

IN THE HIGH COURT OF SINDH AT KARACHI

Special Cr. Anti-Terrorism Appeal No.223 of 2016
Special Cr. Anti-Terrorism Appeal No.224 of 2016
Special Cr. Anti-Terrorism Appeal No.225 of 2016
Confirmation Case No.07 of 2016

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio.

Appellants: Ahmed Raza @ Muskhi and Muhammad Arshad @ Dacoit through Mr. Abdul Razzak, Advocate.

Respondent The State through Mr. Muhammad Iqbal Awan Deputy Prosecutor General Sindh

Date of hearing: 02.10.2019

Date of announcement: 08.10.2019

J U D G M E N T

Mohammad Karim Khan Agha, J.- Appellants Ahmed Raza @ Mushki son of Abdul Rehman and Muhammad Arshad @ Dacoit son of Muhammad Anwar have preferred the above appeals against the impugned judgment dated 31.08.2016 passed by the learned Judge Anti-Terrorism Court No.IV, Karachi in Special Case No.101/2012, F.I.R. No.54/2012 u/s.302/34 PPC r/w section 7 of ATA, 1997, registered at Police Station Khokhrapar, Karachi whereby the appellants have been convicted as under:-

- i) Accused Muhammad Arshad @ Dacoit son of Muhammad Anwar found guilty for the charge of the offence punishable u/s.302/34 PPC r/w. Section 7(a) of Anti-Terrorism Act, 1997 and awarded death sentence to him (subject to confirmation by this court) and to pay Rs.1,00,000/- (Rupees One Lac) as compensation to the legal heirs of the deceased and in case of default to pay compensation to the legal heirs of the deceased he shall further suffer R.I. for one year more.
- ii) Accused Ahmed Raza @ Mushki s/o. Abdul Rehman found guilty of the charge of the offence punishable u/s.302/34 PPC r/w. Section 7(a) of Anti-Terrorism Act, 1997 and awarded imprisonment for life sentence to him and to pay Rs.50,000/- (Rupees Fifty Thousand) as compensation to the legal heirs of the deceased and in case of default to pay,

compensation to the legal heirs of the deceased he shall further suffer R.I for 6 months more.

- iii) Accused Muhammad Arshad @ Dacoit s/o. Muhammad Anwar found guilty of the charge of the offence punishable u/s.13 (e) of the Arms Ordinance is convicted and sentenced to suffer R.I for seven (07) years and fine of Rs.25,000/- (Rupees Twenty Five Thousands) in case of default he shall further suffer R.I. for six months more.

2. The brief facts of the prosecution case as per FIR are that the complainant namely Muhammad Aslam son of Masoom Ali on 01.04.2012 along with his friend namely Muhammad Shahid were going for performing his duty at PS Khokhrapar, when he reached Khokhrapar Road No.02, four (04) persons came on two motorcycles out of them two persons who were sitting on rear of the motorcycles namely Arshad s/o Haji Aslam and Ahmed Raza @ Mushki who were affiliated with Jeay Sindh Qaumi Mahaz at about 18:10 hours started firing with pistols on the complainant with intention to kill him, in result of which the complainant had received bullet injuries on his abdomen and on other parts of his body. Accused persons have managed to escape good from the place of incident. Thereafter his friend Muhammad Shahid moved the injured / complainant to Government of Sindh Hospital, then he was referred to Jinnah Hospital and later transferred to Abbasi Shahid Hospital where he later expired from his firearm injuries. A few days later the nominated accused were arrested by the police on spy information and accused Arshad took the police to the murder weapon which was recovered on his pointation.

3. That after usual investigation challan was submitted on 05.05.2012. As per challan accused Ahmed Raza @ Mushki s/o. Abdul Rehman, Muhammad Arshad @ Dacoit s/o. Muhammad Anwar were shown in custody and accused Ayub @ Lali, Qaim @ Pardam Das and Naveed @ Arbab were shown as absconders. NBWs were issued against accused Ayub @ Lali, Qaim @ Pardam Das and Naveed @ Arbab.

4. In order to prove its case the prosecution examined 09 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The accused persons recorded their statements under S.342 Cr.PC whereby they claimed their false implication in the case and plead not guilty and

claimed trial. The accused did not examine themselves on oath but they called two (02) defense witnesses as DW-1 & DW-2 who deposed on behalf of the appellants that they were falsely implicated in this case.

