

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Spl. Criminal A.T.A No. D-208 of 2018
along with Conf. Case No. D-08 of 2018

SINDH HIGH COURT

Composition of Bench.

Single/D.B. ✓

Honorable Mr. Justice KARIM KHAN AGHA

Honorable Mr. Justice MUHAMMAD SALEEM JESSAR

Dates of hearing: 25-02-2020

Decided on 11-03-2020

(a) Judgment approved for
reporting.

Yes ✓
~~No~~

KJG

CERTIFICATE

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

*Strike out whichever is not applicable.

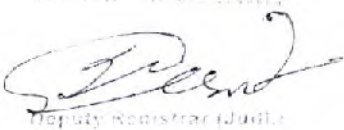
NOTE:—(i) This slip is only to be used when some action is to be taken.

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

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

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

SGP., Kar.—L (iii) 1459—5,000—6.93—T.S.S.

Deputy Registrar (Judicial)


IN THE HIGH COURT OF SINDH AT KARACHI
 (CRIMINAL APPELLATE JURISDICTION)

CRIMINAL APPEAL NO. 208 OF 2018

1. REHMAT ULLAH
S/O AJAB KHAN.
2. MUHAMMAD JAMEEL @ ARI
S/O HAZRAT GUL
Both Muslim, adult, Resident of
Katchi Abadi Sohrab Goth,
Karachi. Presently Confined
in Central Prison Karachi..... APPELLANTS

VERSUS

The State. RESPONDENT

FIR No. 51 / 2013
 U/S 302/324/353/427/34 PPC
 R/W Sec. 7 ATA 1997.
 P.S. Sachal Karachi.

**2nd CRIMINAL APPEAL UNDER SECTION 25 OF ANTI-
 TERRORISM ACT 1997 READ WITH SECTION 410 CR.P.C.**

Being aggrieved at and dissatisfied with the impugned Judgment dated 27-07-2018, passed by the VIth Anti Terrorism Court at Karachi, in Special Case No. A-56 of 2013, in which the Appellants are convicted as under: -

1. The accused Rehmatullah is convicted for offence U/S 302(b) PPC and he is sentenced to death as hanged till death.

OFFICE OF THE JUDGE, ANTI-TERRORISM COURT NO: VI, KARACHI.
No: ATC-VI/K-DIV/ 286 of 2018 Karachi dated 27-07-2018.

To,

The Registrar
Honorable High Court of Sindh
Karachi.

INWARD TO 1371
BRANCH 681
DATE 13/8/18
HIGH COURT OF SINDH AT KARACHI

Subject:- REFERENCE FOR CONFIRMATION OF DEATH
SENTENCE U/S 374 CRPC IN SPECIAL CASE NO.A-56
OF 2013, FIR No.51 of 2013 and U/S 302/353/324/427/34 PPC
OF PS SACHAL
=====

Respected Sir,

With reference to the above noted subject matter, I have the honor to submit that in the Special case No.A-56 of 2013, FIR No.51 of 2013 and u/s 302/353/324/427/34 PPC of PS Sachal Karachi, judgment passed thereon by the undersigned vide judgment dated 27th July 2018, against accused namely, Rehmatullah s/o Ajab Khan and Muhammad Jameel @ Ari s/o Hazrat Gul who have been convicted and sentenced as under:-

1. For offence u/s 302 (b) PPC, accused Rehmatullah is convicted and sentenced to be hanged till death with penalty of paying compensation of Rs.2,00,000 (Two Lac) to be paid to the LRs of the victim.
2. For offence u/s 302 (b) PPC, accused Muhammad Jameel @ Ari s/o Hazrat Gul is convicted and sentenced to be hanged till death with penalty of paying compensation of Rs.2,00,000 (Two Lac) to be paid to the LRs of the victim.
3. For the offence u/s 353 PPC, I hereby, convict accused Rehmatullah s/o Ajab Khan and sentenced him to suffer R.I two (2) years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall serve SI four months more.
4. For the offence u/s 353 PPC, I hereby, convict accused Muhammad Jameel @ Ari s/o Hazrat Gul and sentence him to suffer R.I two (2) years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall suffer SI four months more.
5. For the offence u/s 324 PPC, I hereby, convict accused Rehmatullah s/o Ajab Khan and sentence him to undergo for R.I. five (05) years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall suffer SI four months more.

