

Eye witnesses Believed

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CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

**Spl. Criminal A.T. Jail Appeal NO. 26 of 2021  
Conf. Case NO. 05 of 2021**

Muhammad Nawaz

Vs

The State

HIGH COURT OF SINDH

Composition of Bench.

D.B.

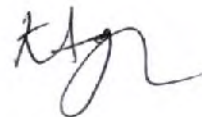
**Mr. Justice Muhammad Karim Khan Agha  
Mr. Justice Zulfiqar Ali Sangi**

Date(s) of hearing: 05-09-2022

Decided on : 08-09-2022

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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sep/04

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## IN THE HONORABLE HIGH COURT OF SINDH AT

ATA KARACHI

SPL Criminal Jail Appeal No. 26 /2020

Through Superintendent Central Jail

**Muhammad Nawaz**

Son of Muhammad Zareen,

Muslim, Adult, and

presently confined in Central

Prison Karachi, .....Appellant

VERSUS

1. **Learned Anti Terrorism Court No VIIIth**  
at Karachi2. **The State**

Through the Prosecutor General Sindh,

Having its office at Sindh Secretariat,

Karachi.....Respondents

**CRIMINAL JAIL APPEAL AGAINST THE JUDGEMENT  
DATED 22-10-2020 PASSED BY THE LEARNED SPL JUDGE  
ANTI-TERRORISM COURT NO VII KARACHI**

Being aggrieved and dissatisfied with the impugned Judgment dated: 22-1-2020 passed by **LEARNED SPL JUDGE ANTI-TERRORISM COURT NO VII KARACHI** in Criminal Case No. 67(vii)/2018 (OLD Case No A-114/2014), FIR No. 101/2014~~2019~~, Under section 302/324/353/324/393/427 r/w section 7 ATA, of Police Station Sharafi Goth Karachi, Styled as "The State V/s Muhammad Nawaz and Criminal Case No. 67-A(vii)/2018 (OLD Case No A-115/2014), FIR No. 102/2014 9, Under section 23(1) A of Sindh Arms Act of Police Station Sharafi Goth Karachi" whereby impugned Judgment dated: 22-10-2020 passed by Learned special Judge Anti terrorism Court No VII has convicted the undersigned appellant under section 7(a), 7(b), 7(c) 7(d) 7(h) of Anti Terrorism Act ,1997 r/w section 302, 324,353,393, 427, PPC and for offences u/s 23(1) (a) SAA,2013 and sentence as under;-

(1) That the appellant has convicted for the offence u/s section 7(a) of Anti terrorism 1997, for causing death of SIP Muhammad Ishaque as referred in earlier part of judgement and sentenced him to death with fine 200,000/- (Two Lac), the accused shall be hanged by neck till death.



IN THE ANTI - TERRORISM COURT NO. VII AT KARACHI  
No./ATC-VII/KHI-Div/ 19/2020 Karachi, Dated: 23<sup>RD</sup> day of October 2020

(Special case No: 67(vii)/2018)  
(Old Case No: A-114/2014)

The State  
Versus

Muhammad Nawaz S/o Muhammad Zareen.....Accused  
FIR No: 101/2014  
U/S: 302/324/353/393/427PPC  
r/w Section 7 ATA.  
P.S Sharafi Goth, Karachi.

(Special case No: 67-A(vii)/2018)  
(Old Case No: A-115/2014)

The State  
Versus

Muhammad Nawaz S/o Muhammad Zareen.....Accused  
FIR No: 102/2014  
U/S: 23 (1) (a) of Sindh  
Arms Act, 2013  
P.S Sharafi Goth, Karachi.

To,

The Worthy Registrar,  
Hon'able High Court of Sindh  
Karachi

INWARD TO 911-A  
BRANCH glt  
DATE 26/10/2020  
HIGH COURT OF SINDH AT KARACHI

SUBJECT:

REFERENCE FOR CONFIRMATION OF  
DEATH SENTENCE UNDER SECTION 374  
CR.P.C, R/W SECTION 30 OF ATA, 1997.

