

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.D- 124 of 2019  
[Confirmation case No.26 of 2019]

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

02.03.2023.

Mr. Farhan Ali Bozdar, Advocate for appellant.  
Mr. Shahzad Saleem Nahiyoona, Additional P.G for State.  
M/s Aijaz Ahmed Shaikh and Kamran Baig, Advocates for  
complainant.

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We have heard learned counsel for the appellant, learned A.P.G  
and learned counsel for the complainant. Reserved for judgment.

IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha  
Justice Mrs. Kausar Sultana Hussain

Cr. Appeal No.D- 124 of 2019  
[Confirmation Case No.26 of 2019]

Seeta Ram

Versus

The State

Appellant Seeta Ram S/o Chetan Das	through Mr. Farhan Ahmed Bozdar Advocate
Respondent the State	through Mr. Shahzad Saleem Nahiyoan, Additional Prosecutor General, Sindh
Complainant Dr. Anil Kumar	through Mr. Aijaz Shaikh along with Mr. Kamran Baig, Advocate
Date of hearing	02.03.2022
Date of judgment	15.03.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.-This criminal appeal is directed against the judgment dated 03.07.2019, passed by the learned Additional Sessions Judge-I / Model Criminal Trial Court, Tharparkar at Mithi, in Sessions Case No.38 of 2018 (re: The State V Seetaram), emanating from Crime No.37 of 2018, registered at Police Station Mithi, under section 302 PPC, whereby the accused / appellant Seeta Ram S/o Chetan Das has been convicted u/s 302(b) PPC and sentenced to death as ta'zir; however, subject to confirmation by this Court. The appellant was also directed to pay compensation of Rs.300,000/- to the

legal heirs of the deceased Chander Kumar as provided under section 544-A Cr.P.C, in case of default, he would further suffer S.I for seven months. The appellant was also convicted u/s 506(2) PPC and sentenced to suffer R.I for three (03) years. However, benefit of section 382-B Cr.P.C was extended to him.

2. The facts of the prosecution case as per FIR lodged by complainant Dr. Anil Kumar son of Amrat Brahman on 20.08.2018 at 2115 hour at police station Mithi are as under:-

*"That he is having posting as Medical Officer at BHU Pani Lal Colony Jhangi Nangar Mithi; Chander Kumar who was his elder brother and was former District Information Secretary of PPP, district Tharparkar so also social worker and generally he used to remain on front on social issues. He and his brother Chander Kumar used to go together in Town. On 18.08.2018 at about 5.00 p.m. his brother Chander Kumar asked him for going to the shop of Nawaz Ali Kunbhar for some necessary work. At about 5.15 p.m. they left house and proceeded towards the shop of Nawaz Ali Kunbhar, when reached on the eastern side of shop of Nawaz Ali Kunbhar, where he told his brother Chander Kumar to go at the shop of Nawaz Ali Kunbhar and he would come after visiting nearby shop. Chander Kumar within his sight sat at the chair lying on platform (thalla) in front the shop of Nawaz Ali Kunbhar, where Nawaz Ali Kunbhar was already seated on chair, meanwhile Sarwan Kumar Malhi also arrived and started chit chatting and he (complainant) was standing outside the nearby shop. It was 1735 hours Seetaram son of Chetan Kolhi presently residing in Mithi Town, who is already known by him, from inside path of market came and reached at the place where Chander Kumar and others were sitting, and within his sight took out pistol from fold of his wearing pants and made straight fire upon his brother Chander Kumar with intention to cause his murder. Nawaz Ali Kunbhar and Sarwan Kumar Malhi tried to apprehend the accused, but accused pointed pistol upon them and they tried to run away. He by raising hue and cry rushed towards Chander Kumar, but accused also pointed pistol towards him and warned if he came closer, he would kill him; due to fear he remained silent and accused then made second straight fire of pistol upon his brother Chander Kumar with intention to cause his murder. His brother fell down on platform from chair while crying and accused fled away by same route inside market. He (complainant) went running there, Nawaz Ali Kunbhar and Sarwan Kumar Malhi and other people came running there after hearing commotion of fire shots, and with their help complainant put his injured brother Chander Kumar in a vehicle for taking him to Civil hospital, Mithi but his brother Chander Kumar succumbed to injuries on the way to hospital. After postmortem of deceased Chander Kumar got conducted, his dead body was brought at home and on 19.08.2018 in morning time dead body of deceased was burnt according to Hindu custom, hence, this FIR."*

