

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Irshad Ali Shah

SPL. CRIMINAL A.T. APPEAL NO.102 OF 2019
CONF. CASE NO.04 OF 2019

Appellants	1 Abdul Aziz Ansari son of Abdul Naseer Ansari
	2. Azhar Ali @ Uncle son of Abdul Rehman both through Mr. Raj Ali Wahid Kunwar, Advocate.
For State:	Mr. Ali Haider Saleem, Addl. Prosecutor General Sindh.

SPL. CRIMINAL A.T. APPEAL NO.103 OF 2019

Appellants	1. Abdul Aziz Ansari son of Abdul Naseer Ansari
	2. Azhar Ali @ Uncle son of Abdul Rehman both through Mr. Raj Ali Wahid Kunwar, Advocate.
For State:	Mr. Ali Haider Saleem, Addl. Prosecutor General Sindh.

SPL. CRIMINAL A.T. APPEAL NO.104 OF 2019

Appellant	Azhar Ali @ Uncle son of Abdul Rehman through Mr. Raj Ali Wahid Kunwar, Advocate.
For State:	Mr. Ali Haider Saleem, Addl. Prosecutor General Sindh.

SPL. CRIMINAL A.T. APPEAL NO.105 OF 2019

Appellant	Abdul Aziz Ansari son of Abdul Naseer Ansari through Mr. Raj Ali Wahid Kunwar, Advocate.
For State:	Mr. Ali Haider Saleem, Addl. Prosecutor General Sindh.

SPL. CRIMINAL A.T. JAIL APPEAL NO.27 OF 2020

Appellant	Noor Muhammad @ Bangali son of Mian Muhammad Jaisum through Mr. Raj Ali Wahid Kunwar, Advocate.
For State:	Mr. Ali Haider Saleem, Addl. Prosecutor General Sindh.
Date of hearing:	14.09.2021
Date of announcement:	21.09.2021

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellants Abdul Aziz Ansari son of Abdul Naseer Ansari, Azhar Ali @ Uncle son of Abdul Rehman and Noor Muhammad @ Bangali S/o. Mian Muhammad Jaisum have preferred these Special Criminal Anti-Terrorism Appeals against the judgment dated 03.04.2019 passed by the learned Judge Anti-Terrorism Court No.IV, Karachi in Special Case Nos.84 of 2010, F.I.R. No.726 of 2010 u/s. 302/392/427/109/34 PPC read with section 7 of ATA 1997 registered at P.S. Ferozabad, District Jamshed Town, Special Case Nos.85 of 2010, F.I.R. No.179 of 2010 u/s. 353/324/427/34 PPC registered at P.S. CID Sindh Karachi, Special Case Nos.86 of 2010, F.I.R. No.180 of 2010 u/s. 13-D Pakistan Arms Ordinance registered at P.S. CID Sindh, Karachi and Special Case Nos.87 of 2010, F.I.R. No.181 of 2010 u/s. 13-D Pakistan Arms Ordinance registered at P.S. CID Sindh, Karachi whereby the appellants have been convicted and sentenced as under:-

- a) "Accused Abdul Aziz found guilty for the charge with the offence of murder of Muhammad Ishaq Meo, Assistant Superintendent of Jail (Prison) is convicted u/s.302(b)-PPC and sentenced to death subject to confirmation by this court and to pay a sum of Rs.1,00,000/- (Rupees One Lac) as compensation u/s. 544-Cr.PC to the legal heirs of the deceased, which shall be recovered by way of arrear of land revenue and in default of payment / recovery thereof undergo simple imprisonment of six months.

