

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Mr. Justice Omar Sial  
Mr. Justice Muhammad Hassan (Akber)

**Spl. Cr. Anti-Terrorism Appeal No. 03 of 2023**  
[Mehboob Akhtar Mian vs. The State]

**Spl. Cr. Anti-Terrorism Appeal No. 04 of 2023**  
[Abbas Bangash vs. The State & others]

**Confirmation Case No. 01 of 2023**  
[Reference made by the Judge, ATC No.16, Karachi  
for confirmation of death sentence against both the appellants]

Appellant : Mehboob Akhtar Mian  
through Mr. Muhammad Farooq,  
Advocate.

Appellant : Abbas Bangash  
through Mr. Iqbal Shah Khattak,  
Advocate.

Complainant : through Ms. Farah Khan, Advocate

Respondent : The State  
through Mr. Muhammad Iqbal  
Awan, Additional Prosecutor  
General, Sindh

Date of Hearing : 15.05.2025

Date of Decision : 27.06.2025

**JUDGMENT**

**Omar Sial, J:** The background to this case is convoluted.  
Nonetheless, it is as follows:

- a. A lady named Aziz Akhtar left for work at a beauty parlor at 10:30 a.m. on **03.10.2022**. Her family lost contact with her thereafter, and Aziz could not be located. On **Kareem Bux's** (Aziz's husband and PW-1) complaint, F.I.R. No.

546 of 2020 was registered on 06.10.2020 under section 496-A and 34 P.P.C.

- b. On **05.10.2021**, it was alleged that Abbas Bangash met a man named Rizwan (Aziz's son-in-law) and told Rizwan that Aziz Akhtar owed him money.
- c. On **23.03.2021**, Abbas Bangash was arrested by the police on spy information that he was the person responsible for the abduction of Aziz Akhtar.
- d. On **29.03.2021**, the deceased's family handed over a USB to the police that contained a conversation with Abbas Bangash in which Bangash demanded Rs. 500,000 to release the lady. Apart from the voice of Bangash, the other participants of the meeting were, Kareem Bux, Lala Fazal and Mujahid.
- e. On **10.04.2021**, Abbas Bangash led the police to a well inside a farm, from where Aziz Akhtar's dead body was recovered. Bangash told the police that he, with the help of Major Mehboob, Sarwar, Ali Hasan, and others, had strangled Aziz to death.

2. Both the accused pleaded not guilty and claimed trial. Prosecution examined **Karim Bux** (husband of deceased and a witness to the recovery of the dead body) as **PW-1**, **Fazal-ur-Rehman** (the person who was present at the time of recording of conversation) as **PW-2**, **Sadiq** (broker of property) as **PW-3**, **Liaquat Ali** (a driver working in Fouji Fertilizer) as **PW-4**, **Rizwan Muhammad** (son in law of deceased) as **PW-5**, **Orangzaib** (the person who had gone into the well to get the dead body) as **PW-6**, **Ishrat Ahmed Khan** as **PW-7**, **Noor-uddin** (original owner of the land where well is situated) as **PW-8**, **S.I. Wazeer Ali** as **PW-9**, **Mujahid Kareem** (a witness of the recovery of the dead body) as **PW-10**, **Muhammad Shafique** (a working of a textile mill) as **PW-11**, **Malik Muhammad**

**Arshad** (a worker of PSM) as **PW-12**, **Manzoor Hussain** (broker of property) as **PW-13**, **Muhammad Ilyas** (a barber) as **PW-14**, **S.I. Muhammad Shahban** as **PW-15**, **S.I. Naik Muhammad** as **PW-16**, **Nadeem Ali Bhutto** (the learned Judicial Magistrate who recorded Abbas's confessional statement under section 164 Cr.P.C.) as **PW-17**, **Tasneem Akram Malik** (the doctor who did the post-mortem) as **PW-18**, **S.I. Ahmed Butt** as **PW-19** and **P.I. Malik Muhammad Ashraf** (Investigating Officer of the case) as **PW-20**. Both appellants pleaded innocence in their respective section 342 Cr.P.C. statements.