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Appeal No.208 of 2018
Confirmation Case No.08 of 2018.

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Muhammad Saleem Jessar.

Appellants : 1. Rehmatullah S/o Ajab Khan
2. Muhammad Jameel @ Ari S/o Hazrat Gul through Mr. Sahib Khan Buner, Advocate

Respondent : The State
Through Mr. Ali Haider Saleem, Deputy Prosecutor General, Sindh

Date of Hearing : 25.02.2020
Date of Judgment : 11.03.2020

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- Accused Rehmatullah s/o Ajab Khan and Muhammad Jameel @ Ari s/o Hazrat Gul, were tried by the learned Judge, Anti-Terrorism Court No.VI, Karachi in Special Cases No. A-56/2013 arising out of Crime No.51/2013 U/s. 302/324/353/427/34 PPC r/w section 7 ATA, 1997, registered at P.S. Sachal, Karachi. After trial vide judgment dated 27.07.2018 the appellants named above were convicted and sentenced as under:-

1. Convicted accused Rehmatullah for offence u/s 302(b) PPC and sentenced to death with penalty of paying compensation of Rs.2,00,000/- (Two Lac) to be paid to the LRs of the victim.
2. Convicted accused Muhammad Jameel @ Ari s/o Hazrat Gul for offence u/s 302(b) PPC, and sentenced to death with penalty of paying compensation of Rs.2,00,000/- (Two Lac) to be paid to the LRs of the victim.
3. Convicted accused Rehmatullah s/o Ajab Khan for the offence u/s 353 PPC, and sentenced him to suffer R.I two (2) years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall serve SI for four months more.
4. Convicted accused Muhammad Jameel @ Ari s/o Hazrat Gul for the offence u/s 353 PPC, and sentenced him to suffer R.I two (2) years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall suffer SI for four months more.

5. Convicted accused Rehmatullah s/o Ajab Khan for the offence u/s 324 PPC, and sentenced him to undergo R.I for five (05) years with fine of Rs.10, 000/- and in case of failure to pay the fine, he shall suffer SI for four months more.
6. Convicted accused Muhammad Jameel @ Ari s/o Hazrat Gul for the offence u/s 324 PPC, and sentenced him to undergo R.I for five (05) years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall suffer SI for four months more.
7. Convicted accused Rehmatullah s/o Ajab Khan for the offence u/s 7(I)(a) of ATA, 1997 and awarded him death sentence.
8. Convicted accused Muhammad Jameel @ Ari s/o Hazrat Gul for the offence u/s 7(I)(a) of ATA, 1997, and awarded him death sentence.
9. Convicted accused Rehmatullah s/o Ajab Khan for the offence u/s 6(2) (m) and punished him u/s 7(I) (h) of ATA and he is sentenced to undergo R.I for five (5) years.
10. Convicted accused Muhammad Jameel @ Ari s/o Hazrat Gul for the offence u/s 6(2) (m) and punished him u/s 7(I) (h) of ATA and sentenced to undergo R.I for five (5) years.
11. Convicted accused Rehmatullah s/o Ajab Khan for the offence u/s 6(2) (n) and punished him u/s 7(I) (h) of ATA 1997 and sentenced to undergo R.I for five (5) years.
12. Convicted accused Muhammad Jameel @ Aro s/o Hazrat Gul for the offence u/s 6(2) (n) and punished him u/s 7(I)(h) of ATA 1997 and sentenced to undergo R.I for five(5) years.

So far as the injuries sustained by the two injured persons are concerned, injured No.1 namely PC Ghulam Nazik has been declared as under:-

- i. Injury No.1 Jurah Jaifa, 337-D PPC.
- ii. Injury No.2 and 3 Jurah Ghyar-Jaifa Mutalahimah 337-F(iii) PPC.
- iii. Injury No.4 Jurah Ghyar-Jaifa Munaqqillah 337-F(vi) PPC.