I have the honour to submit that in the above captioned cases, this Court passed the Judgment vide dated 22<sup>nd</sup> day of October 2020, wherein, the accused person namely **Muhammad Nawaz son of Muhammad Zareen**, is hereby convicted and sentenced under section 265-H(ii) Cr.P.C as under:

The accused namely Muhammad Nawaz son of Muhammad Zareen is hereby convicted and sentenced under section 265-H(ii) Cr.P.C. for each of the offence committed by him as under:-

- i) The accused namely Muhammad Nawaz son of Muhammad Zareen is hereby convicted for the offence u/s: 7 (a) of Anti-Terrorism Act, 1997, for causing death of SIP Muhammad Ishaque as referred in earlier part of Judgment and sentenced him to death with fine of Rs. 200,000/- (Two Lacs), the accused shall be hanged by neck till death.

**IN THE HIGH COURT OF SINDH, KARACHI**

Spl. Criminal A.T. Jail Appeal No.26 of 2021.

Conf. Case No.05 of 2021.

*Present:*

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Zulfiqar Ali Sangi,*

Appellant: Muhammad Nawaz S/o.  
Muhammad Zareen through Mr.  
S. Sahid Mushtaq, Advocate.

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

Date of hearing: 05.09.2022.

Date of Announcement: 08.09.2022.

**JUDGMENT**

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant Muhammad Nawaz S/o. Muhammad Zareen has preferred the instant jail appeal against the judgment dated 22.10.2020 passed by Learned Judge, Anti-Terrorism Court No.VII, Karachi in Special Case No.67(vii) of 2018 (Old Case No.A-114 of 2014) arising out of Crime No.101 of 2014 U/s. 302/324/353/393/427 PPC R/w section 7 ATA 1997 and Special Case No.67-A(vii) of 2018 (Old Case No.A-115) of 2014 arising out of Crime No.102 of 2014 U/s. 23(1)(A) of Sindh Arms Act registered at P.S. Sharafi Goth, Karachi whereby the appellant was convicted and sentenced as under:-

- (i) The accused Muhammad Nawaz S/o. Muhammad Zareen was convicted for the offence u/s. 7 (a) of Anti-Terrorism Act, 1997 for causing death of SIP Muhammad Ishaque and sentenced to death subject to confirmation by this court with fine of Rs.200,000/- (Two Lacs).
- (ii) The accused Muhammad Nawaz S/o. Muhammad Zareen was also convicted for the offence u/s. 302(a) PPC for causing death of SIP Muhammad Ishaque and sentenced to death subject to confirmation by this court.



- (iii) The accused was also convicted for the offence u/s. 7 (b) of Anti-Terrorism Act, 1997 for endangering the life of Bank Staff and sentenced to R.I. for ten years with fine of Rs.100,000/- (One Lac). In case of failure to pay the fine, the accused was ordered to suffer S.I. for six months.
- (iv) The accused was also convicted for the offence u/s. 324 PPC for attempting qatl-i-amd and thereby causing injuries to security guard and sentenced to suffer R.I. for ten years with fine of Rs.100,000/- (One Lac). In case of failure to pay the fine, the accused was ordered to suffer S.I. for six months.
- (v) The accused was also convicted for the offence u/s. 7 (c) of Anti-Terrorism Act, 1997 for causing injuries to the Security Guard Anwar Saeed sentenced to suffer R.I. for ten years with fine of Rs.100,000/- (One Lac). In case of failure to pay the fine, the accused was ordered to suffer S.I. for six months.
- (vi) The accused was also convicted for the offence u/s. 7 (h) of Anti-Terrorism Act, 1997 to create a serious risk to the public/employees of the bank, besides intimidation of a public servant in order to force him not to discharge his lawful duty and sentenced him to suffer R.I. for five years with fine of Rs.50,000/- (Fifty Thousand). In case of failure to pay the fine, the accused was ordered to suffer S.I. for six months.
- (vii) The accused was also convicted for the offence u/s. 393 PPC for attempting to commit robbery in the Apna Bank and sentenced to suffer R.I. for seven years with fine of Rs.50,000/- (Fifty Thousand). In case of failure to pay the fine, the accused was ordered to suffer S.I. for six months.
- (viii) The accused was also convicted for the offence u/s. 427 PPC for causing damage to Apna Bank and sentenced to suffer R.I. for two years with fine of Rs.50,000/- (Fifty Thousand). In case of failure to pay the fine, the accused was ordered to suffer S.I. for six months.
- (ix) The accused was also convicted for the offence u/s. 23(1)(a) of Sindh Arms Act, 2013 for carrying unlicensed weapon viz. 9 mm pistol and sentenced to suffer R.I. for ten years with fine of Rs.100,000/- (One Lac). In case of failure to pay the fine, the accused was ordered to suffer S.I. for six months.

