

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Sp ATA 03 & 04 of 2006

clw Conf. Case 02 of 2006

Atta-ur-Rehman vs. The State

HIGH COURT OF SINDH

Composition of Bench: S. B./D. B.

Mr. Justice Mohammad Karim Khan Agha,

Mr. Justice Abdul Moazzam Lakhani

Date(s) of Hearing: 21st, 22nd, 23rd, 24th, 27th & 28th January, 2020

Decide on: 14-02-20

(a) Judgment approved for reporting:

Yes



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 / overrules / 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.

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PRESENTED
27/02/06
M. J. Registrar (Jr)

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Cri. ATA No. 03 of 2006

- 1- ✓ Atta-ur-Rehman S/o Habib-ur-Rehman.
2- ✓ Shehzad Ahmed Bajwa S/o Mushtaq Ahmed Bajwa.
3- ✓ Shoaib Siddique S/o Nooruddin Siddiqui.
4- ✓ Yaqoob Saeed Khan S/o Saeedullah.
5- ✓ Uzair Ahmed Abdullah S/o Aziz Ahmed.
6- ✓ Danish Imam S/o Ali Hashmi.
7- ✓ Najeebullah S/o Zahoorullah Hashmi.
8- ✓ Khurram Saifullah S/o Khalid Saifullah.
9- ✓ Rao Khalid S/o Rao Muhammad Rafiq.
10- ✓ Syed Adnan Shah S/o Syed Abdul Aziz Shah..... APPELLANTS.
*All Muslims, adults, presently confined
in Central Prison, Karachi.*
VERSUS

The State RESPONDENT.

FIR No. 165/ 2004
Dated: 10-6-2004
U/Ss. 302,324,404,34 P.P.C.
R/w S. 3, 4, & 5 of the
Explosive Substance Act.
R/w S. 7 of ATA 1997.
P.S. Boat Basin
Karachi, South.

**APPEAL U/S 410 OF Cr. P. C. R/w SECTION 25 (1)
OF THE ANTI TERRORISM ACT 1997**

Being aggrieved with and dissatisfied by the order/ judgement dated
21-2-2006 passed by the Learned Special Judge of Anti Terrorism

Contd. P/2

nd c.	Date to hear adju
	5

IN THE HIGH COURT OF SINDH AT KARACHI

(Criminal Appellate Jurisdiction)

Special Criminal Anti-Terrorism

Appeal No. 04 of 2006

Shahzad Mukhtar Alias Talha
son of Mukhtar Ahmed, resident
of House No.A/1/12, Laraib Garden,
Block No.1, Gulshan-e-Iqbal,
Karachi, presently confined in
Central Prison, Karachi

Appellant

VERSUS

The State

Respondent

FIR No.165/2004

Under Section 302/324/404/34 PPC

3/4/5 Explosive Substances

Act, 1908, 7, Anti Terrorism

Act, 1997.

P.S. Boat Basin, Karachi South.

**APPEAL UNDER SECTION 25 OF THE ANTI-TERRORISM A
OF 1997 (ACT NO.XXVII OF 1997) READ WITH SECT
410 OF CRIMINAL PROCEDURE CODE**

Being aggrieved and dissatisfied with the
Judgment dated 21.2.2006, passed by the learned Special
Judge, Ant-Terrorism Court No.II Karachi, (Mr.FEROZ
MAHMOOD BHATTI) in Special Case No.57/2004, (The State
Versus Atta-ur-Rehman and others) vide FIR No.165/2004,
under Section 302/324/404/34 PPC 3/4/5, explosive
Substances Act, 1908, 7, Anti-Terrorism Act, 1997,
registered at Polic Station Boat Basin, South, Karachi,
invicting the appellant abovenamed alongwith 10 others
ac sed persons under section 302(b) read with 34 PPC

Cont'd... /2

IN THE H

SPECIAL CASE NO: 57/2004

The State

Vs

Abul-Rahman alias Ibrahim alias Umar alias Tahir
 Person of Habit: Abul-Rahman & 10 others.

FIR No: 163/2004

U/Ss: 302/324/404/34

3/4/5 Explosive Substances

7 Anti-Terrorism Act 1997

P.S. Boat Basin, Karachi

To:

The Registrar,
 High Court of Sindh,
 Karachi.

**SUBJECT: REFERENCE UNDER SECTION 374 CR.P.C. R/W
 30(2) OF THE ANTI-TERRORISM ACT, 1997.**

This Court, vide judgement dated 21st February 2006, convicted all the eleven accused persons namely Atta, Shahzad Ahmed Bajwa, Muhammad Shoaib Siddiqui, Saifullah, Yaqoob Saeed Khan, Danish Imam, Najeebullah Haq, Ahmed Abdullah, Shahzad Mukhtar, Rao Khalid and Syed Asad alias Tipu are awarded death sentence as ta'zir, on each count above Special Case No: 57/2004, for the offences punishable u/s 302 PPC and 7(a) of the Anti-Terrorism Act, 1997, and have been awarded death sentence on each counts u/s 302(b) PPC and 7(a) of the Anti-Terrorism Act, 1997, subject to confirmation of the said sentence by Hon'ble High Court of Sindh, Karachi, as required under section 374 Cr.P.C. r/w section 30(2) of the Anti-Terrorism Act, 1997.

Reference is hereby made for the confirmation of the sentence awarded to the abovenamed accused.

The R&Ps of the above mentioned case is also enclosed herewith as required under section 25(2) of the Anti-Terrorism Act, 1997.

Please acknowledge the receipt.

[Signature]
 21/02/2006

THE HIGH COURT OF SINDH AT KARACHI

Spl. CrI. Anti-Terrorism, Appeal No.03 of 2006.
Spl. CrI. Anti-Terrorism, Appeal No.04 of 2006.
Confirmation Case No.02 of 2006.

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Abdul Mubeen Lakho,

Appellants:

1) Atta-ur-Rehman S/o. Habib-ur-Rehman (2) Shehzad Ahmed Bajwa S/o. Mushtaq Ahmed Bajwa, (3) Shoaib Siddiqui S/o. Nooruddin Siddiqui, (4) Yaqoob Saeed Khan S/o. Saeedullah, (5) Uzair Ahmed Abdullah s/o. Aziz Ahmed (6) Danish Imam S/o. Ali Hashmi, (7) Najeebullah S/o. Zahoorellah Hashmi, (8) Khurram Saifullah S/o. Khalid Saifullah, (9) Rao Khalid S/o. Rao Muhammad Rafiq and (10) Syed Adnan Shah S/o. Abdul Aziz Shah and in Spl. Cr. A.T Appeal No.04/2006 Shahzad Mukhtar alias Talha s/o. Mukhtar Ahmed all through M/s Mushtaq Ahmed and Raja Hassan Nawaz, Advocates.

For State:

Through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

Date of hearing:

21.01.2020, 22.01.2020, 23.01.2020, 24.01.2020, 27.01.2020 and 28.01.2020

Date of Judgment:

14.02.2020.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- Accused Atta-ur-Rehman s/o. Habib-ur-Rehman, Shahzad Ahmed Bajwa S/o. Mushtaq Ahmed Bajwa, Shoaib Siddiqui S/o. Nooruddin Siddiqui, Yaqoob Saeed Khan S/o. Saeedullah, Uzair Ahmed Abdullah S/o. Aziz Ahmed, Danish Imam S/o. Ali Hashmi, Najeebullah S/o. Zahoorellah Hashmi, Khurram Saifullah S/o. Khalid Saifullah, Shahzad Mukhtar S/o. Mukhtar Ahmed, Rao Khalid S/o. Rao Muhammad Rafiq and Syed Adnan Shah Syed s/o Abdul Aziz Shah were tried by learned Judge, Anti-Terrorism Court No.II, Karachi in Special Cases No. 57/2004 arising out of Crime No.165/2004 U/s. 302/324/404/34 PPC r/w Section 3/4/5 Explosive

Substances Act 1908, S.7 of ATA, 1997 at P.S. Boat Basin Karachi South vide judgment dated 21.02.2006 the appellants were convicted and sentenced as under:-

- (a) For causing callous offence of brutal and broad day light Qatl-e-Amd of innocent deceased persons namely Hav: Manzoor, Hav: Muhsbat Baig, LNK Afzal Shakir, Sarwar Shahid Hussain, Sepoy Tariq Naveed, LNK Tariq Hussain (Army Personnel) SIP Hassan Asghar, HC Nazeer Ahmed, HC Liaquat Gujjar (Police Personnel) and Ashok (Civilian) an offence punishable u/s 302(b) r/w 34 PPC and r/w section 7(a) of the Anti-Terrorism Act, 1997, all the eleven accused persons namely Atta-ur-Rahman, Shahzad Ahmed Bajwa, Muhammad Shoaib Siddiqui, Khurram Saifullah, Yaqoob Saeed Khan, Danish Imam, Najeebullah Hashmi, Uzair Ahmed Abdullah, Shahzad Mukhtar, Rao Khalid and Syed Adnan Shah alias Tipu are awarded death sentence as ta'zir, on each count. They are directed to be hanged by neck till they are dead.
- (b) For planting two bombs at the place of incident i.e. attempt to cause explosion, an offence punishable under section 4 of the Explosive Substances Act, 1908 all the eleven accused persons namely Atta-ur-Rahman, Shahzad Ahmed Bajwa, Muhammad Shoaib Siddiqui, Khurram Saifullah, Yaqoob Saeed Khan, Danish Imam, Najeebullah Hashmi, Uzair Ahmed Abdullah, Shahzad Mukhtar, Rao Khalid and Syed Adnan Shah alias Tipu are awarded imprisonment for life.
- (c) Since all the eleven accused persons namely Atta-ur-Rahman, Shahzad Ahmed Bajwa, Muhammad Shoaib Siddiqui, Khurram Saifullah, Yaqoob Saeed Khan, Danish Imam, Najeebullah Hashmi, Uzair Ahmed Abdullah, Shahzad Mukhtar, Rao Khalid and Syed Adnan Shah alias Tipu have been convicted under the provisions of the Explosive Substances Act, 1908, therefore, their whole property is directed to be forfeited to the Government as provided u/s 5-A of the Explosive substances Act, 1908.
- (d) For attempting to commit murder of Corps Commander Sindh, Karachi Lieutenant General Ahsan Saleem Hayat, an offence punishable u/s 7(b) of the Anti-Terrorism Act, 1997 r/w 34 PPC all the eleven accused persons namely Atta-ur-Rahman, Shahzad Ahmed Bajwa, Muhammad Shoaib Siddiqui, Khurram Saifullah, Yaqoob Saeed Khan, Danish Imam, Najeebullah Hashmi, Uzair Ahmed Abdullah, Shahzad Mukhtar, Rao Khalid and Syed Adnan Shah alias Tipu are awarded R.I. for 14 (fourteen) years each and to pay fine of Rs.50,000/- (fifty thousand) each, or in default each of them have to suffer R.I. for six months more.
- (e) For causing damage to Toyota Hi-Ace Van bearing Regn. No.JE-9255 which was used by the accused persons in the commission of the offence and escort vehicles i.e. Land Cruiser Jeep bearing Regn. No.88-8263, Land Cruiser Jeep bearing Reg. No.86-7364 Toyota Corolla Car bearing Regn. No.92-4702, Toyota Land

Cruiser Jeep bearing Regn. No. BB-8173 and Toyota Land Cruiser Jeep bearing Regn. No. BC-3621 due to passage of projectiles of firearms, an offence punishable u/s 7(d) of the Anti-Terrorism Act, 1997, each of the eleven accused persons named above are directed to suffer R.I. for 10 (ten) years and to pay fine of Rs.50,000/- (fifty thousand) each or in default to undergo R.I. for 6 (six) months more.