- b) Accused Abdul Aziz is also found guilty for the charge of the offence u/s. 6(1)(b) of ATA 1997 and convicted u/s 7(1)(a) of ATA 1997, and sentenced to death subject to confirmation by this court and to pay a sum of Rs.50,000/- (Rupees Fifty Thousand) as compensation u/s. 544-Cr.PC to the legal heirs of the deceased, which shall be recovered by way of arrear of land revenue and in default of payment / recovery thereof undergo simple imprisonment of six months.
- c) The death sentence is given on two counts i.e. Section 302-PPC and Section 7(1)(a) of ATA, 1997.
- d) Accused Azhar Ali @ Uncle found guilty for the charge of the offence of u/s.302(b)/109/34-PPC awarded imprisonment for life and to pay a sum of Rs.50,000/- (Rupees Fifty Thousands) as compensation u/s.544-Cr.PC to the legal heirs of the deceased, which shall be recovered by way of arrear of land revenue and in default of payment/recovery thereof undergo simple imprisonment of six months.
- e) Accused Azhar Ali @ Uncle also found guilty u/s 6(1)(b) of ATA 1997, and convicted u/s 7(1)(a) of ATA 1997, for life imprisonment and to pay a sum of Rs.50,000/- (Rupees Fifty Thousand) as fine and in case of default of payment of fine, he shall further suffer for six months simple imprisonment.
- f) Accused Noor Muhammad found guilty for the charge of murder of Muhammad Ishaq Meo, Assistant Superintendent of Jail (Prison) is convicted u/s.302(b)/109/34-PPC for imprisonment for life and pay a sum of Rs.50,000/- (Rupees Fifty Thousands) as compensation u/s.544-Cr.PC to the legal heirs of the deceased, which shall be recovered by way of arrear of land revenue and in default of payment / recovery thereof undergo simple imprisonment of six months.
- g) Accused Noor Muhammad also found guilty u/s 6(1)(b) of ATA 1997, and convicted u/s 7(1)(a) of ATA 1997, for life imprisonment and to pay a sum of Rs.50,000/- (Rupees Fifty Thousand) as fine and in case of default of payment of fine, he shall further suffer for six months simple imprisonment.
- h) Accused Abdul Aziz Ansari also found guilty for the charge of the offence u/s 392-PPC, he is convicted and sentenced to suffer R.I. for seven (07) years and fine of Rs.10,000/- and in case of default of payment of fine, he shall further suffer for six months simple imprisonment.
- i) Accused Abdul Aziz Ansari and Azhar Ali also found guilty for the charge of the offence punishable u/s 427-PPC, and they are convicted and sentenced to suffer R.I. for two (02) years each.
- j) Accused (1) Azhar Ali @ Uncle and accused (2) Abdul Aziz Ansari found guilty of the charge of offence u/s 353/34-PPC

r/w Section 7(h) of ATA, 1997 they are convicted and sentenced to suffer R.I. for five years and fine of Rs.10000/- (Ten thousand rupees) each, in case of default in payment of the fine, they shall further suffer simple imprisonment for six months more.

k) Accused (1) Azhar Ali @ Uncle and accused (2) Abdul Aziz Ansari found guilty of the charge of offence u/s 324/34-PPC r/w Section 7(h) of ATA, 1997 they are convicted and sentenced to suffer R.I. for five years and fine of Rs.10,000/- (Ten thousand rupees) each, in case of default in payment of the fine, they shall further suffer simple imprisonment for six months more.

l) Accused Abdul Aziz Ansari also found guilty of the charge of offence punishable u/s 13(d) of Arms Ordinance is convicted and sentenced to suffer R.I. for seven (07) years and fine of Rs.25000/- (Rupees Twenty Five Thousand) in case of default in payment of the fine, he shall further suffer simple imprisonment for six months more.

m) Accused Azhar Ali @ Uncle also found guilty of the charge of offence punishable u/s 13(d) of Arms Ordinance is convicted and sentenced to suffer R.I. for seven (07) years and fine of Rs.25000/- (Rupees Twenty Five Thousand) in case of default in payment of the fine, he shall further suffer simple imprisonment for six months more.

All the sentences were to run concurrently. The benefit of Section 382-B Cr.P.C was extended to the accused (1) Azhar Ali @ Uncle and accused (2) Abdul Aziz Ansari (3) Noor Muhammad @ Bangali."

2. The brief facts of the prosecution case as per FIR No.726/2010, under Section 302/427/109/34 PPC r/w Section 7 of ATA 1997 registered at PS Ferozabad (SIU) Karachi are that the complainant is Head Constable in Police Department, his elder brother Muhammad Ishaque Meo son of Chahat Khan aged about 38 years was Assistant Superintendent in Central Prison, Karachi. On 14.06.2010 the complainant received telephonic message at about 1930 hours, that his brother Muhammad Ishaque Meo was going in his Car No.Z-8966, white colour, Margala, and when he reached at Shaheed-e-Millat Road, near Memon Masjid, near Medicare Signal, on one unknown number motorcycle two young boys, wearing pants shirt, fired from their weapons on brother of the complainant, who became injured and had been taken to Liaquat National Hospital. On such information the complainant immediately reached at Liaquat National Hospital, he saw that his brother had received three bullet injuries on stomach, right arm and right side of the back and was seriously

injured and later succumbed to his injuries, as such the said FIR was lodged against the unknown culprits. The accused Azhar Ali and Abdul Aziz were arrested in FIR No.179/20201 on 17.07.2010.

