

# HIGH COURT OF SINDH AT KARACHI

Crl. Anti-Terrorism Jail Appeal No.77 of 2024 &  
Confirmation Case No.03 of 2024

Present:

Justice Adnan Iqbal Chaudhry  
Justice Tasneem Sultana

Appellant : Muhammad Asif @ Katto, through  
Mr. Raj Ali Wahid Kunwar, Advocate

Respondent : The State, through Mr. Mumtaz Ali  
Shah, Assistant Prosecutor General  
Sindh

Dates of Hearing : 07.07.2025, 09.07.2025, 10.07.2025

Date of Judgment : 18.08.2025.

## JUDGMENT

TASNEEM SULTANA, J: By this common judgment we intend to dispose of aforementioned Criminal A.T.A. Jail Appeal and Confirmation Reference No.03/2024 as required under Section 374 Cr.P.C. sent by the trial Court as the same being arisen out of the same and connected FIRs have been heard by us together.

2. Through the instant Criminal Anti-Terrorism Jail Appeal; the Appellant namely Muhammad Asif @ Katto has assailed the Judgment dated 24.04.2024, passed by the learned Anti-Terrorism Court No.XX, Karachi (*Trial Court*), in Special Case No.35 of 2021 arisen out of FIR No.370 of 2015 under Sections 302, 324, 397, 109, 34 PPC read with Section 7 of Anti-Terrorism Act, 1997 (*ATA*), and Special Case No.35-A of 2021 arisen out of FIR No.492 of 2016 under Section 23(i)a of Sindh Arms Act, 2013, respectively, at P.S. Zaman Town, Karachi, whereby the appellant was convicted and sentenced under Section 265-H(ii) Cr.P.C. as under:

"For offence under section 7(1)(a) of ATA 1997 r/w section 302(b) PPC accused Asif Katoo is awarded sentence to death for murder of four police officials deceased ASI Aqeel Ahmed, PC Mohammad Anwar, PC Jameel Ahmed and PC Mohammad Akhtar and he is ordered to be hanged by neck four count till he is dead with forfeiture of his property also as required u/s 7(2) of ATA 1997. The accused is also ordered to pay the fine of Rs: 200,000/- (two lac) on account of each murder, in case of default of payment of fine, he will have to undergo R.I for six months.



For offence under section 397 PPC accused to undergo R.I for 07 (seven years) and fine of Rs.20,000/- (Twenty thousand only) in default of payment of fine accused shall further undergo R.I for 03 (three) months.

For offence under section 7(i)(b) ATA Act, R/w section 324 PPC accused to undergo R.I for 05 years and fine of Rs.20,000/- in default of payment of fine accused shall further undergo S.I for 6 (Six) months.

For offence under section 23(i)(a), Sindh Arms Act accused to suffer R.I for 05 years and fine of Rs.20,000/- in default of payment of fine the accused shall suffer further S.I three months."

All the sentences were ordered to run concurrently and the benefit of Section 382(b) Cr.P.C. was also extended to the appellant.

3. Brief facts of the prosecution case are that on 12.08.2015 at about 13:45 hours the accused / appellant Muhammad Asif @ Katto alongwith deceased co-accused namely Muhammad Bilal and Abdul Salam in furtherance of their common intention with collaboration of accused Faheem Ahmed Lodhi fired on police party who were taking lunch inside the Hanif Nihari Hotel situated at Sector G-Area, Korangi 50/B, Korangi 5-1/2, Karachi and caused Qatl-e-Amd of ASI Aqeel Ahmed, PC Mohammad Anwar, PC Jameel Ahmed and PC Mohammad Akhtar by giving them firearm injuries and also caused injury to one Muhammad Asif Khan and the owner of Hanif Nihari Hotel namely Mohammad Raees. The appellant along with co-accused while leaving the place of incident had taken away the official weapons of the said police party and fled away from the spot. SIP Tariq Mehmood recorded facts of above incident in terms of his statement under Section 154 Cr.P.C. Later on duty officer Safdar Watto lodged FIR.

4. Investigation was handed over to DSP Waheed Khan who visited place of incident, prepared memo of inspection, recorded statement of P.Ws under Section 161 Cr.P.C. ASI Ashraf Qaimkhani visited JPMC, where he conducted proceedings under Section 174 Cr.P.C. of four slain police officials obtained postmortem reports and cause of death, empties were sent for FSL report.

5. On 13.03.2016 I.O. received information that eight terrorists had been killed during an encounter from whom some official SMG(s) were secured. Thereafter, I.O./ DSP along with eyewitness visited to P.S. Steel Town where they found that all terrorists were lying in dead

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condition and eyewitness identified two of them as Mohammad Bilal and Abdul Salam, who along with their accomplice /accused Muhammad Asif @ Katto (appellant) had committed the murder of abovementioned police officials at hotel. Thereafter, I.O. secured one official SMG bearing registration No.29006 from the deceased accused Abdul Salam under memo of identification (Ex:20/A). After completing usual investigation he submitted report under Section 173 Cr.P.C. (challan) under "A" Class.

6. Thereafter, the investigation of this case was transferred to DSP Mehmood Hussain Raja. On 12.08.2016 he received an information that an accused namely Muhammad Asif alias Katto (appellant) had been arrested in Case / Crime No.280/2014 under Sections 302/324/34 PPC read with Section 7. of ATA 1997 of P.S. Zaman Town. Thereafter, I.O. /DSP Mehmood Hussain Raja along with eyewitness namely Mohammad Raees went to P.S. Khokharapar and after reaching there he had taken out the custody of accused Muhammad Asif alias Katto from lockup and thoroughly interrogated him in presence of eye witness. The accused admitted his guilt before the I.O. and eye witness, therefore, DSP Mehmood Hussain Raja arrested the appellant in present crime. The eye witness Muhammad Raees was mashir of memo of arrest.

7. . . On 16.08.2016 I.O. produced the appellant in the Court of Judicial Magistrate-XVI Karachi East for his identification parade where he was identified through eye witnesses namely Muhammad Asif and PC Mushtaq Ahmed.