The sentence of death to all the eleven accused persons named above, is subject to confirmation by the Hon'ble High Court of Sindh, Karachi as provided u/s.374 Cr.P.C.

- (f) The accused are directed to pay compensation of Rs.1,00,000/- (one lac) each to the legal heirs of each of the deceased persons Hav: Manzoor, Hav: Muhsbat Baig, LNK Afzal Shakir, Sarwar Shahid Hussain, Sepoy Tariq Naveed, LNK Tariq Hussain (Army Personnel) SIP Hassan Asghar, HC Nazeer Ahmed, HC Liaquat Gujjar (Police Personnel) and Ashok (Civilian) as provided u/s. 544-A Cr.P.C. or in case of their failure to pay the compensation each of them shall undergo R.I. for 6 (six) months more.

The amount of compensation, if paid, be given to the legal heirs of the deceased persons at the rate mentioned above and the amount of fine, if realized, be deposited in the Government Treasury.

All the sentences are directed to run concurrently and benefit of section 382-B PPC is also extended to the accused.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.II, Karachi, the aforesaid appeals have been preferred by the appellants.

3. The facts of the prosecution case are that on or about the 10th day of June, 2004, accused Atta-ur-Rehman, Shahzad Ahmed Bajwa, Danish Imam, Khurram Saifullah, Muhammad Shoaib Siddiqui, Shahzad Mukhtar, Yaqoob Saeed Khan, Najeebullah, Rao Khalid, Syed Adnan Shah alias Tipu and absconding co-accused Muhammad Qasim alias Hamza S/o. Muhammad Farooq, Shahab, Bilal, Tayyab and Hamad sons of unknown, formed an unlawful assembly and conspired to commit Qatl-i-Amd of Corps Commander Karachi, Lt. General Ahsan Saleem Hayat, by making murderous assault upon him with deadly weapons. On the same date i.e. 10.06.2004 at about 8.45 a.m. in pursuance of the above criminal conspiracy, they in prosecution of the common object of such unlawful assembly, armed with SMGs, Explosive Substances, including bombs,

came near the Bridge Store opposite Prince Complex, Clifton, Karachi in Toyota Hi-Ace Van bearing Registration No.JE-9255, took positions on the left and right side of the Clifton bridge, planted one bomb in a plastic bag near a pole and another bomb at the beginning of Clifton bridge in a flower pot (Gamla) lying on the foot path and when the convoy of Corps Commander was passing through the Clifton bridge, all of them intentionally started firing from both the sides, on the convoy, to commit their Qatl-i-Amd, as a result of which the escort of Corps Commander, namely Manzoor Muhsbat Baig, Sawar Afzal Shakir, Sawar Shahir Hussain, Sepoy Tariq Naveed, Sepoy Tariq Hussain sustained bullet injuries and succumbed to their injuries and died at the PNS Shifa Hospital, whereas police personnel namely SIP Hassan Asghar, HC Nazeer Ahmed, HC Liaquat Gujjar and Ashok who had also sustained the bullet injuries succumbed to their injuries and died at JPMC, Karachi, whereas Irshad Ali, Muhammad Afzal, Sepoy Gul Bayan Khattak, Sepoy Zahid Iqbal, Karim Bux, Abdul Qadir, Muhammad Ilyas, Gulsher, Amjad Siddiqui, Muhammad Hussain sustained fire arm injuries. Thereafter the appellants picked up two SMG Rifles and sixty live rounds, which were in possession of deceased LNK Tariq Hussain and LNK Afzal Shakir and made their escape good from the spot in the said Toyota Hi-Ace Van bearing Regn. No.JE-9255. **On the same day i.e. 10.06.2004** at about 7.45 a.m. Inspector Wasif Qureshi, SHO P.S. Boat Basin was on usual patrolling, during the course of which he received a wireless message through police control that an incident of firing had taken place at Clifton bridge. On receiving the above message, he rushed towards the Clifton bridge, where he saw Army, police personnel and some other persons lying injured in front of the Bridge Store on the main Clifton Road, leading towards Saddar. He called ambulances and shifted the injured to PNS Shifa Hospital, JPMC and Civil Hospital. Blood was lying on the road and empty cases of Kalashnikov bullets were lying scattered at the scene of offence. His superior police officers also arrived at the scene of offence. P.C. Mehmood picked up a bomb wrapped in a plastic bag/shopper threw it in the adjacent open plot, which blasted there. Bomb Disposal Unit was summoned at the scene of offence. They inspected and surveyed the whole area during the course of which one more bomb was found lying near the flowerpot (Gamla) at the end of the Clifton bridge. The

bomb disposal unit took that bomb into their possession and defused it. During the presence of Inspector Muhammad Wasif Qureshi, SHO, PS Boat Basin, at the scene of offence PC Mehmood and HC Javed Iqbal of PS Boat Basin, who were already present there, informed him that while patrolling in the area when, at about 8.45 a.m. they reached near Clifton bridge, they saw convoy of Corps Commander Sindh coming from Teen Talwar (Three Sword) side, proceeding ahead through main Clifton road. The convoy consisted of five vehicles. They informed him that at that time they saw that some persons, who were duly armed and present in the left side lane, near Clifton bridge, started firing at the convoy Jeep bearing Regn. No.BB-8173. Both the above said Constables further informed him that the above said culprits, after firing at the jeep retreated back and fled away, towards the Railway Track, in Toyota Hi-Ace Van bearing Registration No.JE-9255. From the scene of offence Inspector Muhammad Wasif Qureshi proceeded to PNS Shifa Hospital, where he came to know that some of the Army personnel had succumbed to their injuries and expired and some of them were lying injured. Those who had died at PNS Shifa Hospital were Sawar Tarique Hussain, Hawaldar Manzoor, Hawaldar Muhbat Baig, Sawar Shahid Hussain and Sepoy Tarique Naveed, whereas LNK Asif Sohail, LNK Abid Hussain, Sepoy Zahid Iqbal, Sepoy Gul Bayan Khattak, were lying injured. From PNS Shifa Hospital he proceeded to the JMPC where he came to know that five injured persons who were brought there had succumbed to the injuries and expired. They were Sepoy Afzal Shakir, SIP Hassan Asghar, HC Nazeer Ahmed, HC Liaquat Ali Gujjar and Ashok and injured Muhammad Afzal Khan was also lying in the hospital and was under treatment. From JMPC he proceeded to the Civil Hospital where the injured persons of Sindh Secretariat, who were traveling in a secretariat bus along with other persons, were also lying injured. Those injured were Abdul Qadir, Muhammad Ilyas, Gulsher, Muhammad Hassan, Irshad Ali, Amjad Ali and Karim Bux. From the Civil Hospital he returned back to the scene of offence, where he dictated his FIR, acting himself as complainant on behalf of the State, to HC Mujahid Iqbal and sent the same through ASI Abdul Ghaffar, to PS Boat Basin for its incorporation in the 154 Cr.PC book, where ASI Syed Imtiaz Hussain Shah incorporated its contents in the 154 Cr.PC, book word by word and registered formal FIR

bearing crime No.165/2004, PS Boat Basin and its investigation was entrusted to Inspector Muhammad Tarique, Incharge Investigation.

4. **On the same day i.e 10.06.2004**, at about 9.30 a.m. Inspector Muhammad Tarique, Incharge Investigation Branch of PS Boat Basin, inspected the scene of offence and secured blood of the deceased / injured persons, sealed in four bottles, Mobile Telephone Set of Nokia, one SIM Card, one detonator, 237 empty shells of bullets of SMG, 6 misfired bullets of SMG, 5 empty shells of G-3, Rifle, two motorcycles, one bicycle, one piece of shoe, 2 police caps, smashed pieces of glass, one empty magazine of SMG and prepared the memo of inspection and recovery in presence of SIP Zafar Nazeer and HC Javed Iqbal. ASI Abdul Ghaffar prepared the memo of inspection of the dead body of deceased Sepoy Afzal Shakir, SIP Hassan Asghar, HC Nazeer, HC Liaquat Ali and Ashok and also prepared the inquest report upon the dead bodies of the above named deceased in presence of Naib Sobedar Mushtaq Ahmed, Naik Muhammad Ameen, S.I. Tariq Rasheed, HC Jameel Ahmed, PC Muhammad Ayub, HC Sher Zaman, Nicolas and Vijay Kumar respectively. On the same day i.e **10.6.2004**, at about 1:00 p.m. ASI Abdul Ghaffar sealed the blood stained police uniform of deceased HC Liaquat Gujjar prepared the memo of seizure in presence of PC Muhammad Ayub and HC Sher Zaman.

5. **On the same day i.e 10-06-2004**, Inspector Muhammad Tariq, Incharge Investigation Branch, PS Boat Basin received information that Toyota Hi-Ace Van bearing Regn. No.JE-9255, which was used in the commission of this offence, was lying abandoned at Defence View. On receiving the above information he along with his subordinate staff reached Defence View at 1.15 p.m. and found the above vehicle parked near Baitul Ameen Plaza, police of PS Baloch Colony were present there and had already cordoned off the vehicle. He summoned the Bomb Disposal Unit and Finger Prints Bureau, who came and checked the vehicle thoroughly and took finger print impressions from the vehicle. At about 3.45 pm Inspector Muhammad Tarique, inspected the said Toyota Hi-Ace Van bearing No.JE-9255 and collected one SMG bearing No.2050763, two magazines, one magazine containing 30 live bullets and another containing 8 live bullets, 40 empty shells of LMG, one live bullet

of LMG, one empty shell of G-3 Rifle, smashed pieces of glass rear side screen sealed the same in separate parcels, seized the said Toyota Hi-Ace Van and prepared such memo in presence of SIP Bashir Ahmed and ASI Khalid Mehmood.

6. **On the same day i.e 10-06-2004**, at about 5.45 p.m. ASI Abdul Ghaffar sealed the blood stained pant of deceased Ashok prepared the memo of seizure in presence of Nicolas and Vijay Kumar. **On the same day**, at 9.45. p.m., I.O. Inspector Muhammad Tarique seized and secured record of Mobile Telephones No.0300-2756329 (5 pages) in the name of Mst. Shaista, 0300-2566785 (8 pages) in the name of Aurangzeb and one bill of PTCL Telephone NO.4403488 in the name of Shahid-ur-Rahman, from Room NO.29 of Investigation Centre and prepared such memo in presence of ASI Muhammad Jamil and ASI Khalid Mehmood.

7. **On 11.06.2004** Inspector Muhammad Tarique inspected the vehicles of Army bearing Regn. No.92 4702 Toyota Corolla, No.86 7364 Escort Jeep, No.88 8263 MP Jeep, No.BA 87 5890 Toyota Jeep No.BB 8173 Jeep, and prepared such memos in presence of ASI Jameel Akhtar and ASI Khalid Mehmood. **On the same day**, I.O. Inspector Muhammad Tariq moved letter of request to the DDO Revenue, Saddar Town, Karachi, for preparing sketch of the place of incident and pursuant to it, the sketch of the place of incident was prepared by Tapedar Jameel Ahmed on the pointation and in presence of eyewitnesses PC Ghulam Farooq and the I.O. Inspector Muhammad Tarique.