5. Learned Judge, Anti-Terrorism Court-VI, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 31.08.2016 convicted and sentenced the appellants as stated above, hence these appeals have been separately filed by the appellants against their conviction. By this common judgment we intend to decide the same.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. After the reading out of the evidence and the impugned judgment learned counsel for the appellants initially tried to argue the appellant's case however in the face of the overwhelming evidence against the appellants on record he decided not to press the appeals on merits except to the extent that the case did not fall within the purview of the ATA and that the appellants should not be convicted under the ATA but only for the offenses charged under the PPC and otherwise prayed that the sentence in respect of Ahmed Raza be maintained and for reduction of the sentence from the death penalty to one of life imprisonment in respect of appellant Arshad based on the following mitigating circumstances (a) that the prosecution had neither alleged nor proven any motive as to why appellant should murder the deceased ASI Aslam and (b) that the appellant was of a young age and was previously of good character (c) that the court must exercise judicial caution in awarding the death sentence as opposed to the alternate sentence of life imprisonment. In support of his contentions regarding this not being an ATA case he placed reliance on **Tahir Mehmood @ Achoo V The State** (2018 SCMR 169) and in support of his contentions for a reduction in sentence in respect of appellant Arshad from death to that of life imprisonment he placed reliance on **Muhammad Anwar V State** (2017 SCMR 630) and **Ghulam Mohyuddin V State** (2014 SCMR 1034).

8. Learned DPG contended that based on the evidence on record the prosecution had proved its case against the appellants beyond a reasonable doubt and as such the impugned judgment did not require interference. When, however, he was confronted by the court whether the case fell within the purview of the ATA he candidly conceded that it did not and when again further confronted by the the court whether there was any mitigating circumstances raised by the appellant Arshad which justified a reduction in sentence he also conceded that as a matter of law such mitigating circumstances did justify a reduction in sentence from the death penalty to that of life imprisonment especially as it appeared that no motive had been alleged or proved by the prosecution.

9. Having gone through the evidence on record we have no doubt that the prosecution has been able to prove its case against the appellants beyond a reasonable doubt for the offenses for which they have been charged. In that there was no delay in lodging the FIR, which named both the accused with specific roles; that it was a day light incident; that the sole eye witness PW 7 Syed Shahid Hussain in our view is trustworthy reliable and confidence inspiring, that there is an admissible dying declaration; that the eye witness is corroborated by the medical evidence, the recoveries, a positive FSL report and the pistol being the murder weapon which was recovered on the pointation of the appellant Arshad.

10. The only two issues therefore before us are (a) whether the case falls within the purview of the ATA and (b) whether sufficient mitigating circumstances have been shown to justify the reduction in sentence from that of the death penalty to imprisonment for life for appellant Arshad as prayed by the appellant.

11. With regard to the first issue concerning the applicability of the ATA it appears from the record that the deceased ASI Aslam was not on duty at the time of the incident; this conclusion is bolstered by the fact that this has never been asserted by the prosecution; that the prosecution has produced no evidence to show that he was on duty; he was not in uniform at the time of the incident; that he was not carrying any weapon let alone an official weapon at the time of the incident and as such under such

circumstances the appellants would have no way of knowing that the accused was a police officer especially as it has not come on record that they did know and it is also apparent that the deceased Aslam was not on duty at the time of the incident and therefore might not have been killed because he was a police officer. It has also not been proven that the incident was carried out with the intent and design to spread fear and terror amongst the public at large which is also a requirement for the case to fall within the purview of the ATA. Thus, we find that the ATA is not applicable to this case and as such the appellant's convictions under the ATA are set aside and both the appellants stand convicted only under S.302/34 PPC and in respect of appellant Arshad also under S.13 (e) of the Arms Ordinance. In this respect reliance is placed on **Tahir Mehmood's** case (Supra)

12. Turning to the applicable sentence. We are also of the view that the prosecution has not been able to fully prove its motive or which of the appellants fired the fatal shots. Generally it has been accepted by the superior courts that if the prosecution fails to prove the motive for the murder the courts are justified in imposing the alternate sentence of life imprisonment as opposed to the death penalty. Likewise is the case when it is unclear as to which out of a number of accused fired the fatal shots or struck the fatal blow on the deceased which lead to his death. Reliance in this respect is placed on the case of **Amjad Shah V State** (PLD SC 2017 P.152) where it was held as under at P.156 Para 9;