And the injuries sustained by injured No.2 namely, PC Ghulam Arshad have been declared as injury No.1, 2 and 3 Jurah Ghyar-Jaifa Damiyah 337-F(i) and convicted both the accused persons for causing injuries to both the injured persons as under:-

1. Convicted accused Rehmatullah s/o Ajab Khan for committing offence u/s 337-D PPC and punished to pay fine of Rs.5,60,106/- as Arsh as compensation to the victim/injured person.
2. Convicted accused Muhammad Jameel @ Ari S/o. Hazrat Gul for committing offence u/s 337-D PPC and punished to pay fine of Rs.5,60,106/- as Arsh as compensation to the victim/injured person.

3. Convicted accused Rehmatullah s/o Ajab Khan for committing offence u/s 337-F (iii) PPC and punished to pay fine of Rs.5, 000/- as Daman to the victim/injured.
4. Convicted accused Muhammad Jameel @ Ari S/o. Hazrat Gul for committing offence u/s 337-F (iii) PPC and punished to pay fine of Rs.5,000/- as Daman to the victim/injured.
5. Convicted accused Rehmatullah s/o Ajab Khan for committing offence u/s 337-F (i) PPC and punished to pay fine of Rs.5,000/- as Daman to the victim/injured.
6. Convicted accused Muhammad Jameel @ Ari S/o. Hazrat Gul for committing offence u/s 337-F (i) PPC and punished to pay fine of Rs.5, 000/- as Daman to the victim/injured.
7. Both accused Muhammad Jameel @ Ari S/o. Hazrat Gul and Rehmatullah s/o Ajab Khan were convicted and sentenced to undergo R.I. for 10 years each for the offence u/s. 7(1)(c) of ATA 1997 and fine of Rs.10,000/- each and forfeiture of their properties.

All the sentences by way of imprisonment shall run concurrently for both of the accused persons.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.VI, Karachi, the aforesaid appeal has been preferred by the appellants against their conviction.

3. The brief facts of the prosecution case are that on 29.01.2013 at 07:00 pm complainant Inspector Aziz Ahmed Shaikh of PS Sohrab Goth Karachi, lodged FIR No.51/2013 u/s 302/324/353/427/34 PPC r/w Section 7 of ATA 1997 of PS Sohrab Goth on the basis of the statement u/s 154 Cr.PC and stating therein "that on 29.01.2013, he was present at PS and it was about 7:00 pm then all of a sudden 15/16 unknown terrorists attacked the police station with intention to kill them. They were on four motorcycles and two cars and armed with deadly weapons. Due to such firing HC Zulfiqar, PC Arshad and PC Nazik who were outside the doors of the PS received bullet injuries. Thereafter, police party returned fire in their self defence and all the accused persons fled from the scene. Injured police officials namely PC Nazik and PC Arshad were taken to Aga Khan Hospital, whereas injured HC Zulfiqar succumbed to his injuries. His dead body was taken to Abbasi Shaheed Hospital, inquest report was prepared by SIP Mehboob Ali and so also memo of dead body was prepared. Thereafter, he went to Aga Khan Hospital to inspect the injured persons. On the following morning at about 0800 hours, he prepared 154 Cr.P.C statement and the same was sent to the SHO PS Sachal Karachi for its incorporating in FIR. Subsequently, such FIR was lodged.