3. After usual investigation, police submitted formal challan of the case before the concerned court. After completing necessary formalities, learned trial court framed charge against the accused, to which he pleaded not guilty and claimed trial.
4. At trial, in order to prove its case, the prosecution examined 10 witnesses and exhibited numerous documents and other items and thereafter prosecution side. The statement of the accused / appellant was recorded under Section 342 Cr.P.C. in which he denied the prosecution allegations leveled against him and claimed his false implication in the commission of alleged crime. However, neither he examined himself on oath in disproof of the prosecution case nor led any evidence in his defence.
5. On conclusion of the trial, learned trial court after hearing learned counsel for the parties and appraisal of prosecution evidence brought on record, convicted and sentenced the accused / appellant vide impugned judgment, as set out in the earlier para of this judgment, hence the appellant has preferred this appeal against his conviction.
6. The evidence produced before the trial court finds an elaborate mention in the impugned judgment, 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 innocent of any wrong doing and that he has been falsely implicated in this case by the police at the instance of some office bearers of ruling party and hence the two day delay in lodging the FIR whilst consultation took place; that none of the eye witnesses was present at the scene of the incident; that there are material contradictions in the PW's evidence which renders their evidence unreliable; that all material PW's are interested hence their evidence cannot be safely relied upon; that the appellant had no motive to murder the deceased; that an important eye witness Sarwan Kumar was given up by the prosecution and thus an adverse inference can be drawn under Article 129 (g) Qanun-e-Shahadat Ordinance 1984 that he would not have supported the prosecution case; that the appellants retracted judicial confession was made under coercion as the police had arrested his family members



in order to pressure him to confess and as such his confession could not be relied upon as it was not made voluntarily; that the alleged crime weapon being the pistol was foisted upon the appellant by the police and that for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions learned counsel for the appellant has placed reliance on the cases of **Noor Muhammad V The State and another** (2020 SCMR 1049), **Muhammad Mansha V The State** (2018 SCMR 772), **Tariq Pervez V The State** (1995 SCMR 1345), **Sardar Bibi and another V Munir Ahmed and others** (2017 SCMR 344), **Muhammad Adnan V The State and others** (2021 SCMR 16), **Muhammad Ashraf V The State** (2012 SCMR 419) and **Khalil V The State** (2017 SCMR 960).

8. On the other hand, learned Additional Prosecutor General Sindh as well as the learned counsel for the complainant have fully supported the impugned judgment. In particular, they contended that any delay in lodging the FIR had been fully explained; that the eye witnesses to the murder could be safely relied upon; that the retracted judicial confession of the appellant was made voluntarily with the object of telling the truth and as such it could be safely relied upon; that the eye witnesses evidence was supported/ corroborated by the medical evidence; that the appellant himself volunteered to produce the crime weapon / pistol before the police which was recovered by the police on his pointation which when matched with the empties recovered at the crime scene lead to a positive FSL report and as such the prosecution had proved its case beyond a reasonable doubt and the appeal should be dismissed and the death penalty maintained as it was a brutal crime the motive for which had been admitted by the appellant in his Section 342 Cr.PC statement. In support of their contentions they placed reliance on the cases of **Muhammad Iqbal V Muhammad Tahir and others** (PLD 1985 Supreme Court 361), **Allah Dad and 2 others V The State** (PLD 1978 Supreme Court 1), **Muhammad Mansha V The State** (2016 SCMR 958), **Ashfaq Ahmed V The State** (2007 SCMR 641) and **Muhammad Ismail V The State** (2017 YLR 39).

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by



the appellant's counsel, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. Based on our reassessment of the evidence of the PW's, especially the medical evidence, the blood stained earth and empties recovered at the scene of the crime we find that the prosecution has proved beyond a reasonable doubt that on 18.08.2018 at about 5.35pm at the shop of advocate Nawaz Ali Kumbhar situated in Sadiq Faqeer chowk Mithi Chandar Kumar (the deceased) was murdered by firearm.

11. The only question left before us therefore is whether it was the appellant who murdered the deceased by firearm at the said time, date and location?

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

(a) That admittedly the FIR was lodged after a delay of two days however we find that this delay in lodging the FIR has been fully explained as the complainant first had to take his deceased brother to the hospital where a post mortem was performed then make the funeral arrangements in accordance with Hindu rituals whilst being in a state of shock and once the funeral had been carried out the FIR was immediately lodged. Even otherwise the police had been informed about the incident on the same day who reached the hospital and as such based on the particular facts and circumstances of this case we do not find that the delay in lodging the FIR is fatal to the prosecution case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

(b) That the appellant is named in the FIR with a specific role.

