

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

Present:

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

**SPL. CRIMINAL A.T APPEAL NO.309 OF 2016**

**Confirmation Case No.01 of 2017**

**SPL. CRIMINAL A.T APPEAL NO.310 OF 2016**

**SPL. CRIMINAL A.T APPEAL NO.311 OF 2016**

Appellant: Yaseen Balouch son of Manzoor Balouch  
Through Khawaja Naveed Ahmed,  
Advocate

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

Date of Hearing: 03.11.2021

Date of Announcement: 11.11.2021

**J U D G M E N T**

*Mohammad Karim Khan Agha, J.* Appellant Yaseen Balouch son of Manzoor Balouch was convicted by the learned Judge, Anti-Terrorism Court No.III, Karachi in Special Case No. 117 of 2014, FIR N0.459/2013 u/s 302/324/365/34 PPC r/w section 7 of ATA, 1997 and Special Case No. 120/2014, FIR No.363/2013 u/s 23(1) (a) of Sindh Arms Act 2013 of PS Maripur Karachi and was sentenced as under:

“Accused Yaseen Baloch s/o Manzoor Baloch was convicted for offences u/s. 7(1) (a) of ATA 1997 r/w Section 302/34 PPC and sentenced to death for causing death of Muzaffar Hussain and to pay fine of Rs.50,000/- and compensation u/s.544/A Cr.PC Rs.100,000/- payable to the legal heirs of deceased Muzaffar Hussain and in default of payment of fine he shall further undergo S.I. for one year;

Accused Yaseen Baloch s/o Manzoor Baloch was convicted for offences u/s. 7(1) (a) ATA of 1997 r/w Section 302/34 PPC and sentenced to death for causing death of Mst. Shazia Begum w/o Muzaffar Hussain and to pay fine of Rs.50,000/- and compensation u/s.544/A Cr.PC Rs.100,000/- payable to the legal heirs of deceased Shazia Begum and in default of payment of fine he shall further undergo S.I. for one year;

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Accused Yaseen Baloch s/o Manzoor Baloch was convicted for offences u/s. 7(1) (a) of ATA 1997 r/w Section 302/34 PPC and sentenced to death for causing death of Abdul Samad s/o Muzaffar Baig and to pay fine of Rs.50,000/- and compensation u/s.544/A Cr.PC Rs.100,000/- payable to the legal heirs of deceased Abdul Samad and in default of payment of fine he shall further undergo S.I. for one year;

Accused Yaseen Baloch s/o Manzoor Baloch was convicted for offences u/s. 7(1) (a) ATA of 1997 r/w Section 302/34 PPC and sentenced to death for causing death of Imran step son of Muzaffar Baig and to pay fine of Rs.50,000/- and compensation u/s.544/A Cr.PC Rs.100,000/- payable to the legal heirs of deceased Imran and in default of payment of fine he shall further undergo S.I. for one year;

Accused Yaseen Baloch s/o Manzoor Baloch was also convicted for offences u/s. 7(1)(c) of ATA 1997 r/w Section 324/34 PPC for attempt to commit murder of Mst. Muneeza and causing injury and sentenced to undergo 10 years R.I. and to pay fine of Rs.50000/- and in default of payment of fine he shall further undergo S.I. for one year;

Accused was convicted for offence 302/34 PPC to undergo imprisonment for life on each count for causing death of Muzafar Baig, Shazia, Abdul Samad and Imran and to pay fine of Rs.50,000/- and compensation of u/s.544/A Cr.PC and fine of Rs.100,000/- payable to the legal heirs of deceased and in default of payment of fine he shall suffer R.I. imprisonment for one year.

Accused Yaseen Baloch s/o Manzoor Baloch was also convicted for offences u/s. 23(1)(a) of Sindh Arms Act, 2013 and sentenced to undergo R.I. for 07 years and to pay fine of Rs.50000/- and in default of payment of fine he shall further undergo S.I. for one year;

All the sentences were ordered to be run concurrently and the death sentences were subject to confirmation by this court.