3. In nutshell, the facts of the prosecution case as narrated in FIR No.179/2010 are that on 17.07.2010, complainant SIP Muhammad Shoaib Qureshi of PS AEC/CID Sindh, Karachi, along with his subordinate staff was busy in patrolling duty in government mobiles in search of target killers within Karachi, he received spy information about presence of armed accused persons opposite Darakhshan Society, Railway Track, for the purpose of target killing, on such information he reached along with his subordinates at the pointed place at about 01:30 hours, on seeing three accused persons on railway track police party stopped mobiles for arresting accused persons. The accused persons when saw police party started firing upon them with intention to kill them and 02 bullets hit on body of police mobile No.SP-5988, in retaliation police party also made aerial firing then encircled and arrested two accused persons with their weapons namely (1) Azhar Ali @ Uncle S/o. Abdul Rehman and (2) Abdul Aziz S/o. Abdul Naseer, whereas accused Noor Khan while making firing made his escape good, his name was disclosed by arrested accused persons. Personal body search of accused persons was made by SIP Shoaib Qureshi in presence of mashirs, and he recovered from right hand of accused Azhar @ Uncle one unlicensed pistol of 30 bore without number, loaded magazine with 02 live rounds and one live round in chamber, one mobile phone cash of Rs.210/- and 03 SIMs, and from the right hand of accused Abdul Aziz one unlicensed pistol of 30 bore loaded magazine with 03 live rounds and one round in chamber and from his pocket one mobile phone of Nokia 1112 with SIM, Cash of Rs.80/-. Police party secured 06 empties of 30 bore form the place of incident. After completing legal formalities three FIRs (1) bearing No.179/2010 u/s 353/324/427/34-PPC, (2) FIR No.180/2010 and (3) FIR No.181/2010 u/s 13-D of Arms Ordinance, were registered at P.S CID, Sindh against accused persons on the basis of statement u/s 154 Cr.P.C.

4. After usual investigation the appellants were challoned by the police. The charge was framed against the accused persons to which the

accused persons denied all the allegations leveled against them. They claimed to be innocent and prayed for trial.

5. The prosecution in order to prove its case examined 17 witnesses and exhibited various documents and other items. The statement of the appellants was recorded under Section 342 Cr.P.C in which they denied all the prosecution allegations and claimed false implication at the hands of the police on account of political victimization. None of the appellants gave evidence under oath. Two of the appellants however called DW's in support of their defence case.

6. After appreciating the evidence on record the trial court convicted and sentenced the appellants as set out earlier in this judgment whilst their co-accused Syed Mehmood aka Guddu was acquitted by being extended the benefit of the doubt whose case both legally and factually was on a completely different footing to that of the appellants as he was in jail and was not present at the scene of the murder or police encounter and no weapon was recovered from him. The State did not file an appeal against his acquittal. Hence, the appellants have filed these appeals against their convictions.

7. Learned counsel for the appellants has contended that the appellants are completely innocent and have been falsely implicated by the police on account of political victimization; that the identification of the appellants by the sole eye witness cannot be safely relied upon as no hulia of the appellants was given by him at the time when he recorded his S.161 Cr.PC statement and that there were major procedural defects in the subsequent identification parade where the appellants were picked out by the eye witness; that the encounter case was false as it was a case of ineffective firing and that the so called recovered pistols from two of the appellants had been foisted on them by the police and the FSL report was managed and that for any of the above reasons the appellants should be acquitted by extending them the benefit of the doubt. In support of his contentions he has placed reliance on the cases of **Hayatullah v. The State** (2018 SCMR 2092), **Muhammad Umair alias Bhutto State** (2018 MLD 1196), **Jalal Hassan v. Ameer Hamza Awan and 2**

others (2019 MLD 1170), **Mst. Sughra Begum and another v. Qaiser Pervez and others** (2015 SCMR 1142), **Khurram Jalali v. The State** (2017 P. Cr.LJ 19), **Kanwar Anwaar Ali, Special Judicial Magistrate**: In the matter of Criminal Miscellaneous Application No.183 of 2019 of Criminal Appeal No.259 of 2018, decided on 22nd February, 2019, **Toor Jan v. The State** (2020 YLR 1099), **Riaz Ahmed v. The State** (2010 SCMR 846), **Shakeel and another v. The State** (2019 MLD 1554), **Hayatullah v. The State** (2018 SCMR 2092) and **Taj Bahadur alias Taji and another v. The State** (1997 MLD 1072).