3. At the end of the trial, both the accused were tried, convicted, and sentenced by the learned Anti-Terrorism Court No.16 at Karachi on 30.12.2022, as follows:

- (a) For an offence under section 365-A read with section 34 P.P.C., the accused was sentenced to death, and the properties of the accused were also forfeited.
- (b) For an offence under section 302 P.P.C., read with section 34 P.P.C., and sentenced to death.
- (c) For an offence under section 201 P.P.C. and sentenced to seven years in prison.
- (d) For an offence under section 465 P.P.C. and sentenced to two years in prison.
- (e) Both the accused were also directed to pay Rs . 200,000 each to the legal heirs as compensation as provided under section 544-A Cr. P.C.

4. We have heard the learned counsels for the appellants, the learned Additional Prosecutor General, and the learned counsel of the complainant. Their arguments, for brevity, are not being reproduced but are reflected in our findings and observations below.

5. Terrorism was not proved in this case. The fact that the offence with which Bangash was charged fell within the

schedule of the ATA does not ipso facto mean that it is a terrorism offence. A terrorism court has exclusive jurisdiction to hear and adjudicate cases that fall within the schedule of the ATA, but that does not necessarily mean that it must also convict under the terrorism law. Terrorism must be proved using the standards extensively and intensely analysed by the Supreme Court in **Ghulam Hussain vs The State (PLD 2020 SC 61)**.

6. It must also not lose sight of the fact that branding every case as a terrorism case without the requirements of terrorism being proved has a negative impact on the country among the nations of the world. The liberal branding of cases as terrorism raises a number. The world looks at these statistics before making many decisions. The country is also embarrassed when such a high number of terrorist cases in our country is cited to us.

7. The evidence against Bangash is three-fold. One was a USB that ostensibly recorded a conversation. Two, he led the police to the well from where the body was found. Three, he allegedly confessed. We have closely analysed the evidence exhibited in support.

8. The prosecution's story is that Mujahid Karim recorded the conversation on the USB. In his testimony, Mujahid did not give a specific recording date but said it was sometime after 06.03.2020. Kareem Bux (PW-1), however, testified that the recording was made seven to eight days after the date Aziz had gone missing. That would mean roughly the conversation was recorded on 10.03.2020 or 11.03.2020. The record, however, reflects that the USB was given to the police on 29.03.2020. No reason for the substantial delay in handing over the recording to the police was provided by the prosecution. Admittedly, the USB was not subjected to forensic examination. The seizure memo does not record that the USB was sealed on the date it was given to the police.

9. Fazal-ur-Rehman (PW-2) was said to be present during the recorded conversation. He testified in his cross-examination that he had asked Mujahid Karim to make the recording. Surprisingly, his examination-in-chief mentioned nothing about the USB and its recording. Rizwan was said to be present when the conversation was recorded. In his testimony, Rizwan contradicted the other participants by saying that the recording was made on 07.10.2020. Rizwan alleged that the recording was made in his workshop, whereas according to Kareem Bux, it was in Fazal-ur-Rehman's workshop. Strangely, while the prosecution witnesses alleged that Major Mahboob was also present in the recorded conversation, Mujahid did not record anything Mehboob said for unknown reasons. Rizwan testified, "It is true that the conversation of accused Mehboob was not recorded." If the conversation of one participant can be doctored out of the recording, doors of doubt open regarding the authenticity of the recording. The recording in Court was produced, not by the maker, Mujahid Karim, but by Kareem Bux. Mujahid did not produce the USB or identify it during the trial. What he said was correct, though, were the seizure memo and the transcription of the contents of the USB, which Kareem Bux produced, but the origins of which were not elaborated upon. Mujahid Karim was a gardener, and making audio or video recordings was not part of his job. The recording was made to trap the accused secretly. The record reflects that the USB was not given to the accused when the trial commenced. It was produced at a late stage in the trial. The safekeeping of the recording after handing it over to the police was also not proved. The transcript of the conversation exhibited by the prosecution at no place records Bangash confessing to killing Aziz. At best, he says he can help locate her for a price.

