

Baddia Town: Confession, delay + direct 81  
evidence

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Amjad Ali Bohio

Special Criminal A.T.A. No.133 of 2020  
Confirmation Case No.06 of 2020.

Appellant: Muhammad Zubair alias Chariya S/o.  
Nazeer Ahmed through Mr. Muhammad  
Tamaz Khan, Advocate.

The State: Through Mr. Muhammad Iqbal Awan,  
Additional Prosecutor General, Sindh and  
Rana Khalid Hussain, Special Prosecutor  
Rangers.

Special Criminal A.T.A. No.134 of 2020

Appellant: Abdul Rehman @ Bhola S/o. Abdul Sattar  
through Syed Muhammad Mansoor  
Akhtar Peerzada, Advocate.

The State: Through Mr. Muhammad Iqbal Awan,  
Additional Prosecutor General, Sindh and  
Rana Khalid Hussain, Special Prosecutor  
Rangers.

Special Criminal A.T.A. No.141 of 2020

Appellants: 1. Fazal Ahmed S/o. Khan Zada,  
2. Arshad Mehmood S/o. Muhammad  
Bashir,  
3. Ali Muhammad S/o. Masheen Khan  
through Mr. Farooq Hayat, Advocate.

The State: Through Mr. Muhammad Iqbal Awan,  
Additional Prosecutor General, Sindh and  
Rana Khalid Hussain, Special Prosecutor  
Rangers,

**Special Criminal A.T.A. No.142 of 2020**

Appellant: Shahrukh Latif S/o. Abdul Latif through M/s. M. Sarmad Khan and Muhammad Qasim Iqbal, Advocates.

The State: Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh and Rana Khalid Hussain, Special Prosecutor Rangers.

**Special Criminal A.T Acq. Appeal No.104 of 2022**

Appellant: The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh and Rana Khalid Hussain, Special Prosecutor Rangers.

Respondents

1. Abdul Rauf Siddiqui S/o. Muhammad Abdul Majeed Siddiqui through M/s. Shoukat Hayat and Saqlain Shafi Rajput, Advocates
2. Umar Hassan S/o. Siddique Hussain Qaderi.
3. Dr. Abdul Sattar Khan S/o. Jabbar Khan.
4. Mst. Iqbal Adeeb Khanum W/o. Syed Masroor Ahmed through M/s. Hassan Sabir and Salman Sabir Advocates.

Dates of hearing: 28.08.2023 and 29.08.2023

Date of Judgment: 11.09.2023.

**J U D G M E N T**

*"The only thing necessary for the triumph of evil is when good men do nothing." Edmund Burke/J.S.Mill*

**MOHAMMAD KARIM KHAN AGHA, J:-** The Appellants Muhammad Zubair alias Chariya S/o. Nazeer Ahmed, Abdul Rehman @ Bhola S/o. Abdul Sattar, Fazal Ahmed S/o. Khan Zada, Arshad Mehmood S/o.



Muhammad Bashir, Ali Muhammad S/o. Masheen Khan, Shahrukh Latif S/o. Abdul Latif have filed these appeals against the judgment passed by the Anti-Terrorism Court No.VII, Central Prison at Karachi dated 22.09.2020 in Special Case No.11(vii)of 2017 arising out of F.I.R. No.343 of 2012 U/s. 384/385/386/435/436/302/324/337/109/34 PPC r/w Section 7 ATA registered at P.S. SITE-B, Karachi whereby the appellants were convicted and sentenced as under:-

- i) I hereby convict the accused persons namely Abdul Rehman alias Bhola S/o. Abdul Sattar and Muhammad Zubair alias Lala Zubair alias Zubair Chariya for the offence u/s. 7(a) of Anti-Terrorism Act, 1997 for causing death of 264 persons (men and women) through arson and sentence them to death on each count with fine of Rs.200,000/-(Two Lacs) each subject to confirmation by this court.
- ii) I hereby convict the accused persons namely Abdul Rehman alias Bhola S/o Abdul Sattar and Muhammad Zubair alias pala Zubair alias Zubair Chariya for the offence u/s: 302 (a) PPC r/w section 34 PPC and sentence them for causing death of 264 persons (men and women) and sentence them to death on each count subject to confirmation by this court.
- iii) I also hereby convict the accused Abdul Rehman alias Bhola and Muhammad Zubair alias Zubair Lala alias Zubair Chariya for the offence u/s: 7(b) of Anti-Terrorism Act, 1997 for their participation in the offence likely to cause death and endanger the life of the total number of factory workers/ employees present inside the factory, and sentence them to R.I for life with fine of Rs.200,000/-(Two Lacs) each and in default whereof to pay the fine, each accused shall suffer S.I for six months.
- iv) I also hereby convict the accused Abdul Rehman alias Bhola and Muhammad Zubair alias Zubair Lala alias Zubair Chariya for the offence u/s: 324 R/W section 34 Pakistan Penal Code (PPC) for attempting qatl-i-amd and thereby causing injuries to 60 persons (men and women) sentence them to suffer R.I ten years on each count with fine of Rs.100,000/-(One Lac) each, and in default whereof to pay the fine, each accused shall suffer S.I for six months.
- v) I also hereby convict the accused Abdul Rehman alias Bhola and Muhammad Zubair alias Zubair Lala alias Zubair Chariya for the offence under 7(c) of Anti-Terrorism Act, 1997, for causing injuries to 60 persons (men and women) and sentence them to



suffer R.I for life on each count and to pay fine amount of RS 200,000/(Two Lacs) each and in default whereof to pay the fine, each accused shall suffer S.I for six months.

vi) I also hereby convict the accused Abdul Rehman alias Bhola and Muhammad Zubair alias Zubair Lala alias Zubair Chariya for the offence under 7(h) of Anti-Terrorism Act, 1997, to create serious risk to the public, factory owners, workers and employees present/available in the factory, thereby prevented them to come out from the factory viz. Ali Enterprises situated at plot No.F-67 Site area Karachi, and sentenced them to suffer R.I for life and to pay fine amount of Re 200,000/(Two Lacs) each and in default whereof to pay the fine, each accused shall suffer S.I. for six months.

vii) I also hereby convict the accused Abdul Rehman alias Bhola and Muhammad Zubair alias Zubair Lala alias Zubair Chariya for the offence u/s: 435 of Pakistan Penal Code (PPC) for causing damage to private property viz. Ali Enterprises situated at Plot No.F-67, Site Karachi and sentence them to suffer R.I for seven years each and to pay fine amount of Rs.1,00,000/- (One Lac) each and in default whereof to pay the fine, each accused shall suffer S.I for six months.

viii) I also hereby convict the accused Abdul Rehman alias Bhola and Muhammad Zubair alias Zubair Lala alias Zubair Chariya for the offence u/s:436 of Pakistan Penal Code (PPC) and sentence them to suffer R.I. for life each for destruction of private factory viz. Ali Enterprises situated at Plot No.F-67, Site, Karachi and to pay fine amount of Rs.200,000/- (Two Lacs) each and in default whereof to pay the fine, each accused shall suffer S.I. for six months.

ix) I also hereby convict the accused Abdul Rehman alias Bhola and Muhammad Zubair alias Zubair Lala alias Zubair Chariya for the offence u/s: 384 r/w section 34 of Pakistan Penal Code (PPC) for commission of Extortion of money ("bhatta") and sentence them to suffer R.I. for three years each and to fine of Rs.100,000/- (One Lac) each and in default whereof to pay the fine, each accused shall suffer S.I. for six months.

x) I also hereby convict the accused Abdul Rehman alias Bhola and Muhammad Zubair alias Zubair Lala alias Zubair Chariya for the offence u/s: 385 r/w section 34 of Pakistan Penal Code (PPC) for putting Factory owners under fear to extort money ("bhatta") and sentence them to suffer R.I. for two years each and to pay fine amount of Rs.50,000/- (Fifty



Thousand) each and in default whereof to pay the fine, each accused shall suffer S.I. for six months.

- xi) I also hereby convict the accused Abdul Rehman alias Bhola and Muhammad Zubair alias Zubair Lala alias Zubair Chariya for the offence u/s: 386 of Pakistan Penal Code (PPC) for putting Factory owners under fear of death and grievous hurt too, to extort money ("bhatta") and sentence them to suffer R.I. for ten years each and to pay fine amount of Rs.100,000/- (One Lac) each and in default whereof to pay the fine, each accused shall suffer S.I. for six months.
- xii) I also hereby convict the accused Shahrukh Latif S/o Abdul Latif, Ali Muhammad S/o Masheen Khan, Arshad Mehmood S/o. Muhammad Bashir and Fazal Ahmed S/o Khan Zada under section 21-I of Anti-Terrorism Act, 1997 r/w section 109 PPC for aid and abetment to the accused namely Abdul Rehman alias Bhola and Muhammad Zubair alias Zubair Lala and their accomplices to get them entered inside the factory to endanger the live of workers, employees and owners of the factory to cause their death which resulted in the death of 264 persons and injuries to 60 persons at the hands of above named principal accused persons, thus sentence them to suffer R.I. for life by each accused on each count and to pay fine of Rs.200,000/- (Two Lacs) each and in default whereof to pay the fine, each accused shall suffer S.I. for six months.
- xiii) I also hereby convict the accused Shahrukh Latif S/o Abdul Latif, Ali Muhammad S/o Masheen Khan, Arshad Mehmood S/o. Muhammad Bashir and Fazal Ahmed S/o Khan Zada, who while permitting the principal accused persons to get them entered inside the factory in aid thereby to endanger the lives of workers, employees and owners of the factory to cause their death, bodily harm and injuries, resulting in the death of 264 persons and injuries to 60 persons at the hands of principal accused persons named above for the offence U/s: 109 R/W section 34 of PPC, and sentence them to suffer R.I for life to each accused on each count and to pay fine of Rs. 1,00,000/- (One Lac) each and in default whereof to pay the fine, each accused shall suffer S.I for six months.
- xiv) I also hereby convict the accused Shahrukh Latif S/o. Abdul Latif, Ali Muhammad S/o Masheen Khan, Arshad Mehmood S/o. Muhammad Bashir and Fazal Ahmed S/o. Khan Zada, for the offence u/s:316 r/w section 34 of PPC, to facilitate the principal accused persons named above to get them entered inside the factory having plastic shoppers containing chemical substance with intent to cause harm to the bodies of employees, workers and factory owners available inside the factory,



resulting in the death of 264 persons thus, each accused is liable to pay Diyat amount as notified by the Government of Pakistan for the year 2020-21 vide notification No:F.8(3)IF-III/91-609 dated: 01<sup>st</sup> of July, 2020 at rate of Rs. 27,77,353/equivalent to (30,630 grams of silver) to the legal heirs of each of the deceased.