*"Notwithstanding that the participation of the appellant in the commission of offence is duly established, his intention, guilty mind or motive to commit the same remains shrouded in mystery and is therefore, unproven. In such like cases where the motive is not proved or is not alleged by the prosecution, the Court for the sake of safe administration of justice, adopts caution and treats the lack of motive as a mitigating circumstance for reducing the quantum of sentence awarded to a convict. Reference is made to **Zeeshan Afzal v. The State** (2013 SCMR 1602)." (bold added)*

13. In our view taking into account the fact that no motive has been proved against the appellants, that it is unclear as to which of the appellants fired the fatal shot which killed the deceased and by exercising judicial caution by taking guidance from the supreme court authority of

Ghulam Mohyuddin (supra) where it was stressed as under whilst dealing with sentencing in a murder case in the following terms;

"Judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows. So it is better to respect the human life, as far as possible, rather to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed".

14. We hereby uphold the convictions in the impugned judgment against both the appellants under S.302/34 PPC but reduce the sentence of the appellant Arshad from that of the death penalty to life imprisonment and also uphold appellant's Arshad's sentence and conviction u/s 13 (e) of the Arms Ordinance as such the confirmation reference is answered in the negative. Apart from the above variation all other fines, penalties etc imposed upon the appellants in the impugned judgment shall remain in tact. With regard to appellant Arshad the sentences shall run concurrently. Both of the appellants shall have the benefit of S.382 (B) Cr.PC.

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

CERTIFICATE OF THE COURT IN RECORD NO. ---

C P No. 5841/2018

Roshan Ali Lakhan vs. Saadullah D.G. Petrolani

SINDH HIGH COURT

& others

Composition of Bench.

Single/D.B.

Mr. Justice Muhammad Karam Khan
Mr. Justice Omar Sial

Dates of hearing:

Decided on 13/7-10-18

(a) Judgment approved for
reporting.Yes
No

kg/L

CERTIFICATE

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

*Strike out whichever is not applicable.

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

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

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

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

سپریم کورٹ آف پاکستان، اسلام آباد

(Original Jurisdiction)

CRIMINAL ORIGINAL PETITION NO: 1743/2015

IN

Constitution Petition No. 46/2013.

(Application by Mr. Abdul Hakeem Khoso, Advocate)

1743
02/12/15

روشن علی لکھن

ولدیت و سند علی لکھن گائوب عبد اللہ لکھن

تخصیص و ضلع گھوٹکی

03 00 - 3112324

VERSUS

1- سعید اللہ شاہ، ڈائریکٹر جنرل
پیشہ ایم کانسیشن، وزارت، پیشہ ولیم و قدرتی وسائل اسلام آباد

2- زاہد حسین جنگ ڈائریکٹر
OGDCL, OGDCL ہائوس نزل چائنا چوک اسلام آباد،

3- ریاض خان، ایگزیکٹو مینیجر جنگ ڈائریکٹر
OGDCL, OGDCL ہائوس نزل چائنا چوک اسلام آباد،

4- عبداللہ آصف خدیجک، جنرل مینیجر CSR،
OGDCL, OGDCL ہائوس نزل چائنا چوک اسلام آباد،