8. **On 13.06.2004**, at 3.15 p.m. accused Danish Imam, Khurram Saifullah, Uzair and Yaqoob Saeed were arrested by AVCC Police from the parking lot of Jinnah View Apartments, near Wireless Gate, Al-Falah Society, Karachi. At that time, accused Danish Imam had a Kalashnikov with magazine containing 24 live rounds and one in its chamber, accused Uzair Ahmed had a Kalashnikov with magazine containing 21 live bullets and one in its chamber, accused Khurram Saifullah had a Kalashnikov with magazine containing 11 live bullets and one in its chamber, accused Yaqoob Saeed had a T.T. Pistol with magazine containing five live bullets and one in its chamber. On the personal search of accused police secured

Rs.480/- from accused Danish Imam, Rs.360/- from accused Uzair Ahmed, Rs.580/- from accused Khurram Saifullah and one hand grenade from the folds of his shalwar and Rs.300/- from accused Yaqoob Saeed and one hand grenade from his shirt pocket. The police arrested the accused and took into possession all the above articles and also secured two motorcycles parked in front of Jinnah View Apartments bearing Regn. No.KAW-0284 and LHL-2833. The police also collected 15 empty shells of SMG, two empty shells of T.T. pistol and four empty shells of 9MM from the place of occurrence and prepared the memo of their arrest and recoveries of the above articles in presence of mashirs Abdullah and Maqsood Ahmed. On account of recovery of above arms and ammunition, SIP Tasawur Ameer of AVCC reduced his five S.154 Cr.PC statements and sent the same to PS Al Falah through SIP Bashir for incorporation in the 154 Cr. PC book. On the basis of his above said S.154 Cr.PC statements FIR Nos.94, 95, 96, 97 and 98 of 2004 were registered at PS Al Falah. **The above named accused were interrogated at the place of vardat during the course of which they led the police party to Model Colony graveyard** where the police party saw one CG-125 motorcycle bearing Regn. No.MNQ-9682 and one Suzuki Car bearing Regn. No.S-5847 parked near the graveyard of Model Colony. Four persons were sitting in the Suzuki Car and two persons were sitting on the motorcycle. As soon as the police party reached there and tried to apprehend the accused, the accused, who were armed, opened fire on the police party, police returned the fire in self defence and apprehended four persons sitting in Suzuki Car whereas two accused sitting on motorcycle made their escape good leaving their motorcycle behind. The four accused who were sitting in Suzuki Car disclosed their names as Atta-ur-Rahman, Shahzad Ahmed Bajwa, Shoaib and Najeeb and the police recovered one Kalashnikov with two magazines, one containing 30 live bullets and other containing 19 live bullets, one bullet was found in the chamber of Kalashnikov, one hand grenade, one T.T. pistol loaded with five live bullets in its magazine and cash of Rs.680/- from the possession of accused Atta-ur-Rahman, one Kalashnikov bearing No.14037586 with two magazines, one contained 30 live bullets and other magazine contained 15 live bullets, one live bullet was found in the chamber of Kalashnikov, one hand grenade was found from the folds of Shalwar and also one T.T.

pistol loaded with magazine with three live bullets and cash of Rs.300/- from the possession of accused Shahzad Ahmed Bajwa, one Kalashnikov bearing No.756349 with magazines, containing 21 live bullets, one bullet was found in the chamber of Kalashnikov, one hand grenade was found from the folds of Shalwar and also one T.T. pistol loaded with magazine with four live bullets and cash of Rs.600/- from the possession of accused Muhammad Shoaib and one Kalashnikov bearing No.7718 with magazines containing 13 live bullets, one bullet was found in its chamber, one hand grenade, and cash of Rs.425/- from the possession of accused Najeebullah. Two kit bags were also found lying in the Diggi of Suzuki Car; those kit bags contained illicit arms and ammunitions, i.e. 5 Kalashnikovs out of which one was non-assembled, four magazines each containing 30 live bullets, two G-3 Rifles, out of which one was without butt with two magazines, one containing 10 live bullets and other containing 8 live bullets, two LMGs, belts containing 200 live rounds and 400 live bullets of LMGs, in all 600 live bullets, two grenade firers, 15 detonators, one First Aid Medical Box. The police also collected 33 empty shells from the scene of offence, out of them 23 were of SMG and 10 were of 9MM pistol, and prepared memo of arrest and recovery of the above named four accused in the presence of mashirs Muhammad Akram and Maqsood Ahmed.

9. On 15.6.2005 I.O. of the case Inspector Muhammad Tarique had taken finger print impressions of accused Muhammad Shoaib Siddiqui, Najeebullah, Khurram Saifullah, Yaqoob Saeed Khan, Uzair Ahmed Abdullah, Danish Imam, Shahzad Ahmed Bajwa and Atta-ur-Rahman at AVCC Garden and sent the same to the Incharge Finger Prints Bureau for comparison with the finger prints detected from the vehicle Toyota Hi-Ace Van bearing Regn. No.JE-9255 and one SMG bearing No.2050763 recovered from above said Toyota Hi-Ace Van. The report of the Finger Print Expert showed that the finger prints of accused Atta-ur-Rahman match with the finger prints found on SMG bearing No.2050763 and finger prints of accused Muhammad Shoaib Siddiqui, Uzair Ahmed Abdullah, Shahzad Ahmed Bajwa, Danish Imam and Najeebullah matched with the finger prints detected from the Toyota Hi-Ace Van bearing Regn. No.JE-9255.

10. **On 19.06.2004** I.O. Inspector Muhammad Tarique sent 237 crime empties of 7.62 mm bore, one 7.62 mm bore magazine, six 7.62 mm bore mis-fired cartridges, five 7.62 (G-3) bore crime empties, one 7.62 (G-3) bore crime empty, one 7.62 mm bore SMG Rifle No.12050763 along with two magazines, 38 7.62 mm bore live cartridges, 40 7.62 SMG Crime Empties, one 7.62 mm LMG bore live cartridge and on **24.06.2004** AVCC had sent 12 SMGs, two G-3 Rifles, 2 LMGs to the Ballistic Expert for comparison with each other and the **Ballistic Expert report dated 16.7.2004** shows that fourteen 7.62 mm bore crime empties were fired from the 7.62 bore SMG Rifle body No.12083586, which was recovered from the possession of accused Atta-ur-Rahman at the time of his arrest and seven 7.62 mm bore crime empties were fired from Rifle No.15158739, ten 7.62 mm bore crime empties were fired from Rifle No.94379, nine 7.62 mm bore crime empties were fired from No.33141, eight 7.62 mm bore crime empties were fired from No.24723, G-3 Rifle No.012650, eleven 7.62 mm bore crime empties were fired from LMG Rifle No.231, which were recovered from the Diggi of Car at the time of arrest of accused Atta-ur-Rahman, Shahzad Ahmed Bajwa, Shoaib and Najeebullah.

11. **On 19.06.2004** four vehicles, i.e. one Land Cruiser Jeep bearing Regn. No.88 8263, one land cruiser Jeep bearing Regn. No.86 7364, one Toyota Corolla Car bearing Regn. No.92 4702 and one Toyota Land Cruiser Jeep bearing Regn. No.BB-8173 were sent by the I.O. Inspector Muhammad Tarique to the Ballistic Expert, who reported that these vehicles were bearing holes caused by passage of fired projectiles of fire arms.

12. **On 22.06.2004** accused Danish Imam, Uzair Ahmed Abdullah, Khurram Saifullah, Atta-ur-Rahman, Yaqoob Saeed Khan, Shahzad Ahmed Bajwa, Muhammad Shoaib Siddiqui, Shahzad Mukhtar and Najeebullah were correctly identified by eyewitnesses PC (Traffic) Ghulam Farooq, Ghulam Rasool, Bakhtiar Khan, LNK Muhammad Safdar, Hav. Zafar Abbas, Hav. Muhammad Rasheed, Hav. Umar Daraz, Sepoy Sharakat Zaman and Ghulam Abbas before Judicial Magistrate Court No.XIV, Karachi South.

13. On **24.06.2004** the I.O. Inspector Muhammad Tarique sent the blood, blood stained earth, pieces of brain secured from the place of incident, blood stained pant and shirt of deceased Ashok, blood stained shirt, pant and vest of deceased HC Liaquat, blood stained shirt, pant and underwear of deceased HC Nazeer, blood stained white shirt of injured Karim Bux, blood stained shirt of injured Amjad Ali to the Chemical Examiner who reported that all the above articles are stained with human blood. On **24.06.2004** one Toyota Land Cruiser Jeep bearing Regn. No.BC-3621 was also sent by the I.O. Inspector Muhammad Tariq to the Ballistic Expert, who has reported that it was bearing holes caused due to passage of projectiles of fire arm.

14. On **25.06.2004**, at about 4.45pm Inspector Muhammad Tarique recorded confessional statements of accused Atta-ur-Rahman and Shahzad Ahmed Bajwa in two video and audio cassettes through photographer Abbas and prepared such memo in presence of SIP Zafar Nazeer and photographer Abbas. On **30.06.2004** confessional statement of accused Atta-ur-Rahman and Shahzad Ahmed Bajwa were recorded u/s. 164 Cr.P.C by the learned IXth Judicial Magistrate, Karachi South. On **3-7-2004** the I.O. Inspector Muhammad Tarique sent one 8 mm bore crime bullet to the Ballistic Expert, who has reported that it was fired from 8 mm bore fire arm.

15. After completion of the Investigation the I.O. submitted charge sheet No.125/2004 before the Court on **26.07.2004** forwarding accused Atta-ur-Rahman, Shahzad Ahmed Bajwa, Shoaib Siddiqui, Yaqoob Saeed Khan, Uzair Ahmed Abdullah, Danish Imam, Najeebullah, Khurram Saifullah and Shahzad Mukhtar in judicial custody while names of Syed Adnan Shah, Muhammad Qasim alias Hamza, Rao Khalid alias Haris, Shahab, Bilal Tayab and Hamad were placed in column No.2 with red ink as absconders, on the basis of which above case was registered. Accused Rao Muhammad Khalid, who was shown absconder, was arrested on **13.08.2004** and I.O. submitted supplementary charge sheet No.125-A/2004 on **25.08.2004**. After completion of necessary formalities against the absconding accused Syed Adnan Shah alias Tipu, Muhammad Qasim

alias Hamza, Shahab, Bilal Tayab and Hamad were declared as absconders vide order dated 25.08.2004.

16. The charge was framed against the accused persons and read over to the above named ten arrested accused to which they pleaded not guilty and claimed trial of the case. Accused Syed Adnan Shah alias Tipu alias Muhammad son of Syed Abdul Aziz was arrested on 15.10.2004 and produced before the court, remanded to the police custody. On 26.10.2004 I.O. submitted supplementary charge sheet No.125-B/2004. **Thereafter amended charge** was framed and read over to all the above named eleven arrested accused persons, to which they pleaded not guilty and claimed to be tried.

17. In order to prove its case, the prosecution examined 32 witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The Statements of the accused persons were recorded u/s 342 Cr.P.C. respectively who all claimed false implication in the case. None of the appellants examined themselves on Oath or called any witness in support of their defense case.

18. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 21.02.2006 (the impugned judgment) passed by the concerned trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

19. Mr. Mushtaq Ahmed, learned counsel for the appellants has contended that there was an unexplained delay of about 8 hours in registering the FIR which lead to a false case being concocted against the appellants; that no PW was present at the place of incident and that all the PW's in respect of the incident were put up witnesses; that the fact that this was a concocted case is illustrated by the fact that according to the prosecution the incident took place at about 8.45 am yet some bodies from the incident reached the respective hospitals before this time; that the appellants had been acquitted from the police encounter case and arms case which lead to their arrest; that the confessions could not be relied upon as they had been recorded after a delay of 18 days and there were

numerous defects in the manner in which the confessions had been recorded especially as the appellants who confessed had been handed back to the police after making their confessions; that the identification parade of all the appellants had been held after a long delay and that no role had been assigned to the appellants when they were identified at the identification parades; that there were other legal defects in carrying out the identification parades which meant that they could not be safely relied upon; that the empties and recovered SMG's had been sent for FSL together after a long delay and as such the FSL report could not be safely relied upon; that the finger prints of the appellants had been planted in the van after their arrest; that appellant Uzair who led the police to the uniforms in the house was not the only person living in the house and as such these uniform could have been put in the house by other occupants of the house; that questions regarding the hi jacking of the van had not been put to the appellants when they recorded their S.342 Cr.PC statements and as such this evidence could not be used to convict them and that for any of the above reasons based on the benefit of the doubt being extended to the appellants all the appellants should be acquitted of the charge and /or in the alternative if this court was of the view that the charge had been proven by the prosecution beyond a reasonable doubt the defects which existed in the prosecution case amounted to mitigating circumstances and the appellants should be awarded the lesser alternative sentence of life imprisonment. In support of his contentions he has relied on **Muhammad Pervez V The State** (2007 SCMR 670), **Azeem Khan V Mujahid Khan** (2016 SCMR 274), **Muhammad Fazil V The State** (2006 SCMR 1432), **Khuda Bux V The Crown** (1969 SCMR 390), **Bahadur Khan V The State** (PLD 1995 SC 336), **Mah Gul V The State** (2009 SCMR 4), **Aala Muhammad V The State** (2008 SCMR 649), **Muhammad Ismail V The State** (2017 SCMR 898), **Taj Wali Shah V The State** (2014 P Cr.LJ 323), **Tooh V The State** (1975 P Cr. L J 440), **Muhammad Israr V The State** (2002 P Cr. L J 1072), **Kanwar Anwaar Ali, Special Judicial Magistrate in the matter of Criminal Miscellaneous Application No.183 of 2019 in Criminal Appeal No.259 of 2018**, an unreported judgment of this Court in Special Cr. ATAs No.29 of 2006 and 27 and 28 of 2007 (**Muhammad Shaukat and others v. The State**), **Mian Sohail Ahmed and others v. The State and others** (2019 SCMR 956), **Azhar Mehmood and others v. The**

State (2017 SCMR 135), Sabir Ali v. The State (2011 SCMR 563), Muhammad Ayaz and others v. The State (2011 SCMR 769), Nazir Ahmad v. Muhammad Iqbal and another (2011 SCMR 527), Kamal Din alias Kamala v. The State (2018 SCMR 577), Bacha Zeb v. The State (2010 SCMR 1189), Muhammad Ibrahim v. Ahmed Ali and others (2010 SCMR 637), Muhammad Fazil v. Bashir Ahmad and another (2009 SCMR 1382), Akhtar Ali and others v. The State (2008 SCMR 6), Muhammad Mansha v. The State (2018 SCMR 772), Basharat Ali v. Muhammad Safdar and another (2017 SCMR 1601), Muhammad Zubair and 2 others v. The State (2010 P. Cr. LJ 1892), Ghulam Akbar and another v. The State (2008 SCMR 1064), Ali Sher and others v. The State (2008 SCMR 707), Asad Rehmat v. The State and others (2019 SCMR 1156), Amin Ali and another v. The State (2011 SCMR 323), Mst. Rukhsana Begum and others v. Sajid and others (2017 SCMR 596), Nadeem Hussain v. The State (2019 SCMR 1290), Hayatullah v. The State (2018 SCMR 2092), Faqir Ullah v. Khalil-uz-Zaman and others (1999 SCMR 2203), Muhammad Akram v. The State (2009 SCMR 230), Tariq Pervez v. The State (1995 SCMR 1345), Imtiaz alias Taj (2018 SCMR 344), Muhammad Saddique v. The State (2018 SCMR 71), Application by Hussain Nawaz Sharif in the matter of C.M.A. No.3986 in C.M.A. No.2939 of 2017 in Constitutional Petition No.29 of 2016 etc. decided on 20th June, 2017 (PLD 2019 Supreme Court 196) and an unreported judgment of Hon'ble Supreme Court of Pakistan, in Criminal Appeals No.25-K and 26-K of 2013.

20. On the other hand Mr. Saleem Akhtar Buriro, Additional Prosecutor General has fully supported the impugned judgment. He contended that there was no delay in the lodging of the FIR which lead to the prosecution having a chance to concoct a case against the appellants; that the judicial confessions could be relied upon as they had been carried out in accordance with law; that the eye witness evidence was reliable, trustworthy and confidence inspiring and as such the prosecution could convict the appellants on the basis of this ocular evidence alone; the appellants had also been picked out at an identification parade which had been carried out in accordance with the law; that finger print evidence against some of the appellants supported

the prosecution case; that the recovery of empties at the scene along with recovery of weapons and positive FSL report supported the prosecution case as did the positive chemical report and CDR data which linked the appellants to the unexploded bomb and that for all the above reasons the prosecution had proved its case against each of the appellants beyond a reasonable doubt and as such their appeals be dismissed and their convictions including the death penalty maintained against each of the appellants as there were no mitigating circumstances. In support of his contentions he has relied on **Solat Ali Khan v. The State** (2002 SCMR 820), an unreported Judgment of this Court in Spl. CrI. ATA No.39 to 41 of 2010 dated 16.12.2019 (**Muhammad Ashfaq Qureshi & others v. The State**), **Khan Muhammad and others v. The State** (1999 SCMR 1818), **Muhammad Amin v. The State** (PLD 2006 Supreme Court 219), **Joygun Bibi v. The State** (PLD 1960 Supreme Court (Pak.) 313), **Nazeer alias Wazeer v. The State** (PLD 2007 Supreme Court 202), **The State v. Minhun alias Gul Hassan** (PLD 1964 Supreme Court 813), **Noor Muhammad v. The State** (1999 SCMR 2722), **Raz Muhammad v. The State** (PLD 2002 Supreme Court 56), **Rafaqat Ali and others v. The State** (2016 SCMR 1766), **Muhammad Afzal and 2 others v. The State** (2003 SCMR 1678), **Zulfiqar Ahmed and another v. The State** (2011 SCMR 492) and **Nizamuddin v. The State** (2010 SCMR 1752).

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

22. In our view after our reassessment of the evidence based on the prompt lodging of the FIR i.e. around 8 hours after the incident where chaos and mayhem reined after the incident and the immediate concern was to attend to the injured, secure the scene and defuse any other bomb in our view such delay in lodging the FIR has been adequately explained which lead to no time to concoct a false story against the appellants, the evidence of the PW witnesses (including eye witnesses), PW MLO's, post mortem reports and other medical evidence, IO's evidence, recovery of empties, weapons and an unexploded bomb and mobile at the scene of the

incident, positive chemical and FSL reports, damaged vehicles of the convoy from the scene of the incident we are satisfied that the prosecution has proved beyond a reasonable doubt that on 10-06-2004 at about 8.45 am a murderous assault was launched through bomb and firearm against the Karachi Corps Commander with attempt to murder him and his convoy which lead to the murder of 10 persons named earlier in this judgment whilst the convoy was crossing Clifton bridge Karachi.

23. The issues therefore, in our view, left before us are:

(a) whether it was the appellants or some other persons who launched the murderous attack against the Corps Commander and his convoy which left 10 people dead.

(b) Whether the murderous attack against the Corp. Commander and his convoy which lead to the murder of 10 people was a part of a criminal conspiracy made between the appellants.

(c) Whether during the attack on the Corps Commander and his convoy offenses under the Explosive Substances Act 1908 were committed

(d) Whether the murderous attack against the Corp. Commander and his convoy which lead to the murder of 10 people was an act of terrorism which fell within the purview of the ATA.

Turning to the main prosecution evidence in respect of each of the above aspects.

1. Confessional Statements before the judicial magistrate.

24. In our view one of the foundational pieces of evidence in respect of the prosecution case are the two confessional statements made by appellants Atta-ur Rehman and Shahzade Ahmed Bajwa which for ease of reference are set out below:

S. 364 Cr.P.C. Confession of Atta-ur-Rehman. Exhibit 106.

"Question: What you have to say in this case?"

Answer: Pakistani Government has announced ultimatum of 24 hrs and thereafter operation has to start in Wana. Operation was against the persons, who have sacrificed their lives in the way of Allah. Pakistani government and the Army had already killed the Muslims of Wana mercilessly during operation. They martyred 5 ladies and 7 children in a vehicle, destroyed their houses by bombing, martyred and arrested them and the foreign Mujahidin were handed over to America by arresting. Our organization

"Jund-Allah" after consultation decided to kill corp commander prior to commencing the operation. We were practicing the same for the last one month so that the Pakistani government may easily understand that in case they kill any Muslim on the wishes of America we shall kill the persons partner with General Musharraf in policy making and the Generals also understand that they are not the godfathers of Pakistan and cannot rule the country in accordance with American Agency against the wishes of People. I directed my companion **Bilal** to get booking of one HIX for the Picnic, who did the same with **Najeeb** and directed to arrive at the address situated behind UBL Sports Complex at 5.00 am. **Najeeb** was not aware about our plan. On the next day at 5.30 am **Atta-ur-Rehman, Shahzad Ahmed Bajwa, Bilal, Aziz Abdullah and me** rode in rented Toyota and took **Najeeb** from his home and went behind UBL Sports Complex, where the HIX was already available. **Najeeb, Shahzad Ahmed Bajwa, Bilal and Azizullah** rode in the available Hilex and asked the driver to go to Gulistan-e-Jauhar for collecting other goods. The HIX driver proceeded towards Gulistan-e-Jauhar by taking them and I proceeded in the Toyota behind them. When we reached Gulistan-e-Jauhar, my companion aimed guns towards drivers and cleaners and I directed **Najeeb** to inject them sleeping injections which we had already purchased. We dropped them after injecting. On the way **Najeeb** started weeping then we also dropped him in the area of Airport. We reached model colony in the vehicle, parked the HIX in abandoned street and all the companions rode in Toyota vehicle reached at the house of **Shahzad**. Where all the companions **Qasim, Shahbaz, Bilal, Irfan, Shahid alias Sad, Yaqoob, Saeed Khan, Fehmi alias Hamad, Shoaib Ahmed Siddiqui, Shahzad, Khalid Rao, Aziz Abdullah and me** rode in our Toyota Vehicle. We took two bags of arms and ammunition. All our companions except **Hamad** and me rode in HIX and I lead them. **Hamad** followed me and the HIX followed us. In this shape of convoy we reached Defence view and at the already settled place this convey stopped. I delivered key of my vehicle to **Hamad** and rode in HIX. HIX proceeded towards Clifton bridge. Our six companions wore police uniform and we stopped the vehicle under the bridge. All the persons took already settled positions. **Hamad and Shahzad Bajwa** were in the vehicle, whereas **Aziz Abdullah** was on the driving seat. We kept explosive material's bags at the already settled places. As the convoy of Corp commander arrived **Shahzad** pressed remote button to blast the vehicle of military police but failed. Thereafter we started firing from our respective positions. Four vehicles plying with the vehicle of corp commander received our fires but rapidly crossing while one vehicle left behind which **Khalid Rao and me** opened fires and killed all the persons by reaching near the vehicle. We also took their two SMG rifles. As **Qasim** received bullet shot under left finger therefore, I directed all the companions to sit in HIX and we proceeded from there. We forget to switch on the mobile timer of the bag of explosive substance. We reached Defence View and shifted in my vehicle and the rented Toyota vehicle. Thereafter, we proceeded towards model colony and reached my home. Where we provided first aid to the injured hand of **Qasim** and made him to sleep at my home and all the other companions proceeded to their services. Next day I

took Dr. Arshad Waheed to home, who wrote medicines for Qasim. This action was taken by us solely without direction of anyone. We have old terms with Dr. Arshad and Dr. Akmal who sent us Vana to Eid Muhammad for training".(bold added)

S. 364 Cr.P.C. Confession of Shahzad Ahmed Bajwa. Exhibit 107.

"Question: What you have to say in this case?

