IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Syed Fiaz ul Hasan Shah

Spl. Crl. Anti-Terrorism Appeals Nos.38, 39, 40, 41 & 42 of 2023

APPELLANTS	:	1. Muhammad Sohail @ Ahmed Liaquatabad Wala @ Kala Muna S/o Muhammad Khalil 2. Muhammad Kashif @ Shakeel Burder S/o Muhammad Shafiq Through Mr. Muhammad Imran Meo, Advocate
RESPONDENT	:	The State through Mr. Ali Haider Salim, Addl. Prosecutor General, Sindh.
Date of hearing	:	03.02.2026
Date of Decision	:	03.02.2026

J U D G M E N T

Syed Fiaz ul Hasan Shah, J :-- Appellant Muhammad Sohail @ Ahmed Liaquatabad Wala @ Kala Muna S/O Muhammad Kashif **(Appellant No.1)** and Appellant Muhammad Kashif @ Shakeel Burger S/O Muhammad Shafiq **(Appellant No.2)** have challenged the consolidated Judgment dated 28.02.2023 **("Impugned Judgment")** passed by the learned Judge, Anti-Terrorism Court No.V, Karachi **("Trial Court")** in Special Case Nos. 27/2011, 27-A/ 2011, 27-B/2016, 27-C/2016 and 27-D/2016 emanating from the Crimes bearing (1) FIR No.518/2011 under sections 302/34 PPC read with Section 7 of the Anti-Terrorism

Act, 1997 **("ATA")** registered with Police Station Aziz Bhatti, Karachi, (2) FIR No.423/2011 under Sections 353, 324/34 PPC read with section 7 of the Anti-Terrorism Act, 1997; (3) FIR Nos.424/2011, (4) FIR No.425/2011 and (5) FIR No.429/2011 under Sections 13(d) and 13(e) of the Arms Ordinance, registered with Police Station CID Karachi. Through the impugned judgment, both the appellants were convicted while being extended benefit of section 382(b) Criminal Procedure Code, 1898 **(Cr.P.C.)** The sentence detailed as under:

Appellant/Accused Muhammad Sohail @ Ahmed Liaquatabad Wala @ Kala Muna son of Muhammad Khalil

(i) *He is found guilty for the offence, convicted u/s 302(b) PPC and sentence to suffer Imprisonment for life as Tazir and also directed to pay Rs.2,00,000/- (two lacs) each as a compensation to the L.R.S of deceased as provided u/s 544-A Cr.P.C in case of default accused shall suffer S.I one (01) year more.*

(ii) *He is also found guilty for the offence, convicted u/s 7(1)(a) of Anti-Terrorism Act, 1997, sentenced to suffer Imprisonment for life with fine Rs.2,00,000/- (two lacs) in case of default accused shall suffer R.1 one (01) year more.*

(iii) *He is further found guilty for the offence and is convicted u/s 353 PPC, sentence to suffer R.1 two (02) years with fine Rs.10,000/- (ten thousand) in case of default in payment of fine accused shall suffer R.1 two (02) Months more.*

(iv) *Accused is further convicted u/s 324 PPC and sentence to suffer R.1 ten (10) years with fine Rs.25,000/- in case of default in payment of fine accused shall suffer R.1 three (03) Months more.*

(v) *Accused is further convicted u/s 7(i)(b) of ATA. 1997 and sentence to suffer R.1 Ten (10) years with fine*

Rs.25,000/- in case of default in payment of fine accused shall suffer R.I three (03) Months more.

(vi) *He is also convicted u/s 13(d) Arms Ordinance and is sentence to suffer R.I seven (07) yours with fine Rs.20,000/- in case of default in payment of fine accused shall suffer R.I two (02) Months more.*

(vii) *He is also convicted u/s 13(e) Arms Ordinance and is sentence to suffer R.I seven (07) years with fine Rs.20,000/- in case of default in payment of fine accused shall suffer R.1 two (02) Months more.*

Appellant/Accused Muhammad Kashif @ Shakeel Burger son of Muhammad Shafiq

(i) *He is found guilty for the offence, convicted u/s 302(b) PPC and sentence to suffer Imprisonment for life as Tazir and also directed to pay Rs.2,00,000/- (two lacs) each as a compensation to the L.Rs of deceased as provided u/s 544-A Cr.P.C in case of default accused shall suffer S.I one (01) year more.*