The benefit of Section 382-B Cr.P.C was also extended to the accused.

2. The brief facts of the case as narrated in the FIR lodged by complainant P.C. Fayyaz, posted at P.S Sharafi Goth are that on 01.04.2014 at about 1626 hours the present accused Muhammad Nawaz S/o. Muhammad Zareen along with deceased accused Faizan tried to enter



Apna Bank situated at Future Curve Moeenabad No.2, District Malir Karachi, with intent to commit robbery along with weapons and made firing. The Bank Guard Anwar Saeed and SIP Muhammad Ishaque Abbasi sustained bullet injuries. The complainant Muhammad Fayyaz (P.C) of P.S. Sharafi Goth, deployed there, made fired upon both the culprits. As a result of which, both the culprits sustained firearm injuries and fell down. The Manager of Bank Rahatullah Khan informed the police, to which SIP Rao Tahir with his police party arrived there. SIP Rao Tahir found on the road in front of gate of the bank two persons were lying injured whereas, Bank Guard and SIP Muhammad Ishaque Abbasi were lying injured inside the Bank Gate. Constable Fayyaz was standing pointing weapon upon the culprits. Constable Fayyaz told the SIP that two culprits tried to enter inside the Bank and when stopped by Bank Guard and SIP they fired at them, who sustained bullet injuries. SIP prepared memo of arrest of culprit, took the injured to JPMC and got them admitted in emergency ward. SIP Muhammad Ishaque Abbasi and Security Guard Muhammad Anwar Saeed were also sent to hospital. The condition of SIP Muhammad Ishaque Abbasi remained critical and he was taken to Aga Khan Hospital, where he succumbed to his injuries. He completed formalities as required u/s. 174 Cr.P.C. and brought the dead body of Muhammad Ishaque Abbasi at JPMC and obtained the cause of death. He also recorded the statement of PC Fayyaz u/s 154 Cr.P.C. which was incorporated in FIR as Crime No.101/2014 u/s. 302/324/353/393/427 PPC. He also registered two separate FIRs u/s. 23(1)(a) of Sindh Arms Act being Crime Nos.102/2014 and 103/2014 against both the accused regarding recovery of weapons.

3. After usual investigation the case was challaned and the appellant was sent up to face trial. He pleaded not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 09 PWs and exhibited various documents and other items. The statement of accused person was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him. He did not give evidence on oath or call any DW in support of his defence case.



5. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment 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 appellant has contended that he is innocent and has been falsely implicated in this case by the police which was the reason why the FIR was delayed by 11 hours so that consultation could take place; that the charge was defective as the accused had no notice that he was facing a charge under S.302 (b) PPC; that there is no evidence against him except the sole eye witness whose evidence cannot be safely relied upon; that the person said to be with the bank manager at the time of the incident was not called to give evidence and thus the prosecution deliberately did not produce vital evidence without explanation; that the medical evidence does not support the ocular evidence; that the appellant is not seen in the CCTV footage; that the pistol was foisted upon the accused and in fact he was an innocent passer by and thus for any or all of the above reasons the appellant should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Muhammad Sajid alias Chota Bona and others v. The State** (2022 P. Cr.LJ 505), **Master Juman Buriro v. The State** (2022 YLR 299), **Shahzaib v. The State** (2022 MLD 950) and **Saeedullah v. Asfandiyar and another** (2017 P. Cr.LJ Note 5).

