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CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Spl. Criminal Anti-Terrorism Jail Appeal NO. 06 of 2021  
Spl. Criminal Anti-Terrorism Jail Appeal NO. 07 of 2021

Tahir Hussain @ Saeen & another

Vs

The State

HIGH COURT OF SINDH

Composition of Bench.

D.B.

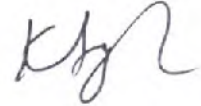
Mr. Justice Muhammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi

Date(s) of hearing: 24-08-2022

Decided on : 29-08-2022

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/. 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.

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IN THE HIGH COURT OF SINDH AT KARACHI

Special Anti Terrorism Court Through

Jail Appeal No-----06-----of 2021

~~Tahir~~ Hussain Minhas @ Sain ,

~~Chadim~~ Hussain, Muslim Adult, R/o

~~No.~~ -----,

~~is~~ confined at Central Prison, Karachi-----Applicant/ Accused

VERSUS

~~VIIIth~~ Anti Terrorism Court, Karachi.

~~The~~ State-----Respondent

FIR No. 596/2013

U/S 302/324/34 PPC,

R/W Section 7 ATA, 1997

P.S. Shahra-e-Faisal, Karachi.

APPLICATION UNDER SECTION 25 OF THE ANTI TERRORISM  
ACT, 1997, AGAINST JUDGMENT DATED 19-12-2020.

~~I~~ aggrieved and dissatisfied with the judgment, dated 19-12-2020,  
~~is~~ by the Learned VIIIth Terrorism Court, inside Central Jail, Karachi,  
~~New~~ Special Case No. 21/2020.

~~certified~~ Copy of Judgment Dated 19-12-2020, is attached herewith and  
~~marked~~ as Annexure "P".

~~is~~ by the Applicant/ Accused Tahir Hussain Minhas@ Sain, Son of  
~~Chadim~~ Hussain has been convicted and sentenced as under:

Under Section 7(i)(a) of ATA 1997, R/w Section 302/324/34 P.P.C .  
He is liable to pay fine of Rs. 500,000/- each and in case of default to



## IN THE HIGH COURT OF SINDH AT KARACHI

Special Anti Terrorism Court Through

Jail Appeal No-----07-----of 2021

Saad Aziz @ Tun Tun,

Son of Aziz Shaikh, Muslim Adult, R/o

House No. A-41, Block 2, Gulshan-e-Iqbal, Karachi

Presently confined at Central Prison, Karachi-----Applicant/ Petitioner

VERSUS

The VIIIth Anti Terrorism Court, Karachi.

The State-----Respondent

FIR No. 596/2013

U/S 302/324/34 PPC,

R/W Section 7 ATA, 1997

P.S. Shahra-e-Faisal, Karachi.

APPLICATION UNDER SECTION 25 OF THE ANTI TERRORISM  
ACT, 1997, AGAINST JUDGMENT DATED 19-12-2020.

The Applicant is aggrieved and dissatisfied with the judgment, dated 19-12-2020,  
passed by the Learned VIIIth Terrorism Court, inside Central Jail, Karachi,  
in Special Case No. 21/2020.

A Copy of Judgment Dated 19-12-2020, is attached herewith and  
is marked as Annexure "P".

The Applicant/ Petitioner Saad Aziz @ Tun Tun, Son of Aziz  
Shaikh, has been convicted and sentenced as under:

Under Section 7(i)(a) of ATA 1997, R/w Section 302/324/34 P.P.C .

To pay fine of Rs. 500,000/- each and in case of default to

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IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi,*

Spl. Criminal A.T Jail Appeal No.06 of 2021.

Appellant: Tahir Hussain Minhas @ Sain S/o.  
Khadim Hussain through Mr.  
Iftikhar Ahmed Shah, Advocate.

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

Spl. Criminal A.T Jail Appeal No.07 of 2021.

Appellant: Saad Aziz @ Tin Tin S/o. Aziz  
Shaikh through Mr. Iftikhar  
Ahmed Shah, Advocate.

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

Date of hearing: 24.08.2022.