5- عرفان بابر، ایگزیکٹو مینیجر CSR،
OGDCL, OGDCL ہائوس نزل چائنا چوک اسلام آباد،

6- احمد لک، جنرل مینیجر لیگل،
OGDCL, OGDCL ہائوس نزل چائنا چوک اسلام آباد،

7- احمد حسین، ڈپٹی لیگل،
OGDCL, OGDCL ہائوس نزل چائنا چوک اسلام آباد،

8- زاہد حسین شاہ، مینیجر CSR،
OGDCL, OGDCL ہائوس نزل چائنا چوک اسلام آباد،

9- فیاض احمد امیر، فیڈرل مینیجر،

OGDCL ہائوس نزل چائنا چوک اسلام آباد

2

10. ڈائون بٹ، فیلڈ مینیجر،
OGDCL قادرپور گیس فیلڈ کھوٹکی،
11. نسیر سہتو، ریجنل کوآرڈینیٹر،
R.C آفیس شکارپور روڈ سکٹر۔
12. اصغر، آپریشن مینیجر،
OGDCL قادرپور گیس فیلڈ کھوٹکی،
13. محمد یونس، سینیئر ایڈمن آفیسر،
OGDCL قادرپور گیس فیلڈ کھوٹکی،
14. کامران احمد، چیف ایگزیکٹو آفسر،
اکین پاکستان لمیٹڈ،
PTET ہائوس، 3rd روڈ، مٹاوی روڈ، G-10/4، P.O Box No 1325، اسلام آباد
15. جاوید احمد، ڈائریکٹر آپریشن،
Nativus Resource Limited
ہائوس نمبر 09، گلی نمبر 02، F-10/3، اسلام آباد،
16. جاوید احمد، ڈائریکٹر آپریشن،
Paige Limited، ہائوس نمبر 39، گلی نمبر 2، G-10/3، اسلام آباد،
17. جاوید احمد، جنرل مینیجر،
RDC انٹرنیشنل پرائیویٹ لمیٹڈ،
ہائوس نمبر 39، گلی نمبر 02، G-10/3، اسلام آباد،
18. مظفر احمد ورک، کنٹری (ملک) مینیجر،
Tallu Pakistan (Development) limited
ہائوس نمبر 5، گلی نمبر 34، F-8/1، اسلام آباد،
19. لی منگ، جنرل مینیجر،
China ZhenHua Oil
ہائوس نمبر 16، گلی نمبر 3، F-8/3، اسلام آباد،
20. ڈاکٹر افتخار زاہد، پریزیڈنٹ/ چیف ایگزیکٹو آفسر،
Hycarbex American Energy Inc.

3

21. دیوان محمد ضیاء الرحمن فاروقی، چئرمین / صدر،
Dewan Petroleum pvt limited
نمبر 46، نظام دین روڈ، F-7/4، اسلام آباد،
22. اکیل کریم ڈاڈی، چئرمین،
OGIL
نمبر 514، 5 فلور، کونٹیننٹل ٹریڈ سنٹر، بلاک 8، کلفٹن، کراچی،
23. عامر منصور، جنرل مینیجر،
Horitage Oil and Gas Limited
ہائوس نمبر 24، گلی نمبر 30، F-6/1، اسلام آباد،
24. محمد انور مغل، چیف ایگزیکٹو آفسر،
New Horizon Exploration Production Limited
فرسٹ فلور 8-C، بلاک نمبر 6، P.E.C.H.S، بھائیڈ فاران ہوٹل، کراچی۔
25. شاہد حمید، چیف ایگزیکٹو آفسر،
Spud Energy pvt limited
نمبر 12-A، گلی نمبر 86، اٹاکرک اوینیو، G-6/3، اسلام آباد،
26. ندیم احمد، مینیجنگ ڈائریکٹر،
MPCL
21 مٹاوی ایریا، 3rd روڈ، G-10/4، اسلام آباد،
27. سید وقیم بخاری، چیف ایگزیکٹو آفسر،
Pakistan Petroleum Limited
4th فلور، PIDC ہائوس، ڈاکٹر ضیاء الدین روڈ P.O.Box 3942، کراچی،
28. ظہیر دین، چیف ایگزیکٹو آفسر،
Petroleum Exploration (Pvt) Limited
20 مرگلا روڈ، F-8/3، اسلام آباد،
29. کرت رگنر، جنرل مینیجر،
OMV پاکستان،
ISE ٹاور، 16 فلور، 55-E، جناح ایوینیو، P.O.Box 2653، اسلام آباد،
30. اندر زج کزوروسکی، مینیجنگ ڈائریکٹر،
Polish OGC Pakistan
6th فلور، یو فون ٹاور، نمبر 2، جناح ایوینیو، بلو ایریا، اسلام آباد،