8. On the other hand, learned Addl. Prosecutor General Sindh has fully supported the impugned judgment and has in particular contended that the sole eye witness has correctly identified the appellant as being one of the persons who fired on and murdered the deceased whose evidence was trust worthy reliable and confidence inspiring; that the accused was arrested on the spot in injured condition; that when the appellants pistol was matched with the empties recovered at the crime scene they produced a positive FSL report and that since this was a cold bloodied murder the death sentence should be upheld. In support of his contentions, he placed



reliance on the cases of *Dadullah and another v. The State* (2015 SCMR 856), *Safdar Ali and 2 others v. The State* (1996 SCMR 1965), *Aijaz Nawaz alias Baba v. The State* (2019 P. Cr.LJ 1775), *Noor Muhammad v. The State* (1999 SCMR 2722), *Muhammad Ehsan v. The State* (2006 SCMR 1857), *Amrood Khan v. The State* (2003 SCJ 604) and *Majhi v. The State* (1970 SCMR 331).

9. We have heard the arguments of the learned counsel for the appellant as well as learned Additional Prosecutor General and have gone through the entire evidence which has been read out by learned counsel for the appellant, and the impugned judgment with the able assistance of learned counsel and have considered the relevant law including the case-laws cited at the bar.

10. Based on our reassessment of the evidence of the PW's especially the medical evidence and other medical reports, recovery of empties and blood and bike from outside the bank where the attempted robbery took place we find that the prosecution has proved beyond a reasonable doubt that PC Muhammed Ishaque (the deceased) was shot and murdered by firearm whilst Bank Guard Anwar Saeed was shot and injured by firearm on 01.04.2014 at about 16.25 hours whilst foiling an attempted robbery at APNA Bank main gate future curve, Mueenabad No.2 District Malir Karachi.

11. The only question left before us therefore is whether the appellant whilst attempting to rob the bank, murdered the deceased by firearm and injured bank guard Anwar Saeed at the said time, date and location?

12. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant **except** under the ATA for the following reasons keeping in view that each criminal case must be decided on its own particular facts and circumstances;

(a) At the outset we do not find the charge to be defective. The charge makes it absolutely clear that the appellant must defend himself against the offence of attempted robbery, murder, attempt to murder and possession of an illegal firearm. The cross examination by the defence proves that he understood the charge against him and used all measures to defend himself against such



charges during cross examination. It cannot be said that he was taken by surprise in respect of any of the offences so charged and that he was prejudiced by not being put on notice for the offences against which he had to defend himself.

(b) That the FIR was lodged after a delay of 11 hours. The reason for the delay in lodging the FIR was that the complainant had to secure the site, take the injured to hospital which included the accused and his accomplice Faizan who later died of his injuries and the deceased who died after he was transferred to the Aga Khan hospital from the JPMC on the same day and thus the complainant's priority was to save life. Once this was done he returned to the PS and recorded his S.154 Cr.PC statement which later became the FIR. As such we find the delay in lodging the FIR to be fully explained. The prosecution has not been benefited by the delay in lodging the FIR and the appellant has not been prejudiced as they were both arrested on the spot in injured condition so there was no time for the police to cook up a false case against them. **Furthermore**, the complainant had no enmity with the accused and had no reason to falsely implicate him and as such we find that the delay in lodging the FIR is not fatal to the prosecution case as the delay has been explained. In this respect reliance is placed on **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872)

(c) We find that the prosecution's case primarily rests on the following witnesses to the attempted robbery; murder of the deceased and injury to the bank guard whose evidence we shall consider in detail below;

(i) **Eye witness PW 1 Muhammed Fayyaz. He is also the complainant and was one of the police guards placed inside the bank at the time when the incident occurred.** According to his evidence on 01.04.2014 he was deployed at APNA bank with an SMG and 30 rounds. At 4.15pm the deceased came for checking on the bank and was inside the bank. Two persons came on motor cycle which they parked in front of the bank. The two persons drew out weapons which had been hidden in their shalwar and fired at bank guard Anwar Saeed who received bullet injuries along with the deceased. He fired at the culprits from his SMG who while running away were hit by his firing and sustained bullet injuries. He secured the weapons from the injured culprits. The manager of the bank PW 2 Rahat informed the police and PW 3 Rao Tahir of PS Sharafi Goth arrived at the scene to whom he gave the culprits' weapons which were sealed at the spot. He along with PW 3 Rao Tahir moved the injured deceased and injured bank guard to JPMC.