Date of Announcement 29.08.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellants Tahir Hussain Minhas alias Sain S/o. Khadim Hussain and Saad Aziz alias Tin Tin S/o. Aziz Shaikh have preferred these appeals against the judgment dated 19.12.2020 passed by Learned Judge, Anti-Terrorism Court No.VIII, Karachi in New Special Case No.21 of 2020 arising out of Crime No.596 of 2013 U/s. 302, 324, 34 PPC R/w. section 7 of ATA 1997 registered at P.S. Shahrah-e-Faisal, Karachi whereby the appellants Tahir Hussain Minhas alias Sain S/o. Khadim Hussain and Saad Aziz alias Tin Tin S/o. Aziz Shaikh were convicted and sentenced to life imprisonment along with fine of Rs.500,000/- to each appellant. In case of default in payment of fine they would further undergo imprisonment for 03 years more.



2. The brief facts of the prosecution case as per F.I.R. lodged by the complainant Rahat Bashir S/o. Bashir Ahmed vide his statement u/s. 154 Cr.PC are that on 05.09.2013 he received information through phone that his brother Captain Nadeem Ahmed aged 46 years, has received firearm injury and he has been taken to PNS Shifa. He immediately proceeded to the hospital and en route to the hospital, he again received a phone call that his brother has been shifted to Aga Khan Hospital. He reached to Agha Khan Hospital Emergency Ward, where he come to know that his brother succumbed to his injuries and had died and his dead body was shifted to the Jinnah Hospital for postmortem. After postmortem and funeral proceedings, he came to P.S. for legal proceedings against the culprits. On inquiry, he came to know that his brother Captain Nadeem Ahmed along with his wife in car bearing No.W-8799 Make Margalla Red colour, was going to his office at PNS Johar from his home at about 0800 am, when he reached at Karsaz Road near Bridge, some unknown person/persons fired with deadly weapons upon his brother and his sister in law, and as a result his brother expired and sister in law Dr. Traycee got injured and was under treatment at PNS Shifa. His claim is against unknown person/persons who fired upon his brother and sister in law with firearm weapon. On his disclosure in his statement u/s 154 Cr.PC, FIR was lodged at the police station.

3. The investigation of the instant crime was entrusted to SIP Farooq Azam, he also continued search of the accused persons, but he did not succeed and submitted final report in "A Class" of the absconding accused persons. On 29.06.2015, he came to know that accused persons arrested in CTD Civil Lines and have admitted their involvement in the present crime of PS Shahrah-e-Faisal. On such information, SIP Farooq Azam proceeded there and interrogated the accused persons. Accused persons admitted their involvement in the present crime, as such SIP Farooq Azam arrested the accused persons in the instant crime and obtained police custody remand from the Court. Since the deceased was Naval Officer, I/O added section 7 ATA in the instant crime. The investigation of the crime was entrusted to PI Hayatullah. PI Hayatullah obtained remand of the accused persons from ATC Court-I and

interrogated the accused persons. During interrogation, the accused persons admitted that on 04.09.2013, they proceeded along with their companion Umar alias Javed and spotted one Naval Officer along with one English Lady at about 08:00 am near National Stadium KDA Scheme No.1, and shot fires upon them in their car, as a result, Naval Officer died and one lady who was accompanied with him got injured. The accused persons during the interrogation, offered to point out the place of incident on which PI/SIO visited there and prepared memo of site inspection and site sketch of the place of incident and he also produced the eye witness before Magistrate for identification parade and produced its copy. Thereafter, I/O completed investigation of the case and sent the final report to Administrative Judge ATCs for approval. The case was approved and transferred to ATC for trial of the accused persons according to law.

4. The accused plead not guilty to the charge and claimed trial. The prosecution in order to prove its case examined 13 witnesses and exhibited various documents and other items. The statements of accused were recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them.