8. On 22.08.2016 the appellant led police to an abandoned snooker club and discovered crime weapon along with 20 live bullets hidden under rubble. Appellant was arrested under memo of arrest and seizer (Ex:13/A). Thereafter FIR No.492/2016 registered at P.S. Zaman Town under Section 23(1)(a) Sindh Arms Act, 2013. Appellant also disclosed the name of his facilitator co-accused namely Faheem Lodhi regarding his involvement in this case.

9. After completion of usual investigation the police submitted the supplementary charge-sheet against the appellant and co-accused. The necessary documents in compliance of Section 265-C, Cr.P.C. were provided to appellant. An application under Section 21-M of the ATA, 1997 was moved by Deputy District Public Prosecutor for amalgamation of both the cases for joint trial, which was allowed by



the Trial Court, vide order dated 04.01.2017. The trial Court framed the formal charge against the appellant, to which he pleaded not guilty and claimed trial.

10. At the trial, prosecution examined twenty witnesses. **PW-1**, SIP Raja Tariq Mehmood at Ex: 10, he produced his statement u/s 154 Cr.P.C at Ex: 10-A, memo of inspection of the place of incident at Ex: 10-B. **PW-02** SIP Mohammad Safdar, at Ex: 11, he produced copy of FIR at Ex: 11-A and, DD entry No: 22 at Ex: 11-B. **PW-03** Asif Ali, Civil Judge & Judicial Magistrate 14th East Karachi, at Ex: 12, he produced envelope at Ex: 12-A, application dated: 16.08.2016 for identification parade at Ex:12-B, memos of identification parade at Ex:12-C and Ex:12-D respectively, copies of CNICs at Ex 12-E to Ex 12-11 respectively, copy of FIR No. 370-2015 at Ex:12-1. **PW-04** ASI Mohammad Rizwan at Ex 13, he produced memo of re-arrest and recovery of accused Asif at Ex: 13-A, memo of inspection of the place of recovery of crime weapon at Ex: 13-18. **PW-05** SIP Zulfiqar Ali at Ex: 14, he produced inquest reports and memos of inspection of dead bodies at Ex: 14-A to Ex: 14-11 respectively. **PW-06** Mohammad Asif Khan (injured eye witness) at Ex:15, he produced notice u/s 160 Cr.P.C. at Ex:15-1. **PW-07** Shiraz Ali, the MLO at Ex:16, he produced Medico-Legal Certificates, cause of death certificates and postmortem reports of two deceased police officials and medico legal certificate of injured PW-6 at Ex:16-A to Ex:16-M respectively. **PW-08** ASI Haroon-ur-Rasheed at Ex:18, he produced memo of inspection of the place of incident and recovery of empties at Ex:18-A. **PW-09** PC Mushtaq Ahmed, (eye witness), who identified deceased accused persons namely Muhammad Bilal and Abdul Salam as well as present accused Muhammad Asif alias Katoo, at Ex:20, he produced memo of identification of accused and recovery of snatched official SMG at Ex:20-A. **PW-10** Mohammad Raees at Ex: 22, he produced memo of re-arrest of the appellant at Ex:22-A. The learned APG given up PW PC Ambar Hayat vide statement at Ex:23. **PW-11** DSP Waheed Khan at Ex:24, he produced sketch of the place of incident at Ex: 24-A, photographs of the place of incident as well as photographs of deceased police officials at Ex:24-B to Ex:24-B/7, letter addressed to SSP Investigation-III at Ex 24-C, letter addressed to DIGP for Geo Fencing at Ex:24-D, copy of order dated 02.09.2015 at Ex: 24-E. **PW-12** PC Hafeez Ghouri at Ex. 25. **PW-13** DSP Shakeel Ahmed at Ex. 26, he produced copy of order dated: 08-01-2016 at Ex: 26-A, DD entry No: 04 at Ex:26-B, DD entry No: 8 at Ex:26-C. **PW-14** Retired



Inspector Mohammad Hussain Chandio at Ex:27, he produced DD entry No. 41 at Ex: 27-A, DD entry No: 51 at Ex:27-B, letter addressed to DIGP at Ex: 27-C, letter addressed to Incharge FSL at Ex:27-D, FSL report of kalashnikov at Ex:27-E. Learned APG for the State given up DSP Ali Mohammad Khoso vide statement at Ex:28. PW-15 Inspector Syed Mohammad Sarfraz at Exh.29, he produced memo of re-arrest of accused Faheem at Ex:29-A. PW-16 Inspector Pathan Khan at Ex:30, he produced DD entry No: 25 at Ex:30-A, letter addressed to Police surgeon at Ex. 30-B, letter addressed to Incharge FSL, at Ex:30-C, copy of Order of DIGP at Ex:30-D, FSL report at Ex: 30-E, letter addressed to Surgeon of Civil Hospital at Ex:30-F, letter addressed to Chemical Examiner at Ex:30-G. Report of Chemical Examiner at Ex:30-H, DD entry No 14 at Ex:30-I, DD entry No. 06 at Ex:30-J. Learned APG filed an application u/s 540 Cr.P.C. at Ex:31 for calling PW Dr. Afzal Ahmed, the MLO which was allowed at Ex:32. PW-17 SIP Mohammad Ashraf at Ex:33, he produced letter addressed to MLO JPMC at Ex:33-A, letter addressed to JPMC at Ex:33-B, DD entries No: 21 and 23 at Ex:33-C and Ex:33-D. PW-18 Dr. Sheeraz Ali, in his behalf and on behalf of Dr. Afzal in the capacity of well conversant at Ex:34, he produced copy of order of police surgeon at Ex: 34-A, postmortem report of deceased Mohammad Akhtar at Ex:34-B, certificate of cause of death at Ex:34-C, postmortem report of Aqeel at Ex:34-D, certificate of cause of death at Ex:34-E. PW-19 ASI Zulfiqar Ali Khan at Ex:35. PW-20 DSP Mehmood Hussain Raja at Ex:36, he produced DD entry No: 49 at Ex:36-A, DD entry No: 36 at Ex. 36-B, DD entry No: 40 at Ex: 36-C, notices u/s 160 Cr.P.C. at Ex:36-D and Ex. 36-D/1, DD entry No: 41 at Ex: 36-E, DD entry No: 47 at Ex: 36-F, DD entry No: 31 at Ex. 36-G, FIR No: 492/2016 at Ex: 36-H, DD entry No: 34 at Ex:36-I, DD entry No:55 at Ex:36-J, letter addressed to DIGIP at Ex:36-K, letter addressed to Incharge FSL at Ex: 36-L, FSL report at Ex:36-M, DD entry No: 18 at Ex:36-N, DD entry No: 26 at Ex:36-O, DD entry No: 19 at Ex:36-P, DD entry 14 at Ex: 36-Q, DD entry No: 28 at Ex:36-R, DD entry No: 46 at Ex:36-S, copy of koth register entry at Ex:36-T. Learned APG for the State filed an application u/s 540 Cr.P.C. for recalling and re-examining DSP Mehmood Hussain Raja at Ex: 37, which was allowed at Ex:38.