(ii) *He is also found guilty for the offence, convicted u/s 7(i)(a) of Anti-Terrorism Act, 1997, sentenced to suffer Imprisonment for life with fine Rs.2,00,000/- (two lacs) in case of default accused shall suffer R.I one (01) year more.*

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(vi) *He is also convicted u/s 13(d) Arms Ordinance and is sentence to suffer R.I seven (07) years with fine Rs.20,000/- in case of default in payment of fine accused shall suffer R.I two (02) Months more.*

2. Brief facts of the case are that on 18.08.2011 at about 18:45 hours complainant Muhammad Hussain @ Baboo son of Muhammad Ismail lodged FIR No.518/2011 at Police Station Aziz Bhatti Karachi. He stated that on 15.08.2011 at about 11:30 p.m. Akhllas Khan aged about 16 years son of Mir Haji Feroz Khan along with his driver Amanullah son of Ghulam Sarwar left Civic View Apartments, Gulshan-e-Iqbal in Car No.ATG-450 (Toyota Vitz white) and near Civic View Office came under attack when three unknown persons in a black car started indiscriminate firing with Kalashnikov. While speeding away from a firing range to escape danger, the driver lost control of the vehicle and crashed into a telephone pole. The assailants fled from crime scene, leaving victims Akhllas Khan and Amanullah dead at the scene. Hence the FIR was lodged against unknown culprits.

3. On 16.09.2011 PI Muhammad Shoaib Qureshi, posted at CID Sindh, Karachi received a spy information regarding the presence of accused Sohail @ Ahmed Liaquatabad Wala alongwith accomplices at C/1 area graveyard, Liaquatabad. The police party reached at spot around 00:15 hours. Upon spotting the police, the suspects opened fire, prompting police party to return fire in self defence; the suspects Sohail @ Ahmed Liaquatabad Wala and Muhammad Kashif @ Shakeel Burger

were apprehended following the exchange while their four accomplices fled away. From Accused Sohail, the police recovered one 9mm pistol and one 30 bore pistol with live rounds. From accused Kashif, one Kalashnikov with magazine and live rounds one 9mm pistol and one hand-grenade were recovered. Crime empties in that separate case of police encounter were secured. The accused disclosed names of absconders. After registration of FIRs, investigation was conducted by Inspector Iftikhar Ahmed who prepared relevant memos and also recorded statements under section 161 Cr.P.C and obtained FSL reports. During interrogation the accused confessed and disclosed their involvement in the firing incident dated 15.08.2011 in which victims Akhllas Khan and his driver Amanullah were murdered. He also secured weapons which were used in the offence and separate case was registered under section 13(e) of Arms Ordinance for illegal possession of weapons. After completion of investigation, challans were submitted before the Court for trial of the appellants.

4. After completion of usual investigation, copies were supplied to appellants at Exh.01, charge was framed at Exh-09 for which both appellants pleaded not guilty and claimed trial vide their pleas at Exh.09/A & Exh.09/B respectively.

5. In order to prove the case, the prosecution has examined PW-1 ASI Muhammad Saleh at Ex.10, PW-2 Muhammad Hussain at Ex.12, PW-3 Naseebullah at Ex.13, PW-4 Din Muhammad at Ex.14, PW-5 Abdul Hai at Ex.15, PW-6

Muhammad Wafa at Ex.16, PW-7 ASI Saleem Khan at Ex.17, PW-8 Zeeshan at Ex.18, PW- 9 PC Aslam Jan at Ex.19, PW- 10 SIP Azhar Ali at Ex.22, PW- 11 ASI Ameen Qurban at Ex.23, PW- 12 Dr. Dileep Khatri at Ex.24, PW- 13 Ms. Sarah Jonejo learned Civil Judge & Judicial Magistrate at Ex.25, PW- 14 Inspector Muhammad Shoaib at Ex.30, PW- 15 PC Syed Younus Ali at Ex.31, PW- 16 DSP Imtiaz Hussain Memon at Ex.32, PW-17 SIP Syed Waqar Mustafa at Ex.33, PW- 18 SIP Muhammad Dilawar at Ex.35, PW- 19 H.C Muhammad Kashif Laik at Ex.37, PW- 20 SIP Muhammad Saleem at Ex.38 and PW- 21 I.O/Rtd. Inspector Iftikhar Ahmed at Ex.39. These witnesses produced the relevant record and documents. Thereafter the side of the prosecution was closed vide statement at Exh-40. Statements of the accused under section 342, Cr.P.C. were recorded at Exh.41 and Exh.42, wherein they categorically denied allegations leveled against them. However, the appellants neither examined themselves on oath under Section 340(2), Cr.P.C., nor produced any witness in their defence and the trial Court after hearing the parties passed the impugned judgment.