5. After hearing the parties and appreciating the evidence on record the trial court convicted the appellants and sentenced them as stated earlier in this judgment and hence, the appellants have filed these appeals against their convictions and sentences.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 19.12.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellants has contended that the appellants are completely innocent and have been falsely implicated in this case by the police in order to show their efficiency; that the sole eye witnesses evidence cannot be safely relied upon as he is a put up witness and even the appellant's identification parade was legally defective; that



injured eye witness Dr. Tracy was not examined without any explanation; that no medical evidence in respect of Dr. Tracy's injuries was produced; that the vehicle in which the victim was driving was not taken into immediate possession; that no recovery was made from either of the appellants and that for any or all of the above reasons the accused should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he has placed reliance on the cases of *Mst. Sughra Begum and another v. Qaiser Pervez and others* (2015 SCMR 1142), *Mst. Rukhsana Begum and others v. Sajjad and others* (2017 SCMR 596), *Muhammad Irshad v. Allah Ditta and others* (2017 SCMR 142), *Muhammad Shafqat v. The State* (1970 SCMR 713), *Muhammad Tufail v. The State* (2017 SCMR 1845), *Gulfam and another v. The State* (2017 SCMR 1189), *Kamal Din alias Kamala v. The State* (2018 SCMR 577), *Muhammad Yameen alias Raja v. The State and others* (2009 SCMR 84) and *Javed Khan alias Bacha and another v. The State and another* (2017 SCMR 524).

8. On the other hand learned APG appearing on behalf of the State has fully supported the impugned judgment and contended that the appeal is without merit and should be dismissed. In particular he has relied on evidence of the eye witness whose identification evidence of the appellants is correct and is trust worthy confidence inspiring and can be safely relied upon which is fully corroborated by the medical evidence. In support of his contentions he has placed reliance on the cases of *Niaz-uddin and another v. The State and another* (2011 SCMR 725), *Muhammad Ehsan v. The State* (2006 SCMR 1857) and *Muhammad Zaman v. The State* (2007 SCMR 813).

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

10. At the outset based on the prosecution evidence, especially photo's of the car at the scene and medical evidence we find that the prosecution has proved beyond a reasonable doubt that on 24.09.2013 at about 0800



hours at Karsaz Main Road near bridge opposite national stadium Karachi Dr. Nadeem Ahmed was shot by firearm whilst sitting in car bearing registration No.W-8799 along with his wife and that Dr.Nadeem Ahmed (the deceased) died on account of his firearm injuries at the said time, date and location.

11. The only question left before us therefore is who shot and murdered the deceased and injured his wife at the said time, date and location?

12. After our reassessment of the evidence we find that the prosecution has **NOT** proved beyond a reasonable doubt the charge against the appellants for which they have been convicted keeping in view that each criminal case is based on its own particular facts, circumstances and evidence for the following reasons;

(a) Although there was a delay of about 19 hours in lodging the FIR we do not consider this fatal to the prosecution case based on the particular facts and circumstances of this case as such delay has been explained by the complainant who lodged the FIR after the funeral of the deceased. What is of significance however that is the FIR is against unknown persons without any description of those persons being given in the FIR.

(b) In our view the prosecution's case rests almost exclusively on the evidence of the sole eye witness to the incident and his ability to correctly identify the appellants who allegedly came on a motor bike and fired on the deceased and his wife whose evidence we shall consider in detail below;

(i) **Eye witness PW 11. Mansoor Ahmed.** According to his evidence on 04.03.2013 he was coming from Dhoraji to bring his mechanic when he saw a red coloured car stopped at a traffic signal. He then saw two accused arrive on a motor bike and fire on the car. The women was injured and the husband died on the spot and were taken to hospital and he went to his shop. On 07.04.2013 he informed the police that he was an eye witness to the incident and in 2015 he picked out the appellants at an identification parade as the persons who committed the crime. According to his evidence he was about 25 to 30 feet from the incident when it occurred in day light.

At the outset we find this witness to be a chance witness as he had no reason to be present at the time of the incident. In this respect reliance is placed on the cases of **Sughra Begum** (Supra), **Ms Rukhsana Begum** (Supra) and **Muhammed Irshad** (Supra) which castes doubt on his evidence.



Furthermore, in his evidence he states that he witnessed the incident on 04.03.2013 which is 6 months **before** the incident took place. This might have been considered as a typo but he then states that he gave his S.161 Cr.PC eye witness statement to the police on 07.07 2013 which is two months **before** the incident. He then says that he gave his eye witness statement 3 days after the incident during his cross examination which is completely contradictory to his evidence in chief in terms of when he witnessed the incident and gave his S.161 eye witness Cr.PC statement. It is notable that the police report was initially disposed of in "A" class yet the eye witness is not named in the police report which further indicates that he did not give his S.161 Cr.PC statement within three days after the incident and that he is a put up and unreliable witness.