10. The USB's evidentiary value must be determined following the principles laid down by the Supreme Court in **Ishtiaq Ahmed Mirza and 2 others vs. The Federation of Pakistan (PLD 2019 SC 675)**. The Court held that "precedent

cases mentioned above show that in the matter of proving an audio tape or video before a court of law, the following requirements are insisted upon:

- i. No audio tape or video can be relied upon by a court until the same is proved to be genuine and not tampered with or doctored.
- ii. A forensic report prepared by an analyst of the Punjab Forensic Science Agency in respect of an audio tape or video is per se admissible in evidence in view of the provisions of Science Agency Act, 2007.
- iii. Under Article 164 of the Qanun-e-Shahadat Order, 1984 it lies in the discretion of a court to allow any evidence becoming available through an audio tape or video to be produced.
- iv. Even where a court allows an audio tape or video to be produced in evidence such audio tape or video has to be proved in accordance with the law of evidence.
- v. Accuracy of the recording must be proved and satisfactory evidence, direct or circumstantial, has to be produced so as to rule out any possibility of tampering with the record.
- vi. An audio tape or video sought to be produced in evidence must be the actual record of the conversation as and when it was made or of the event as and when it took place.
- vii. The person recording the conversation or event has to be produced.
- viii. The person recording the conversation or event must produce the audio tape or video himself.
- ix. The audio tape or video must be played in the court.
- x. An audio tape or video produced before a court as evidence ought to be clearly audible or viewable.

- xi. The person recording the conversation or event must identify the voice of the person speaking or the person seen or the voice or person seen may be identified by any other person who.
- xii. Any other person present at the time of making of the conversation or taking place of the event may also testify in support of the conversation heard in the audio tape or the event shown.
- xiii. The voices recorded or the persons shown must be properly identified.
- xiv. The evidence sought to be produced through an audio tape or video has to be relevant to the controversy and otherwise admissible.
- xv. Safe custody of the audio tape or video after its preparation till production before the court must be proved.
- xvi. The source of an audio tape or video becoming available has to be disclosed.
- xvii. The person recording an audio tape or video may be a person whose part of routine duties is recording of an audio tape or video and he should not be a person who has recorded the audio laying a trap to procure evidence.
- xviii. The transcript of the audio tape or video must have been prepared under independent supervision and control.
- xix. The date of acquiring the audio tape or video by the person producing it”

11. The learned trial court was not appropriately assisted, and the abovementioned case was not brought to its attention. Given our observations in the preceding paragraphs, we find that a substantial number of conditions stipulated by the Supreme Court were not adhered to in this case. The recording

on the USB thus could not form the basis of a conviction for an offence under section 302(b) or 365-A P.P.C.

12. Aziz went missing on 03.10.2020. Bangash was arrested on 23.03.2021. Allegedly, on 10.04.2021, on his lead, the dead body was found from a well located in Mehboob Farm situated in the Jokhio Goth of Malir. It is the prosecution's case that Bangash told the investigators that he, along with Sarwar, Major Mehboob, Ali Hassan, and others, had strangled Aziz with a dupatta and thrown the dead body in the well. Karim Bux and Mujahid Karim were the witnesses to the recovery of the dead body. Kareem Bux's testimony at trial does not reconcile with the rest of the prosecution's story. According to him, when the body was taken out, it had no legs and was in a gunny bag. He also said that the dead body had a ring. The memo of recovery of the dead body does not detail that the legs of the body were cut off, nor that the body was in a gunny bag, nor does it mention the ring. The Inquest report also does not mention these details. The recovery memo, however, shows that a ring was recovered, which was sealed separately by the investigating officer. Most surprisingly, the doctor who performed the postmortem said at trial that the body was wearing the ring when brought to her. Identification of the dead body in itself was not free from doubt. Kareem Bux (PW-1) admitted at trial that the ring was not sealed in his presence. Further doubt is created when witness Orangzaib (PW-6) testified that he was the person who had gone into the well to get the body, and that the police had pointed out the well to him, and that apart from the police, he saw no "private" person. This witness, not mentioning the presence of Bangash on the scene, is noteworthy. It is equally notable that Bangash was in judicial lock-up till he was taken out on 09.04.2021, and the very next day, it is alleged that he took the police to the well where the body was. Mujahid Karim PW-10 testified that *"It is true that accused Abbas was remanded into jail custody without discovery of the body. It is true that due to my application police*



*remand was allowed and custody of the accused Abbas Bangash was again given to the police on 09.04.2021. It is true that on 09.04.2021 the police did not attempt to discover the dead body.”* This fact in itself creates sufficient doubt in the prosecution’s story that the dead body was found on Bangash’s lead on 10.09.2021.