(c) We find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and whether we believe their evidence especially in connection with the correct identification of the appellant whose evidence we shall consider in detail below;

(i) **Eye witness PW 1 Dr. Aneel Kumar. He is a medical doctor, the complainant and brother of the deceased.** According to his evidence on 18.08.2018 he and the deceased were present in their house when the deceased

asked him to go to the shop of PW Nawaz as he had some work there. At 5.15pm they left for Nawaz's shop. At 5.25pm they reached Nawaz's shop where the deceased sat down on a chair outside Nawaz's shop whilst he went to a nearby shop from where he could see his brother sitting outside Nawaz's shop. Nawaz was already seated and one Sarwar Kumar also came. He was standing outside the nearby shop when at 5.35pm he saw the accused **who was already known to him** go towards the deceased and **saw** the appellant shoot the deceased with a pistol. The accused pointed his pistol at Nawaz and Sarwar when they tried to intervene who then backed off. He also came forward but the accused pointed his pistol at him and told him to stay put or else he would also shoot him. He then **saw** the accused make a second fire shot on the deceased which hit him and he fell down. The accused escaped and he found his brother in an injured condition who died on the way to the hospital.

This eye witness is related to the deceased however **no enmity or dispute has been proven** between this eye witness and the appellant and thus the mere relationship to the deceased is no reason to discard his evidence which has to be judged on its own worth. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

This eye witness also **knew the appellant before** the incident which occurred at about 5.35pm in the month of August in broad day light. The incident went on for about 5 minutes and the eye witness was close to the incident and would have got a good look at the appellant who he already knew. Thus, there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the appellant. His presence at the scene of the incident is corroborated by PW 2 Nawaz Ali who is also an eye witness who was present at the scene of the crime.

This eye witness was not a chance witness as he lived in the house from where he along with the deceased came to see PW Nawaz whose shop was only 500/600 meters away. He gave his Section 154 Cr.PC statement two days after the incident and no material improvements have been made in the same during the course of his evidence. He named the appellant in his FIR with a specific role along with the other eye witnesses. He gave his evidence in a natural manner and was not dented at all during a lengthy cross examination and as such we find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the appellant who murdered the deceased.

We can convict on the evidence of this 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 case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in 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 eye witness to be of good quality and believe the same. **In this case however there is more than one eye witness.**

(ii) **Eye witness PW 2 Nawaz Ali. He is a lawyer and shop keeper and is not related to the deceased, complainant or the appellant.** He is an independent witness. His evidence corroborates that of **PW 1 Aneel Kumar** in all material respects. He knew the appellant from before the incident which was in day light and he saw the appellant fire on the deceased twice from a short distance so would have been easily able to recognize him. He is named as an eye witness in the FIR. He has no relationship or enmity with the appellant, complainant or deceased and had no reason to implicate the appellant in a false case. He gave his Section 161 Cr.PC statement within two days of the lodging of the FIR. He was also not a chance witness as the incident happened at his shop. His S.161 Cr.PC statement was not materially improved upon during the course of his evidence. His evidence was not dented despite a lengthy cross examination. We believe his evidence in respect of the incident and in particular the correct identification of the appellant as the person who shot the deceased twice. The same considerations apply to his evidence as the evidence of **PW 1 Aneel Kumar.**

The appellants counsel has argued that since eye witness Sarwar Kumar was dropped from the prosecution witness list an adverse inference **must automatically** be drawn against him under Article 129 (g) Qanun-e-Shahadat Ordinance 1984 that he was dropped because he would not have supported the prosecution case. We find ourselves not in agreement with this proposition. Yes, based on the particular facts and circumstances of the case if for example there were no eye witnesses or only one eye witness and an eye witness in the calendar of witnesses of the prosecution was dropped without explanation then it might be reasonable for us to draw such inference. However, we have to keep in mind that it is for the prosecution to conduct its case in a lean and efficient manner and once it is of the view that the eye witnesses it has already called have proved its case then if say it has 6 other similar eye witnesses what is the need to call such witnesses who would only consume the valuable time of the court. If the defense counsel firmly believed that these dropped eye witnesses of the prosecution would not have supported the prosecution case then the defence can move an application to the court to call them. No such application was made in this case. We find that the application of Article 129(g) Qanun-e-Shahadat should be



governed by the court's discretion based on the particular facts and circumstances of each case.