Accused was also extended benefit of Section 382-B Cr.P.C "

2. The brief facts of the case as per prosecution are that on 29.12.2013 at about 0810am ASI Sedar Khattak was duty officer at P.S. Maripur. Someone informed him that a few dead bodies were lying at Gabo Pat near Tool Tax Hawksbey Road Maripur. He made entry in daily Roznamcha and went to the place where he came to know that dead bodies were shifted to Civil Hospital. He then reached at Civil Hospital and found the dead bodies of Muzaffar Baig, Shazia Begum, Abdul Samad and Imran. He wrote a letter to MLO Civil Hospital and on identification of relatives of deceased Shujat and Naheed Begum inspected the dead bodies and prepared Inquest Reports and after completion of their postmortem the dead bodies were handed over to their legal heirs. One Injured Muniza was also admitted in the

Emergency Ward Civil Hospital and was shifted to Abbasi Shaheed Hospital for further treatment. ASI Sedar Khattak then went to Abbasi Shaheed Hospital, gave letter to MLO for recording her statement which was not allowed. He then came back to P.S. Maripur where three children namely Iqra aged 13/14 years, Kiran aged 11/12 years and Sumeer aged about 2/3 years were present whom he delivered to their uncle Mushtaque. He also recorded statement u/s 154 Cr.P.C. of Mushtaque who stated that the deceased Muzaffar Baig was his brother-in-law and on 29.12.2013 he was present at his house when at 8.15 am, he received information on phone that his brother-in-law Muzaffar Baig and his family members have been expired after firing and their dead bodies have been taken to Civil Hospital. He reached at hospital and found the dead bodies of his brother-in-law Muzaffar Baig, sister Shazia Begum, nephews Abdul Samad and Imran. His niece Muniza aged about 18 years was also at the hospital who was conscious and she told him that at about 02.00 am the family members were taking meal when (1) Abdul Rasheed alias Chief (2) Mehar Bux s/o Rasool Bux, (3) Nazeer Baloch alias Mulla s/o Muhammad Yaqoob, (4) Adil s/o Zafar Hussain, (5) Yasin Baloch s/o Manzoor Baloch and 3/4 unknown persons arrived and started beating them. All were holding weapons and on the point of weapons they also committed rape upon her and her mother Mst. Shazia. Thereafter they took the family members at Thandi Sarak near Gabo Pat and made fires upon Muzaffar Baig, Shazia Begum, Abdul Samad and Imran. She along with her younger brother Sumeer aged 2½ years and sisters Iqra aged 13 years and Kiran aged 12 years and the culprits also made fires upon them and one bullet hit to her belly through and through and she fell down and was taken to Civil Hospital by Chippa Ambulance. The complainant thereafter went to Abbasi Shaheed Hospital taking Muniza and got her admitted there. According to the complainant the said Muniza was pregnant and on receipt of bullet her pregnancy miscarried. His niece was unconscious after operation. On the basis of S.154 Cr.P.C. statement of Mushtaque FIR No.459/2013 was registered at P.S. Maripur, Karachi. Accused Yasin Baloch was arrested on 30.12.2013 by SIP Ismail who during patrolling with his staff, received information that the nominated accused of crime No.459/2013 were present at Baba Mazhar Budin Road Maripur. He along with his staff reached there and found the accused, who on seeing police party made fires with intent to kill them. However, two persons namely Adil s/o Zafar Hussain and Yasin Baloch s/o Manzoor Baloch

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were apprehended. From the hand of accused Adil one pistol 30 bore loaded magazine, 04 bullets and one in chamber and one Hand-Grenade recovered from his pocket and one mobile phone Nokia and cash Rs.1900/- recovered. From the accused Yasin one 30 bore pistol loaded magazine 03 bullets and one in chamber recovered and from his pocket of shirt Rs.700/- also recovered. They disclosed the names of absconding accused as Abdul Rasheed, Mehar Bux, Mulla Nazeer and Mullah Zubair. He called BDU team, prepared mashirnama of arrest and recovery and registered FIRs being Crime No.460/2013 to 463/2013 and then handed over the said four FIRs to SIO Ajmal. On 21.4.2014 the accused Wajid Ali was arrested in another case of P.S. Maripur and also re-arrested in this case.

3. On completion of investigation the Investigating Officer submitted charge-sheet before the trial court. The joint charge was framed which was read over to the accused on 26.03.2015 by the learned Judge Anti-Terrorism Court-VII Karachi to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 12 PWs and exhibited various items and other documents. The appellant recorded his statement under Section 342 Cr.P.C. whereby he claimed that he was innocent and had been falsely implicated in this case by the complainant Mustaque. In support of his defence case the appellant gave evidence on oath whereby he claimed that he had been falsely implicated in this case by Mustaque due to enmity who was unit in charge of MQM and who was residing in the same area and that on 29.12.2013 (the day of the incident) he along with his father was picked up by the police from his house and falsely implicated in this case. He called 2 DW's in support of his defence case that he was taken from his house by the police. He denied his involvement in any encounter with the police and stated that the pistol which was allegedly recovered from him had been foisted on him by the police.