This eye witness was not a chance witness and had no ill will or enmity with the appellant and had no reason to implicate him in a false case. His evidence was given in a natural manner and he was not dented during cross examination. It was a day light incident where the appellant and his accomplice were both arrested on the spot in injured condition by firearm as confirmed by PW 6 Jagdash Kumar



MLO in his medical evidence and as such we have no reason to doubt his evidence and believe the same which we find to be reliable, trust worthy and confidence inspiring. **Significantly** during cross examination of this eye witness the appellant admits his presence at the crime scene by suggesting that he was hit by firearm whilst sitting outside the bank for which he was lulling around without explanation as he was not even an account holder at that bank. Furthermore, his counsel contends that he did not know his accomplice Faizan who was shot as well at the crime scene and later died of his injuries but suggests in cross examination that the deceased accused had a bank account at the bank. If he did not know the deceased accused it would not make any sense for him to put this suggestion to the eye witness as it appears that he is trying to establish that Faizan was present as a customer of the bank and not there to rob it. In any event this defence is completely belied by the CCTV in the USB which we shall come to later. Thus, for the reasons mentioned above we find the evidence of the eyewitness to be reliable, trustworthy and confidence inspiring and we believe the same and there is no issue of mistaken identity as the appellant was arrested on the spot in an injured condition in day light hours and we can convict on the evidence of this eye witness alone though it would be of assistance by way of caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That what is of significance is the quality of the evidence and not its quantity and in this case we find the evidence of this sole eye witness to be of good quality and believe the same.

(ii) **PW 2 Rahatullah Khan.** He was the bank manager whose bank was attempted to be robbed. According to his evidence on 01.04.2014 he was the manager of APNA Bank when at about 4.15pm he heard firing. He saw that two persons were trying to enter the bank and that the banks security guard (PW 4 Anwar Saeed) had been hit by firearm as also the deceased, PW 1 Fayyaz who was deputed from the PS fired at the culprits who ran back and fell down due to fallen motor bike. Fayyaz had made his fires from outside the bank and both the culprits fell down and sustained injuries. He informed police about the incident and after 8 to 10 minutes police mobiles and Inspector Rao Tahir arrived and the injured were moved to hospital.

This witness being the bank manger was not a chance witness. He was an independent witness being the bank manager and had no reason to make up a story or falsely implicate the accused. He was not dented during cross examination and he gave his evidence in natural manner and we believe his evidence which corroborates the eye



witnesses' evidence in all material respects. The fact that the person who he was sitting in his office with at the time of the incident was not on the witness list or called to give evidence we find of no relevance based on the particular facts and circumstances of the case as he was not an eye witness

(iii) **PW 4 Anwar Saeed. He is in the injured bank security guard.** According to his evidence on 01.04.2014 he was posted as security guard at APNA bank. He was present inside the bank when two dacoits arrived who shot him in the abdomen. He confirms the presence of Fayyaz. He fell unconscious and was told a few days later that the deceased who was also inside the bank had expired and that the incident was in the camera of the bank. **He was not subject to cross examination** and once again we have no reason to disbelieve his evidence with his injury to the abdomen being corroborated by the medical evidence which evidence corroborates that of PW 1 Fayyaz and PW 2 Rahatullah Khan.

Thus, based on our believing the evidence of the PW eyewitness what other supportive/corroborative material is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of *Muhammad Waris v The State* (2008 SCMR 784)

(d) That the evidence of PW 3 Rao Tahir who was the duty officer who reached the crime scene after the bank managers PW 2 Rahatullah's telephone call from the bank corroborates both PW1 Fayyaz, PW 2 Rahatullah and PW 4 Anwar Saeed in all material respects. He had no ill will or enmity with the appellant and had no reason to falsely implicate him in this case. He was not damaged despite a lengthy cross examination and as such we believe his evidence.