Answer: **Atta-ur-Rehman** got booked HIX through **Bilal** which reached at the settled place behind UBL Sports Complex at 6.00 am on the day of incident. To bring the same **Shahzad Ahmed Bajwa, Atta-ur-Rehman, Bilal and Aziz Ahmed Abdullah** reached there in Toyota vehicle. On the way we purchased syringe for injecting sleeping injection to driver and conductor. We picked **Najeeb** from Star gate. **Aziz Ahmed Abdullah and me** reached **Gulshan-e-Iqbal** in HIX by picking **Najeeb**. Where **Abdullah** and me got seated Driver and Conductor on the rear seat on gunpoint. Thereafter, both the persons were injected through **Najeeb and Abdullah** plied HIX. We dropped Driver and Conductor in **Gulistan-e-Jauhar** with the gape and reached model colony after dropping **Najeeb too on the way**. Where we parked HIX at the abandoned place, sit in Toyota vehicle with **Atta-ur-Rehman** and reached my home, where two of our companions **Yaqoob and Qasim** were available since night, whereas other companions including **Khalid Rao, Hamad, Sad, Shahab, Shahzad, Mukhtiar, Shoaib Siddiqui and Adnan Shah** reached in the morning. From my home we took arms and ammunitions and sat in **Atta-ur-Rehman's** Mehran and the other rented vehicle by wearing Police Uniform and reached to the HIX and transferred all the articles and the persons in HIX. Thereafter, **Atta-ur-Rehman** in Mehran car, other persons in HIX and me in rented vehicle proceeded towards Defence view, where we parked **Atta-ur-Rehman's** Mehran car and the rented vehicle and by leaving **Hamad** with the keys of these vehicles there. **Atta-ur-Rehman** get with us and we proceeded towards Clifton bridge in HIX and reached there at 8:35 am. Some persons have worn Police Uniforms in the vehicle per the settled plan including **Bilal, Adnan Shah, Shahzad Mukhtiar, Shoaib Siddiqui and Yaqoob**. At about 8:45 am some companions including **Adnan Shah alias Muhammad, Bilal, Shahzad Mukhtiar, Shoaib Siddiqui, Qasim, Rao Khalid, Atta-ur-Rehman, Shahab and Yaqoob** alighted from the HIX and took positions. Whereas **Abdullah** was remain seated in the vehicle at the driver seat. **Shahzad Ahmed Bajwa, Saad and me** were taken positions with LMG. **Qasim** kept one bag of explosive material between the two road, which had to explode at the arrival of corp-commander convoys. That could not be exploded consequently **Saad and me** started firing with LMG on the first vehicle. Immediately all the other companions started firing on the targeted vehicles, which continued from one to one and half minutes. In the meantime, bullet entangled in my gun and diverted my attention for some time. I took second rifle and when drawn my attention again I witnessed that **Rao Khalid** was picking arms form the

victimized vehicles. Thereafter, they came towards HIX and sat with me. One of our accomplices Qasim received bullet shot at his hand, therefore, we hurriedly proceeded from there. In this hurriedness we forget to switch on the mobile timer of other explosive material bag. Thereafter, we reached Defence View and by taking the keys from already available person namely Hamad relieved him. After that we reached Atta-ur-Rehman's house with the arms and I proceed in the rented vehicle by taking some arms towards my home. In 2003 I visited Vana on the directions of Atta-ur-Rehman for training. We had old consulting terms with Dr. Arshad and Dr. Akma".(bold added)

Law on retraction of judicial confessions.

25. After a review of the relevant law on the legal validity of judicial confessions the Hon'ble Supreme court in the case of **Ch. Muhammad V Yaqoob V The State** (1992 SCMR 1983) reached the following conclusion:

"The legal position, which has emerged from the above reports, seems to be that in order to judge the evidentiary value of retracted confession, the Court is to advert to the question, whether the same appears to have been made voluntarily, without any inducement, duress or coercion with the object to state the truth. If the Court is satisfied on the above aspect, the mere fact that there were some irregularities in recording of a confession, would not warrant disregarding of the same".(bold added)

26. It is settled law that a retracted judicial confession can be legally admissible and used against its maker in certain circumstances. In the later case of **Muhammed Amin** (Supra) it was held at P.224 Para 9 as under;

"9. There is no cavil to the proposition that conviction could have been awarded on the basis of retracted confession which proposition was examined in case of Mst. Joygun Bibi v. The State PLD 1960 (SC (Pak) 313 as under:-

"We are unable to support the proposition of law laid down by the learned Judges in this regard. The retraction of a confession is a circumstance which has no bearing whatsoever upon the question whether in the first instance it was voluntarily made, and on the further question whether it is true. The fact that the maker of the confession later does not adhere to it cannot by itself have any effect upon the findings reached as to whether the confession was voluntary, and if so, whether it was true, for to withdraw from a self-accusing statement in direct face of the consequences of the accusation, is explicable fully by the

proximity of those consequences and need have no connection whatsoever with either its voluntary nature, or the truth of the facts stated. The learned Judges were perfectly right in first deciding these two questions, and the answers being in the affirmative, in declaring that the confession by itself was sufficient, taken with the other facts and circumstances to support Abdul Majid's conviction. The retraction of the confession was wholly immaterial once it was found that it was voluntary as well as true."

10. Similarly in the case of the State v. Minhun alias Gul Hassan PLD 1964 SC 813 this Court has observed as under:-

"As for the confessions the High Court, it appears, was duly conscious of the fact that retracted confession whether judicial or extra judicial, could legally be taken into consideration against the maker of those confessions himself, and if the confessions were found to be true and voluntary, then there was no need at all to look for further corroboration. It is well-settled that as against the maker himself his confession, judicial or extra judicial, whether retracted or not retracted, can in law validly form the sole basis of his conviction, if the Court is satisfied and believes that it was true and voluntary and was not obtained by torture or coercion or inducement." (bold added)

27. Thus, the court laid down a two pronged test as under (a) whether the retracted judicial confession appears to have been made voluntarily, without any inducement, duress or coercion **and** (b) was made with the object to state the truth.

28. Notably it was also held that if both (a) and (b) were satisfied that even if there were some irregularities in recording of a confession it would not warrant disregarding of the same. In our view however following the case of **Azeem Khan V Muhahid Khan** (2016 SCMR 274) such irregularities must be of a minor nature and must not have detracted from either the voluntariness or truthfulness of the confession.

29. In the case of **Bahadur V State** (PLD 1996 SC 336) although it was suggested that a judicial confession alone can be made the basis of conviction the safer course was to look to see if there was any corroborative material available to determine its truthfulness

30. In the case of **Manjeet Singh V State** (PLD 2006 SC 30) a further requirement seemed to be added that in determining the truthfulness of the confession it had to be placed within the context of the whole of the prosecution evidence/case.

31. In our view therefore we are not in any doubt that a retracted confession before a magistrate can be the basis of convicting in a capital case however it must be;

(a) Voluntary i.e. without threat or inducement **and**

(b) Its object must be to state the truth; assistance for which can be ascertained from (i) whether the confession appears truthful within the context of the prosecution case and (ii) whether there is any other evidence on record which tends to corroborate the truthfulness of the confession **and**

(c) Only minor irregularities regarding the rules concerning the recording of judicial confessions can be permitted as determined on a case to case basis the main criteria being that such irregularities have not adversely effected the voluntariness or truthfulness of the confession.

32. In our view based on the evidence of PW 9 Rajab Ali who was the judicial magistrate who recorded the confessions the judicial confessions have been made voluntarily without threat or inducement and the confessions are truthful when based in the context of the prosecution case and other corroborative material which we will discuss later. Even if we give very little weight to the video recordings and tapes provided by the police of the two appellants confessing before them despite them being policemen in view of S.21 (H) of the ATA they provide some measure of corroboration even if slight whilst also keeping in view A.164 Qanoon-e-Shahadat 1984 concerning production of evidence which has become available because of modern devices.

33. In our view if there are any irregularities in recording the confessions these are only minor in nature and have no bearing on the voluntariness and truthfulness of the confessions and can be ignored and thus we rely on the confessions. In the case of **Raz Muhammed** (Supra) it was held that a delay in recording judicial confession would not be fatal.

2. Identification of the Appellants.

34. All the appellants except Danish Imam and Khurram Saifullah are named in both the confessional statements which we are relying upon. Thus, we must see what other evidence of identification is available against each appellant in respect of this incident.

35. In this respect we must consider the eye witness evidence against each appellant. In this respect we observe that none of the eye witnesses knew the appellants before this incident and thus the safer course would be for such eye witnesses to have identified the particular appellant from an identity parade especially as none of the appellants were arrested on the spot although this was a day light incident.

Turning to the eye witnesses of the appellants.

- (a) **Eye witness PW 23 Zaffar Abbass (P.401).** He was an escort commander in the military police. He was in the lead vehicle of the convoy followed by the Corp. Commander at the time of the incident. He noticed a Hi-roof van parked on the service road from where the attack was launched. Near the vacant plot he saw some armed persons with SMG's near the vacant plot some of whom wore police uniforms and others in civilian clothes. He recognized one accused during the incident who was firing at the convoy. On the next day his S.161 Cr.PC statement was recorded. On 22.06.2020, 12 days after the incident, at an Identification parade he picked out and identified appellant **Atta-Ur-Rehman** (who also gave one of the above referred judicial confessions) as one of the persons who was firing on the convoy. Admittedly he gave little, if any, hulia, in his S.161 statement and at the identification parade he did not give a role to the appellant which ordinarily might be fatal to the correct identification of the appellant. However based on the particular facts and circumstances of the case where the identified person had made a judicial confession to his role in the attack which we have already found we believe and are relying upon, that his S.161 statement was taken promptly, that he had no reason to falsely implicate the appellant, that in his evidence he has assigned a role to the appellant which corroborates the role assigned by the appellant himself in his confession, that it was a day time incident and that he was not far from the appellant at the time of the incident we are of the view that he has correctly identified the appellant. We accept that there might have been some defects in the identification parade as per the decision of the Hon'ble Supreme Court in the case of **Kanwar Anwaar Ali (PLD**

2019 SC 48). However in distinguishing **Kanwar Anwaar Ali** (Supra) based on the particular facts and circumstances of this case we rely on a more recent unreported case of the Supreme Court which discussed **Kanwar Anwaar Ali** (Supra) being the case of **Muhammed Siddique and others V State** dated 02-01-2020 (unreported) in Crim.Jail Appeal No's 24,69,215,486 of 2016 and 682 of 2017 which held as under at Para 5 which is set out below;

"5. Castigating severely the evidence of test identification parade, the learned counsel relied upon the guidelines laid down in the case of Kanwar Anwar Ali (PLD 2019 Supreme Court 488) to urge exclusion thereof. The supra case indeed a fine piece of juridical literature, nonetheless, does **not** extend much help to the convicts; it mainly addressed laconic approach adopted by a Magistrate in holding the test identification parade in the said case while highlighting general principles of law on the subject.