The sentences shall run concurrently and the convicts are entitled to the benefit of section 382(b) Cr.P.C, besides the fine amount if any paid by accused persons, shall be deposited in the Government Treasury.

The remaining accused namely Muhammad Abdul Rauf Siddiqui S/o Muhammad Abdul Majeed Siddiqui, Umar Hassan S/o. Siddique Hassan Qadri, Dr. Abdul Sattar Khan S/o Abdul Jabbar Khan and Mst. Iqbal Adeeb Khanum w/o Syed Mansoor Ahmed are present on bail and against them prosecution has failed to establish the charge, therefore, they are hereby acquitted of the charge u/s: 265-H(i) Cr.P.C.

The State has also filed Criminal Acquittal Appeal No.104 of 2022 against acquittal of respondents Abdul Rauf Siddiqui S/o. Muhammad Abdul Majeed Siddiqui, Umar Hassan S/o. Siddique Hussain Qaderi, Dr. Abdul Sattar Khan S/o. Abdul Jabbar Khan and Mst. Iqbal Adeeb Khanum W/o. Syed Maroor Ahmed who as noted above were acquitted of the charge.

2. The brief facts of the case as narrated in the FIR are that on 11.09.2012 SIP/SHO namely Muhammad Nawaz Gondal along with other police officials was busy in patrolling in the area for prevention of crime. During patrolling, he received information that there was fire at Ali Enterprises Garments Factory, situated at Plot No.F-67. On this information SHO Muhammad Nawaz Gondal rushed to the pointed place at about 1845 hours, saw the fire flames in cloths inside the factory spreading speedily. He immediately reported the matter to high ups over the phone and also informed the fire brigade department. On the order of high ups, the police mobiles and fire brigade also started reaching at the spot, where it came into his knowledge that at 1830 hours, clothes had caught fire. The vehicles of fire brigade were putting out the fire through



the night. On 12.09.2012 at 1400 hours, the fire had been controlled. The SHO inspected the ground floor of the factory from outside, observed that there are four gates of coming and going for the factory workers. Three gates were locked by order of the factory owner Abdul Aziz Bhaila some time back. The sons of Abdul Aziz Bhaila namely Rashid Bhaila and Shahid Bhaila and the administration of the factory did not make proper arrangements for the emergency and exit of the factory workers, in case of any emergency incident. The factory building was consisting upon three stories. The common entry and exit point is situated from inside the factory. The iron grills were fixed in the windows. At the time of fire in the building, different workers including male and female have expired and were also injured due to said fire, who were taken to Civil Hospital, Abbasi Shaheed Hospital and Jinnah Hospital by Edhi, Chippa and other Ambulances from the place of incident. The owners of the factory and the administration of the factory did not make any arrangement of safety measures, in order to save the life of factory workers, in case of any sudden fire in the said factory, even there were no alternate emergency gates or doors. The responsible persons of the factory were well aware of the fact that in case of any incident there could be considerable loss of lives. In this incident due to their burning, presently (at that time) 225 persons have been expired. The staff members of rescue were taking out more bodies of the dead persons, those bodies were immediately being shifted to hospitals. Their postmortem reports would be received later on. Upon the identification of deceased persons received from hospital, it shall be incorporated in the daily diary. In this incident during investigation, it has also come in the knowledge that this incident has taken place due to dishonesty, negligence and none of the concerned department came for checking the factory i.e. Labour Department, Building Control Department, Electric Department, Environment Social Security Site Ltd, Civil Defence and other concerned departments and due to this the lives of many people have been destroyed. The performance of factory owners, administration and above named departments attracted the offence punishable under section 302/435/436/437/34 PPC, therefore



this case was registered and investigation were entrusted to SIO Zafar Iqbal of P.S Site-B, Karachi.

3. Following the above FIR, as narrated in detail in the Impugned Judgment, the investigative process was set in motion whereby the factory owners as per original charge sheets were amongst others alleged to be responsible for various offences on account of the fire. However nearly 2 and a half years after the fire a JIT report in respect of Rizwan Qureshi conducted in FIR No: 61/13 came to light before the Sindh High Court which made revealing disclosures as to the cause of the fire, the motive behind the fire and the persons involved in the occurrence which JIT report was exhibited at trial. Such revelations are set out below for ease of reference;

IMPORTANT INFORMATION WHICH ACCUSED  
(Rizwan Quershi) REVEALED.

During interrogation accused revealed the following important information which is as under:-

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2. -----
3. Fire Incident in Ali Enterprises Garment Factory in Baldia Town.

*"During the interrogation accused revealed that well Known Party High Official demanded extortion money (BHATTA) of 20 Caror through his front man from the owner of Ali Enterprises in August, 2012, on this demand of extortion money (BHATTA) the factory owners met with Sector Incharge of Baldia Town Asghar Baig and told him that on the name of Party High Official someone asked them for extortion money (BHATTA). Sector Incharge of Baldia Town Asghar Baig talk to his brother Majid and they both took Factory owner to 90 Azizabad and met with Incharge KTC Hammad Siddiqui and Farooq Saleem and told them that Factory owners are their supporter and also about the demand of extortion money (BHATTA). After heard everything Hammad Siddiqui and Farooq Saleem replies them that this matter is not from their side. On this attitude Sector Incharge of Baldia Unit Asghar Baig and his brother use harsh words with Hammad Siddiqui and Farooq Saleem and returned back from there. After few days Hammad Siddiqui suspended Sector Incharge of Baldia Town Asghar Baig and assign Joint Sector Incharge Rehman Bhola as Sector*



*Incharge of Baldia Town. Later on Hammad Siddiqui and Farooq Saleem ordered Rehman Bhola to collect the extortion money (BHATTA) from Factory owners on the order of Party High Official. Rehman Bhola Sector Incharge Baldia Town again demand for extortion Money (BHATTA) of 20 Caror from Factory owners and after the denial of Factory owners on 11 September, 2012 Rehman Bhola and his unknown accomplices threw chemical substance which creates fire in Factory. On next day CID raided on Asghar and Majid house in Gujrat Mohala Baldia Town and arrested Majid brother of Asghar baig and after the pressure of MQM (A) on Factory owners they gave statement that Majid was not involved in incident on this statement CID released Majid. He further stated that on the order of Party High Official, Ex-Minister of MQM (A) went to Police Station and registers a case against Factory owners. Factory owners got bail before arrest from Sindh High Court in the said FIR but after their bail MQM-A Ex-Minister by using his connections cancelled the bail of Factory owners. After that Ex-Prime Minister helps Factory owners for taking bail from Punjab High Court but after the interruption of MQM-A Most high Official that this is provincial issue so stay away from it then Ex-Prime Minister steps back from the matter and one unknown front man of the same Party High Official who was in Government took 15 Caror from Factory Owners for disposal of the case. Accused told that these all information he took form Ex-Sector Incharge Baldia Town".*

4. These disclosures which came to light on 06.02.2015 nearly 2 and a half years after the incident and the original FIR **changed the entire complexion of the investigation.** A further JIT was formed to **reinvestigate** the case thread bare and after it submitted its report with ultimately the investigation concluding that the fire was deliberately started at the factory by some of the accused on account of the factory owners refusal to pay a huge amount of 25 Crores bhatta to the Muttahida Qaumi Movement (MQM) (Altaf) political party and as a result at least 259 people died in the factory fire and at least 56 others were injured on account of the factory deliberately being set on fire as punishment to the factory owners for not paying the bhatta with the design, intent and purpose to terrorize other factory owners to pay bhatta on demand to the MQM and that the MQM had managed the false FIR in order to divert any suspicion away from them and had even extorted an amount of money



from the factory owners which they had agreed to pay as compensation to the legal heirs of the deceased and the injured which was instead used to build a lucrative property in Hyderabad.

5. Thus, on 14.02.2018 (6 years after the fire at the factory) the following charge was framed against the appellants and their acquitted co-accused to which they all plead not guilty and claimed trial.

*"That on 11.09.2012 at about 1830 hours Inside Factory Building Ali Enterprises situated at Plat No:F-67 Site Karachi, you accused Abdul Rehman alias Bhola S/o Abdul Sattar and Muhammad Zubair alias Lala Zubair alias Zuabir Chariya S/o Nazeer Ahmed along with your accomplices/assailants at the directions and instigation of absconding accused Hamid Siddiqui, in furtherance of your common intention and object, demanded Bhatta amount of Rs.25 Crores from the owners of factory Ali Enterprises and partnership in the factory profits and on non-compliance of such demand issued threats to the factory owners that in case of their refusal, they would face the serious dire consequences and you at the directions and instigation of accused Hamid Siddiqui in order to teach the lesson to the factory owners set the factory on fire with the help and connivance of your accomplices (activists of MQM-A) working in said Factory through chemical lying in the polythene bags retained by you, which you accused and your accomplices thrown in the factory which erupted fire and in the ensuing fire about 259 persons lost their lives through fire and more than about 60 persons were injured. Thus, thereby you have committed an offence punishable U/S: 7 (h) 7 (a) (b) and (c) of ATA, R/W 384 / 385 / 386 / 435 / 436 / 302 / 324 / 337 / 34 PPC, within the cognizance of this Court".*