13. It was acknowledged in the testimonies of prosecution witnesses that the land where the well was situated was owned by three men, Noor, Shoaib, and Sohail, and that they had requested Ishrat Ahmed Khan (PW-7) to find them security for the land. Ishrat had contacted Major Mehboob for this purpose, who had then deployed two guards at the site. In mid-2020, Noor had told Ishrat that they had sold the land and that security was no longer required. Mehboob had then evacuated one guard, but the other remained as his wife was about to deliver. Noor and others handed over the land to someone else. He also confirmed that the guards deployed on the land were from the Sigma Security Services. None of the security services was examined at trial. It was categorically acknowledged that Major Mehboob had nothing to do with the two guards. Ishrat stated, *“it is obvious that accused Mehboob had no concern with the land after handing over of the same by Noor party to someone else in July 2020.”*

14. Noor-uddin (PW-8), the original owner of the land where the well was, testified that he had sold the land to Arshad Nawaz and Yousuf Abbas in July 2020. He corroborated the story of Major Mehboob providing guards for the land. He, however, acknowledged that Arshad and Yousuf had deployed their guards on the land in August 2020 (i.e., more than a year before the body was found in the well).

15. The discovery of the dead body on Bangash’s lead from land possessed by Major Mahboob was not devoid of doubt.

16. The prosecution did not examine important witnesses in this case and gave no reason for not doing so. One such

witness was Malik Mohammad Arshad. According to S.I. Wazeer Ali (PW-9), Malik Mohammad Arshad was an eyewitness, but his statement was not recorded.

17. Kareem Bux (PW-1) testified that the last person Aziz was in contact with was a lady named Rubina. He said his last contact with his wife was on the afternoon of 03.10.2020, when she told him she was going to the Azizabad Memon Foundation with Rubina. No effort was made to trace Rubina or interview anybody at the Azizabad Memon Foundation to search for the facts.

18. Asma Batool, Bangash's sister and a good friend of the deceased, was most obviously connected with the incident as her name was said to have cropped up several times in the recorded conversation. While S.I. Naik Mohammad (PW-16) said that he had recorded her section 161 Cr.P.C. statement, it was not revealed what she had said. She did not appear as a witness, and no reason was assigned for her absence.

19. Several people, families, lived in the farmhouse where the body was discovered. Yet, the investigators did not interview these inhabitants of the farmhouse. Investigators had evidence that Aziz may have gone to Sanghar to see her mother. This lead was not investigated like many others. The case had five investigators; this, too, added to the prosecution's confusion.

20. The deceased's mobile phone was a vital lead to what had transpired. Admittedly, the phone was found registered in the name of Mohammad Zahid, but Mohammad Zahid could not be found. It was Mohammad Zahid on whom the complainant had shown suspicion of having murdered Aziz. Naik Mohammad (PW-16) admitted that the call data record he had collected did not connect either Bangash or Major Mehboob with the murder. The investigation showed Aziz Akhtar's presence in a completely different area on 04.10.2020. Bangash's call on data record showed that he was not present in the area where the dead body was found from 04.10.2020 to

07.10.2020. The call data record of Major Mehboob was never collected.

21. The call data records made little sense, and the investigator admitted he had not checked who the owner of the SIM was whose call data record was produced. Another investigator said that Zahid owned the number and that the last call made by Aziz was also from that number. Apart from this brief mention, Zahid appears nowhere in the story. The call data record established that Bangash, Aziz, and Asma spoke to each other. That was not startling, as they all knew each other and lived in the same neighborhood.