۷

31. انور سیف اللہ خان، چٹرمین،
سیف انرجی لمیٹڈ،
نمبر 12، گلی نمبر 34، F-7/1، اسلام آباد،
32. محمد صدیق میمن، چیف سکریٹری، سندھ
سندھ، سندھ سکریٹریٹ، کراچی۔
33. آغا واصق، سکریٹری،
انرجی ڈپارٹمینٹ، سندھ، سندھ سکریٹریٹ کراچی۔
34. طارق علی شاہ، ڈائریکٹر،
تیل اور گیس سندھ، سندھ سکریٹریٹ کراچی۔
35. آغا عبدالرحیم، ڈپٹی کمشنر، ٹنڈو محمد خان
ضلع ٹنڈو محمد خان، ڈپٹی کمشنر آفیس ٹنڈو محمد خان۔
36. محمد رفیق قریشی، ڈپٹی کمشنر، بدین
ضلع بدین، ڈپٹی کمشنر آفیس بدین۔
37. **نذیم الرحمن میمن**
ڈپٹی کمشنر، تٹا
ضلع تٹو، ڈپٹی کمشنر آفیس تٹا۔
38. طارق انور کلہو کر، ایڈیشنل ڈپٹی کمشنر،
ضلع دادو، ڈپٹی کمشنر آفیس دادو۔
39. منور علی ہشیانی، ڈپٹی کمشنر، خیرپور میرس
ضلع خیرپور، ڈپٹی کمشنر آفیس خیرپور میرس۔
40. **عابد سلیم قریشی**
ڈپٹی کمشنر،
ضلع شکارپور، ڈپٹی کمشنر آفیس شکارپور۔
41. محمد طاہر وٹو، ڈپٹی کمشنر، گھوٹکی
ضلع گھوٹکی، ڈپٹی کمشنر آفیس گھوٹکی۔
42. **ملاہ مراد علی منیخ**
ڈپٹی کمشنر،
ضلع مٹیاری، ڈپٹی کمشنر آفیس مٹیاری۔
43. **عمر فاروق دلو**
ڈپٹی کمشنر،
ضلع سانگلہ، ڈپٹی کمشنر آفیس سانگلہ۔

44. راجا شاہ زمان کھڑو، ڈپٹی کمشنر،
ضلع جیکب آباد، ڈپٹی کمشنر آفیس جیکب آباد۔

45. ڈاکٹر عبدالصغیر سیال، ڈپٹی کمشنر، کشمور
ضلع کشمور، ڈپٹی کمشنر آفیس کشمور۔

46. متصم عباسی، ڈپٹی کمشنر،
ضلع حیدر آباد، ڈپٹی کمشنر آفیس حیدر آباد۔

47. جاوید جاگیرانی، ڈپٹی کمشنر،
ضلع لاڑکانہ، ڈپٹی کمشنر آفیس لاڑکانہ۔

48. محمد زمان ناریجو، ڈپٹی کمشنر،
ضلع میرپور خاص، ڈپٹی کمشنر آفیس میرپور خاص۔

49. منہر ادھنی عباسی، ڈپٹی کمشنر،
ضلع سکھر، ڈپٹی کمشنر آفیس سکھر۔

50. انوار الحق، ڈپٹی کمشنر،
ضلع قمبر، ڈپٹی کمشنر آفیس قمبر۔

51. شوکت حسین بھوکیو، ڈپٹی کمشنر،
ضلع سجاول، ڈپٹی کمشنر آفیس سجاول۔

52. ڈاکٹر دسمیہ عباس، ڈپٹی کمشنر،
ضلع نوشہرہ و فروز، ڈپٹی کمشنر آفیس نوشہرہ و فروز۔

1. ORIGINAL PETITION U/S 204 CONSTITUTION OF REPUBLIC OF PAKISTAN,
1973 R/W S/3/4. CONTEMPT OF COURT ORDINANCE, 2003.

عزت معاف کورٹ میں جناب اعلیٰ التجا ہے کہ مہربانی فرما کر اوپر دی گئی
توہین عدالت کے کاروائی کو نا اہل کیا جائی، انہوں نے جات بوجھ عزت معاف کورٹ کے
ہدایات کے floated, disobeyed اور violated کیے ہیں۔ جناب اعلیٰ عزت معاف کورٹ کے جاری
27-12-2013 کے ریسمانڈنٹس کنٹینمنٹس نے جات بوجھ کر بی ادبی، انحرافی کی ہے۔

(P/c of order is attached with as annex " A")