8. On the other hand learned APG appearing on behalf of the State who was also representing the complainant has fully supported the impugned judgment. He has contended that the eye witness' evidence was trustworthy, reliable and confidence inspiring and that he has correctly identified the appellants as the persons who murdered the deceased at the identification parade; that two of the appellants were caught red handed during a police encounter with unlicensed pistols and after there arrest they confessed before the police that they have murdered the deceased; that the appellants took the police to the wardat; that the medical evidence has corroborated the ocular evidence; that there was a positive FSL report from the pistols which were recovered from two of the appellants when the empties recovered at the scene of the murder and police encounter were matched; that there were no material contradictions in the evidence of the PW's and as such the evidence of the prosecution witnesses could be safely relied upon; that it was an act of terrorism and that all the convictions and sentences be maintained and the appeals dismissed. In support of his contentions he placed reliance on the cases of **Bashir Ahmed v. The State** (2004 P.Cr.LJ 1326), **Muhammad Zaman v. The State** (2007 SCMR 813), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725), **Sikandar v. The State and another** (2006 SCMR 1786), **Jan Mohammad alias Janoo v. The State** (2016 YLR 2359), **Muhammad Ehsan v. The State** (2006 SCMR 1857) and **Nazar Hussain and another v. The State** (PLD 2010 Supreme Court 1021).

9. We have heard the arguments of the learned counsel for the appellant as well as learned APG who was also acting for the complainant, gone through the entire evidence which has been read out by learned counsel for the appellants along with the impugned judgment who have ably assisted us and have considered the relevant law including the case law cited at the bar.

10. Based on our reassessment of the evidence of the PW's, especially PW eye witness Muhammed Javed, the other PW's, PW 15 Dr. Afzal, the medical reports and certificates, recovery of empties at the scene, the recovery of blood at the scene and the bullet holes in the car which the deceased was driving when he was shot we find that the prosecution has proved beyond a reasonable doubt that on 14.06.2010 at about 1930 hours Muhammed Ishaque Meo (the deceased) was shot by firearm whilst driving car with registration No.Z-8966 near Pahari Wali Memon Masjid, Shaheed-e- Millat Road Karachi whereby he was seriously injured and later died on account of the serious firearm injuries which he sustained on the same day at Liaquat National Hospital Karachi.

11. The only question left before us therefore is who seriously injured the deceased by firearm which lead to his death (murder) 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 were convicted for the following reasons;

(a) In our view the prosecution's case rests on the evidence of the sole eye witness to the murder of the deceased whose evidence we shall consider in detail below;

(i) **Eye witness PW 9 Muhammed Javed.** According to his evidence on 14.06.2010 after offering Magrib prayer when he came out of the Masjid he heard fire reports and saw three persons on two motorcycles one of who made firing on a car and then they robbed his (the car driver's) mobile phone and wallet before fleeing away. The person in the car came out in an injured condition and he was shifted to hospital. On 21.07.2010 he picked out appellants (Azhar Ali and Abdul Aziz) with specific roles at an identification parade before the judicial magistrate. On 28.09.2010 he again picked out appellant Noor Muhammed with a specific role.

According to his evidence he was Khalid's driver but Khalid was not examined and nor was the location of Khalid's house or office disclosed and the eye witness appears to be a roving taxi driver. Ordinarily he might be seen as a natural witness however on the **next day** his S.161 Cr.PC statement was recorded at the wardat by PW 14 DSP Aijaz Hussain which begs the question what he as a driver was doing at the wardat a day after the incident which in our view tilts the balance in favour of him not being a natural witness especially as the eye witness contradicts the police evidence by stating that he gave his S.161 Cr.PC statement at the PS. He appears to be a put up witness.

Furthermore, in his evidence he states that there was light/darkness but things were visible. No light bulb was seized from the wardat.

Although his eye witness S.161 Cr.PC statement was taken the next day he gave no hulia or description of any of the appellants in the same. No description of the appellants also appears in the FIR who are stated to be unknown persons. He being an eye witness is also not named in the FIR. In his evidence he also states that he never told the police that he could make a sketch of the accused with is in contradiction with the police evidence which states that he and Atif (another eye witness who was not examined) made sketches of the appellants which were not exhibited at trial. He did not know the appellants prior to the incident and only got a fleeting glance of them from a distance of over 20 paces with indifferent light at best and during a chaotic and life threatening incident.