5. After appreciating the evidence on record, the learned trial court convicted and sentenced the appellant as set out earlier and hence, the appellant has filed this appeal against his convictions and sentences.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by the trial court

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and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the entire prosecution case revolves around the evidence of eye witness PW 6 Mst Muniza which could not be safely relied upon as she had given her evidence at the instance of her relative complainant Mushtaque who had enmity with the appellant, that her evidence that she had been raped had been disbelieved by the trial court and as such her whole evidence should be discarded; that even if she had been fired upon it could not be proven that the appellant had fired on her or any of her family members; that there were material contradictions in her evidence and the medical evidence and as such her evidence should be disbelieved on this count as well as it did not ring true; that the pistol was foisted on him and even otherwise he had been acquitted in the encounter case; that there was no other evidence against the appellant and as such the appellant should be acquitted of all charges by extending him the benefit of the doubt.

8. On the other hand learned Additional Prosecutor General appearing on behalf of the State and also representing the complainant has fully supported the impugned judgment. In particular he has emphasized that the appellant can be convicted based on the evidence of a sole eye witness provided that it is reliable, trust worthy and confidence inspiring as it was in this case and as such the appeals should be dismissed in respect of the appellant and the confirmation reference answered in the affirmative due to the heinous nature of the offences. In support of his contentions he has placed reliance on the cases of **Muhammad Mansha v The State** (2001 SCMR 199), **Ijaz Ahmad v The State** (2009 SCMR 99), **Muhammad Ehsan v The State** (2006 SCMR 1857), **Allah Ditta v The State** (PLD 2002 SC 52), **Farooq Khan v The State** (2008 SCMR 917) and **Zia Ullah and another v The State** (2021 SCMR 1507).

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. Before proceeding further we are fully conscious that this was a case of a particularly serious and heinous nature which concerns 4 brutal murders one of whom was a young child and the gang rape of two women however as

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Judges we cannot be swayed by the brutality of the offences which have been committed and are obligated to decide these appeals based on the strength of the evidence before us and our reappraisal of such evidence.

11. At the outset based on our reassessment of the evidence and in particular the medical evidence and the medical reports we find that the prosecution has proved beyond a reasonable doubt that on 29.12.2013 at about 02 am Muzafar Baig, Shazia Begum, Imran and Abdul Sarmad (collectively referred to as the deceased) were all murdered by firearm at Thandi Sarak Gabo Pat.

12. The questions before us are essentially (a) who murdered the deceased and injured Ms Muniza at the time, date and place as per the charge and (b) whether an unlicensed firearm was recovered from the appellant.

13. It is **significant** to note that vide the impugned judgment the appellant was acquitted for offences u/s S. 353/324/34 PPC and S.376 PPC (gang rape). The State has not filed an appeal against such acquittals which have reached finality. The appellants co-accused Wajid was acquitted of the entire charge.

14. It is also **significant** that originally the appellant was to face trial with co-accused Adil and Abdul Basit **for the same offences** however since the aforesaid co-accused were minors their trial was separated from that of the appellant and based **on the same evidence** the co-accused Adil and Abdul Basit have been acquitted of all charges by this court vide judgment dated 10.11.2021 in Spl. Criminal AT Appeal No.104 of 2021.

15. We find that when we examine the evidence in a holistic manner based on our reassessment of such evidence the prosecution has **NOT** proved beyond a reasonable doubt that the appellant murdered the deceased keeping in view the fact the accused gave evidence under oath and called defence witnesses to show that he was arrested from his home by the police and then falsely implicated in this case and the case against him u/s.23 (1) (i) of the SAA 2013 for the following reasons;

(a) The prosecution case revolves around the evidence of the sole eye witness PW 6 Muniza. Yes, she was an injured eye witness who was allegedly raped but this does not mean that her evidence is automatically to be believed. Her evidence has to be analyzed in terms

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of its reliability and whether it is confidence inspiring and whether there is any corroboration.

(b) When taken together the following findings tend to cast doubt on her evidence and the prosecution case;

(i) According to her evidence the accused barged into her house at 2am in the morning when all the deceased and herself were apparently awake eating dinner which to us seems some what odd to say the least. At such a late hour most families have eaten and have long since gone to bed.

(ii) Apparently she narrated the incident to the complainant Mustaque whilst she was being treated in hospital yet according to the evidence of PW 3 Sedar Khan when he went to take the statement of Ms Muniza in hospital the Dr. informed him that she was unable to make a statement and stopped him from doing so which tends to caste doubt on the content of the later FIR lodged by the complainant.