Thus, based on our believing the evidence of the 2 eyewitnesses what other evidence/material supportive/corroborative or other wise 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)

(d) The appellant was brought before a magistrate after his arrest and made a judicial confession which is reproduced below for ease of reference;

**Section 164 Cr.PC Statement (Confession) of the appellant before PW 5 Gur Muk Das Gehani judicial magistrate in material part;**

**" Question; What do you have to say**

**Ans:** I do hereby state on oath that on 04-02-2014 my marriage was contracted with the consent of my parents with Sht: Reena D/o Punam Chand by caste Kohli R/O Kohli Daro, UmarKot. My wife was LHV and she was doing job in Civil Hospital Mithi. Thereafter Chandar Sharma has transferred my wife at mid wife school Mithi as Teacher. My wife Reena was living in a flat of Government Hospital near Civil Hospital. I was also living with her thereafter Chandar Sharma got job for me at Thar Book House Mithi. **Different peoples were used to say me that Chandar Sharma has illicit terms with my wife Reena Kohli, therefore I remain in suspicious.** In August 2017 I got admission in Hyderabad in Journal nursing college and started living here and used to come in house at Mithi after a week. My brother Pardeep aged about 8 years and Nirmal aged about 10/12 years were living with my wife in the flat. **Several Peoples used to say me that Chandar Sharma has illicit terms with my wife Reena. I borne all these words since 2½ years and remained in suspicious.** On dated 05-08-2018 my brother Nirmal informed me on phone call that on dated 30-07-2018, one person was present in home and he went away after giving Rs.10000/- to my wife and mother in law Umedi. **He told that Chandar Sharma was present for long time in the house. My wife Reena got pardon from my brother and said that not disclosed this fact to Seeta Ram. My suspicious was changed in to believe and I decided that I will kill Chandar Sharma.** Then I sold my mobile phone at Rs. 18500/- and motor cycle at Rs.29,000/-. Then purchased a 9MM un-licensed pistol and 10 bullets at Rs.28000/- from the shop of Arms shop Nazir Kalhoi in Noukot. On 16-08-2018 I took pistol came at Mithi and lived as guest at the house of Raimal Bheel. On 17-08-2018 lived with friend Ali Hingorjo as guest. **On 18-08-2018 in the morning, I went to the shop of Nawaz Ali Baghi,**

*Kumbhar for inquiry and in intention to kill about Chandar Sharma. Pistol was in my possession but Chandar Sharma was not present there then on same date 18-08-2018 in the evening at 04:00 pm, got motor cycle from Kishor Kohli who is working in the Hospital of Doctor Ameer Shah and then again went to the shop of Nawaz Ali Kumbhar and remained in wait of Chandar Sharma. I parked motor cycle in street of vine shop. It was evening time at about 05:30 hours I saw that Chandar Sharma was standing in the street outside the shop of Nawaz Ali Baghi. I went and said to Chandar Sharma that you are found to make illicit terms with stranger women. After saying this I made two fires from my pistol on Chandar Sharma which hit to Chandar Sharma and he fell down on ground and died away. Then I returned back and hidden the pistol near the Hospital of Doctor Ameer Shah, near the Electric pole. This was handed over to Police on dated 29-08-2018. After committing murder of Chandar Sharma I went to Karachi and lived with friend. Thereafter I came at Khipro and I thought that my wife is in Mithi City then I was coming from Khipro to Mithi, I alighted from Bus at Mithi Chahar road near Badhrio Tarai due to fear of Police, where Qurban Ali Rajar SHO Mithi arrested me and produced me before the Court. I have killed the Chandar Sharma in the name of Honour for having illicit terms with my wife Reena. Hence this statement." (bold added)*

Although this confession was retracted at trial it is well settled by now that we can rely on this retracted judicial confession as against its maker if we find that (a) it was made voluntarily and (b) it was made with the object of telling the truth based on the prosecution case and that even minor irregularities in recording the confession before the judicial magistrate can be ignored. In this respect reliance is placed on the cases of **Ch. Muhammad V Yaqoob V The State** (1992 SCMR 1983), **Bahadur V State** (PLD 1996 SC 336) **Muhammad Amin V The State** (PLD 2006 SC 219), **Manjeet Singh V State** (PLD 2006 SC 30) and **Azeem Khan V Mujahid Khan** (2016 SCMR 274).