*I charge you accused Shahrulh s/o Abdul Latif, Ali Muhammad S/o Masheen Khan, Arshad Mahmood S/o Muhammad Bashir and Afzal Ahmed S/o Khanzada that you accused under the influence, instigation and connivance of accused Abdul Rehman alias Bhola and accused Muhammad Zubair alias Zubair Chariya and their other accomplices kept the exit doors of factory locked, when the fire erupted inside the factory, did not take active and serious precautionary measures to save the employees/workers of the said factory, working inside the factory at the time of fire to get them exit after fire erupted therein, moreso, the fire extinguishers were not found in order due to your criminal negligence being employees of the said factory, besides you accused Shahrulh S/o Abdul Latif being Incharge of HR Department and also did not take any action after fire to get the workers exit from the gates by breaking/ opening the same, thus, thereby due to your criminal negligence and abetment to the accused named above, the workers lost their lives, thus, you committed the offence punishable under section 316 R/W section 109 PPC & section 21-I of ATA-1997, within the cognizance of this Court.*

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I charge you accused Muhammad Abdul Rauf Siddiqui S/o Muhammad Abdul Majeed Siddiqui (Late) that you with the connivance of accused Hammad Siddiqui (absconding accused) under a pre-planned manner through the activists of MQM Abdul Rehman alias Bhola, Zubair alias Chariya and others demanded the Bhatta of Rs. 20/25 Corers and partnership in the profits of said factory from the factory owners and on their refusal accused Abdul Rehman Bholla, Zuabir alias Chairya along with other companions/ accomplices at such instigation of Hammad Siddiqui ( absconding accused) set the All Enterprises Factory situated in Baldia at plot No. F/67 Site Karachi by throwing chemical which erupted in fire, resulting therein 259 lost their lives and about 60 persons became injured and thereby you influenced the police to lodge such FIR of simple incident of accidental fire in order to save yourself and your party viz MQM from such conspiracy and later on you along with accused Hammad Siddiqui extorted an amount of Rs.4 to 5 Corers from the factory owners to get the matter settled accordingly, thus thereby you have committed an offence U/s: 384/385/386/435/436/302/324/337/109 PPC, punishable under section U/Ss: 7 (h), 7 (a) (b) and (c) of ATA, within the cognizance of this Court".

I charge you accused Omer Hassan Qadri S/o Siddique Hassan Qadri, along with Muhammad Ali Hassan Qadri (absconding accused), that the factory owners Arshad Bhaila and Shahid Bhaila during investigation before the J.I.T averred therein that they had paid an amount of Rs.5,98,00,000/(five Corers Ninety Eight lacs) to absconding accused Muhammad Ali Hassan Qadri through Bank account of Siddique Hassan Qadri, whose detail was given by said absconding accused Muhammad Ali Hassan on the pretext that said amount would be deposited in the Bank till the time MQM compensates the victims from party platform and the rest of amount will be paid at the time of distribution ceremony to pay the compensation at the rate of Rs.2,50,000/per casualty and Rs.1,00,000/per injured and thereby the said amount was transferred in the account of Siddique Hassan Qadri in account No.1010-0081-010815-01-6 Bank-Al Habib at Branch Hyderabad (Titled Siddique Hassan Qadri) (father of absconding accused Muhammad Ali Hassan Qadri) and you accused Umar Hassan Qadri, however, no such distribution ceremony arranged till date, thus thereby you accused extorted the amount of Rs.5,98,00,000/from the factory owners and thereby committed an offence falling under section 7 (h) r/w section 11N of ATA-1997, within the cognizance of this Court.

I charge you accused Mst. Iqbal Adeeb Khanum and Dr. Abdul Sattar that you both with your common intention and object on 02.05.2013 got transferred an amount of Rs.5,00,00,000/- with the connivance of you accused Omer Hassan Qadri in the account of Muhammad Yameen, a known builder of Hyderabad for the purchase of property Plot No; 175, Block-C, Unit No: VI, Latifabad, Hyderabad, measuring 1000 Sq. Yds in the name of you accused Mst. Iqbal Adeeb Khanum as Benami transaction, besides an amount of Rs.1,35,00,000/- was transferred in the account No. 0020135860001289 Burj Bank Ltd, Latifabad Branch, Hyderabad, by you accused Dr. Abdul Sattar Khan for the advance of said



*plot through several cheques of your account No. 0020010586000002 (titled accused Dr. Abdul Sattar Khan) Burj Bank Ltd, Latifabad Branch, Hyderabad and thereby got the said property viz Plot No; 175, Block-C, Unit No: VI, Latifabad, Hyderabad, measuring 1000 Sq. Yds transferred in your name Mst. Iqbal Adeeb Khanum being family friend of Qadri Family, subsequently constructed a house on it which prima facie established that you accused Mst. Iqbal Adeeb Khanum and Dr. Abdul Sattar purchased the said plot, constructed house thereon through extorted amount, collected from Bhaila Brothers which is still with you accused Omer Hassan Qadri, Dr. Abdul Sattar and Mst. Iqbal Adeeb Khanum being beneficiaries of the said extorted, thus thereby you have committed offence falling under section U/S: 7 (h) r/w section 11N of ATA-1997, within the cognizance of this Court".*

6. The prosecution in order to prove its case examined 400 witnesses and exhibited various documents and other items. The statement of the accused were recorded under Section 342 Cr.P.C who denied the allegations against them and in particular appellant AR Bhola retracted his judicial confession and appellant Zubair denied setting fire to the factory. The accused neither examined themselves on oath or called any DW in support of their defence case.

7. After hearting the parties and appreciating the evidence on record, the trial Court convicted and sentenced the appellants and acquitted the respondents as set out earlier in this judgment and hence, the appellants have filed these appeals against their convictions and the State has filed an appeal against the acquittal of the respondents.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 22.09.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for the appellant A.R Bhola contended that the appellant was completely innocent and had been falsely implicated in this case based on a JIT report in respect of Muhammed Rizwan Quershi who was not even produced as a witness; that the appellant was not named in the FIR; that no witness had given any statement against him for over 2

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and a half years which showed that the statements were concocted and false as the police wanted to fix him simply because he was a member of MQM (A); there was no evidence that the appellant made any demand for bhatta from the factory owners or threatened anyone.; that there was no evidence that any watch man was in connivance with the appellant; that there was no direct evidence against the appellant; that the appellant's judicial confession was retracted as it was not made voluntarily and should be excluded from consideration and for any or all of the above reasons he should be acquitted of the charge based on the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Hussain Ahmad v Mst. Irshad Bibi** (1997 SCMR 1503), **Muhammad Zafar v Civil Judge and Judicial Magistrate-8, Hyderabad** (2016 P Cr. LJ 207), **Mst. Bano v Civil Judge and Judicial Magistrate-XII, Hyderabad** (2019 Y L R 2178), **Attaullah alias Qasim v The State** (2006 Y L R 3213), **Muhammad Yaqoob v The State** (2023 Y L R 1418) and **Syed Mehroz Mehdi Zaidi v The State** (2023 Y L R 665).

10. Learned counsel for the appellant Zubair contended that the appellant was completely innocent and had been falsely implicated in this case by the police in order to show their efficiency; that he was not nominated in the FIR; that only one PW Arshad gave evidence that he started the fire and his evidence since it was given about 2 and a half years after the event could not be safely relied upon; that Abdul Majeed who was in charge of the Godown and was the star witness in the case was not made a PW by the prosecution and as such it had withheld the best evidence; that the appellant was for the first time named in the final charge sheet despite not being named in the 3 earlier ones which showed the malafide of the police; that there was no evidence that any chemical was involved to cause the fire nor any explosive device and that there was no CCTV or DVR evidence against the appellant and as such for any or all of the above reasons the appellant should be acquitted of the charge by being extended the benefit of the doubt.



11. Learned counsel for Fazal Ahmed, Arshad Mehmood, Ali Muhammed (guards at the factory gate) and Shahrukh Lateef the HR manager at the factory have all contended that there is not a shred of evidence against them to support the charge and as such they should all be acquitted by being extended the benefit of the doubt.

12. On the other hand Mr. Muhammad Iqbal Awan, Additional Prosecutor General and Rana Khalid Hussain, Special Prosecutor Rangers appearing on behalf of the State have fully supported the impugned judgment. With regard to appellant Bhola they have contended that the appellant gave a judicial confession before a magistrate which although retracted at trial could be fully relied upon as it was made voluntarily with the object to state the truth; that his judicial confession was also corroborated by PW 381 Abdullah, PW 397 Arshad Bhaila, PW 375 Majid Baig and PW 396 Muhammed Mansoor; that he was an absconder for over 4 years; that the witnesses delayed giving their statements for so long due to fear of reprisals from the MQM if they told the truth and only felt able to do so once the reinvestigation took place following the revelations in the Muhammed Ramzan Quershi JIT and his appeal should be dismissed and death sentence upheld due to the heinous nature of the offence of having the factory set on fire for non payment of bhatta which left 264 dead and 54 injured. With regard to appellant Zubair they contended that he was named in the confessional statement of appellant Bhola as being directed to burn the factory down on account of the owners refusal to pay bhatta which is corroborated by both direct evidence and corroborative ocular evidence and various chemical reports and his appeal be dismissed and again due to the heinous nature of the offence where so many people innocent people lost their lives in such a horrific manner i.e being burnt to death or suffocated through asphyxia the death penalty was fully warranted in his case and the confirmation reference be answered in the affirmative. In support of their contentions that placed reliance on the cases of *Waris Khan v The State* (2005 SD 451), *Sajid Mehmood v the State* (2022 SCMR 1882), *Zulfiqar and others v The State* (1991 SCMR

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326), *Abdul Haq v The State* (2015 SCMR 1326), *Muhammad Amin v the State* (2002 SCMR 1017), *Ghulam Nabi v The State* (2007 SCMR 808), *Khan Muhammad v The State* (1999 SCMR 1818), *Maj. (Retd.) Tariq Mahmood v The State* (2002 SCMR 1493), *Aijaz Nawaz alias Baba v The State* (2019 P. Cr. LJ 1775), *Watan Party v The Federation of Pakistan* (PLD 2011 SC 997) and *Muhammad Amin v The State* (PLD 2006 SC 219).

13. We have heard the learned counsel for the appellants and learned Additional Prosecutor General Sindh and Special Prosecutor rangers and have carefully gone through the evidence on record as well as the relevant case law.