According to his evidence the incident took place at the traffic lights but according to the police photo's of the bullet riddled car this was no where near a traffic light which again indicates that the eye witness did not witness the incident. According to his evidence two accused came on motor cycle and committed the crime however the police seem to have roped in a third absconding accused Umer when their star eye witness only allegedly saw the two accused committing the crime.

He would have only got a fleeting glance of the incident as he was driving by and he did not know the accused from before and thus an identification parade was a requirement under the law. No hulia of either of the accused was given in the FIR nor his S.161 Cr.PC statement which again casts doubt on his correct identification of the accused at an identification parade.

The identification parade of the accused was held 2 years after the incident where he picked out both the accused with specific roles however in his cross examination he has this to say about the identification parade, *"it is correct to suggest that when I went at city court for identification of the accused person's at that time outside of the court ASI Arif and both the accused persons were available"*. This indicates that the eye witness saw both of the accused **before** the identification parade which ties in with the accused's claim in their S.342 Cr.PC statements that the eye witness identified the accused on the directions of the police.

In addition during cross examination he also states when he went for the identification parade, *"At the time of the identification parade only both accused person's were available and no any dummy was available at the time of the identification parade"*.

As such we find the identification parade to be a complete farce and not in accordance with the law and completely disregard it especially as it was also a joint identification.



parade and took place 16 days after the arrest of the accused which delay has not been explained and also gave the police ample time and opportunity to show the eye witness to the accused who were in police custody. In this respect reliance is placed on the cases of **Gulfam (Supra)**, **Kamal Din (Supra)** and **Kanwar Anwaar Ali, Special Judicial Magistrate: in the matter of Criminal Miscellaneous Application No.183 of 2019 in Criminal appeal No.259 of 2018 (PLD 2019 Supreme Court 488)**

It is true that we can convict based on the evidence of a sole eye witness however based on the particular facts and circumstances of this case as discussed above we find that even if the eye witness was present at the time of the incident, which we very much doubt, based on the reasons mentioned above he would not have been able to correctly, safely and reliably identify the appellants and as such we veer on the side of caution in this case especially as there appears to be hardly any cogent corroborative or supportive evidence and find that the eye witness was not able to correctly identify the appellants.

In this respect reliance is placed on the case of **Javed Khan V State (2017 SCMR 524)** concerning the necessity for an early hulia/description of an accused by an eye witness in his S.161 Cr.PC statement before an identification parade and the need to strictly follow the rules governing identification parades where it was held as under at P.528 to 530:

*"7. We have heard the learned counsel and gone through the record. The prosecution case rests on the positive identification proceedings and the Forensic Science Laboratory report which states that the bullet casing sent to it (which was stated to have been picked up from the crime scene) was fired from the same pistol (which was recovered from Raees Khan in another case). We therefore proceed to consider both these aspects of the case. As regards the identification proceedings and their context there is a long line of precedents stating that identification proceedings must be carefully conducted. In Ramzan v Emperor (AIR 1929 Sid 149) Perceval, JC, writing for the Judicial Commissioner's Court (the precursor of the High Court of Sindh) held that, "The recognition of a dacoit or other offender by a person who has not previously seen him is, I think, a form of evidence, which has always to be taken with a considerable amount of caution, because mistakes are always possible in such cases" (page 149, column 2). In Alim v. State (PLD 1967 SC 307) Cornelius CJ, who had delivered the judgment of this Court, with regard to the matter of identification parades held, that, "Their [witnesses] opportunities for observation of the culprit were extremely limited. They had never seen him before. They had picked out the assailant at the identification parades, but there is a clear possibility arising out of their statements that they were assisted to do so by being shown the accused person earlier" (page 313E). In Lal Pasand v. State (PLD 1981 SC 142) Dorab Patel J, who had*



delivered the judgment of this Court, held that, if a witness had not given a description of the assailant in his statement to the Police and identification took place four or five months after the murder it would, "react against the entire prosecution case" (page 145C). In a more recent judgment of this Court, *Imran Ashraf v. State* (2001 SCMR 424), which was authored by Iftikhar Muhammad Chaudhry J, this Court held that, it must be ensured that the identifying witnesses must "not see the accused after the commission of the crime till the identification parade is held immediately after the arrest of the accused persons as early as possible" (page 485P).