4. After registration of the case, the investigation was assigned to Inspector Muhammad Hussain Chandio. He inspected the place of incident in presence of mushirs namely ASI Ali Akber and HC Sarfraz and so also he prepared the memo of site inspection in presence of the mushirs. On 24.03.2013, he arrested accused Rehmatullah at PS Sohrab Goth in presence of mushirs namely Ghulam Nabi and Shah Muhammad. On 30.03.2013 he issued notice u/s 160 to witness Sarfraz for identification test of accused Rehmatullah and Dilbar @ Muhammad Ali before the Magistrate. On 01.04.2013 he also took the accused Rehmatullah to the place of incident and on his pointation the place of incident was inspected. On 19.04.2013 he made formal arrest of the accused Jameel Ahmed at PS Sachal in presence of the mushirs namely PC Ghulam Nabi and Ali Hassan and prepared the memo of arrest. He also wrote a letter to the FSL. Subsequently he obtained the FSL report. He also prepared the sketch of the place of incident. After completion of the investigation he submitted the challan before the competent court of law.

5. The charge against the accused persons was framed to which they pleaded not guilty and claimed trial of the case.

6. To prove its case the prosecution examined 13 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. Statements of the accused were recorded u/s 342 Cr.P.C whereby they denied the allegations against them and claimed false implication. They did not examine themselves on oath or call any DW in support of their defense case.

7. Learned Judge, Anti-Terrorism Court No.VI, Karachi after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 27.07.2018, convicted and sentenced the appellants as stated above, hence this appeal has been filed by the appellants against their convictions.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 27.07.2018 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for the appellants has contended that with regard to appellant Muhammad Jameel the only evidence against him was that he has been identified in the court by a number of prosecution witnesses as firing on the deceased and injured policemen. That with regard to appellant Rehmatullah PW 3 Sarfraz was not an eye witness to the event at all and that no reliance can be placed on his evidence and that the other PW's have only identified him in court and as such there is no reliable evidence against either of the appellants who should both be acquitted of the charge. In support of his contentions he placed reliance on the cases of **Umar Farooque v. The State** (NLR 2008 Criminal 104), **Sabir Ali Waseem and 3 others v. The State** (2007 YLR 2142), **Zeeshan @ Shani v. The State** (2012 SCMR 428), **Muhammad Hanif alias Pocho v. The State** (2014 P. Cr.LJ 928), **Akhtar Ali and others v. The State** (2008 SCMR 6), **Wajid Umar v. The State** (1994 P. Cr.LJ 409), **Siraj-ul-Haq and another v. The State** (2008 SCMR 302), **Azhar Mehmood and others v. The State** (2017 SCMR 135), **Javed Khan alias Bacha and another** (2017 SCMR 524), **Kamal Din alias Kamala v. The State** (2018 SCMR 577), **Shafqat Mehmood and others v. The State** (2011 SCMR 537), **Ghulam Shabbir v. The State** (2012 YLR 1199), **Muhammad Imran v. The State** (2009 P.Cr.LJ 997), **Muhammad Aftab Siddiqui v. S.H.O. Shah Faisal Colony Police Station** (2006 MLD 320), **Jan Muhammad and 3 others v. The State** (1969 P.Cr.LJ 588), **State through Advocate-General Sindh, Karachi v. Farman Hussain and others** (PLD 1995 Supreme Court 1), **Muhammad Ahmad alias Danyal v. The State** (2005 YLR 954), and **Muhammad Iqbal v. Abid Hussain alias Mithu and 6 others** (1994 SCMR 1928).

10. On the other hand learned Deputy Prosecutor General has fully supported the impugned judgment. He has contended that both the appellants have been correctly identified with appellant Muhammad Jameel being identified in court and appellant Rehmatullah being correctly identified by PW 3 Sarfraz at an identification parade where he was assigned a specific role and also lead the police to the place of incident on his pointation and both the accused attacked the police station, fired upon and killed the dead police officer and the two injured police officers and as such their convictions and sentences should be upheld and their appeals dismissed. In support of his contentions he has placed reliance upon the cases of **Ghazanfar Ali @ Pappu** (2012 SCMR 215), **Bashirullah and another v. The State** (2002 P. Cr.LJ 1183), **Niaz-ud-din and another v. The State**

and another (2011 SCMR 725) and Fazal Akbar and another v. The State through A.A.G. and another (2013 P. Cr.LJ 369).