14. The witnesses can be divided into the following categories;

(a) Eye witnesses who were inside the factory at the time of the fire and managed to escape but in the process were injured and were treated at hospital for their injuries but did not implicate any of the accused. There are 34 of such witnesses all of whom gave evidence of the fire at the factory and the resulting chaos inside the factory amongst the workers once the fire started including in some cases death of fellow workers on account of the fire. These witnesses were mostly not cross examined and as such their evidence of the factory burning down was not challenged. These witnesses worked at the factory and as such were natural as opposed to chance witnesses and their presence at the time of the fire does not seem to have been disputed.

(b) Eye witnesses who were fire fighters who were called to the factory when it was on fire and assisted in putting out the fire as well as assisting with the dead and injured. There were 4 of such witnesses. These witnesses were mostly not cross examined and as such their evidence of the factory burning down was not challenged. These witnesses being fire fighters were natural as opposed to chance witnesses and their presence at the time of the

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fire does not seem to have been disputed. They did not implicate any of the accused.

(c) Witnesses who were medical legal officers(MLO's) who were at the various hospitals to which the dead and injured were dispatched (Abbassi Shaheed, Civil and JPMC) who carried out the post mortem of the dead bodies and mostly came to the conclusion that cause of death was either through burns or asphyxiation caused by smoke inhalation. There were 30 of these witnesses who dealt with multiple bodies. These witnesses were mostly not cross examined and as such there evidence of the death of the person who was brought from the burning factory was not challenged. These witnesses being MLO's were natural as opposed to chance witnesses and there presence at the time of carrying out the respective post mortems does not seem to have been disputed. They did not implicate any of the accused.

(d) Witnesses who carried out the S.174 Cr.PC proceedings on the dead bodies brought from the burning factory. There were 43 of such witnesses. Again mostly the evidence of these witnesses was not challenged during cross examination.

(e) Witnesses who were legal heirs of those who died on account of the fire at the factory and who identified and collected the dead body from the hospital. There were about 240 of such witnesses. Again mostly the evidence of these witnesses was not challenged during cross examination.

These categories mentioned above exclude the IO's and other material witnesses which according to the prosecution prove the charge against each of the accused the evidence of which witnesses we will consider later in this judgment.

#### **Conclusion.**

15. None of the above category of witnesses were chance witnesses, they all gave their evidence in a natural manner and none of these }



witnesses evidence was challenged during cross examination and they did not implicate any of the accused. We find their evidence to be trustworthy, reliable and confidence inspiring and as such find that the prosecution has proved beyond a reasonable doubt that;

- a) That on 11.09.2012 at about 1830 hours Inside Factory Building Ali Enterprises situated at Plat No:F-67 Site Karachi a fire broke out;
- b) That as a result of the fire at the factory at least 264 persons died on account/consequence of the fire as named in the impugned judgment (259 complete bodies and the remainder in pieces. 29 dead bodies remain to be identified despite the use of DNA) and
- c) That as a result of the fire at the factory at least 56 persons were injured on account/consequence of the fire as named in the impugned judgment.

Based on the evidence we need to determine whether any bhatta demand was made by any of the accused by themselves or on behalf of the MQM and who if any of the accused burnt down the factory.

16. It is notable that most of the statements implicating the appellants were made after the disclosures in the Rizwan Qursehi JIT report which was produced before the Sindh High Court on 06.02.2015 which is reproduced above about two and a half years after the incident. A number of these statements were material eye witness statements directly implicating some of the accused.

17. Usually as a matter of law such statements are not given much credibility and their reliability is considered doubtful as there are chances that over this period of time (2 and a half years) such statements have been fabricated through consultation. Each criminal case however must be based on its own particular facts and circumstances and like wise the



reason for the delay in making any such statements implicating the accused.

18. In this case the reason why the statements were given so belatedly was because of the party involved in the incident. Namely, the MQM (A) which although a legitimate political party with Parliamentary seats and a large support bank mainly in urban Sindh certain elements within it, as most people who live in Karachi know, since its inception had a propensity for violence when so ordered by the party high command. One of its methods of raising funds was through the collection of bhatta (extortion money through the threat of fear) which if not paid could lead to dire consequences for those who refused. Target killing was also not off the agenda of the party as in the case of Salot Khan whose MQM target killing team assassinated the head of the then KESC (Solat Khan V State 2002 SCMR 820) and those involved in the murder of one of its founding members Dr. Imran Farooq (PCr.LJ 2022 1511) in London showing that its militant elements had a long reach. These two cases are well documented and need no further discussion or elaboration along with the widespread disorder in the Saddar area of Karachi by MQM supporters following a provocative speech by its leader Altaf Hussain from phone via London on 22.08.2016.

19. Essentially because of fear of reprisals from certain elements within the MQM witnesses were initially reluctant to come forward and tell the truth until the disclosures 2 and a half years later made by Rizwan Quershi in his JIT report which was presented before the Sindh High Court and gave them a reason to do so now that the cat was out of the bag and there was to be no hiding of the truth regarding the reasons behind the fire. Besides prior to the Rizwan Quershi disclosures the sole FIR had placed the blame on the factory owners and other departments and not on the real culprits so why come forward and put both your life and that of your family at risk? To keep mum in such a situation, although not to be



condoned, was both the logical and natural thing to do in terms of a quiet life.

20. It has come in evidence on countless occasions that appellant A.R Bhola was sector in charge of the MQM for Baldia sector where the factory was situate at the time of the fire and that appellant Zubair was an active member of the MQM who was head of the finishing department of the factory at the time of the fire and was present during the fire and allegedly both of them were instrumental in the burning down of the factory after the owners refused to pay the MQM bhatta demand.

21. A number of witnesses gave evidence about their fear of the MQM. For example;

(a) **PW 373 Amir Ali** in his evidence stated that he met Arshad at the staircase who told him that Zubair had started the fire but directed him not to say anything about the fire including Zubair and his assailants as they were dangerous and would cause damage to my life and property. Thus, he remained mum and told no one.

(b) **PW 374 Muhammed Arshad** corroborates the evidence of his subordinate mentioned above PW 373 Amir Ali. According to his evidence after the incident he moved to Punjab out of fear and the danger that he could have been exterminated as he was an important eye witness who saw Zubair set fire to the factory.

(c) **PW 375 Majid Baig** stated that after recording his statement on 15.07.2015 he was threatened and felt in danger and went to the Mitharam hostile and told his fears to the rangers where after his S.164 Cr.PC statement was recorded.

(d) **PW 397 Arshad Bhaila**. One of the owners of the factory gave evidence that he remained under pressure from the activists of the MQM. That he had to give wastage from the factory at 15 lacs per month (bhatta) just to keep the MQM at bay as well as 10 lacs a month (Bhatta) to MQM Baldia sector in order to run their business peacefully. He and his brothers were followed by armed riders to pressurize them to pay bhatta. He and his brother remained in Bangladesh for about 3 weeks due to the pressure and fear which even made him ill. The police did not even encourage them to record statements regarding MQM's demand for bhatta and threats on account of non payment. When the Rizwan Quershi disclosures became public about the real reasons about the fire he felt insecure and he and his family left Pakistan. They were asked to pay RS5 lac



to each deceased by the MQM but since they were under fear, threats and pressure they did not respond. In the initial round of investigation our employees and workers were threatened, tortured and kept under pressure to depose on the line of FIR, even some were bribed in this regard to narrate at the tone what they were trying to float.

(e) PW 398 Jahanzeb who was the second IO gave evidence that initially the factory owners did not mention any thing in their statement out of fear and referred him to PW Mansoor.

(f) PW-399 Sajid Ameer Sadozai who was the 3<sup>rd</sup> IO gave evidence that the witnesses and factory owners did come forward due to fear.

(g) The opening part of the retracted judicial confession of appellant A.R. Bhola which we will come to later gives some insight as to the modus operandi of some elements of the MQM which is reproduced as under;

*"In the year of 1992, I had joined "MQM" Party as worker and on the instance of Sector Incharge Amin Khan, according to the party's policy, bloodshed, extortion, burning of vehicles, closing of shops, aerial firing and spreading fear and harassment etc, was included. During this time, I also killed 5 to 7 peoples belong to People's Party and Sunny Movement. Besides that my team members killed dozen people as per MQM policy"*

22. Hence, based on the above fear and terror placed on the witnesses based on the particular facts and circumstances of the case as narrated above we have decided to consider the evidence of the witnesses who gave their statements 2 and a half years after the event whilst viewing it with some caution. In this respect we place reliance on the case of Waris Khan (Supra) where it was even held that it was not mandatory that in all cases a witness shall record his statement under S.161 Cr.PC. Reliance is also placed on the cases of Sajid Mehmood (Supra), Qaiser Hussain V State (2011 P.Cr.LJ 1126), Abdul Khalique V State (2015 YLR 1015), and The State V Muhammed Boota (2014 YLR 306). Reliance is also placed on the Watan Party (Supra) case which sets out in detail the fearful law and order situation prevailing in Karachi at the time when the factory was burnt down and tells its own story of why witnesses and other citizens were fearful of giving evidence before the courts against the miscreants,



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who were operating in Karachi at that time especially in respect of those subject to demands for the payment of bhatta.

Turning to the cases of appellant A.R.Bhola and Zubair as they are interlinked through appellant AR Bhola's retracted judicial confession.

23. The main although not exclusive evidence against appellant AR Bhola is his retracted judicial confession which is set out below for ease of reference where he also fully implicates appellant Zubair. Initially AR Bhola had confessed before PW 400 Raja Jahaghir the fourth IO and PW-362 Muhammad Asghar whilst in custody and was then brought before the judicial magistrate for recording his confession within 6 days of his arrest it being settled by now that there is no hard and fast rule as to when a confession can be recorded after arrest but obviously the sooner the better. In this case we find this slight delay to be of no significance.

**Judicial Confession of Abdur Rehman alias Bhola under S.164 Cr.PC.**

Q.No.11. What you have to say?