11. The trial Court recorded the statement of appellant and co-accused Faheem under Section 342 Cr.P.C. wherein they denied the allegation against them and claimed to be innocent. They have neither examined themselves on oath to disprove the prosecution's allegation.



nor even led any evidence in their defence. The Trial Court after hearing the learning counsel for the appellant as well as APG for the State convicted the appellant and sentenced him as mentioned above vide impugned judgment.

12. Learned counsel for the appellant contended that appellant is innocent and has been falsely implicated; that the identification of appellant by the PWs cannot be safely relied upon as no *hulia* of appellant was given by them at the time when their statement under section 161 Cr.P.C. was recorded; that the trial Court failed to appreciate the evidence in true prospective and passed the impugned judgment which is result of misreading and non-reading of evidence; that the alleged disclosure followed by the recovery of crime weapon has been foisted upon the appellant just to strengthen the case of the prosecution; that the case of prosecution is replete with legal defects, discrepancies and infirmity which has made the case of prosecution doubtful; that prosecution case suffered from material contradictions; that there is no independent witness of recovery and I.O. violated the mandatory provision of Section 103 Cr.P.C.; that the case of prosecution does not fall under Article 40 of the Qanoon-e-Shahadat Order, 1984; that appellant was neither nominated in FIR nor arrested at the spot and there was no occasion for his conviction merely on the statements of interested eye witnesses who claimed to have identified the appellant in test identification parade held in derogation to the principle safeguards enumerated by the superior Court of this country. Learned counsel for the appellant has relied upon the following case laws:

"Kanwar Anwar Ali, Special Judicial Magistrate PLD 2019 SC 488, Subha Sadiq v. The State 2025 SCMR 50, Anwar Faheem alias Anoo alias Zeshan v. The State 2024 MLD 762, Naseer Ahmed alias Mullan v. The State 2024 P.Cr.L.J. 196, Sardar Bibi v. Munir Ahmed 2017 SCMR 344, Fazal Hussain alias Faqeera & others v. The State 2020 P.Cr.L.J. 311, Shakeel & another v. The State 2019 MLD 1554, Khizar Hayat son of Hadaitullah PLD 2019 SC 527, Owais & another v. The State 2022 P.Cr.L.J. 920, Muhammad Imtiaz Baig & another 2024 SCMR 1191, Anwar Hussain & others v. The State 2019 YLR 1117, Attaullah alias Qasim & others v. The State 2006 YLR 3213, Amanullah v. The State 2022 YLR 1681, Ghulam hussain & others v. The State 2020 PLD SC 61, Abdul Hayee & others v. The State 2025 SCMR 281, Muhammad Hassan & another v. The State & others 2024 SCMR 1427, Moula Bux v. The State 2018 YLR 270, Asad alias Nazir v. The State 2019 MLD 1821, Sajjad alias Mithu v. The State 2022 P.Cr.L.J. 13708/2025 13, Muhammad Ali v. The State & others 2015 P.Cr.L.J.



1448, Nasreen & others v. The State 2001 P.Cr.L.J. 685, Fayyaz Ahmed v. The State 2017 SCMR 2026, Afzal Haidar v. The State 1992 MLD 421, Nasreen & others v. The State 1991 P.Cr.L.J. 1082, Faheem Ali v. The State 2019 MLD 468, Sajid Hussain v. The State 2021 MLD 163, M. Anwar & another v. The State 2021 YLR 1346, Islam & another v. The State Cr. Appeal No.126/2021, Kamal Din alias Kamala v. The State 2018 SCMR 577, Faiyaz Khan & another v. The State 2024 NLR 905 and M. Saleem v. Shabbir Ahmed 2016 SCMR 1605."

13. Conversely learned A.P.G. assisted while supporting the impugned judgment contended that prosecution through consistent and confidence inspiring evidence has proved the charge against the appellant; that FIR has been lodged promptly with specific role of firing; that after the arrest of appellant he confessed his guilt by recording his extra-judicial confession, followed by the recovery of Kalashnikov; that recovery of empties from the place of incident were matched with the recovered weapon; that ocular accounts i.e. P.W. 6 and P.W. 9 duly identified the appellant during test identification parade as well as in trial Court; that P.W. 6 sustained fire arm injury which established his presence at the scene of offence; that appellant along with deceased co-accused were well prepared and duly armed with sophisticated automatic weapons made indiscriminate firing upon police officials while they were taking lunch in a hotel and this fact itself is enough to establish the element of *pre-meditation* and *mens rea* of the appellant for committing the crime; that the findings of trial Court, being based on proper appreciation of evidence called no interference on mere minor discrepancies; that there is no glaring contradiction in the testimonies of prosecution witnesses; that the terrorism had badly affected in the whole area so, the appellant is not deserved for any leniency. He relied upon the following case laws:

"Ansar & others v. The State & others 2023 SCMR 929, Nazir Ahmed v. The State 2023 SCMR 1299, Ali Taj & others v. The State 2023 SCMR 900, Muhammad Hayat & another v. The State 2021 SCMR 92, Muhammad Siddique & others v. The State 2020 SCMR 342, Mst. Nazakat v. Hazrat Jamal & another PLD 2007 SC 453, Shoaib Ahmed 7 others v. The State & others 2019 P.Cr.L.J. 57, Muhammad Azeem v. The State 1998 P.Cr.L.J. 175, Abdul Rashid & 3 others v. Abdul Ghaffar & 5 others 2001 P.Cr.L.J. 524, Munawar Shah v. The State 2004 MLD 200, Bahadur v. The State 2014 YLR 742, Aijaz Nawaz alias Baba v. The State 2019 P.Cr.L.J. 1775 and Ghulam Sarwar v. The State 2019 YLR 2530."