(iii) At 1800hrs PW 3 Sedar Khan recorded the statement of the complainant Mustaque at his home who gave a very detailed statement of the incident i.e rape and murder which had allegedly been given to him earlier by Ms Muniza at the hospital which even gave the names of all the accused and co-accused. Such detail in the FIR based on the hearsay evidence of an injured women who was not well enough to record her statement before the police at about the same time as she gave the information to the complainant is also some what dubious.

(iv) According to Ms Muniza's evidence after the incident she managed to reach PS Maripur with her younger brother and sister. However no FIR was lodged at that time and no police entry to that effect has been produced. It seems that the police called a chippa ambulance for this young injured women and sent her off unaccompanied to hospital. No member of Chippa was examined as a PW and PW 3 Sedar Khan who was on duty at 8am that morning at PS Maripur had no idea that Ms Muniza had reached the PS in the morning. He was only informed where the dead bodies were lying and when he reached that place found that they had already been taken to civil Hospital. This is also very surprising conduct on the part of Ms Muniza and the police and does not particularly accord with natural human conduct based on the particular facts and circumstances of the case

(v) With regard to her rape and that of her mother Ms Shazia in her evidence she states that;

*"Yasin Baloch (appellant) and Adil took me in a room and they committed Zinna on me forcibly. Thereafter Rashid, Mehr Bux took my mother Shazia in a room and committed Zina with her".*

The appellant vide the impugned judgment has already been acquitted of the rape of Ms Muniza and Ms Shazia as such her evidence with regard to this aspect of the case has been disbelieved by the trial court and no appeal against the appellants acquittal in respect of this offence has been made by the State and as such his acquittal has reached finality. The trial court also acquitted Adil of the rape of Ms Muniza

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vide judgment dated Judgment dated 28.03.2020 passed by ATC Court III Karachi. Such findings put her entire evidence in doubt based on the case of Notice to Police Constable Khizer Hayat (PLD SC 527) which endorsed the applicability of the principle of "falsus in uno, falsus in omnibus" in Pakistani law in the following terms at P.562 Para 21;

*"21. We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury."* (bold added)

(vi) Significantly when PW 3 Sedar Khan went to the house (wardat for the rape) he stated in his evidence that;

*"We had seen the house from the inside but could not find anything left by the culprits which can be treated as proof of their presence in the house".*

This evidence also tends to cast doubt on the prosecution case as according to the prosecution about 10 heavily armed men entered this rather small house, beat up and tied up the occupants of whom there were about 8, gang raped two of the female occupants and then forcibly took them all from the house yet the house appears to have been in an undisturbed state which would not support such an incident taking place in the house. It is also significant that Ms Muniza's eye witness S.161 Cr.PC statement was made after a considerable delay of 6 days which gave her a chance to improve it or ensure that it was in line with the very detailed FIR lodged by her father based on her hearsay.

(vii) Ms Iqra who was the daughter of one of the deceased and Kiran who was the son of one of the deceased who were also in the house at the time of the beatings and rape and were also taken to the plot where they also witnessed the shooting of the deceased and were saved by PW Ms Muniza were about 13 to 14 and 12 to 13 years of age respectively at that time and would have been about 15 to 16 and 14 to 15 years of age respectively at the time of trial but did **not** give evidence for the prosecution at trial. We find this to be rather surprising as both would have been mature enough to support the evidence of Ms Muniza and as such it appears that the prosecution deliberately chose to omit some of the best evidence without any reason which tends to undermine the prosecution case.

(viii) According to the evidence of Ms Muniza after the rape the occupants of the house were forcibly removed by the culprits and were taken to a vacant plot where her mother was raped again. She does not say who raped her mother at the plot. According to her evidence the accused all then made indiscriminate fire on them which led to the death of the