Answer: *In the year of 1992, I had joined "MQM" Party as worker and on the instance of Sector Incharge Amin Khan, according to the party's policy, bloodshed, extortion, burning of vehicles, closing of shops, aerial firing and spreading fear and harassment etc, was included. During this time, I also killed 5 to 7 peoples belong to People's Party and Sunny Movement. Besides that my team members killed dozen people as per MQM policy. What I have told you about the wardats of murders, I have told the JIT in detail during the Interrogation before. In the year of 2009, on the recommendation of MQM Karachi Organizing Committee members Irfan Khan, Zahid and Hanif Memon, I was made a sector member of Baldia. During the tenure; we extort millions rupees in lieu of Zakat, Fitrat and Animal Leather and used to deposit at 90. In 7th month of the year of 2012, the KTC Incharge Karachi Hammad Siddiqui got called me at 90 and said to me that he is removing the previous sector Incharge Asghar Baig and deputing you as sector incharge, because you are being given a task, which you have to complete. He said to me that*

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there is a factory in Baldia-Town in the name of Ali Enterprises; you have to demand extortion money of Rupees 25 Crore from its owners. He further said that anyhow you have to complete this task. Thereafter, I went and met with factory owners and said them that I have been sent by Hammad Siddiqui, for extortion of 25 Crore. They asked for time to think. After passing few days, I again went to factory. As soon as I entered into factory, the owners were about to go, and they had sat in the vehicle. I stopped them and demanded money, but they replied that they cannot pay more than one crore. Subsequently, on the instance of Hammad Siddiqui, I asked them that either make our partnership in the factory or otherwise the factory shall be got set on fire. Thereafter, I contacted with factory manager namely Mansoor on phone and said that if you don't have Rs.25 Crore, then give us Rs.20 Crore or partnership, but Mansoor said that the owners can pay Rupees One Crore only and besides that can't give anything else. Thereafter, I and one Zubair @ Charya went to Hammad Siddiqui and narrated him entire detail that neither the factory owners can pay Rs.20 Crore extortion money nor doing partnership, they are paying rupees One Crore only on which Hammad Siddiqui become angry and asked me to set fire the factory. Thereafter, I gave this responsibility to Zubair @ Charya and said him that he has to make arrangements of chemical, etc. After that on 11-09-2012 at noon time, Zubair @ Charya alongwith 4/5 persons came to me in a white coloured Hi-Roof and spend half an hour in my office and said that he has made arrangements with regard to set fire the factory. Meanwhile, I informed to Hammad Siddiqui through phone that we are setting fire to factory. He said that after finishing work inform him that whether the work is done or not? Thereafter, in white coloured Hi-Roof, Zubair @ Charya alongwith his accomplices proceeded towards factory. I also went behind them on my motorcycle to watch them. When they entered into factory then I came back and informed to Hammad Siddiqui on phone. After passing 20/25 minutes, Zubair @ Charya said through phone that the work has been done. Then I immediately informed to Hammad Siddiqui on phone that the work has been done. Thereafter, Hammad Siddiqui said to me to take accompany the area MNA, MPA and workers to factory for help. Thereafter, the KKF vehicles and MQM workers also arrived. We set the camp upto 04 days. Thereafter Rauf Siddiqui got registered the FIR against factory owners, so that the allegation may not come on MQM. Thereafter, I came to know that Rauf Siddiqui



and Hammad Siddiqui after the bail of factory owners received Rs.04/05 Crore for withdrawing from case”.

#### Law on retraction of judicial confessions.

24. After a review of the relevant law on the legal validity of judicial confessions the Hon’ble Supreme court in the case of **Ch. Muhammad V Yaqoob V The State** (1992 SCMR 1983) reached the following conclusion:

*“The legal position, which has emerged from the above reports, seems to be that in order to judge the evidentiary value of retracted confession, the Court is to advert to the question, whether the same appears to have been made voluntarily, without any inducement, duress or coercion with the object to state the truth. If the Court is satisfied on the above aspect, the mere fact that there were some irregularities in recording of a confession, would not warrant disregarding of the same”.*(bold added)

25. It is settled law that a retracted judicial confession can be legally admissible and used against its maker in certain circumstances. In the later case of **Muhammad Amin V The State** (PLD 2006 SC 219) it was held as under;

*“9. There is no cavil to the proposition that conviction could have been awarded on the basis of retracted confession which proposition was examined in case of Mst. Joygun Bibi v. The State PLD 1960 (SC (Pak) 313 as under:-*

*“We are unable to support the proposition of law laid down by the learned Judges in this regard. The retraction of a confession is a circumstance which has no bearing whatsoever upon the question whether in the first instance it was voluntarily made, and on the further question whether it is true. The fact that the maker of the confession later does not adhere to it cannot by itself have any effect upon the findings reached as to whether the confession was voluntary, and if so, whether it was true, for to withdraw from a self-accusing statement in direct face of the consequences of the accusation, is explicable fully by the*



*proximity of those consequences and need have no connection whatsoever with either its voluntary nature, or the truth of the facts stated. The learned Judges were perfectly right in first deciding these two questions, and the answers being in the affirmative, in declaring that the confession by itself was sufficient, taken with the other facts and circumstances to support Abdul Majid's conviction. The retraction of the confession was wholly immaterial once it was found that it was voluntary as well as true."*

10. Similarly in the case of the State v. Minhun alias Gul Hassan PLD 1964 SC 813 this Court has observed as under:-

*"As for the confessions the High Court, it appears, was duly conscious of the fact that retracted confession whether judicial or extra judicial, could legally be taken into consideration against the maker of those confessions himself, and if the confessions were found to be true and voluntary, then there was no need at all to look for further corroboration. It is well-settled that as against the maker himself his confession, judicial or extra judicial, whether retracted or not retracted, can in law validly form the sole basis of his conviction, if the Court is satisfied and believes that it was true and voluntary and was not obtained by torture or coercion or inducement."* (bold added)

26. Thus, the court laid down a two pronged test as under (a) whether the retracted judicial confession appears to have been made voluntarily, without any inducement, duress or coercion and (b) was made with the object to state the truth.

27. Notably it was also held that if both (a) and (b) were satisfied that even if there were some irregularities in recording of a confession it would not warrant disregarding of the same.

28. In the case of Bahadur V State (PLD 1996 SC 336) although it was suggested that a judicial confession alone can be made the basis of conviction the safer course was to look to see if there was any corroborative material available to determine its truthfulness.



29. In the case of **Manjeet Singh V State** (PLD 2006 SC 30) a further requirement seemed to be added that in determining the truthfulness of the confession it had to be placed within the context of the whole of the prosecution evidence/case.

30. In our view therefore we are not in any doubt that a retracted confession before a magistrate can be the basis of convicting in a capital case however it must be;

- (a) Voluntary i.e. without threat or inducement and
- (b) Its object must be to state the truth; assistance for which can be ascertained from (i) whether the confession appears truthful within the context of the prosecution case and (ii) whether there is any other evidence on record which tends to corroborate the truthfulness of the confession and
- (c) Only minor irregularities regarding the rules concerning the recording of judicial confessions can be permitted as determined on a case to case basis the main criteria being that such irregularities have not adversely effected the voluntariness or truthfulness of the confession.

31. The judicial confession if relied upon by us is extremely damaging to the maker and the other co-accused who is named in the confession even if its legal value vis a vis a co-accused is lesser without corroboration of an unimpeachable nature.

32. Now if we consider the retracted judicial confession of appellant AR Bhola we find no material on record that it was not made voluntarily.

33. We also find that it was made with the object of telling the truth keeping in view the prosecution case and evidence. In this context it must be noted that the appellant Bhola had absconded and was arrested in Singapore and was brought back to face trial in this case over 4 years after his absconsion. Perhaps he was tired of being on the run and now having been arrested in Singapore knew the game was up and decided to come



clean and tell the truth. The truth of his confession ties in with the prosecution case and witnesses thus we find that the retracted judicial confession was made with the object of telling the truth Keeping in mind the fact that absconders who remained absent for a long time such as 4 years in appellant's Bhola's case, let alone arrested from abroad, could be used as a corroborative piece of evidence against him in any event. In this respect reliance is placed on **Muhammed Ijaz V State (2023 SCMR 1375)**

34. We also find that there are no procedural irregularities in the manner in which the appellant's confession was recorded before the judicial magistrate and that it was recorded in accordance with the law and the settled principles of recording judicial confessions thus we believe the confession as against appellant AR Bhola subject to some independent corroboration.

So what other evidence is there to corroborate appellant's Bhola's confession and co-appellant Zubair's role in the fire. 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)**

- (a) According to the evidence of PW 375 Majid Baig his family was affiliated with MQM and his brother Asghar Baig was MQM sector in charge of Baldia town in which area the factory was located. He knew appellant AR Bhola who was an active member of the MQM. In July 2012 he was sitting with PW Mansoor and appellant Bhola in Mansoor's office in the factory when Shahid Bhaila one of the owners of the factory came into his office. AR Bhola followed Shahid Bhaila outside where they were in discussion. This witness gave his evidence in a straight forward manner and was not particularly dented during a lengthy cross examination. He had no reason to falsely implicate appellant AR Bhola in the offence in terms of his presence at the factory and corroborates his confession of going outside to meet the factory owners. Thus, so far as this evidence concerns the appellant AR Bhola we believe the same and place reliance on it.