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

12. Admittedly a brazen attack on a police station by 16 to 17 person's armed with sophisticated deadly weapons which lead to one policeman losing his life and two others sustaining injuries is an extremely heinous crime which is an attack against the writ of the State and must be discouraged at all costs and clamped down on with an iron hand. However our horror and anger at such a brazen attack on those who risk their lives in protecting the citizens of the country must not be at the price of failing to do justice. As such, as is our duty, we have reassessed the evidence before us both dispassionately and objectively and with a view to ensuring that justice is done and that the usual suspects have not been rounded up simply to appease those amongst us who may seek revenge for such heinous acts against the State. The evidence and its application in accordance with the law must always prevail over emotion and personal feelings

13. In our view after our reassessment of the evidence based on the relatively prompt lodging of the FIR i.e. around 12 hours after the incident where chaos and mayhem reined after the incident and the immediate concern was to attend to the injured and secure the scene and the PS in our view such delay in lodging the FIR has been adequately explained which lead to no time to concoct a false story, the evidence of the PW witnesses (including eye witnesses), PW MLC's, post mortem reports and other medical evidence, IO's evidence, recovery of empties, positive chemical and FSL reports, we are satisfied that the prosecution has proved beyond a reasonable doubt that on or about 29.01.2013 at 1900 hrs around 16/17 persons arriving on motor cycles and 2 vehicles attacked and opened fire on police officials while they were rendering their duties near the main gate of PS Sohrab Goth with firearms which lead to the deliberate and intentional premeditated murder of HC Zulfiqar Ali and injuries to PC Muhammed Arshad and PC Ghulam Nazek. Indeed learned counsel for the appellants admitted this position.

14. In our view therefore the only issue before us is whether the appellants have been correctly identified as two of the persons who fired at the PS whose firing lead to the death of one police officer and the injury of two others by firearm.

15. After our reassessment of the evidence we are of the view that the prosecution has **not** been able to prove beyond a reasonable doubt that the appellants were responsible for firing on the police Station and causing the death of one police man and injury to two others for the following reasons;

With regard to appellant Rehmatullah.

(a) Only eye witness PW 3 Sarfraz identifies him as firing on the police station and causing the death of one policemen and injuring two others at the main gate of the PS and identified him at an identification parade. Although he is not a chance witness we however do not find the evidence of this eye witness to be reliable trust worthy or confidence inspiring and we disbelieve the same for the following reasons;

- (i) It was a night time incident and there is no evidence of any source of light which evidence was required in order to support a safe identification. In this respect reliance is placed on **Gulfam V The State** (2017 SCMR 1189)
- (ii) He did not know the appellant and at best would only have got a fleeting glance at him if he saw him at all (which is in doubt).
- (iii) He is not named in the FIR as a witness despite the FIR being slightly delayed
- (iv) In his S.161 Cr.PC statement he has not given any hulia of any appellant, it is also not mentioned in his S.161 Statement that one culprit has been identified by me from his features and he has not mentioned in his S.161 statement that he can identify the culprit again. He simply says that the appellant has features like a pathan. It is not without significance that many pathans live in the Sohrab Goth area of Karachi. Such lack of an initial description is highly damaging to the reliability of the correctness of his identification of the appellant keeping in view the other facts and circumstances of the case such as darkness, lack of light, fleeting glance, distance etc. In this respect reliance is placed on **Javed Khan V State** (2017 SCMR 524)