In this case the confession fully ties in with and corroborates the eye witness evidence. The appellant in his cross examination of the final witness PW 10 Qurban Ali who was the IO of the case suggested to him that his confession was coerced from him or made under influence as such it was not voluntarily made and repeated the same in his Section 342 Cr.PC statement as the police were holding his family members in custody and would not release them. We note however that until the final PW gave evidence this aspect of the case was not put to a single witness in cross examination. The appellant did not give evidence on oath about this issue and most importantly the appellant did not call a single family member as a DW to support his claim that they were held by the police until he made his



confession and thus we discard the appellant's claim of his confession not being made voluntarily as an after thought and believe and rely on his confession which we find to have been made voluntarily and with the object of telling the truth based on the particular facts and circumstances of the case and the evidence which the prosecution has brought on record. **Thus, we believe and place reliance on the appellants retracted judicial confession especially as there were no material procedural irregularities in the manner in which the appellants confession was recorded** in that he was produced before a magistrate and was aware of this fact, his hand cuffs were removed, no police men was in the room, he was given adequate reflection time, he was told that his confession could be used against him in evidence in a court of law, he was checked for evidence of mal treatment and none was found, he was not handed back to the police after he confessed and was handed over to judicial custody after making his confession.

(e) That a CCTV recording of the incident which was exhibited at trial clearly shows the appellant shooting the deceased which also corroborates the eye witness evidence. In cross examination the appellant did not deny the video or the incident but simply suggested that it was not him who was firing on the deceased but some one else.

(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 **Muhammad Ashraf V State** (2021 SCMR 758)

(g) That the medical evidence and medical reports fully support the eye-witness/ prosecution evidence in that the deceased received two fire arm injuries which lead to his death.

(h) That the murder weapon namely the pistol was recovered on the pointation of the appellant from a hidden place which only he would have known about.

(i) That the empties recovered initially were sent for FSL and were **again** sent for FSL with the pistol once it was recovered by the appellant on his pointation which produced a positive FSL report in that the recovered empties at the crime scene matched with the pistol recovered on the pointation of the appellant.

(j) That it has not been proven through evidence that any particular police witness had any enmity or ill will towards the appellant and had any reason to falsely implicate him in this case for instance by foisting the pistol on him and in such circumstances it has been held that the evidence of the police witnesses can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

(k) 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 appellants. 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 time the complainant and his brother left their house for PW Nawaz's shop to the complainant seeing the appellant shoot the deceased twice at Nawaz's shop to the arrest of the deceased to the judicial confession of the deceased to the recovery of the pistol on his pointation which matched with the empties recovered at the crime scene through a positive FSL report.

(l) That the mashirs were independent and had no blood relations with the complainant or the appellant and had no enmity with them and were from the local community and as such had no reason to make false mashirnama's in order to implicate the appellant in this case.

(m) That the motive has been proven through the confession of the appellant whereby he admitted that he murdered the deceased because he believed he was having illicit relations with his wife which he also repeats in his Section 342 Cr.PC statement.

(n) 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 cast doubt on or dent the prosecution case. The defence case is that the appellants confession was not made voluntarily which we have already disbelieved earlier in this judgment and that some one else was arrested by the police and committed the crime. This however was denied by the IO during cross examination although the appellant contended that there was a news flash to this effect and that it also appeared in the newspapers he did not exhibit any newspaper to this effect or any TV footage or even call as a DW a person who read or saw the news flash as a DW. He produced no alibi witness and did not give any evidence on oath. Thus, for the reasons mentioned above we disbelieve the defence case of false implication as an after thought in the face of reliable, trust worthy and confidence inspiring eye witnesses and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

13. Thus, based on the above discussion we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and hereby maintain his conviction.

14. With regard to sentencing we note that the motive for the crime



has been proven as being on account of the appellant's belief/suspicion over many years that the deceased was having an illicit relationship with his wife and should therefore be murdered out of revenge; that the crime was premeditated and a particularly brutal one carried out in broad day light whereby the appellant firstly shot the deceased and then after warning PW Nawaz and the complainant off at gun point shot the deceased for a second time in order to finish him off without mercy in front of his helpless brother. There are absolutely no mitigating factors rather only aggravating ones and thus based on the reasons mentioned above and the particular facts and circumstances of this case we find this a fit case to hand down the death sentence by way of deterrence and as such uphold the death penalty handed down to the appellant in the impugned judgment.

15. As such the appeal is dismissed and the confirmation reference is answered in the affirmative.