*Jameem*



14. We have heard the learned counsel for the appellant and learned A.P.G. Sindh as well as scanned the material available on record with their assistance.

15. Upon reassessment of the prosecution evidence, it is revealed that the prosecution case is primarily based on the ocular account of witnesses to the murder of four police officials, the robbery of their official SMGs, corroborating medical evidence, identification parade, and recovery of the weapon. A perusal of the testimony of PW-6, Muhammad Asif Khan (Ex15), indicates that he had been serving as a volunteer (Qaumi Razakar) and was attached to the Zaman Town Police Station as a driver of the police mobile. PW-6 deposed that on 12.08.2015, he, along with four deceased police officials—namely ASI Aqeel Ahmed, PC Muhammad Anwar, PC Jamil Ahmed, and PC Akhtar—was having lunch at Hanif Nihari Hotel. During that time, three unknown assailants arrived and indiscriminately opened fire upon them. As a result, PW-6 sustained three firearm injuries, while all four police officials died on the spot. After committing the offence, the assailants seized the official SMGs of the deceased police personnel and fled from the scene. Shortly thereafter, PC Mushtaq and other police officials arrived at the place of incident, and PW-6 was shifted to Jinnah Hospital for medical treatment. PW-6 during his examination-in-chief has testified as under:

*"I identified one suspect involved in the offense and also stated that he is the same accused who had made firing upon us."*

16. PW-9, PC Mushtaque (Ex-20), deposed that he had arrived at the scene upon the invitation of the deceased ASI Aqeel Ahmed, who had called him to join for lunch. As soon as he reached near the gate of the Hanif Nihari Hotel, he heard the sound of gunfire and observed panic spreading among the public. In the midst of this commotion, he saw three individuals emerging from the hotel, one was armed with a Kalashnikov, another held a pistol, while the third was carrying a gunny bag. The trio fled from the scene on a motorcycle. PW-9 during his evidence has deposed that:

*"I immediately rushed inside the hotel. I saw ASI Aqeel was laying in injured condition on floor and three constables were laying in half sitting position on the table in severe injured condition. one Quami Razakar namely Asif was also lying in injured condition. I immediately made call to Chippa ambulance and informed to police station Zaman Town"*

PW-9 further deposed that:

*J. N. C. M.*



*\*Accused present court is same\**

17. It is pertinent to note that PW-6 sustained firearm injuries on vital parts of his body, and his presence at the place of occurrence was not challenged by the defence during cross-examination. There was also no suggestion that his injuries were self-inflicted. Similarly the testimony of PW-9 remained unshaken during cross-examination, lending further credibility to the veracity of his presence at the crime scene. In view of the above, the ocular testimony of PW-6 and PW-9 deserves full credence, particularly as it is consistent, coherent, and devoid of any material contradictions, discrepancies, or inherent improbabilities. Their presence at the scene of offence cannot be regarded as doubtful. The learned counsel for the appellant sought to question the reliability of PW-6 Muhammad Asif Khan's testimony on the ground that he was not a police official but merely a volunteer (Qaumi Razakar), and further contended that PW-9 PC Mushtaque was a planted witness, as his name did not appear in the FIR as an eyewitness. These contentions of the defence, however, carry no legal weight. The capacity in which PW-6 accompanied the deceased police officials is inconsequential, particularly when it stands established through reliable evidence that he was present at the scene and sustained firearm injuries. Furthermore, the evidence on record reveals that PW-9 was cited as an eyewitness during the course of investigation. He had, in fact, identified the deceased accused Muhammad Bilal and Abdul Salam on 13.03.2016, which was well before the arrest of the present appellant on 12.08.2016. Hence, his status as an eyewitness does not appear doubtful. His immediate arrival at the scene following the incident was also corroborated by the testimony of injured PW-6 Muhammad Asif Khan. In these circumstances, the testimony of PW-9, to the effect that he saw the appellant and deceased co-accused fleeing from the scene while armed, is fully consistent with the version of PW-6 and stands corroborated by the overall evidence on record.

18. Insofar as the testimony of the police officials is concerned, it is a well-settled principle of law that the evidence of police personnel is to be treated at par with that of any other witness and cannot be discarded merely on account of their official status. In the present case, the police officials have furnished straightforward, coherent, and confidence-inspiring testimony. There is nothing on record to suggest that they acted with mala fide intent or that their depositions were



motivated by animus against the appellant. Hence, the presumption of impartiality stands intact. Mere employment in the police force does not ipso facto render a witness interested or unreliable unless it is demonstrated that the witness harbours a motive to falsely implicate the accused or has enmity with him. Reliance in this regard is placed on the judgment rendered by the Hon'ble Supreme Court of Pakistan in *Zaffar v. The State* (2008 SCMR 1254), wherein it has held that:-

*"Police employees are the competent witnesses like any other witnesses and their testimonies cannot be discarded merely on the ground that they are police officials."*

19. In the case at hand, there is no evidence of enmity, ill-will, or personal grudge between the appellant and the prosecution witnesses. In the absence of such material, no adverse inference can be drawn against the veracity of the official witnesses, whose evidence was rightly relied upon by the learned trial court. Mere status of being an official does not prejudice the competence of a witness unless he is shown to be interested, actuated by motive, or harbouring enmity against the accused. The Apex court has reiterated this view in *Farooq v. The State* (2008 SCMR 970).