22. Bangash made a statement on 12.04.2021 before the 7th Judicial Magistrate. As mentioned above, the statement was made 2 days after Bangash was taken out of judicial custody. Little reliance can be made on it as Bangash does not say that he killed Aziz, but instead lays the blame on Major Mehboob. The statement at the beginning says that Major Mehboob did not know who Bangash was, which was incorrect. The statement further says that Bangash was at the farmhouse on 04.10.2020, but the investigator admitted in cross-examination that his call data record did not show his presence at the farmhouse on that date. Bangash was taken out of jail on the promise that he would be let off if he played ball and accused Major Mehboob. Unfortunately for both, it did not transpire that way. Conviction cannot be based on a retracted confession that was not corroborated.

23. The learned trial court has observed that because Bangash had asked for Rs. 500,000 to help locate Aziz, that would mean that he had kidnapped her for ransom. With much humility, it was a somewhat arbitrary view to take, considering the entire evidence. As we have already observed that the USB recording was not admissible in evidence, Rs. 500,000 being asked to locate Aziz would also be adversely impacted. No amount was admittedly paid. In our view, a case of kidnapping for ransom was not proved.

24. Bangash and Major Mehboob were never charged for offences under section 465 P.P.C. and the learned trial court erred in punishing Bangash under that section without amending the charge—the nature of the evidence led at trial concentrated on the kidnapping and murder. Forgery was not the focus of this litigation. The documents and the extensive, time-wasting testimonies on this aspect were to create a motive. The only thing the evidence achieved was establishing that Bangash and Aziz were at odds over some tiny piece of land. The evidence at trial was not of such a nature that forgery could so easily have been concluded.

25. The principal witnesses in this case have recorded their statements three to seven times. Each appears different from the previous one. For brevity, each instance is not being reproduced, but the same is clear from a bare reading of the testimonies of these witnesses.

26. The above observations also apply to the case of Major Mehboob. It is pertinent to note that apart from linking Mehboob with the murder by alleging that the guard on the farmhouse was his, there was no other evidence against him. One can consider the allegation made by Bangash in his section 164 Cr.P.C. statement, but that was not admissible in evidence. In any case, Bangash at trial told the court that the police had tortured him to make a statement accusing Mehboob. There appears to be an element of truth in this assertion.

27. What appears from a holistic reading of evidence is that nearly all the key characters are known to each other. One gets a sense that the lady in question may have left home of her own accord. But something went wrong. One also gets a sense that this may be an honor-related killing, as all indications are that Aziz had left with her home with a man named Akhtar. Bangash and Major Mehboob were players in the land business, and there also seems to be evidence of minor business transactions between the deceased and Bangash, which were not amicable. Bangash and the complainant party

were certainly at odds. Much clarity could have been achieved if a better investigation had occurred in this area.

28. Bangash and Major Mehboob come out as hard-talking, rough men, and it also seems that they capitalised on Mehboob's former career in the army to gain an edge in their "areas of business interest". That would, however, not mean, ipso facto, that they kidnapped and murdered Aziz. They had no reason to do so. To make them culpable for the murder required a much higher level of proof than what the prosecution succeeded in establishing. One of the areas that is most unusual is Bangash being taken out of judicial custody, and the next day showing the body, making a confession, and blaming Major Mehboob for all the evil. Such conduct baffles a reasonable mind. Why would Bangash even do that, knowing the consequences? The police had no evidence against him or Mehboob till that point.

29. Identifying the body from the well was also not without doubt. It is apparent from the evidence that the identifying object, i.e., the ring, was an afterthought. The divergence of prosecution witnesses' accounts on the state of the body when recovered also creates doubt.

30. Absence of important witnesses raises a presumption that they would not have supported the prosecution's case had they appeared at trial.

31. Only Allah and the people who did the murder will know the truth. A perpetrator can never escape Allah's justice. As far as the law of the land is concerned, we are of the view that the prosecution was unable to reveal and prove the true facts of the matter. This created doubt in the prosecution's case; the benefit of the doubt must go to the accused. We, therefore, conclude that the prosecution could not prove its case beyond a reasonable doubt.

32. The appeals are allowed, and the appellants are acquitted of the charge. They may be released forthwith if not required in any other custody case.

JUDGE

JUDGE