- (v) He was not stationed outside the gate where the policemen were shot. In his own evidence he admits that at the time of the incident he was busy distributing arms and ammunition to the staff of the PS. By his own admission it therefore seems that he was not in a position to see any one who was firing at the PS. According to PW 6 Mehboob Illahi who was also a PC at the time of the incident the boundary wall of Sohrab Goth PS is 15 feet high and the incident took place outside the main gate and the police picket which was attacked outside the PS is not visible from the ground floor of the PS. Thus since PW 3 eye witness Sarfraz was inside the main gate and surrounded by walls this begs the question as to how he was able to see or identify any body let alone the appellant.
 - (vi) Based on the evidence of the other PW witnesses who were present on the night of the attack on the PS it appears that the culprits were at least 50 feet away from the PS. For example, PW 10 Muhammed Korral who was on the roof top of the PS states that this was more than 200 yards from where the firing was coming from the road. So once again this begs the question as to how the eye witness was able to see or recognize any one in the dark from so far away. This aspect of longish distance of fire is supported by the fact that neither the dead policeman nor the injured police men had any blackening on their wounds which indicates that the firing was not from close range.
 - (vii) Likewise the identification parade in our view cannot be safely relied upon. This is because the appellant was in police custody and could have been shown to the eye witness Sarfraz who picked him out of the identification parade which was held after a considerable delay. It is also note worthy that the appellant was the only person in the identification parade who had a bandaged foot and thus he would have been an easy target for a pre planned picking out at an identification parade. Thus, in our view the identification parade cannot be safety relied upon as leading to the correct identification of the appellant. In this respect reliance is placed on **Kanwar Anwaar Ali Special Judicial Magistrate: in the matter of Cr. Misc. Application No.183 of 2019 in Cr.Appeal No.259 of 2018 (PLD 2019 Supreme Court 488)**
 - (viii) Enmity has also been alleged by the appellant against this eye witness for falsely implicating the accused in this case as he blamed the appellant for murdering his brother in law who was a traffic policemen
- (b) It is correct that a number of eye witnesses have identified both of the appellants in court however in court identification has been deprecated by the Supreme Court especially in the circumstances noted above where the accused were not known before the incident, no

hulia was given in their S.161 statements, it was dark with no source of light and the firing was taking place from a distance. In this respect reliance is placed on the case of **Gulfam** (Supra). In our view the evidence of such in court identification can be disregarded. Interestingly PW 7 Muhammad Arshad who was an injured eye witness and was much closer to the action than the other eye witnesses cannot identify the accused. Likewise PW 12 Ghulam Nabi who was present when the appellant was arrested stated that the appellant in court was not the same person who he arrested and was declared as a hostile witness. It is also significant and in our view damaging to the prosecution case that none of the PW's who allegedly identified the appellants in court, including the injured eye witnesses, were called to appear before an identification parade to identify the appellants. This is more so since these PW's were serving police officers who could have been readily made available for such identification tests keeping in view that it was their PS which was attacked and their brother police officers who were killed and injured on account of the attack on the PS.

- (c) We have not seen any other evidence to link the accused to the offenses as charged. For example, no weapon was even recovered from him or motor cycle or vehicle used in the attack which might have belonged to him and linked him to the attack on the PS.
- (d) The fact that the appellant took the police to the scene of the attack on his pointation is irrelevant as the police already knew where the attack took place.
- (e) In our view it is also not without consequence that according to the evidence of the IO PW 13 Muhammed Hussain that until the arrest of the accused there was no evidence as to who caused the attack and it is therefore somewhat convenient that both the accused whilst in police custody confessed before the police (which is in admissible in evidence) to an extremely serious crime which they must have known would have carried the death penalty.

16. Thus, in our view for the reasons discussed above, the identification of appellant Rehmatullah cannot be safely relied upon as one of the persons who fired at the PS or killed or injured any policemen on the fateful night and in the absence of any circumstantial evidence to this effect by extending to him the benefit of the doubt he is acquitted of the charge.

17. **With regard to appellant Muhammad Jameel** the only evidence against him is in court identification which, as discussed earlier, has been deprecated by the Supreme Court. He was not even picked out of any identification parade. Keeping in view the factors already discussed in respect of appellant Rehmatullah such as darkness, lack of light, lack of hulia etc we are also of the view that the correctness of his identification in playing any role in the attack on the police station cannot be safely relied on and thus he too is acquitted of the charge by being extended the benefit of the doubt.

18. The upshot of the above discussion is that the appeal is allowed the appellants Muhammad Jameel and Rehmatullah are both acquitted of the charge and shall be released unless wanted in any other custody case. The confirmation reference is answered in the negative.

19. The appeals are disposed of in the above terms.

Arif