Test identification parade is a method of proof contemplated by Article 22 of the Qanun-i-Shahadat Order, 1984, reproduced below for the convenience of reference:-

"Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose".

The above framework provides enough space to admit evidence in prosecution of offenders previously unacquainted with the victims or the witnesses; appraisal of such evidence is subject to same principles as are universally applicable to any piece of evidence, under consideration in a criminal trial; there are no additional barricades as is evident from the plain reading of the Article *ibid*; without prejudice to the safeguards available to an accused at each stage of trial, essentially fair as guaranteed under the Constitution, nonetheless, it does **not** cast an artificially heavier onus on the prosecution to meet

standards of proof beyond human capacity. Each criminal case is to be decided having regard to its own peculiar facts and circumstances. A test to be essentially applied is one case may absolutely be irrelevant in another, as the crimes are seldom committed in identical situations; there may be cases wherein prosecution must assign distinct roles played during the occurrence by the culprits for determination of their guilt as well as consequences thereof, however, there are cases in which totality of transaction may not warrant reparability for such determination, like the one in hand. Cases involving abductions, dacoities and sudden assaults, more often than not, constitute episodes wherein different roles played by the culprits merge into integral totality of the crime, thus, it would be too harsh as well as unrealistic to demand exact reenactment of roles by the witnesses. Capacities even intellectually most sharp dwindle drastically in calamitous situations, therefore, the administration of criminal justice, in such peculiar situations, has to be dynamically balanced upon fair trial without prejudice to the accused as well as due weightage to the prosecution evidence without being swayed by illusory notions, subjectively structured upon hypothetical beliefs

Having found the witnesses with no axe to grind, in a comfortable unison on all the salient features of the prosecution case as well as events collateral therewith, we do not feel persuaded by the arguments, **couched on hyper technical premise.** Petitions fail. Dismissed."(bold added)

The case which we are currently deciding attracts the above dicta as it is a case of sudden assault. Even a delay in

holding the identification parade of over a year was not fatal to the identifier correctly identifying the accused. In this respect reliance is placed on the case of **Solat Ali Khan** (Supra) and in any event evidence flowing from an identification parade is only a corroborative piece of evidence and cannot supersede reliable, trustworthy, confidence inspiring direct evidence.

Thus, we are of the view that PW 23 Zaffar Abbass has correctly identified appellant **Atta-Ur-Rehman** as firing at the convoy of the Corp. Commander which lead to the murder of 10 people.

(b) **Eye Witness PW 24 Muhammed Safdar. P.408.** He was escorting the Corp. Commander at the time of the incident under the command of PW 23 Zaffar Abbass and thus corroborates PW 23 Zaffar Abbass's presence at the scene at the time of the incident. According to his evidence when the convoy reached near Clifton bridge it came under attack by firearm. He saw some persons standing near the vacant plot armed with SMG's which were firing at the convoy. He also saw one Hi-Ace Van parked at the service road. The people in his jeep sustained bullet injuries. His S.161 statement was recorded the next day. On 22-06-2004 he attended an identification parade where he picked out and identified **Khurram Saifullah** as one of the persons who was firing on the convoy. Generally the same considerations apply to him as for eye witness PW 23 Zaffar Abbass except that he has given some hulia in his S.161 statement and his name does not appear in any of the confessions and thus we are of the view that PW 24 Muhammed Safdar has correctly identified appellant **Khurram Saifullah** as firing at the convoy of the corps commander which lead to the murder of 10 people.

(c) **Eye witness PW 26 Muhammed Rashid. P.422.** On the day of the incident he was slightly ahead of the convoy as he was piloting it on his motor bike. When he reached the

vacant plot near Clifton bridge he saw two policemen in uniform with SMG's and a little further on two more policemen in uniform along with some persons in civil dress but wearing police caps all of whom were armed with SMG's. He was only travelling at 15KMH, had no helmet on and was looking from side to side whilst he was driving and thus he was able to get a good view of the appellants. He heard firing after he crossed Clifton bridge and got off the bike with his pillion rider Umar Darez. He saw culprits firing at the escort car and then making their escape good in a Hi Ace van which was parked on the service road under the bridge. His S.161 Statement was given on the following day. On 26.02.2004 at an identification parade he identified **Shahzad Mukhtar and Shoaib** as firing on the Corp. Commander's convoy both of whom have been named in both of the two judicial confessions which we rely upon. The same considerations apply to him as for PW 23 Zaffar Abbass and thus we are of the view that PW 26 Muhammed Rashid has correctly identified appellant **Shahzad Mukhtar and Shoaib** as firing on a jeep which was a part of the convoy and being present at the scene when the convoy of the Corp. Commander was attacked and which lead to the murder of 10 people.

(d) **PW 27 Umer Daraz P.430.** On the day of the incident he was travelling as pillion rider on PW 26 Muhammed Rashid's motor bike as they were both piloting the convoy. He corroborates PW 26 Muhammed Rashid's evidence. As the motor bike slowed he was able to identify two persons wearing police uniforms near the vacant plot who he later saw firing at the jeep which was a part of the convoy when he and PW 26 Muhammed Rashid were at Clifton bridge after the firing had started and then making their escape good in a Hi Ace van which was parked on the service road under the bridge. His S.161 Statement was given on the following day. On 26-02-2004 he attended an identification parade and identified Shoaib who was also named in the

judicial confessions. The same considerations apply to him as for PW 23 Zaffar Abbass and thus we are of the view that PW 27 Umar Daraz has correctly identified appellant **Shoaib** as firing on a jeep which was a part of the convoy and being present at the scene when the convoy of the Corp. Commander was attacked and which lead to the murder of 10 people.

PW 27 Umer Daraz attended another identification parade held on 19-08-04 where he identified appellant Rao Khalid as being one of the persons in police uniform who he saw with an SMG on the day of the incident. The same considerations apply to him as for PW 23 Zaffar Abbass and thus we are of the view that PW 27 Umar Daraz has correctly identified appellant **Rao Khalid** as being present at the scene of the incident wearing a police uniform and armed with an SMG where the murder of 10 people occurred who is also named in both judicial confessions.

(e) **Eye witness PW 28 Salman Bin Masood.P.440.** He was ADC to the Corps Commander who was sitting in the back of the Corps Commander's vehicle with the Corps Commander on the day of the incident. Just before Clifton bridge he saw an object omitting smoke and thereafter heavy firing commenced on the corps commander's car. He saw some persons wearing police uniforms standing on the side of the road firing with SMG's. He saw and identified one person who was firing. He gave his statement two days after the incident where he gave some hulia. On 26.06.2004 at the identification parade he identified appellant **Shahzad Mukhtar** who was firing on the Corps Commander's car. He is the second eye witness after **PW 26 Muhammed Rashid** to have identified Shahzad Mukhtar from an identification parade who was firing on the convoy who has been named in both the judicial confessions. The same considerations apply to him as for PW 23 Zaffar Abbass and thus we are of the view that **PW 28 Salman Bin Masood** has correctly

identified appellant **Shahzad Mukhtar** as being present at the scene of the incident and firing on the convoy of the Corps Commander which lead to the murder of 10 people.

(f) **Eye witness PW 29 Ghulam Farooq. 449.** In our view he is one of the **most important eye witnesses** especially when it comes to the identification of the appellants. At the time of the incident he was a policeman on traffic duty by Clifton bridge. At about 8.30am he saw the Toyota Hi-Ace Van bearing registration No.9255 parked on the service road near Clifton bridge. He saw three persons sitting in the van. One in the drivers seat and 2 behind him all of whom were armed with SMG's. He personally went up to the van and spoke to and saw the occupants who told him that they were on a special mission and that he should go back to his post. When he returned to his post near Clifton bridge he saw 6 persons in police uniforms all with SMG's. When the convoy approached all the persons he had scene started firing at it and thereafter fled in the Hi Ace Van which he had scene earlier. He recorded his statement a few hours after the incident on the same day at the place of vardat. **On 22-6-2008** he appeared before an identification parade where he identified three of the appellants. **On 19.08.2004** he again appeared before an identification parade where he identified one appellant. On 22.10.2004 he yet again appeared before an identification parade where he identified one appellant. In total he identified appellants **Rao Khalid, Uzair Ahmed, Danish Imam, Adnan Shah and Khurram Saifullah.** All of whom had been named in both judicial confessions except **Khurram Saifullah** but this was the second time that he had been picked out of the identification parade by a different eye witness. It was also the second time that **Rao Khalid** had been picked out by a second eye witness at an identification parade. The eye witness attended three separate identification parades since some of the appellants were arrested on different dates after one or two identification parades had been held and as such separate identification

parades had to be held for them. The same considerations apply to him as for PW 23 Zaffar Abbass and thus we are of the view that **PW 29 Ghulam Farooq** has correctly identified appellants **Rao Khalid, Uzair Ahmed, Danish Imam, Adnan Shah and Khurram Saifullah** as being present at the scene of the incident and firing on the convoy of the Corps Commander which lead to the murder of 10 people.

(g) **PW 30 Ghulam Abbas P.458**. He was running a Rent-a-car Business who was approached by two youngsters to rent them a van at 2.30 pm on 09.06.04 which was the afternoon before the incident. One disclosed his name as Aslam and arrangements were made to rent the van. They took 300 RS token money, their address and their mobile number all subject to production of their NIC's. On the same day at 9pm one of them called him on his mobile phone about delivery of the van however this could not materialize so he made an alternate arrange with Hammed Bhai to send van No. JE 9255 with Ghulam Rasool as the driver who reached the given address at 6 am on 10-06-04. He was informed on the same day that the vehicle had been snatched and went with Hammed bhai to PS and learnt that the van had been used in a serious crime. He recorded his S.161 statement in the evening on the same day. At 22.06.2004 he appeared at an identification parade and identified appellant **Najeebullah** who had come to him to book the van with Aslam. The booking was made during the day time and the eye witness would have had a good look at the appellant from close range. He gave his S.161 statement on the same day and had no reason to falsely implicate the appellants. The same considerations apply to him as for PW 23 Zaffar Abbass and thus we are of the view that **PW 30 Ghulam Abbas** has correctly identified appellant **Najeebullah** who is also mentioned in both the confessional statements as the person who rented a van from him on the day before the incident.