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(b) PW 376 Muhammed Mansoor. He was production in charge at the factory and was also a confidant of one of the owners PW 397 Arshad Bhaila. According to his evidence a large number of workers at the factory belonged to MQM (A) and were also in command of the MQM (A) and appellant Zubair who was an MQM activist and other MQM workers also collected zakat and Fitra for the MQM. He corroborates PW 397 Arshad Bhaila on the wastage and other monies paid by the factory to the MQM as bhatta. He corroborates the evidence of PW 375 Majid Baig of appellant Bhola following Shahid Bhaila out of the factory and entering into discussions with him. According to his evidence on the next day Shahid and Arshad Bhaila (the factory owners) called him into their office and informed him that AR Bhola had demanded RS 25 Cores or partnership in the factory *at the direction of the MQM (A) leaders and party elders. AR Bhola had told him that the demand had come from Hammed Siddique in charge of KTC MQM (A) on behalf of the party.* The Bhaila's refused to pay the bhatta demand and he was directed to meet AR Bhola and negotiate with him and offer RS one crore and settle the matter. He contacted Bhola who told him that the matter could only be settled if the factory owners paid RS 20 crore and not otherwise and in case the demand was not fulfilled there would be no good result for the factory owners or the factory. This fully corroborates AR Bhola's judicial confession. He even confirmed that when the MQM(A) used to demand bhatta it was paid through him. This evidence regarding AR Bhola's demand for bhatta or a share in the factory from Hammad Siddique is fully corroborated by the factory owner PW 397 Arshad Bhaila. This witness gave his evidence in a straight forward manner and was not particularly dented during a lengthy cross examination. He had no reason to falsely implicate appellant AR Bhola in the offence. Thus, so far as this evidence concerns the appellant AR Bhola we believe the same and place reliance on it. }



(c) PW 381 Abdullah. According to his evidence he was an active worker of MQM (A) and worked in unit 117 Baldia sector MQM. Later on he was deputed as sector in charge of Baldia town. He lead the MQM workers to factories situated in Baldia where appellant AR Bhola and others used to distribute bhatta parchies to the factory owners and others. He used to get the wastage from the factories as bhatta along with Ifan Baig but contract was given to Faryal instead. He corroborates PW 375 Majid Baig in this respect. On directions of appellant AR Bhola in Ramazan he pointed out factory to Gul Muhammed who was a member of MQM baldia sector. He saw appellant AR Bhola call PW 376 Muhammed Mansoor and demand RS 25,000 as Zakat. Mansoor collected the said amount and deposited it in the sector office. After hearing about the fire he went to the factory on 11.09.2012 where he saw appellant AR Bhola outside. According to his evidence appellant AR Bhola was appointed sector in charge Baidia town 15 days before Ramazan 2012 i.e before the fire. This witness gave his evidence in a straight forward manner and was not particularly dented during a lengthy cross examination. He had no reason to falsely implicate appellant AR Bhola in the offence. Thus, so far as this evidence concerns the appellant AR Bhola we believe the same and place reliance on it.

(d) PW 397 Arshad Bhaila. He was one of the factory owners. According to his evidence under pressure of the MQM (A) and just to lead a peaceful existence he was paying MQM (A) Baldia sector 25 lacs a month on one account of one thing or another e.g wastage, zakat, futra, demands i.e bhatta etc. In May or June 2012 PW 375 Majid Baig disclosed that the MQM sector was demanding crores of RS. At first he thought it was a bluff but then he realized that it was an extortion amount under threat. He fully corroborates PW 376 Muhammed Mansoor about the 25 crore and partnership in the factory made by appellant AR Bhola through Hammed Siddique and on account of such demand he remained under



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pressure and fear and even attempted moving their business to Bangladesh where he stayed for 3 weeks. His evidence fully corroborates the confession of AR Bhola. On his return armed motorbike riders used to follow him in order to threaten and intimidate him. This witness gave his evidence in a straight forward manner and was not particularly dented during a lengthy cross examination. He had no reason to falsely implicate appellant AR Bhola in the offence. Thus, so far as this evidence concerns the appellant AR Bhola we believe the same and place reliance on it.

35. Thus, the above corroborative evidence when read with the evidence against appellant Zubair fully corroborates and proves the retracted judicial confession of appellant AR Bhola in connection with the bhatta demand and burning down of the factory which lead to hundreds of innocent men and women being murdered by being either burnt alive or through asphyxia and leaving many injured.

#### Evidence against appellant Zubair.

36. There is abundant evidence on record to show that Zubair was head of the finishing department at the factory, that he was present in the factory the day the factory caught fire and was burnt down, that he was an MQM activist in Baldia sector who was already involved in collecting illegal money from the factory through one shape or form (bhatta) for the MQM in order that the factory could exist in peace. That every witness from the factory who gave evidence against him knew him as he was one of the so called strongmen of the factory in resolving disputes and collecting illegal money (bhatta) from the factory owners so there is no case of mistaken identity and no need for an identification parade (as with appellant AR Bhola) and that according to the judicial confession of appellant AR Bhola (which we have already believed and evidence against Zubair further corroborates) he was tasked with setting the factory on fire on account of its owners refusal to pay bhatta.

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(a) According to the evidence of eye witness PW 374 Muhammed Arshad. PW 376 Muhammed Mansoor got him a job at the factory where he was employed as a fitter with Amir (which is corroborated by PW 373 Amir Ali). On 11.09.2012 appellant Zubair directed him to meet him in the evening as guests were coming to the factory. He met Zubair in the evening who had about 5 boys with him in the Godown area. Zubair told him to take the boys to the washroom which he did. Zubair then arrived and gave them all charas cigarettes. He took a few puffs and after Zubair's permission left. From the mezzanine floor he saw Zubair give small shopper packs to each of the 5 boys. He saw Zubair fold the shopper pack in his hand, shook it and threw it onto the clothes in the Godown. The five boys with Zubair to whom he had given packets also did the same. Smoke followed and in a short period of time flames burnt in the cloth Godown. He rushed down and found Majid who was in charge of the Godown and along with others tried to extinguish the fire but they failed. Zubair came but refused to help and told them that the fire would never extinguish. The owners and PW Mansoor were raising a commotion to try and save the laborers and material lying in the factory.....He went to the canteen which was locked but when they managed to break through he saw Zubair and the 5 boys smoking on the cement benches. They pushed past Zubair and his boys and headed for the roof in order to escape the fire. Again Zubair came to the roof smiling and did not help. He then fled to Punjab out of fear. This witness gave his evidence in a straight forward manner and was not particularly dented during a lengthy cross examination. He had no reason to falsely implicate appellant Zubair in the offence. We find his evidence to be trust worthy, reliable, confidence inspiring and of good quality and believe the same and can convict on the basis of this sole eye witness evidence. In this respect reliance is placed on the cases of Qasim Shazade V State (2023 SCMR117), Muhammed Saddiq V State (2022 SCMR



690 and Naiz-ud-din V State (2011 SCMR 725). This evidence also is corroborated by AR Bhola's judicial confession. Thus, so far as this evidence concerns the appellant Zubair settling fire to the factory we believe the same and place reliance on it.

- (b) According to the evidence of PW 360 Kashif. He worked in the finishing department with Zubair. He was with PW 361 Abdul Raees when the fire broke out. After the fire he saw Zubair with three to 4 unknown persons. He saw him in the finishing department and on the roof of the factory. Zubair was not in his department when the fire broke out. This witness gave his evidence in a straight forward manner and was not particularly dented during a lengthy cross examination. He had no reason to falsely implicate appellant Zubair in the offence. Thus, so far as his evidence concerns the appellant Zubair's activities at the factory on the day of the fire we believe the same and place reliance on it.
- (c) PW 361 Abdul Raees. Also worked in the finishing department. He corroborates being with PW 360 Kashif when the fire broke out. He also saw Zubair in the canteen smoking and later on the roof when they were trying to escape. Zubair was locking gates and doors to hinder escape. This witness gave his evidence in a straight forward manner and was not particularly dented during a lengthy cross examination. He had no reason to falsely implicate appellant Zubair in the offence. Thus, so far as his evidence concerns the appellant Zubair's activities at the factory on the day of the fire we believe the same and place reliance on it.
- (d) PW 363 Muhammed Waseem. He was employed at the factory through Zubair. On 11.09.2012 he met Zubair at noon in the finishing department. Zubair went to the Godown side later that evening around Asar prayers. When the fire broke out PW Mansoor and him shut down the electric breakers. He saw Zubair smoking cigarettes in the canteen in a relaxed and cool manner. Zubair locked doors to the canteen to hinder escape. He also



stated that the MQM workers were usually found attending Zubair in the factory who he gave tea and pants to. It was also the Godown area where the fire erupted which was opposite the finishing department which did not catch fire. This witness gave his evidence in a straight forward manner and was not particularly dented during a lengthy cross examination. He had no reason to falsely implicate appellant Zubair in the offence. Thus, so far as his evidence concerns the appellant Zubair's activities at the factory on the day of the fire we believe the same and place reliance on it.

- (e) PW 372 Saleem Khan. Again he saw Zubair in the canteen smoking after the fire broke out. He also saw Zubair lock the canteen door in order to save himself. PW 373 Amir Ali gives corroborative evidence. *Importantly being an electrician he confirms that the fire could not have broken out due to a short circuit as all the wiring was new.* These witnesses gave their evidence in a straight forward manner and were not particularly dented during a lengthy cross examination. They had no reason to falsely implicate appellant Zubair in the offence. Thus, so far as their evidence concerns the appellant Zubair's activities at the factory on the day of the fire we believe the same and place reliance on it.
- (f) PW 376 Muhammed Mansoor. According to his evidence Zubair was in charge of finishing department who was an active member of the MQM who used to exert pressure to establish his hold and monopoly at the factory. He also used to intervene with workers disputes in order to maintain his authority. He was present in the factory when the fire broke out in the Godown which they were unable to extinguish. PW 360 Kashif told him that he saw Zubair and 4 to 5 others in the Godown and later on the roof. Although his evidence regarding Zubair on the night of the fire is mainly hearsay it is however corroborated by other witnesses whose evidence is mentioned above. His direct evidence portrays Zubair as a powerful MQM figure within the factory.



(g) PW 397 Ashraf Bhaila. He was one of the owners of the factory. According to his evidence as mentioned above the management of the factory was always under pressure to make payments to MQM Baldia town sector which they did out of fear so that they could run their factory peacefully. He also narrates earlier the bhatta demands from MQM via appellant AR Bhola via Hammad Siddique *and the top leadership of the MQM*. In 2005 PW Mansoor who was his confidant hired Zubair in the finishing Department who shortly became in charge of the department. The laborers and workers of the department were under his control and direction. Zubair used to get disputes in the factory settled through PW Majid Baig whose brother was an MQM activist. On 11.09.12 he was sitting in his office when PW Majid informed him that a fire had erupted in the Godown/warehouse. On reaching the Godown they found the fire spreading with great speed in a high rise manner and had engulfed half the warehouse/godown in seconds. PW 360 Kashif informed him that at the time of the occurrence of the fire he had seen Zubair with 4 /5 culprits being strangers inside the factory which hearsay evidence is corroborated by other witnesses whose evidence is mentioned above. He told him when he saw Zubair and the strangers they were in a casual manner despite the fire and that they were not worried in this regard. Kashif informed him that Zubair was definitely involved in the fire. He came to know that on the next day the FIR was lodged under the pressure of MQM leader Rauf Siddiqui blaming the factory owners in order to divert attention away from the MQM.