20. The testimony of PW-10, Muhammad Raees (Ex-22), the proprietor of Hanif Nihari Hotel, lends corroboration to the ocular account of PW-6 and PW-9 to the extent that police officials had entered the hotel premises for the purpose of dining, arrival of armed person, hearing of gunshot sounds, so also one bullet crossed his left arm. However, it is pertinent to note that PW-10 introduced a significant improvement during the trial by asserting, for the first time, that the appellant was wearing face mask. This assertion was absent in his earlier statement recorded under Section 161 Cr.P.C. by the Investigating Officer. Notably, PW6 and PW9, had never uttered a single word that the appellant or deceased/co-accused were wearing any face mask at the relevant time. Furthermore, despite having acknowledged the contents of the memo of arrest and identification of the appellant (Ex-22/A), which bears his signature, PW-10 declined to identify the appellant during trial proceedings. This contradiction and omission materially affect the evidentiary value of his testimony to the extent of identification of the accused.

21. In the given circumstances he was declared hostile, but during cross-examination he admitted the incident, inflicting firearm injury on his person. In other words he admitted each and every content of his



161 Cr.P.C. statement and memo of arrest (EX-22/A). During cross-examination APG gave specific suggestion that in the year 2015 there was no concept of wearing facemask in public place and his denial to identify the appellant is result of fear and coercion. When the testimony of above witness read as a whole then it appears that he refused to identify the appellant in Court due to fear that if the appellant is acquitted, he might come after the eye witness. His statement that the culprit was wearing a mask seems to be made to excuse himself from identifying the appellant.

22. Question of evidentiary value of a hostile witness was examined by the Hon'ble Supreme Court of Pakistan in case of The State vs. Abdul Ghaffar 1996 SCMR 678, in which it has been held at pages No.684-685 as follows:-

"The learned Division Bench in Kaloo's case while deducting the ratio from Profulla's case held that the testimony of a hostile witness has to be considered as for or against the accused in accordance with the well known and the well-established principles of appreciation of evidence. Subsequently in Islam v. The State PLD 1962 Lahore 1053 a Division Bench of the West Pakistan High Court, Lahore Bench also considered the question in regard to evaluation of the evidence of a hostile witness. Sardar Muhammad Iqbal, J., with whom M.R. Kayani, C.J. agreed expressed as follows:-

"The learned counsel for the appellants contended that since she was declared to be a hostile witness (this is term of convenience and not of law), she is a witness unworthy of any reliance and her evidence, therefore, should be completely brushed aside. This contention has no force. The fact that the witness is dealt with under section 154 of the Evidence Act, and she is cross-examined as to credit, in no way warrants that the Court is bound in law to place no reliance on her evidence. There is also no warrant for the proposition that the party who called and cross-examined her can take no advantage of any part of her evidence. Her evidence is not to be rejected either in whole or in part. But the whole of the evidence so far as it affects both parties favourably or unfavourably, must be taken into account and assessed like any other evidence for whatever it is worth."

Subsequently in Fazlul Haque v. The State (PLD 1959 Dacca 931) and Dawood Ali v. The State (PLD 1962 Dacca 613) a Division Bench of the High Court, Dacca, expressed the view that when a witness was cross-examined by the party calling him, his evidence is not to be rejected either in whole or in part but the whole of the evidence so far as it affects both parties favourably or unfavourably, must be taken into account and assessed like any other evidence for whatever is it worth. The

*Shahid*



learned Judge referred to and followed the earlier Full Bench decision in the case of Profulla supra.

11. In the light of the above principles it is settled that the testimony of a hostile witness cannot be altogether left out of consideration. The evidence of a hostile witness has to be considered like the evidence of any other witness, but with a caution for the simple reason that the witness has spoken in different tones. When a witness speaks in different voices, it would be for the Court to decide in what voice he speaks the truth. In such cases, the determining test is corroboration from independent source and conformity with the remaining evidence."

23. Moot point was examined by the Hon'ble Shariat Appellate Bench in case of Sarfaraz Gul vs. State (PLD 2004 S.C. 290) and examining the case law on this aspect, it was held that statement of a hostile witness cannot be brushed aside subject to availability of corroboration. Further held that Court is bound to consider and determine as to whether any part of such evidence was worth of belief if examined in the light of other incriminating material and evidence, which had come on record.

24. In another case of Muhammad Suleman and 4 others vs. The State PLD 2007 S.C. 223 wherein Hon'ble Apex Court on the evidentiary value of a hostile witness has observed as under:-

"12. There is no cavil to the proposition that the testimony of a hostile witness or a witness, who was not examined being won over was either produced by the defence or was examined as Court witness, must not be left out of consideration for mere reason that he did not support the prosecution rather the evidence of such a witness must be considered with utmost care and caution. The testimony of a witness who speaks in the different tune at different times is certainly not reliable unless strong confirmatory evidence of independent character is available on record. Similarly, the sole testimony of an interested witness, without independent corroboration may not be confidence inspiring to be relied upon for conviction. The rule of independent corroboration is a rule of abundant caution which is followed in the interest of safe criminal administration of justice and is not a mandatory rule of law to be necessarily applied in each case. In the present case the defence having 'challenged the presence of the eye-witnesses namely Muhammad Aslam and Irfan Aslam at the scene of occurrence has questioned truthfulness of their evidence mainly on the ground that none of them sustained a single injury in the occurrence despite direct and indiscriminate firing made by the accused. The incident took place at the shelter of the complainant and the presence of the complainant and his son at their shelter was not questionable and their testimony was also not suffering from any inherent defect."

*J. Inseem*



25. A careful appraisal of the testimony of PW-10 Muhammad Raees, when examined on the touchstone, reveals that he, being an eyewitness to the occurrence, duly corroborated the ocular account rendered by PW-6 and PW-9 by affirming the contents and acknowledging his signature on, the memo of arrest and identification of the appellant (Ex.20/A) in his capacity as mashir. Furthermore, during cross-examination, PW-10 candidly admitted to each and every assertion made in his statement recorded under Section 161 Cr.P.C., and at no point did he repudiate or disown any portion thereof. Significantly, the defence did not put forth any challenge to this aspect of his testimony during cross-examination. In view of the dictum laid down by the Hon'ble Apex Court, the evidentiary value of such testimony cannot be discarded merely on the basis that the witness declined to identify the appellant during trial, particularly when the witness did not retract from his prior statement and the defence failed to confront him on this material point. The ocular account furnished by PW-6 and PW-9 remained harmonious and consistent inter se on all material particulars, including the date, time, mode and manner of occurrence, and the location and nature of the injuries sustained. Though subjected to extensive cross-examination, the defence was unable to extract any contradiction or discrepancy that would impair the credibility of their testimony or cast doubt upon the prosecution's case with respect to its salient features. The reliability of the ocular account is further reinforced by the admitted fact that none of the eyewitnesses bore any enmity or ill-will against the appellant, thereby negating any possibility of false implication. The witnesses presented a detailed and confidence-inspiring narration of the incident, encompassing the number of assailants, the time and manner of the occurrence, the process of shifting the four slain police officials and the injured PW to the hospital, and the subsequent arrival of police at the scene. These factors collectively substantiate the veracity of the eyewitnesses' presence at the scene of the incident, which the prosecution has succeeded in establishing through cogent and trustworthy evidence