8. The Complainant (PW-5) had not mentioned any features of the assailants either in the FIR or in his statement recorded under section 161, Cr.P.C. therefore there was no benchmark against which to test whether the appellants, who he had identified after over a year of the crime, and who he had fleetingly seen, were in fact the actual culprits. Neither of the two Magistrates had certified that in the identification proceedings the other persons, amongst whom the appellants were placed, were of similar age, height, built and colouring. The main object of identification proceedings is 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 or impression, that is, of an old, young, tall, short, fat, thin, dark or fair suspect....

9. As regards the identification of the appellants before the trial court by Nasir Mehboob (PW-5), Subedar Mehmood Ahmed Khan (PW-6) and Idress Muhammad (PW-7) that too will not assist the Prosecution because these witnesses had a number of opportunities to see them before their statements were recorded. In *State v. Farman* (PLD 1985 SC 1), the majority judgment of which was authored by Ajmal Mian J, the learned judge had held that an identification parade was necessary when the witness only had a fleeting glimpse of an accused who was a stranger as compared to an accused who the witness had previously met a number of times (page 25V). The same principle was followed in the unanimous judgment of this Court, delivered by Nasir Aslam Zahid J, in the case of *Muneer Ahmad v State* (1998 SCMR 752), in which case the abductee had remained with the abductors for some time and on several occasions had seen their faces. In the present type of case the culprits were required to be identified through proper identification proceedings, however, the manner in which the identification proceedings were conducted raise serious doubts (as noted above) on the credibility of the process. The identification of the appellants in court by eye-witnesses who had seen the culprits fleetingly once would be **inconsequential.**" (bold added)

(c) That Dr. Tracy who was an injured eye witness who was shot in the car with the deceased was one of the best and most important eye witnesses but despite being on the calendar of prosecution witnesses she was not called to give evidence and was in effect dropped as a witness without explanation and as such the inference



can be drawn under Article 129 (g) Qanoon-e-Shahdat Ordinance that she would have not supported the prosecution case. In this respect reliance is placed on the case of **Mohammed Shafqat** (Supra). Even otherwise no medical evidence was produced at trial to show that she was even injured during the attack.

(d) With no eye witness evidence to identify who carried out the attack the medical evidence becomes inconsequential as it can only reveal what kind of weapon/device was used and the seat of the injuries of the dead and injured. It cannot identify the person who inflicted the injuries.

(e) It is notable that the appellants confessed to the offence whilst in police custody however they were not produced before a magistrate to record their confessions under S.164 Cr.PC despite being produced before a magistrate for an identification parade and thus we place no reliance on their confessions allegedly made before the police.

(f) It does not appeal to logic, reason or commonsense that the appellants would confess to such a serious crime as the present one which carried the death penalty whilst in police custody when there was no evidence against them at the time of their arrest in this case.

(g) That no pistol was recovered from either of the accused who were already in police custody in another case.

(h) That no empty was recovered from the spot and it is even quite surprising to find that a sikka was found in the car when according to the medical evidence the firing was from more than 6 feet keeping in view that the car was not immediately taken into custody and as such the sikka could even have been planted. In any event the recovery of the sikka cannot tell us the identity of the person who fired on the deceased

(i) The appellants taking the police to the place of wardat is irrelevant as the police already knew where the place of wardat was.

(j) We have also examined the defence case which is one of false implication which when placed in juxtaposition with the prosecution evidence discussed above cannot be completely ignored out of hand.


13. That the prosecution must prove its case against the accused beyond a reasonable doubt and that the benefit of doubt must go to the accused by way of right as opposed to concession. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), wherein the Supreme Court has observed as follows:-

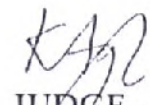


*"It is settled law that it is not necessary that there should be many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession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

14. For the reasons discussed above by extending the benefit of the doubt to the appellants they are acquitted of the charge, the impugned judgment is set aside, their appeals are allowed and the appellants shall be released unless wanted in any other custody case.

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

  
JUDGE  
29/08/2022.

  
JUDGE 29/08/22.