37. 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 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 *Mushtaq Ahmed V The State* (2020 SCMR 474).

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38. 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 appellants. 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 and appellant AR Bhola's confession which we believe provides a believable corroborated unbroken chain of events from the appellant AR Bhola demanding Bhatta at the behest of Hammad Siddique head of the KTC from the owners of the factory whose failure to comply would result in the burning down of the factory to Zubair and 4 to 5 of his associates throwing some form of accelerant in the Godown which lead to the fire while Zubair obstructed workers from leaving the factory and seemed to be enjoying the drama by smoking, smiling and acting in a relaxed manner and not helping to put out the fire which he said could not be put out and lead to the factory being burnt down with the result that 264 men and women being murdered by either being burnt alive or through asphyxiation through smoke inhalation.

39. As was recently held in the case of **Muhammed Ijaz V State** (2023 SCMR 1375):

*"Where discrepancies are of minor character and do not go to the root of the prosecution story and do not shake the salient features of the prosecution version, they need not be given much importance."*

40. Likewise in the case of **Nazir Ahmed V State** (2023 SCMR 1299) it was held as under;

*"It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence."*

41. There are some minor improvements in the S.161 and S.164 Cr.PC statement of the witnesses however we do not consider such improvements fatal to the prosecution case. In the case of **Aijaz Nawaz**,



(Supra) which held as under;

*"Strictly speaking, human behavior varies from person to person; different people behave and react differently in different situation. Human behavior depends upon facts of each case; how a person reacts and behaves in particular situation can never be predicted. Every person who witnesses a serious crime, reacts in his own way; some are stunned, some are speechless; some would see the incident whereas some would flee from the spot. There is no set of rule of natural conduct."*

42. So when we take the evidence against Zubair as a whole it fully supports the confession of appellant AR Bhola that it was Zubair who was given the task of setting fire to the factory. **The eye witness evidence of PW 374 Muhammed Arshad** which he have believed and placed reliance on is conclusive direct evidence that Zubair started the fire with 4 to 5 unknown persons. The other witnesses mentioned above also confirm Zubair's MQM affiliation, that he collected Bhatta for the MQM in different forms e.g Zakat from the factory, that he was a leader within the factory, that he was present in the factory at the time of the fire, that he did not help to put the fire out which according to him could not be put out, that he was smoking in a very relaxed and smiling manner in both the canteen and the roof top whilst the fire engulfed the factory which all support the eye witness evidence that he started the fire in the factory.

43. The eye witness PW 374 Muhammed Arshad saw Zubair and 4 to 5 others set the factory on fire by throwing packets into the Godown which quickly caught fire; a fire which proceeded in an unusually fast manner considering that most of the material in the Godown was Denim which does not burn easily. In this respect the fact that the fire could not be put out by fire extinguishers at its early stages and the evidence of PW 397 **Ashraf Bhalla** with respect to the fire, which is set out below, raises questions whether any chemical and or accelerants were used in the fire as per appellants AR Bhola's confession;



*"On hearing the information for the fire engulfed in the warehouse, within seconds I along with Shahid Bhaila and Mansoor rushed to the said area. In the meantime, the fire engulfed in the half of the portion of the warehouse within seconds and were found spread in a high-rise manner speedily without resistance and unusually the circle goals of the fire were found spread from there. We tried out level best to get extinguish but did not succeed as it was unnatural and with high velocity speed in its volume and were beyond the control and approach to be extinguished. It was definitely a sabotage and terrorism activity... .."*

*The warehouse were retaining raw denim material having the measurement of 100/110, 115/120 meters in each roll tightly packed, having thickness of 12-13 ounce which did not easily capture the fire even if anybody willfully tries to burn it through the usual fire, unless the fire which is unnatural. The ordinary nature of fire could not easily catch the rolled balls of raw denim capacity of having sufficient thickness and of cotton did not capture the fire in any way unless it is in the manner of arson. Here in this case fire caused were carrying highly flammable circles such like balls which could not be found in a usual fire. Even at the time of extinguish as and when water was thrown to the said fire it got accelerated rather to slow down and come to the point of extinguish, rather it exceeded its volume, magnitude and speed. During the investigation a C.P. was filed wherein the report was also furnished by National Forensic Science Lab Islamabad mentioning therein the samples dispatched to the said Lab for DNA were found burnt, deteriorated and decay which is unusual to the best of my experience and knowledge. I may say that on the basis of forensic report it is apparent and prima-face shows that the fire were not the usual and natural but it was an unnatural sabotage state of fire which were caused at different places in an arson with chemical and combustible material. The said report were also furnished to the JIT during the investigation. In the initial round of investigation our employees and workers were threatened, tortured and kept under pressure to depose on the line of FIR, even some were bribed in this regard to narrate at the tone what they were trying to flute.*

*.....*

*We requested the chairman of the commission to get the forensic investigation conducted in respect of fire through the foreign investigation unit to ascertain the real cause, to which learned Chairman informed that it would cause millions of rupees, even our advocate shown our willingness to pay such a huge cost, but it was not acceded thereto and flatly turned down. Our request were also published in daily Dawn in*



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this regard, wherein our advocate had agreed to pay whatever the amount comes involved in the foreign commission and investigation. From 11<sup>th</sup> Sep to 17<sup>th</sup> Sep, the investigation were conducted by PI Choudhry Zafar Iqbal and thereby he was replaced by PI Jahanzeb to carry on the investigation. Through media we came to know that PI Zafar Iqbal investigated Majid Biag and Zubair and thereby the said PI Zafar Iqbal submitted before the chairman commission (headed by Mr. Retired Justice Zahid Qurban Alvi), that sector incharge were having free access inside the factory, who has got some issues and dispute with the owners of the factory (us). The said matter was also reported in daily Dawn, Karachi. It was the major reason and cause that when PI Zafar Iqbal found out truth, he was replaced from the investigation part.....

44. Other eye witnesses to the fire have also reached the same conclusion that the fire was unnatural and spread very quickly. And why did Zubair state that the fire could not be put out unless he knew that it was not an ordinary fire and that some kind of accelerant had been added. He and the 5 boys each threw 5 packets. Yet a single match could have caused the fire.

45. According to the expert chemical report provided by the International Centre for Chemical and biological sciences prepared by PW 387 Dr.Shakeel Ahmed of Karachi University and his team dated 01.08.2016 it was opined as under;

"Subject: Forensic Analysis of Baldia Garments Factory.

Dear Sir:

This is with reference to your letter No: SP/SITE/RDR/32-1/Karachi (delivered by hand on 16<sup>th</sup> November,\_\_\_\_\_.

Based on preliminary discussion, our team has visited the site, met with eye witnesses, and collected samples for analysis. Following are our observations.

"After observing the pattern of fire and eye witness accounts, we feel that the fire may have been caused by volatile accelerator. Samples were analyzed for the presence of volatile and other accelerator(s) by employing GC-MS (Gas Chromatography Mass Spectrometry), ICP (Inductively Coupled Plasma) and HPLC (High Performance Liquid Chromatography). However, no trace of any accelerator was found in any of the samples. Kindly note that samples were collected after three years



*of incident, and & is unlikely that any volatile compound would exist after such a long time".*

With Regards,

Sincerely,

sd/-

Dr. Amir Haider Ph.D.(Chem.)

(Chem.\_

Research Officer.

sd/-

Dr. Shakil Ahmed Ph.D.

Senior Research Officer /

Chemical Manager"

46. As per the report of the Punjab Forensic science agency dated 16.10.16 which was exhibited through PW 395 Khalid Faraz it opined as under;

"Observations and findings of Crime Scene Investigation Unit

- It was an arson incident took place on 11-09-2012. Scene was compromised due to fire rescue activities and time lapse.
- No signs of electrical short circuit have been identified, Probability of fire due to electrical short circuit could be ruled out.
- The fire spread over a large area because the combustible material was present there all around that is cloth etc.
- Discontinuous patches of fire lead to opine that the fire eruption points were multiple.
- Any combustible material do not burn until it gains its flammable temperature and as there were only one or two kind of combustible material (jeans & Cotton which was told by the concerned person as Ready For Dying cloth) was/were present. If same kind of material is present, it should burn in the same manner.
- Fire on ground floor appeared to be initiated from south west area of the hall.
- In the basement there were no signs of fire travelled from ground floor to basement through stairs, as there was only the smoke deposition and no burn pattern was identified(Image # 1 to 3)
- In basement flame/burning material might fall from the open place (material handing opening, in front of elevator) could be the cause of fire initiation. (Image # 4)
- First floor was found to be relatively less damaged with fire as compared to the rest of the floors of the building.
- Heavy smoke deposition observed on walls, ceiling and rest of the material at first floor.
- Discontinuous burn patterns which caused small and focalized level of damaged were also identified. In presence of same type of cloth (combustible material) such patterns could lead to opine



the involvement of humanly activity regarding fire initiation. (image # 5 to 8)

- Supervisory hall (small area to view the main stitching hall) on first floor of the adjacent building was also damaged due to fire, but no signs of fire travelling from the main affected building to the this hall. Western side of the hall was having severe burn impact. Fire initiation point could be such area in this hall. (image # 9 & 10)
- Second floor was found as severely damaged due to the fire, most of the material including building material was severely damaged. Stair area has been collapsed (the only access for second floor from first floor) and no passage could be made to identify the fire travelling from floor first to second. But as there were little burn impact and no fire travelling signs were found in front of stair area on first floor, it is of the opine that fire on second floor initiated from the same floor (second floor). (Image # 11 & 12).

47. We find based on these reports and the eye witness evidence that a chemical accelerant of some kind was thrown into the Godown to accelerate the fire by appellant Zubair and his 4 to 5 colleagues.