(h) Eye witness PW 31 Ghulam Rasool is in our view an important eye witness in respect of those appellants who hi-jacked the van. He corroborates PW 30 Ghulam Abbas's evidence that van No. JE 9255 was driven by him at 6am on 20.06.04 to the address given by the youngsters to Ghulam Abbas when they booked the van. He found 3 youngsters by his vehicle when he went to the house for collection. The 3 youngsters boarded and they set off for Gulshan-e-Iqbal and when they reached one of the youngsters called some one who then came with a pistol. Two of the other three youngsters in the vehicle also pulled pistols and they hi-jacked the van and made him sit at the back with his conductor Bakhtiar. He and his conductor were injected with a sedative drug which made them drowsy. First Bakhtiar was dropped off and then he was dropped off by the 4 people in the van before the incident. Thereafter he reunited with Bakhtiar who had been dropped off close to him and they informed the police of the hijacking who were sitting at a hotel who called "15" and took them to PS Shariah-e-Faisal from where they called Hameed Bhai. He recorded his S.161 statement on the same day. On 22-06-04 he appeared at an identification parade and identified appellant **Najeebullah** who gave him the injection, appellant **Uzair** who had snatched the van from him and driven the van and appellant **Shezade** who was sitting on the front seat with appellant Uzair. All three appellants are named in the two confessional statements before the judicial magistrate. His S.161 statement was recorded promptly. It was a day light incident as it was June and he was in close proximity to all the 4 appellants from the time he collected the initial 3 appellants to the time the van was Hi-jacked and he was later released and as such he would have got a good look at all of them over a sufficient period of time to again later correctly identify them. He has no enmity with any of the appellants and no reason to falsely implicate them. The same considerations apply to him as for PW 23 Zaffar Abbass and

thus we are of the view that PW 31 Ghulam Rasool has correctly identified appellants **Najeebullah, Uzair and Shezade** who are all mentioned in both the confessional statements as the persons who hi-jacked the van on the day of the incident and in Najeeb's case gave injections to Ghulam Rasool and his conductor.

Conclusion on eye witness evidence and the identification of the appellants.

36. It is well settled by now that police witnesses (and presumably Army witnesses) are as reliable as any other witness unless any ill will or enmity has been attributed to them which has not been done in this case. Like wise it is well settled that simply because a witness is related does not make him an interested witness and unreliable unless he has reason to falsely implicate the accused, or he is biased, partisan or inimical to the accused which there is no evidence of in this case. In this respect reliance is placed on **Ijaz Ahmed V The State** (2009 SCMR 99)

37. We have also noted that some of the eye witnesses did not pick out some of the appellants which in our view goes to their honesty as if these were fixed or set up identification parades all the appellants would have been identified by each and every eye witness. That there are no major contradiction in the eye witness evidence and it is well settled by now that minor contradictions which do not effect the materiality of the evidence can be ignored. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793). It was a day time incident. None of the eye witnesses were chance witnesses. Most eye witnesses gave their statements relatively promptly and as mentioned earlier by relying on the case of **Muhammed Siddique and others V State** dated 02-01-2020 (unreported in Crim.Jail Appeal No's 24,69,215,486 of 2016 and 682 of 2017) any defects in the identification parade in our view based on the particular facts and circumstances of this case can be discarded especially as there is sufficient other independent corroborative evidence to show the involvement of the appellants in the incident such as the two judicial confessions which we have placed reliance on and finger print evidence. Thus, we believe that all the following appellants have been correctly identified as per the role ascribed to them by the above eye witnesses PW's in their evidence.

3. Discovery of Hi-Ace Van No. No.JE 9255 and Finger Prints.

38. The van used in the incident as proven by the above eye witnesses from the time of its booking to the time of its hi-jacking to the time of its taking the appellants to launch the attack on the Corps Commander and its use to enable the appellants to make their escape good from the scene of the incident was discovered in defense view area relatively close to the scene of the incident at about 1.30pm on the same day. From it was recovered a KK and a large number of empties. A finger print expert was called and after the taking finger prints from the van and then comparing them with the finger prints of the accused when they were arrested the expert in his report found that the following appellant's finger prints were on the KK and the van. It is notable that the veracity of this expert report was not seriously challenged and the defense took the plea that their finger prints were put on the van after they were arrested and as such have **admitted** their finger prints being on the van and SMG as belonging to them or having been snatched by them at the scene of the incident and have only challenged the manner in which their finger prints got on the van and SMG. The expert finger print report in our view is further strengthened by the fact that not all of the appellants' finger prints were found on the van. If this had been a set up case or there was any truth in the allegation of the appellants that all their finger prints were placed on the van after their arrest in order to falsely implicate them in this case then **all** of the appellant's finger prints would have matched those found on the van as per the report. Whereas in fact as per the report since some finger prints were not clear enough or were only partial some of the appellants' finger prints could not be matched and only the following appellant's finger prints were found on the SMG recovered from the van and the van

(a) On the SMG (KK) recovered from the Van appellant

Atta-ur-Rehman

(b) On the van

- (i) **Muhammed Shoaib**
- (ii) **Uzair Ahmed Abdullah**
- (iii) **Shazade Ahmed Bajwa**
- (iv) **Danish Imam**
- (v) **Najeebullah.**

⚡

4. Recovery of police uniforms on pointation.

39. A significant piece of prosecution evidence is the recovery of the police uniforms and explosive substances at the house of **appellant Uzair Ahmed** on 26-06-04 who was also one of the appellants who made a judicial confession. This recovery is significant as the police would have had no idea where these uniforms were and that only the appellant would have known and that these uniforms were used by the appellants in their well planned attack on the Corps Commander and his convoy. **Significantly**, discarded police caps were also recovered from the scene of the incident where a number of appellants according to the confessional statements and eye witness PW's were also in police uniform or else in civilian clothes but wearing police caps.

5. The unexploded bomb and recovery of mobile and SIM.

40. According to the confessional statements one of the bombs planted near the bridge was not set off as in the heat of the moment the appellants forgot to donate it. PW 25 Abid Farooque who is the Bomb Disposal expert in his evidence stated that near the service road of Clifton bridge by using his detector he found a plastic bag which contained explosive material and also in the bag was a nokia mobile 3310 which was connected to an electric detonator which he defused. Such mobile phone, SIM and detonator and explosive material was recovered and the SIM matched the no. given to one of the appellants who wished to rent a van from PW 30 Ghulam Abbas which cell No. was 0300 27556397 as per CDR which again links the appellants to the attack on the convoy.

6. The prosecution evidence fitting in with the judicial confessions

41. In our view again it is of significance that the judicial confessions made by Atta-ur-Rehman and Shezade Ahmed Bajwa which we have found to be reliable and we are relying on fits in with the prosecution evidence.

42. In this regard the prosecution produced evidence through PW's 30 Ghulam Abbas and PW 31 Ghulam Rasool that at 6am on 10-06-2004 (the day of the incident) the van No. JE 9255 was booked and hijacked by Atta-ur-Rehman, Shezade Ahmed Bajwa, Uzair Ahmed Abdullah and that

Najeeb injected PW 31 Ghulam Rasool which made him drowsy and thereafter he and the conductor (Bakhtiar) were released from the van. The van then proceeded to collect Qasim and appellants Yaqoob, Khalid Rao, Shazade Mukthar, Shoaib Siddique, Adnan Shah, Shezade all of whom were seen near the Clifton bridge armed and some wearing police uniforms at the place of the incident firing on the convoy as identified by PW's 23 Zaffar Abbass, PW 24 Muhammed Safdar, PW 26 Muhammed Rashid, PW 27 Umer Daraz, PW 28 Salam Bin Masood, PW 29 Ghulam Farooq which resulted in the murder of 10 people. Thereafter on the same day at 1.30pm the Hi-jacked van was found containing empties and the finger prints of appellants Atta-ur Rehman, Muhammed Shoaib, Uzair Ahmed Abdullah, Shezade Ahmed Bajwa, Danish Imam and Najeebullah. Later on appellant Uzair Ahmed took the police to his house where on his pointation the police uniforms used in the attack were recovered along with explosive material..

43. Thus, in our view the prosecution evidence fully supports and corroborates the judicial confessions which again goes to the truth of such confessions and shows that there was a **clear plan and motive** (as explained in the judicial confessions) to attack the Corps Commander's convoy and murder the Corps Commander on account of the military operation being carried out in the northern areas of Pakistan by the armed forces of Pakistan and the launching by the armed forces of Pakistan of an operation in wana at that time against militants.

Turning to the the evidence against each appellant.

1. Atta-ur- Rehman

(a) He made a judicial confession setting out the whole plan along with his involvement and that of the co-appellants and admits firing on the convoy.

(b) He is identified by eye PW 23 Zaffar Abbass as firing on the convoy

(c) His finger prints are found on the SMG recovered for the van used to escape from the scene.

(d) On arrest on 13-06-04 near model coloney grave yard before independent mushir PW 19 Muhammed Akram was found with SMG which produced positive with empties

found at the scene of the attack on the convoy per FSL report. Even if there had been a delay in sending the empties to FSL this cannot outweigh reliable ocular evidence as in this case. In this respect reliance is placed on the case of **Nizamuddin** (Supra)

2. Shezade Ahmed Bawja.

(a) He made a judicial confession setting out the whole plan along with his involvement and that of the co-appellants and admits firing on the convoy.

(b) He is identified by eye PW 31 Ghulam Rasool whose van was hi-jacked as being involved in hijacking the van and being its driver and he admits in his confession being one of the Hijackers of the van.

(c) His finger prints are found on the van which was used to bring the appellants to the scene of the offense and to enable them to make their escape good.

(d) On arrest on 13-06-04 near model colony grave yard before independent mushir PW 19 Muhammed Akram was found with SMG which produced positive with empties found at the scene of the attack on the convoy per FSL report.

3. Shoaib Siddiqui

(a) He is named in both the judicial confessions as playing a part in the plan and being present at the scene and as firing on the convoy with his co-appellants.

(b) He is identified by eye PW 26 Muhammed Rashid and eye witness PW 27 Umer Daraz as being present at the scene and firing at the convoy which corroborates the role given to him by both judicial confessions.

(c) His finger prints are found on the van which was used to bring the appellants to the scene of the offense and to enable them to make their escape good.

(d) On arrest on 13-06-04 near model colony grave yard before independent mushir PW 19 Muhammed Akram was found with SMG which produced positive with empties found at the scene of the attack on the convoy per FSL report.

4. Yaqoob Saeed

(a) He is named in both the judicial confessions as playing a part in the plan and being present at the scene and as firing on the convoy with his co-appellants.

(b) He is not identified by any eye witness who gave evidence.

(c) His finger prints are not found on the van which was used to bring the appellants to the scene of the offense and to enable them to make their escape good.

(d) On arrest on 13-06-04 in front of Jinnah apartments before an independent Mushir (PW 17 Abdullah Siddiqui) was found with pistol which produced positive with empties found at the scene of the attack on the convoy per FSL report.

5. Abdullah Uzair Ahmed.

(a) He is named in both the judicial confessions (under the name of Abdullah) as playing a part in the plan and Hijacking the van and being present at the scene and as firing on the convoy with his co-appellants.

(b) He was identified by eye witness PW 31 Ghulam Rasool as one of the persons who hijacked his van. He was also identified by eye PW 29 Ghulam Farooque, one of the most reliable eye witnesses who was the traffic policeman who was on duty at the scene of the incident as being present at the scene and firing at the convoy which corroborates the role given to him by both judicial confessions.

(c) His finger prints are found on the van which was used to bring the appellants to the scene of the offense and to enable them to make their escape good.

(d) On arrest on 13-06-04 in front of Jinnah apartments before an independent Mushir (PW 17 Abdullah Siddiqui) was found with SMG which produced positive with empties found at the scene of the attack on the convoy per FSL report.