(e) That the medical evidence and medical reports as discussed above fully support the eye-witness/ prosecution evidence. It confirms that the deceased died from a gunshot wound. That PW 4 Anwer Saeed received a gunshot wound to his abdomen and that both the accused Faizan (who later died from his injuries) and the appellant received fire arm injuries on account of the incident.

(f) The USB evidence of the CCTV fully supports the prosecution case. Namely that the appellant and his co-accused Faizan drew up outside the bank on their motor bike, dismounted the same, withdrew firearms and tried to enter the bank where they made fire and that they were chased away from the entrance by PW 1 Fayyaz's fire shots which lead to them falling down and becoming injured. This totally belies the appellant's claim of being an innocent passer by

(g) That an unlicensed pistol was recovered from the appellant from his arrest on the spot in an injured condition.



(h) That when the empties recovered at the scene were matched with the pistol recovered from the appellant it lead to a positive FSL report.

(i) That most of the relevant police entries have been exhibited concerning the robbery, shooting and murder which fully support the prosecution's case.

(j) That the police PW's had no enmity or ill will towards the appellant and had no reason to falsely implicate him in this case for instance by planting a pistol on him and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

(k) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the time the appellant and his accomplice drew up to the bank on their motor cycle (which was recovered and found to be stolen) to drawing their weapons to attempting to rob the bank to firing on the deceased and the bank guard to being chased out by the shooting of PW 1 Fayyaz to the appellant being injured on the spot to an unlicensed firearm being recovered from him to the death of the deceased and positive FSL report.

(l) That the appellant had a lengthy CRO for similar type cases.

(m) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can caste doubt on or dent the prosecution case. The defence case is simply one of false implication by the police **despite admitting his presence at the crime scene**. The appellant did not give evidence on oath and did not produce any DW in support of his defence case or produce any other evidence which could dent the prosecution case. Thus, for the reasons mentioned above we disbelieve the defence case as an afterthought in the face of a reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

13. Thus, based on the above discussion especially in the face of reliable, trustworthy and confidence inspiring eyewitness evidence and



other corroborative/supportive evidence mentioned above, we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted and hereby maintain his convictions in respect of the PPC offences only and make it clear that the **appellant is convicted under S.302 (b) PPC and not S.302 (a) PPC**. With regard to the ATA offences he is acquitted for the reasons set out below.

14. We do **not** find that this case falls within the purview of the ATA as defined by a larger bench of the Supreme Court in the case of **Ghulam Hussain V State** (PLD 2020 SC 61) where in essence for their to be an act of terrorism there had to be an object, intent, purpose and design to create terror on account of such act. Whether people were terrorized as a by product of the act did not convert the act into one of terrorism nor the fact that it may have been of a particularly brutal nature. Based on the particular facts and circumstances of this case it appears that the intent of the appellant was to rob the bank which escalated to murder when the guards put up resistance which had no object, intent, purpose or design to create terror and as such the appellant is acquitted of all offences under the ATA.

15. With regard to sentencing we note that it cannot be conclusively proved as to whether it was the appellant or his now deceased accomplice who fired the fatal shot in respect of the deceased and under these circumstances the superior courts have held this to be a sufficient ground for reducing the death sentence to one of life imprisonment and as such we hereby convict the appellant under S.302 (b) PPC and sentence him to Life imprisonment for such offence as opposed to the death sentence along with compensation of ten lacs to be paid to each of the legal heirs of the deceased under S.544-A Cr.PC.

16. As such the appellant is convicted under 302 (b) PPC and sentenced to Life imprisonment with the confirmation reference being answered in the negative, however all other convictions and sentences under the PPC are maintained including fines and compensation. He shall however have the benefit of S.382 (B) Cr.PC and any remission available to him under

the law now that the appellant has been acquitted of the ATA offences and all his sentences shall run concurrently.

17. The appeal is partly allowed in respect of the ATA offences and dismissed in respect of the PPC offences **except** as modified above in terms of sentencing and the confirmation reference is answered in the negative.

18. The appeal is disposed of along with confirmation reference in the above terms.

JUDGE

02/07/22

JUDGE Ali