26. This Court meticulously scrutinized the proceedings relating to the Test Identification Parade. The record reflects that on 12.08.2016, the appellant was formally arrested by PW-20, DSP Mehmood Hussain Raja, under the memo of arrest (Exhibit 22/A). At the time, the appellant was already in custody at Police Station Khokharapar in connection with Crime No. 280/2014 of Police Station Zaman Town.



Subsequently, on 16.08.2016, a Test Identification Parade was conducted under the supervision of PW-3, Asif Ali, the learned 14th Judicial Magistrate, Karachi-East (Ex.12/C and 12/D). During the parade, both PW-6, Muhammad Asif Khan, and PW-9, PC Mushtaq, categorically identified the appellant. PW-6 unequivocally stated that the appellant, along with co-accused (since deceased), had opened indiscriminate fire upon the police party, resulting in the death of four police officials and causing grievous injuries to PW6, Muhammad Asif Khan on vital parts of his body. Similarly, PW-9, PC Mushtaq, confidently pointed out the appellant during the identification proceedings and narrated the sequence of events, including having seen the appellant armed with a Kalashnikov and later leaving the scene alongside the deceased co-accused. It is pertinent to note that PW-3 (Judicial Magistrate), PW-6, and PW-9 were all subjected to thorough cross-examination by the defence. However, nothing material was brought on record to impeach their credibility or to create doubt regarding the legality and reliability of the identification proceedings. Their testimony remained consistent and confidence-inspiring throughout. It is a trite proposition of law that a Test Identification Parade is not a substantive piece of evidence but serves to corroborate the testimony of witnesses, particularly when the accused is identified in court and the statements of witnesses are otherwise credible. The superior courts have repeatedly held that if a witness identifies the accused in court, and the testimony is consistent, coherent, and trustworthy, the absence of an identification parade or any alleged procedural irregularity therein does not vitiate the prosecution's case. Reliance is placed on the case law of Subha Sadiq (supra), wherein the Apex Court highlighted the law regarding the test of identification parade as corroborated piece of evidence as follows:-

*"6. The identification parade is one of the methods of proof contemplated under section 22 of the Qanun-e-Shahadat Order, 1984. It must be carefully conducted in order to achieve its main object i.e. to enable a witness to properly identify a person involved in a crime and to exclude the possibility of a witness simply confirming a faint recollection and impression. The process has to be carried out having regard to the exigencies of each case in a manner that is fair and does not indicate any collusiveness. It is merely a corroborative piece of evidence and holding of test identification parade is not mandatory. If the testimony of the witness qua the identity of the accused inspires confidence and the witnesses are consistent in all material particulars and there is nothing in the evidence to suggest that the latter*

*Shameem*



*had deposed falsely then in such an eventuality not conducting a test identification parade is not fatal to the prosecution's case. The omission of salient features in a crime report is not necessarily a ground to discard a test identification parade. The test identification parade is, therefore, not required when the victim had identified the accused and his statement has been found reliable."*

27. As regards the contention raised by the defence that the appellant was shown to the prosecution witnesses prior to the conduct of the identification parade, thereby rendering the subsequent identification proceedings devoid of evidentiary value, this Court has meticulously examined the testimonies of PW-6 and PW-9 on this specific aspect. It is sufficient to observe that during the course of cross-examination, no suggestion was put to either of the said witnesses that they had seen the appellant prior to the test identification parade. The absence of any such challenge by the defence significantly weakens their objection and lends credibility to the identification proceedings. In the absence of any cogent evidence to suggest that the appellant was previously exposed to the witnesses, the identification made during the test identification parade cannot be discarded on mere conjecture or unsubstantiated assertion. However, when appellant was confronted under Section 342 Cr.P.C. with a specific question "It has also come in evidence against you that on 16-08-2016, you were produced before Judicial Magistrate XIV Karachi-East, who held an identification parade and during such identification parade you were identified by PWs namely Mushtaq Ahmed and Asif Khan. What have to say?"

*Ans: "Sir, it is correct, but I was shown to witnesses before identification prior 3 days before of identification test Parade."*

28. The above assertion made by the appellant appears to be a self-serving attempt to improve his defence at a belated stage, particularly when, during the test identification parade, he did not raise any objection before the learned Judicial Magistrate to the effect that he had already been shown to the prosecution witnesses at the police station. Furthermore, both PW-6 and PW-9, during the course of their testimony, have unequivocally attributed a specific and active role to the appellant in the commission of the offence, thereby reinforcing the reliability of the identification made during the parade. In view of these circumstances, the objection raised by the defence regarding the validity and evidentiary worth of the test identification parade is devoid



of legal substance and is not sustainable under the settled principles of law.

29. In the present case, the ocular account furnished by the prosecution witnesses receives material corroboration from the medical evidence of the Medico-Legal Officer with respect to the cause of death, the approximate time of incident, and the weapon used in the commission of the offence. PW-7 Dr. Shiraz Ali (Ex.16) who received corpses of four police officials and examined injured namely Muhammad Asif (PW-6) at 2:40 p.m. He examined PW-6 and medicolegal officer found: (i) a lacerated penetrating wound of entry measuring 1 cm in diameter located on the lateral aspect of the left forearm, and (ii) a lacerated penetrating wound of entry measuring 1 cm in diameter over the left iliac crest, with an exit wound on the medial thigh, which re-entered into the lateral scrotum and exited from the right lateral scrotum. Upon receipt of the X-ray report, injury No.1 was classified as Jurrah-e-Ghayr Jaifah Munaqqilah, while injury No.2 was declared as Jurrah-e-Ghayr Jaifah Mutalahimah. The nature and trajectory of the injuries, as documented by the Medico-Legal Officer, are consistent with the account of the incident provided by PW-6 and lend further weight to the prosecution's version, leaving no room for doubt as to the credibility of the eyewitness testimony.