(e) Significantly it is he who takes the police on his pointation to his house where the police uniforms used in the attack on the convoy are found along with the explosives which is a hiding place which only he could have known about.

6. Danish Imam.

(a) He is not named in either the judicial confessions.

(b) He was identified by eye witness PW 29 Ghulam Farooque, one of the most reliable eye witnesses who was the traffic policeman who was on duty at the scene of the incident as being present at the scene and firing at the convoy.

(c) His finger prints are found on the van which was used to bring the appellants to the scene of the offense and to enable them to make their escape good.

(d) On arrest on 13-06-04 in front of Jinnah apartments before an independent Mushir (PW 17 Abdullah Siddiqui) was found with SMG which produced positive with empties found at the scene of the attack on the convoy per FSL report.

7. Najeebullah

(a) He is named in both judicial confessions as taking part in the booking of the Hi ACE van and the Hi-Jacking of the van and injecting PW 31 Ghulam Rasool with something which made him drowsy. Although in both judicial confessions it is stated that he did not know about the plan and that he was let out of the vehicle prior to the incident although him being let out of the vehicle is refuted by PW 31 Ghulam Rasool.

(b) He was identified by eye witness PW 30 Ghulam Abbas as being one of the persons who originally came to book the van and PW 31 Ghulam Rasool as the person who injected him with some thing which made him drowsy. He was not scene at the place of incident.

(c) His finger prints are found on the van which was used to bring the appellants to the scene of the offense and to enable them to make their escape good which ties in with the judicial confessions.

(d) On arrest on 13-06-04 near model coloney grave yard before independent mushir PW 19 Muhammed Akram was found with SMG which produced positive with empties found at the scene of the attack on the convoy per FSL report.

8. Khurram Saifullah.

(a) He is not named in either judicial confession.

(b) He was identified by eye witness PW 24 Muhammed Safdar as one of the persons who was firing on the convoy and eye witness PW 29 Ghulam Farooque, one of the most reliable eye witnesses who was the traffic policeman who was on duty at the scene of the incident as being present at the scene and firing at the convoy.

(c) His finger prints were not found on the van which was used to bring the appellants to the scene of the offense and to enable them to make their escape good.

(d) On arrest on 13-06-04 in front of Jinnah apartments before an independent Mushir (PW 17 Abdullah Siddiqui) was found with SMG which produced positive with empties found at the scene of the attack on the convoy per FSL report.

9. Shazade Muktar

(a) He is named in both the judicial confessions as playing a part in the plan and being present at the scene and as firing on the convoy with his co- appellants.

(b) He was identified by eye witness PW 26 Muhammed Rashid as one of the persons who was firing on the convoy and also PW 28 eye witness Salaman Bin Masood as one of the persons who was firing on the convoy.

(c) His finger prints were not found on the van which was used to bring the appellants to the scene of the offense and to enable them to make their escape good.

(d) Interrogated whilst already under arrest in another case.

10. Rao Khalid.

(a) He is named in both the judicial confessions as playing a part in the plan and being present at the scene and as firing on the convoy with his co- appellants and in particular opening fire and killing all the personnel in one jeep.

(b) He was identified by eye witness PW 27 Umer Daraz as one of the persons who was present at the scene when the firing on the convoy took place and eye witness PW 29 Gulam Farooque, one of the most reliable eye witnesses who was the traffic policeman who was on duty at the scene of the incident as being present at the scene and firing at the convoy.

(c) His finger prints were not found on the van which was used to bring the appellants to the scene of the offense and to enable them to make their escape good.

(d) Interrogated whilst already under arrest in another case.

11. Adnan Shah.

(a) He is named in both the judicial confessions as playing a part in the plan and Hi jacking the van and being present at the scene and as firing on the convoy with his co- appellants.

(b) He was identified by eye witness PW 29 Ghulam Farooque, one of the most reliable eye witnesses who was

the traffic policeman who was on duty at the scene of the incident as being present at the scene and firing at the convoy.

(c) His finger prints were not found on the van which was used to bring the appellants to the scene of the offense and to enable them to make their escape good.

(d) Interrogated whilst already under arrest in another case.

Improvements in evidence of PW's and other defense arguments not already dealt with.

44. We agree that there has been some improvements in the evidence of some PW's however in our view these improvements on the whole based on the particular facts and circumstances of the case are generally not material and do not effect the prosecution case when we consider some of these so called improvements in context. For example, it was suggested to numerous Army PW's that they had not mentioned in their S.161 statements what time they left for the Corps commanders HQ in order to collect him as a part of his convoy. When we consider the horrific nature of the incident where 10 people have been murdered near Clifton bridge and 9 others seriously injured in broad day light when an average person shortly after that event is asked to give his S.161 statement he is only realistically going to narrate the offense which occurred before him. Namely the murderous assault that was launched on the Corps Commanders convoy on the Clifton bridge. Realistically the witness is not going to start from the moment he got up, took breakfast, the time he left for the corps commanders house and what time he left from the corp. commanders house. Instead he would go straight to the crux of the offense. Namely that he was a part of the security of the corps commander convoy when it was attacked and give details of the attack. Thus, when considered in context and the prevailing situation on he ground at that time we do not find any of these improvements made in the S.161 statements of the PW's to be of any significance.

45. As regards to the timing of the attack and when the bodies reached the hospitals we find the short time difference inconsequential. That since we have believed the evidence of the PW's which in terms of presence at the scene of the incident which finds corroboration from other evidence

we find this argument without merit. There were some delays in some aspects of the case but based on the facts and circumstances of the case we do not find these fatal to the prosecution case. Even some irregularities have been explained by the prosecution. For instance, after the confession the appellants were handed back to the police instead of the judicial custody however the evidence shows that there was no malafide or ill intention in this as this irregularity has been duly explained in the evidence. Namely, that as the confessions finished late there was no one from the jail authorities present and hence the appellants were handed over to the police who returned them to judicial custody the next day.

The defense case

46. With regard to the defense of the appellants they simply state that they were arrested from their homes and that they had nothing to do with the incident. However none of them gave any evidence under oath to enable cross examination in order to test their evidence and none of them called a single DW in support of their defense. On the other hand the prosecution produced reliable witnesses with regard to the arrest of the appellants which was supported by independent witnesses in most cases who had no reason to falsely implicate the appellants and at the time of most of the appellants arrest SMG's and bomb making material was recovered from them and those SMG's were subject to a positive FSL report and thus we find the defense case completely without merit. It has been contended by the defense counsel that in their S.342 Cr.P.C statements no questions were put to the appellants about the booking and Hi-jacking of the van. In our view this is covered by question No.1 which concerns criminal conspiracy and it is even unclear whether this evidence has been used to convict the three concerned appellants Najeeb, Shazade and Uzair. Even otherwise the failure to put such a question to the appellants will only be of assistance to appellant Najeeb as there is plenty of other incriminating evidence against Shazade and Uzair even if this evidence is excluded from consideration.

47. Of course the onus relies on the prosecution to prove its case beyond a reasonable doubt regardless of the defense case but after a careful reappraisal and consideration of the evidence as discussed above

we are of the view that the prosecution has proved its case beyond a reasonable doubt against nearly all the appellants through cogent, reliable trust worthy oral and corroborative evidence.

Conclusions.

48. Since we have found both the judicial confessions of appellant Attaur-Rehman and Shezade Ahmed Bajwa to be both voluntary, truthful and tying in with the prosecution case with only minor irregularities which would not detract from either their voluntariness and truthfulness and we believe the eye witnesses whose evidence, as discussed above based on the particular facts and circumstances of the case to be reliable, trust worthy and confidence inspiring and in such cases corroborative evidence is not necessary. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857) where it was held at P.1860 at Para 6 as under:

"6. It is true that there is only ocular testimony of P.W. 4 Mst. Khatun Bibi corroborated by medical evidence, P.W. 6 Dr. Muhammad Sarfraz Sial. The fact that there is only ocular testimony of one P.W. which is unimpeachable and confidence-inspiring corroborated by medical evidence would be sufficient to base conviction. It has been noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence". (bold added)

49. Thus, we are satisfied that the eye witness PW's have safely identified nearly all of appellants at the scene firing on the convoy and that the identification parades can also be safely relied upon and when we take all the evidence including the above referred two judicial confessions together including other corroborative finger print evidence, positive FSL from weapons recovered from the appellants on their arrest, recovery of police uniforms on pointation, police caps at the scene, recovery of the van, corroborative medical evidence and other evidence on record we find that the prosecution has proved its case against the appellants listed below beyond a reasonable doubt in terms of planning (criminal conspiracy) to

murder, the murder of 10 people, the attempt to murder the Corps Commander and the possession and use of explosives substances and therefore uphold the convictions against them. In this respect we have been guided by the case of **State V Farman Hussain** (PLD 1995 SC1) which was cited with approval by the Supreme court in the later case of **Noor Muhammed V State** (1999 SCMR P.2722) at P.2725 in the following terms;

"However, we may observe that the people are losing faith in the dispensation of criminal justice by the ordinary criminal Courts for the reason that they either acquit the accused persons on technical grounds or take lenient view in awarding sentence. It is high time that the Courts should realize that they owe duty to the legal heirs/relations of the victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of offences. One of us (Ajmal Mian, C.J., as he then was) has highlighted this aspect, inter alia in the case of State through the Advocate-General Sindh, Karachi v. Farman Hussain and others (PLD 1995 SC 1), relevant portion whereof at page 19 reads as follows:-

*(3) It is matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling insecure. The learned trial Court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. **The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should be overlooked without causing any miscarriage of justice".** (bold added)*

50. Hence the convictions are upheld in respect of the following appellants whose appeals are dismissed:

1. Atta-ur-Rehman
2. Shezade Ahmed Bajwa
3. Shoaib Siddique
4. Abdullah Uzair Ahmed
5. Danish Inam
6. Khurram Saifullah
7. Shezade Muhtar
8. Rao Khalid.
9. Adnan Shah

51. We are however of the view that the prosecution has not proved its case beyond a reasonable doubt against Yaqoob Saeed and Najeebullah who are entitled to the benefit of the doubt as the only evidence against Yaqoob Saeed are the judicial confessions which have not been corroborated by an independent source and Najeebullah since having believed the judicial confessions it appears that he did not know of the plan, that he got out of the van after injecting PW 31 Ghulam Rasool with a sedative, that he was not seen by any eye witness PW at the scene of the incident and since admittedly he was in the van it was only natural that his finger prints were found on the van and thus both Yaqoob Saeed and Najeebullah are acquitted of the charge and shall be released unless wanted in any other custody case.

52. **With regard to sentencing** we note that this was a brutal brazen ferocious attack by heavy firing and bomb in broad day light on the security forces of this country which lead to the brutal murder of ten innocent persons and where the lives of other innocent men, women and children were also put in serious danger in a busy part of Karachi. We have no doubt in our minds that the object, purpose and design of the attack was to create terror and cause fear and insecurity in the minds of the general public which was in fact caused and the offenses so charged fall squarely within the purview of the ATA. We also do not find any mitigating circumstances in this case but rather aggravating circumstances and as such see no reason to interfere with the sentences handed down by the trial court and as such in respect of the appellants whose appeals were earlier dismissed in this judgment and their convictions up held their sentences are also upheld as per the impugned judgment and as such in respect of these appellants the confirmation reference is answered in the affirmative.

53. The above appeals and confirmation reference stand disposed of in the above terms.