48. It is clear from the Punjab Forensic science agency report that the fire did not break out due to a short circuit as claimed by the appellants. Even otherwise, evidence has also come on record that the wiring was completely new and the breakers were turned off within minutes. Likewise PW 385 Anwar Ali who inspected the boiler found that the boiler did not blow up and it had not even been in use since 2010 so this was also not the cause of the fire. Likewise no evidence of any explosion was found.

49. We therefore find based on all the evidence, confession of Bhola, eye witness account of PW 374 Muhammed Arshad , other evidence of the behaviour of Zubair at the time of the fire through other witnesses and chemical reports when read in a holistic manner that appellant Zubair set fire to the factory.



50. We also find that the offences so charged fall squarely within the provisions of the ATA as enunciated in the case of **Ghulam Hussain v State** (PLD 2020 SC 61) not only in terms of actus reus but also mens rea as the appellants AR Bhola and Zubair whilst committing offences under the ATA acted with intent, purpose and design to terrorize other factory owners and members of the public that if they did not pay bhatta as demanded their factories would be burnt down and both their lives, those of their family and their employees would be put in grave danger.

51. Thus, based on the discussion of the above evidence we hereby uphold all the convictions handed down to appellants AR Bhola and Zubair in the impugned judgment.

52. With regard to sentencing there are no mitigating circumstances. Instead there are only aggravating circumstances. 264 men and women with families including young children to support were murdered in the large part in the most agonizing fashion by either being burnt alive or through asphyxia on account of smoke inhalation. Of the 264 only pieces of 5 bodies were recovered. The identities of 29 bodies despite the use of DNA have not been identified and are buried in a kind of mass grave. This must be agonizing for any one whose family member went to work at the factory on the day of the fire but who have not returned home. The motive for the fire was greed for which innocent businessmen were terrorized into paying crores of RS simply to carry out their constitutional right to peacefully carry out their businesses. On top of the dead at least 56 people suffered injuries on account of the fire. So cruel were the appellants that even doors were locked to prevent workers from escaping. Such wide scale demand for bhatta is akin to organized crime which must be stamped out and those convicted of the offence given a deterrent sentence. Pakistan's economy is currently facing challenging times. Who can expect investors to come if they face not only red tapism when they try to set up business and invest in Pakistan but also have to face the menace of bhatta payments failing which either they or their family



members will be murdered or businesses burned down. As such all the sentences handed down to appellants AR Bhola and Zubair in the impugned Judgment are maintained in respect of each of them and the confirmation reference is answered in the affirmative in respect of each of them.

**With regard to appellants Fazal Ahmed, Arshad Mehmood, Ali Muhammed (guards at the factory gate) and Shahrukh Lateef the HR manager at the factory**

53. We have found no evidence to suggest that they committed the offences for which they were charged. The evidence suggests that the guards had no real control over people who entered the factory even if they attempted to stop them who came and went as they pleased due to the MQM's grip over the factory. We also find no linkage of any of them to the fire or those involved in it. As regards the HR manager Shahrukh Lateef we have found that he did not play any role in starting the fire or had any prior knowledge of it. He also was powerless to stop non employees from entering the factory given the prevailing environment of the MQM's grip over the factory. When confronted on this aspect of the charge the learned APG and Special Prosecutor rangers were not able to point out any such evidence which could support the charge against any of them and as such Fazal Ahmed, Arshad Mehmood, Ali Muhammed (guards at the factory gate) and Shahrukh Lateef the HR manager at the factory are all acquitted of the charge by being extended the benefit of the doubt and shall be released unless wanted in any other custody case.

**With regard to the respondents in the appeal against acquittal filed by the State namely Muhammad Abdul Rauf Siddiqui, Umar Hassan, Dr. Abdul Sattar Khan and Mst. Iqbal Adeeb Khanum. These appeals are time barred for which no explanation has been given.**

54. Even otherwise, as a matter of law the parameters for an appeal against acquittal to succeed are much narrower than in the case of an appeal against conviction. It is settled law that judgment of acquittal



should not be interjected until findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous as held by the Honorable Supreme Court in the case of *The State v. Abdul Khaliq and others* (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the above referred judgment. The relevant para is reproduced hereunder:-

*"16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:*

*Bashir Ahmed v. Fida Hussain and 3 others* (2010 SCMR 495), *Noor Mali Khan v. Mir Shah Jehan and another* (2005 PCr.LJ 352), *Imtiaz Asad v. Zain-ul-Abidin and another* (2005 PCr.LJ 393), *Rashid Ahmed v. Muhammad Nawaz and others* (2006 SCMR 1152), *Barkat Ali v. Shaukat Ali and others* (2004 SCMR 249), *Mulazim Hussain v. The State and another* (2010 PCr.LJ 926), *Muhammad Tasweer v. Hafiz Zulkarnain and 02 others* (PLD 2009 SC 53), *Farhat Azeem v. Asmat Ullah and 6 others* (2008 SCMR 1285), *Rehmat Shah and 2 others v. Amir Gul and 3 others* (1995 SCMR 139), *The State v. Muhammad Sharif and 3 others* (1995 SCMR 635), *Ayaz Ahmed and another v. Dr. Nazir Ahmed and another* (2003 PCr. LJ 1935), *Muhammad Aslam v. Muhammad Zafar and 2 others* (PLD 1992 SC 1), *Allah Bakhsh and another v. Ghulam Rasool and 4 others* (1999 SCMR 223), *Najaf Saleem v. Lady Dr. Tasneem and others* (2004 YLR 407), *Agha Wazir Abbas and others v. The State and others* (2005 SCMR 1175), *Mukhtar Ahmed v. The State* (1994

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SCMR 2311), *Rahimullah Jan v. Kashif and another* (PLD 2008 SC 298), *Khan v. Sajjad and 2 others* (2004 SCMR 215), *Shafique Ahmad v. Muhammad Ramzan and another* (1995 SCMR 855), *The State v. Abdul Ghaffar* (1996 SCMR 678) and *Mst. Saira Bibi v. Muhammad Asif and others* (2009 SCMR 946).

From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in *The State v. Muhammad Sharif* (1995 SCMR 635) and *Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others* (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals." (bold added)

55. We have considered the reasons why the co-accused / respondents were acquitted of the charge in the impugned judgment which are found



at typed pages 233 to 236 and 245 to 262 and when confronted by the court the APG and Special prosecutor Rangers were not able to point out any error in the reasoning in the impugned judgment for acquitting the respondents based on the evidence on record. Having reviewed the reasoning for the acquittal of the respondents in the impugned judgment and the evidence of record and keeping in view the law on appeals against acquittals as cited earlier we also find no reason to interfere with the impugned judgment in so far as the acquittal of the respondents is concerned and as such the appeals against acquittal of Muhammad Abdul Rauf Siddiqui, Umar Hassan, Dr. Abdul Sattar Khan and Mst. Iqbal Adeeb Khanum is dismissed.

### Conclusion

1. The appeals of AR Bhola and Zubair are dismissed and all the convictions and sentences in the impugned judgment are maintained and the confirmation reference is answered in the affirmative for both appellants AR Bhola and Zubair.
2. The appeals of Fazal Ahmed, Arshad Mehmood, Ali Muhammed (guards at the factory gate) and Shahrukh Lateef the HR manager at the factory are allowed. They are acquitted of the charge, the impugned judgment is set aside in their cases and they shall be released unless wanted in any other custody case.
3. The States appeal against acquittal in respect of respondents Muhammad Abdul Rauf Siddiqui, Umar Hassan, Dr. Abdul Sattar Khan and Mst. Iqbal Adeeb Khanum is dismissed.

Before parting with this judgment we would like to make the following observations/directions.

1. This case revealed to us a complete breakdown in the investigative process where prima facie the real culprits were protected through a misleading FIR, witnesses could not come forward to tell the truth out of fear, the police were not even keen to record any

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statement which revealed the collection of Bhatta and even a high powered Commission declined to carry out expert chemical tests to conclusively uncover the cause of the fire at the cost of the factory owners. Rather than mourning the death of so many and ensuring that that no such incidents ever happened again it appears that organizations instead were competing to get the credit for handing out compensation to the legal heirs of the deceased. We are quite confident that had the Rizwan Quershi JIT report not come to light by chance before the Sindh High Court three years after the fire at the factory the real culprits would have gotten away with this most horrific and gruesome crime as there seemed to be no will on the part of the police to conduct a rigorous and thorough investigation in order to get to the truth of the matter instead they took the path of least resistance by blaming the factory owners and the departments responsible for safety at factories.

2. We hereby direct that all factory owners in Karachi ensure that they have adequate safety equipment and SOP's in place in case of a fire or other serious occurrence/emergency at their factory which will be checked by the relevant department of the Government of Sindh.
3. We hereby direct all Government of Sindh departments to make the required safety checks on every factory operating in Karachi and cause it to cease its operations until it comes up to the required health and safety standards. This exercise shall be completed within 6 weeks of the date of this judgment with a compliance report being submitted thereafter. A copy of this Judgment shall be sent to Chief Secretary Government of Sindh for compliance.
4. We find that it is extremely unlikely that such a serious decision having such severe consequences/repercussions to burn down a factory employing more than 1,000 workers could have been made without the sanction of the highest leadership of the MQM and note the abject failure of the police in investigating this angle e.g. }



initially through the other members of the KTC which met as a body often at 90 which was the HQ of the MQM in Karachi and then see where there investigation lead.

5. We note that Hammed Siddique still remains out side of Pakistan as a proclaimed offender and has not been extradited to face justice despite a lapse of 10 years. A copy of this Judgment shall be sent to IGP Sindh, Secretary Home Department Government of Sindh and Secretary Ministry of Interior Government of Pakistan who shall all appear in person or through responsible senior officers well aware of the efforts to bring Hammad Siddique to justice and file their progress reports on 18.09.2023 at 8.30am when the matter shall be put up by the office at serial No.1.
6. We extend out thanks to all learned counsel in this case who appeared and offered their able assistance including learned APG and Special Prosecutor rangers.

56. The appeals stand dispose of in the above terms with the confirmation references being answered in the affirmative in respect of appellants AR Bhola and Zubair.