30. PW-7 conducted autopsy on two slain police officials namely PC Muhammad Jameel and Muhammad Anwar. He started autopsy on the corpse of Muhammad Jameel at 3:40 p.m. and completed at 4:15 p.m. He found following injuries:

- (i) lacerated penetrating wound of entry 1 cm in diameter inverted margin over right lateral chest and wound of exit 1.5 cm in diameter everted margin over left hypochondrium; and
- (ii) lacerated penetrating wound of entry 1 cm in diameter inverted margin over right frontal forehead and exit wound over posterior occipital region.

Cause of death:-Death occurred due to cardio respiratory failure, due to fire arm injury over head and chest.

PW-7 Sheraz Ali then conducted autopsy of slain PC Muhammad Anwar who sustained one injury as follows:

- (1) lacerated penetrating wound of entry 1 cm in diameter inverted margin over right temporal region and wound of exit over mid forehead.



Cause of death:-Death occurred due to cardio respiratory failure, due to fire arm injury over head.

31. Whereas autopsy of two slain police officials was conducted by Dr. Afzal Memon on whose behalf Dr. Sheeraz stepped in witness box as PW-18 and produced postmortem report along with cause of death. Autopsy of PC Muhammad Akhtar was conducted. He found following injuries:

- (i) firearm wound of entry 0.5 cm in diameter over left cheek, blackening negative inverted;
- (ii) firearm wound exit 1 cm diameter over right oxipital region of skull margin everted;
- (iii) firearm wound of entry 0.5 cm diameter over left side of abdomen blackening negative margin inverted; and
- (iv) firearm wound of exit 1 cm in diameter over left lumber region everted. All injuries were ant--mortem in nature.

Cause of death:-

Death occurred due to cardio respiratory failure, due to hemorrhagic shock, due to head and face and abdomen injury resulting from firearm projectile.

Autopsy of ASI Aqeel Ahmed was conducted and found following injuries:

Surface Wound:- Firearm wound of entry 0.5 cm and diameter over left cheek, blackening negative margin inverted.

Firearm wound of Exit: Size 1 cm and diameter over right temporal region margin everted.

Fire arm wound of entry: size 0.5 cm and diameter over left side of chest posterior aspect of left side margin inverted.

Wound of exit: size 1 cm in diameter over anterior aspect of left side of chest margin everted.

Firearm wound of entry: size 0.5 cm in diameter over anterior aspect of right side of shoulder margin inverted.

Firearm wound of exit: size 1 cm of diameter over posterior aspect of the right shoulder margin everted. All the injuries were anti-mortem.

Cause of death: -

Cardio respiratory failure due to hemorrhagic shock due to head and chest injury resulting from firearm projectile.

32. The postmortem examinations of the four slain police officials were conducted promptly and in a professional manner by two qualified Medicolegal Officers. The duration between the time of death and the conduct of the postmortem, as recorded by the Medicolegal



Officer, is in complete conformity with the time of occurrence as deposed by the eyewitnesses. The testimony of PW-7, Dr. Shiraz Ali, the Medicolegal Officer, is in full accord with the ocular account, and his findings further corroborate the prosecution's version. The medical evidence is not only consistent with the injuries described by the eyewitnesses but also finds additional support from the recovery of ballistic evidence at the scene, which includes six spent casings of 9mm bore, four spent casings of 7.62mm bore (Kalashnikov), and five projectiles, all collected from the place of occurrence. Such corroborative forensic and medical evidence further strengthens the prosecution's case and lends credence to the account of the incident furnished by the eyewitnesses.

33. The prosecution case is further fortified by the recovery of the crime weapon pursuant to the disclosure made by the appellant. On 22.08.2016, the appellant voluntarily led the police party to an abandoned snooker club located in G-Area, Korangi No. 5½, where he pointed out the location of the concealed weapon hidden beneath rubble. Upon recovery, the weapon was identified as a 7.62 bore Kalashnikov bearing No. 17181614. Following the recovery, the appellant was formally arrested under memo (Ex.13/A), and a separate FIR bearing No. 492 of 2016 was registered against him under Section 23(1)(a) of the Sindh Arms Act, 2013. The said Kalashnikov was subsequently dispatched for forensic analysis (Ex.27/E) through PW-14 Inspector Muhammad Hussain Qureshi (Ex.27). It is pertinent to note that during the initial inspection of the crime scene, PW-16 SIP Muhammad Pathan Khan (Ex.30) had recovered six spent casings of 9 mm bore, four spent casings of 7.62 bore, and five projectiles from the place of occurrence. These articles were forwarded to the Forensic Science Laboratory (FSL) on 26.08.2016 for ballistic examination. As per the FSL report (Ex.36/N), the four recovered 7.62 bore spent casings were matched and found to have been discharged from the Kalashnikov recovered on the pointation of the appellant. The entire recovery proceedings were witnessed by PW-4 ASI Rizwan (Ex.13), who gave a clear, cogent, and consistent account of the recovery process, which remained unshaken during cross-examination. The successful forensic linkage of the crime empties with the weapon recovered at the instance of the appellant provides strong corroborative evidence, directly connecting the appellant to the commission of the offence and substantially strengthening the prosecution's case.

