take advantage of the same, while appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have ring of truth. Minor discrepancies on trivial matters not effecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of prosecution case should be ignored. Reliance in this regard is placed on the case of *Imran Mehmood v. The State and another (2023 SCMR 795)*.

18. Pursuant to the above, we have come to the conclusion that the prosecution has established its case beyond the shadow of a doubt. The conviction and sentence recorded by the Trial Court is based on correct appreciation of evidence, which does not call for interference, therefore, the judgment of conviction and sentence is maintained, in result whereof instant Special Criminal Anti-Terrorism Jail Appeal is dismissed, accordingly.

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