deceased and her injury. She does not name a single accused who was present at the vacant plot and opened fire on the deceased and her. **According to her own evidence there was no light available at the plot at the time of the shooting of the deceased.** The question therefore arises whether it can be safely found that all of the about 10 persons who entered her house heavily armed were present at the time when the deceased were shot. One or two might have left the group. She does not identify the appellant as being present by name at the time of the shooting. Furthermore, **in her evidence she states that the culprits made indiscriminate fire and that the distance of fire was neither from close range or from a distance.** Such evidence is **not** supported by the medical evidence. Three of the 4 deceased received fire shot injuries to the head where **blackening and charring** was found by PW 5 Dr.Ahmed who was the MLO who carried out 3 of the 4 post mortems of the deceased which **indicates that 3 out of the 4 deceased were shot from a very close range.** One deceased received one fire shot to the head, 2 of the deceased received two fire shots each and one of the deceased received three fire shots when considered against the close distance of the shots also indicates that this was not indiscriminate firing but execution style killings which contradicts the evidence of PW Muniza on this aspect of the case. The fact that the accused left the scene as they all ran out of ammunition and then returned also does not appeal to reason logic or common sense as how could about 10 heavily armed men all run out of ammunition when shooting 4 people with about only 12 bullets from relatively close range? Again this suggests that there were fewer than 10 heavily armed men and as such some of the 10 men from the house might not have been present at time when the deceased were shot. Furthermore, if it was dark how it was possible for Ms Muniza to recognize accused Abdul Basit who was according to her allegedly accidentally shot by the other accused? Interestingly she mentions no other accused by name which tends to indicate that at trial she was trying to negate accused Abdul Basit's defence that he was not present as he was shot by members of the Lyari Gang war and was receiving hospital treatment at the time of the incident. It is also significant and suspicious that despite a long and detailed narration of the incident given to the complainant Mustaque whilst she was wounded in hospital she neglected to state this aspect of the case i.e regarding Abdul Basit being shot.

(ix) It may be that Ms Muniza was present and was shot when the deceased were murdered but she has not produced any medical evidence of her gunshot injury and we find that she cannot say for certain that the appellant was present at the time of the shooting who has given evidence that he was not present during the incident and produced DW's in support of his case.

(x) On the appellant's arrest after an encounter with the police an unlicensed pistol was recovered from him however he has been acquitted in the encounter case. He was arrested along with minor appellant **Adil** after the encounter who was also acquitted in the encounter case and the case under SAA 2013 for carrying an unlicensed pistol on the basis that the evidence of the

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prosecution witnesses in respect of this aspect of the case had been disbelieved who are the same PW's in this case as noted by this court in its earlier referred to judgment dated 10.11.2021 in Spl. Criminal AT Appeal No.104 of 2021. Appellant Adil's acquittal in the case under the SAA 2013 was not appealed by the State and has reached finality and as such we find that we cannot convict the appellant under the SAA for the reasons mentioned above and as such he is acquitted of this charge under S.23(1) (i) of the SAA 2013.

(xi) This finding also means that the place of arrest with respect to appellant is now in doubt and it cannot be ruled out that he was arrested from his house as per his defence case and the pistol was foisted on him by the police.

(xii) In any event the pistol recovered from him was not sent for an FSL report in respect of the empties recovered at the wardat of the murders so the recovered pistol story which we have disbelieved cannot link him to the murder scene.

(xiii) There was no motive or reason for the appellant to break into the house of the deceased and gang rape two women and aim to kill the entire occupants of the house. On the contrary complainant Mustaque had an enmity with co-accused Adil which gave the complainant a reason to falsely implicate the appellant in this case in league with the police some of whose evidence has already been disbelieved by us when acquitting the appellant and Adil in the encounter and Arms cases which castes further doubt on the reliability of the prosecution case.

(xiv) Apart from the evidence of PW eye witness Muniza there is no other supportive or corroborative evidence in respect of the rapes and the murders against the appellants which could link them to these offences. In fact as we have noted above there are numerous doubts in the evidence of PW eye witness Muniza's evidence and we find that we cannot rely safely on it to convict the appellant for the offences for which he has been charged without some unimpeachable corroborative or supportive evidence which as discussed above there is none.

(xv) Furthermore, this court has already acquitted minor co-accused Adil and Abdul Basit of the murder of the deceased and injury to Ms. Muniza who had the same role as the appellant in the murders based on the same evidence before this court and as such we find that in these circumstances we are unable to convict the appellant for the murder of the deceased and the injury to Ms. Muniza and hereby acquit him of the same based on the benefit of the doubt which was also extended to co-accused Adil and Abdul Basit by this court in its earlier referred to judgment dated 10.11.2021 in Spl. Criminal AT Appeal No.104 of 2021.

16. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case against the accused beyond a reasonable doubt and that the benefit of doubt must go to the accused by way of right as opposed to concession. In this respect reliance is placed on the case of **Tariq Pervez V/s.**

The State (1995 SCMR 1345), wherein the Supreme Court has observed as follows:-

"It is settled law that it is not necessary that there should be many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

17. For the reasons discussed above we find numerous doubts in the prosecution case against the appellant and thus by extending the benefit of the doubt to the appellant the appellant is acquitted of the charge, the impugned judgment is set aside, his appeals are allowed, the confirmation reference is answered in the negative and the appellant shall be released from jail unless wanted in any other custody case.

18. The appeals stand disposed of in the above terms.

MAK/PS