*Shiraz*



34. It is needless to reiterate that the recovery of the crime weapon at the instance of the appellant is a significant piece of incriminating evidence that weighs heavily against him and reflects strongly upon his guilt. During his examination under Section 342, Cr.P.C., the appellant was specifically confronted with the factum of recovery of the crime weapon; however, he failed to offer any plausible explanation or defence to rebut or dislodge this portion of the prosecution's case. The recovery of the 7.62 bore Kalashnikov was impeccably established through the confidence-inspiring and consistent testimony of PW-4 ASI Rizwan and PW-20 DSP Mehmood Hussain Raja. Both witnesses categorically affirmed that the weapon was recovered in pursuance of the voluntary disclosure and pointation made by the appellant. Their depositions remained unshaken and free from any material contradictions or discrepancies, thereby lending further credibility to the prosecution's version. In light of the unimpeached evidence regarding the recovery and the appellant's failure to provide any satisfactory explanation, an adverse inference is warranted against him under the settled principles of criminal jurisprudence.

35. As regards the contention advanced by the learned counsel for the appellant that the recovery proceedings stand vitiated due to non-compliance with the provisions of Section 103, Cr.P.C., the same is devoid of merit and not sustainable in the eyes of law. It is a settled principle of criminal jurisprudence that the provisions of Section 103, Cr.P.C., are applicable primarily in cases involving search of a house or premises by the police, and not in circumstances where the recovery is effected pursuant to the voluntary disclosure and pointation of the accused. In the present case, there was no independent search conducted by the police; rather, the recovery was made solely on the basis of the appellant's own disclosure and subsequent leading of the police to the location of the concealed weapon. Furthermore, it is also a matter of judicial notice that in cases involving acts of terrorism or offences of heinous nature, it is not uncommon for private individuals to be reluctant to associate themselves with the investigation due to fear and apprehension. In such cases, the absence of private mashirs does not by itself render the recovery illegal or doubtful, particularly when the official witnesses to the recovery proceedings have deposed in a consistent and confidence-inspiring manner, as is evident from the record in the instant matter. Reliance in this regard can be placed on the case of



Mir Muhammad v. The State 194 SCMR 614 and Riaz Hussain v. The State 2010 MLD 1127.

36. As regards the contention raised by the learned counsel for the appellant pertaining to his alleged false implication in the present case, it is observed that during the examination of the appellant under Section 342, Cr.P.C., specific and pointed questions were put to him in relation to the prosecution evidence; however, the appellant failed to furnish any cogent explanation or defence, except for a general claim that he was a worker of a political party and had been falsely implicated. He further asserted that at the time of the incident, he was already in custody in connection with Crime No.280 of 2014 and produced a copy of the judgment in that case. However, this plea appears to be self-serving and lacks corroboration. During cross-examination of PW-20, DSP Mehmood Hussain Raja, the defence did pose a query regarding the appellant's detention at Police Station Khokhrapar. The Investigating Officer replied that he had no knowledge of the appellant having been in police custody since 03.08.2016. It is pertinent to mention that the offence in the instant case was committed on 12.08.2015 nearly one year earlier, thereby rendering the appellant's plea of prior detention factually unsubstantiated and legally untenable. Moreover, while the appellant has taken the plea of false implication, he has failed to assign any plausible motive or reason as to why the police officials or eyewitnesses, who were otherwise strangers to him, would falsely implicate him in a case of such serious magnitude. Even otherwise, the defence did not confront any of the prosecution witnesses during cross-examination with the plea of false implication or any enmity between the appellant and the witnesses. In the absence of any tangible material to support the defence plea, it remains an unsubstantiated assertion that carries no evidentiary weight.

37. It is a cardinal principle of criminal jurisprudence, particularly in cases involving capital punishment, that the prosecution must succeed on the strength of its own evidence and is required to prove the charge against the accused beyond reasonable doubt. In the instant matter, the eye-witnesses have deposed in a clear, cogent, and consistent manner, explaining the date, time, place, and sequence of the occurrence in detail. Their depositions were subjected to rigorous cross-examination wherein the defence made extensive efforts to undermine their credibility and challenge their presence at the crime



scene; however, no material contradiction or inconsistency could be elicited, nor was any aspect of their testimony discredited.

38. The prosecution witnesses are consistent and in consonance with each other on all material particulars. Their evidence remained unshaken throughout the cross-examination and no major contradiction could be pointed out which may render their testimony unreliable. Furthermore, the identification parade was duly conducted in accordance with law, and the appellant was correctly identified by the witnesses, leaving no room for mistaken identity. It is by now a well-settled principle of law that where the witnesses are natural, their presence is probable, and their account is confidence-inspiring, such evidence is sufficient to sustain conviction and cannot be discarded merely for technical reasons.

39. As to the sentence a lenient view cannot be taken as the circumstance, in this case, indicate that act of the appellant was gruesome and merciless, there are no mitigating circumstances to alter the sentence to life imprisonment. In the case of *Muhammad Hayat & others v. The State (2021 SCMR 92)*, the Hon'ble Supreme Court maintain the death sentence of the appellant by observing as under:-

*"Alternate plea of commutation of death penalty into imprisonment for life on the ground that simultaneous multiple fire shots by the assailants left no space to possibly determine fatalities distinctly, a circumstance according to the learned counsel, by itself calling for alternate punishment of imprisonment for life, fails to commend approval inasmuch as the totality of circumstances does not admit any space to divisibly draw any such benign distinction within the realm of human wisdom when all the three assailants in a petty criminal pursuit ruthlessly targeted the deceased in cold blood. Scales are in balance and the wage settled by the courts below being conscionable in circumstances merits no interference. Criminal Shariat Appeal fails. Dismissed."*

40. The upshot of the above discussion is that the prosecution has successfully established its case against the appellant through an ocular account furnished by eyewitnesses, which is corroborated by the medical evidence coupled with circumstantial evidence. Learned



counsel for the appellant has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view is based on proper appreciation of the evidence and same does not call for any interference by this Court. Thus, the conviction and sentence awarded to the appellant by the learned trial Court are hereby **maintained** and the appeal filed by the appellant merits no consideration, which is dismissed accordingly.

41. As a result of the above findings, the reference bearing Confirmation Case No.03 of 2024 submitted by the learned trial Court for confirmation of death sentence to the appellant Muhammad Asif @ Katto, is answered in the AFFIRMATIVE.

*Shamoon*  
12/8/2025  
JUDGE

*Shamoon*  
JUDGE  
16/8/2025

Announced by us

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OMUN SINGH, J  
16/8/25

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J. Syed Fiaz ul Hasan Shah