Admittedly, the eye witness had no enmity with the appellants and we can convict based on the evidence of a sole eye witness however based on the particular facts and circumstances of this case we find that even if the eye witness was present at the time of the incident based on the reasons mentioned above he would not have been able to correctly, safely and reliably 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 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. There is yet another aspect to the matter of identification of the culprits of this case. The Complainant had named three other persons who could recognize the assailants, but he did not mention Subedar Mehmood Ahmad Khan (PW-6) as one of them. Nonetheless Subedar Mehmood Ahmad Khan came forward to identify the appellants. Significantly, none of the three persons mentioned by the Complainant participated in the identification proceedings and two were not even produced

as witnesses by the Prosecution. During the identification proceedings both the appellants had informed the Magistrates who were conducting the identification proceedings, and before the identification proceedings commenced, that they had earlier been shown to the witnesses. The Magistrates recorded this objection of the appellants in their reports but surprisingly did not attend to it, which can only be categorized as a serious lapse on their part. Therefore, for all these reasons reliance cannot be placed upon the report of the identification proceedings in which the appellants were identified.

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)

The recent supreme court case of **Mian Sohail Ahmed V State** (2019 SCMR 956) has also emphasized the care and caution which must be taken by the courts in ensuring that an unknown accused is correctly identified. In fact such extra care and caution in relying on identification parades is an accepted global phenomena in most criminal jurisdictions as the possibility of deliberately or mistakenly picking out a wrong person from an identification parade and sending an innocent man to jail or in this country potentially to the gallows is very much recognized and thus most jurisdictions (including Pakistan as noted below) have put in place mandatory guidelines to greatly limit the chances of such incorrect identification.

Thus, having found that the sole eye witness would not have been able to correctly, safely and reliably identify the appellants if seen again the conduct of the identification parade becomes inconsequential. It is however important to note that the appellants

claimed that they were shown to the police prior to the identification parade which took place a month after the incident and with an unexplained delay of 9 days after their arrest during which period two out of the three appellants were kept in police custody.

It is also of significance that two other natural eye witnesses who were on the prosecution witness list were dropped who would have been extremely important natural eye witnesses in corroborating the sole eye witnesses evidence and in particular that of the correct identification of the appellants. Namely Atif and Shajjad and as such the presumption can be drawn under Article 129 (g) Quoon-e-Shahadat Ordinance 1984 that they would not have supported the prosecution case especially in terms of a correct identification. The prosecution has therefore for reasons best known to itself deliberately withheld the best evidence. In this respect reliance is placed on the cases of **Riaz Ahmed** (Supra) and **Shakeel** (Supra)

(b) With no eye witness evidence to the murder the medical evidence becomes inconsequential as it can only reveal how the deceased died, what kind of weapon was used and the seat of the injuries. It cannot identify the person who inflicted the injuries.

(c) After the arrest of Azhar Ali and Abdul Aziz following the alleged police encounter no wallet or mobile phone of the deceased or the eye witness was found on the appellant's and thus there was no evidence to link them to the murder on their arrest apart from the recovered pistols which later matched with a positive FSL for the encounter and the murder. This however begs the question as to why the appellants would keep the pistols after the murder which would incriminate them. Logic, commonsense and reason dictates that they would have disposed of such pistols. In fact the evidence reveals that the encounter in effect was one of ineffective firing where no one was injured which tends to suggest that no such encounter took place and the pistols might have been foisted on the appellants. No recovery was made from appellant Noor Muhammed who was not arrested at the time of the encounter and who apparently made his escape good.

(d) It is also significant that the police in their evidence admit that they had no idea who had committed the murder of the deceased until appellants Azhar Ali and Abdul Aziz admitted whilst in police custody for the encounter and arms case that they had murdered the deceased. Likewise appellant Noor Muhammed whilst in jail custody in another case. Not only are such confessions before the police inadmissible in evidence but it does not appeal to logic, commonsense and reason that a person booked in an encounter and arms case would out of the blue confess to murder when there was no evidence against him for that offence which carries the capital penalty. Interestingly no effort was made to get the confessing appellants S.164 Cr.PC statements recorded before a judicial magistrate despite the appellants being produced before a

judicial magistrate for an identification parade.

(e) The fact that the appellants could lead the police to the wardat is irrelevant as the police already knew where the wardat was. In this respect reliance is placed on the case of **Hayatullah** (Supra)

(f) Since their co-accused Guddu has already been acquitted whose alleged role was to order the appellants to murder the deceased because he had been treating him badly while in jail the motive for such murder has also disappeared along with Guddu's acquittal.

(g) If the appellants were target killers as alleged by the prosecution it does not appeal to logic, reason or common sense for them to hang around robbing the victim and or by standers after the murder which would greater their chances of being caught on the spot or identified in connection with the murder. This aspect also does not fit in with the prosecution case theory of the murder i.e it being a target killing.

13. It is a golden principle of criminal jurisprudence 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 all three appellants are acquitted of the charge, the impugned judgment is set aside, their appeals are allowed the confirmation reference is answered in the negative and all the appellants shall be released unless wanted in any other custody case.

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

Prosecutor