6. We have the learned Counsel for the Appellants and Addl. PG and with their assistance perused the record carefully.

7. It was asserted by the prosecution that the incident occurred in the presence of PW-5 Abdul Hai and PW-6 Wafa and they had successfully identified the Appellants in separate identification parades. The recovery of the weapon and its successful forensic matching with the crime empties (cartridges)

was presented as corroborative evidence, supplementing the identification parade against the Appellants since the FIR was initially lodged against unknown culprits. The trial Court appreciated these facts and evidence and proceeded to convict the Appellants through the impugned Judgment now under challenge before us.

8. Although the law permits any person to set the criminal law into motion, however, the present case became fraught with peril from the start compounded by the prosecution's witnesses and manner in which FIR was registered. According to the prosecution story, the incident occurred on 15.08.2011 at about 11:30 P.M. near the Civic View Office, Civic View Apartments, Block-13/D, Gulshan-e-Iqbal, Karachi. However, FIR No.518/2011 was lodged on 18.08.2011 by PW-2 complainant Muhammad Hussain S/o Muhammad Ismail, who had claimed to be a childhood friend of the deceased Akhllas Khan stated that he had received a call from Moladad in Quetta regarding the incident.

9. Simultaneously, in the same breath, the prosecution claimed that PW-5 & PW-6 were eyewitnesses of the incident and had narrated the incident to the Police officials at the place of incident. Yet, the FIR was not lodged by these purported eyewitnesses but by PW-2 Muhammad Hussain, who claimed to be childhood pal friend of deceased and had received a call from one Mouladad in Quetta. Such FIR was registered after an unexplained delay of three days. Such conduct is manifestly

inconsistent with the natural course of human behavior. When chance witnesses claimed to have observed the offence, remained at the crime scene until the arrival of the police, and these chance witnesses narrated the facts on the spot to the police, it defies logic that the FIR was ultimately lodged by a third person who was not even present at the occurrence.

10. In the peculiar circumstances, when the FIR was registered on 18.08.2011 with considerable delay of 03 days, the element of consultation cannot be ruled out. The prosecution has not explained the delay. The consistent view of the superior courts is that unexplained delay in lodging the FIR or conducting the postmortem examination gravely undermines the prosecution case, as such delay provides ample opportunity for deliberation, consultation, and fabrication. In ***Amir Muhammad Khan v. The State*** **(2023 SCMR 566)**, even a delay of five hours and ten minutes was considered indicative of dishonesty on the part of the complainant. Likewise, in ***Farman Ahmad v. Muhammad Inayat and others*** **(2007 SCMR 1825)**, the Hon'ble Supreme Court held that a delay of 17 hours in lodging the FIR, despite the presence of eyewitnesses, was sufficient to infer deliberation and consultation, particularly when no explanation was offered. In ***Muhammad Rafique alias Feeqa v. The State*** **(2019 SCMR 1068)**, the Court observed that such delay naturally suggests preliminary investigation and consultation to nominate accused persons and plant eyewitnesses. Similarly, in ***Irshad Ahmad v. The State*** **(2011 SCMR 1190)**, it was held that noticeable delay

in postmortem examination raises a real possibility that time was consumed by the police in procuring and planting eyewitnesses before preparing the necessary papers. This view has been reaffirmed in ***Ulfat Hussain v. The State*** **(2018 SCMR 313),** ***Muhammad Yaseen v. Muhammad Afzal and another*** **(2018 SCMR 1549),** ***Muhammad Rafique v. The State*** **(2014 SCMR 1698),** ***Muhammad Ashraf v. The State*** **(2012 SCMR 419), and** ***Khalid alias Khalidi and others v. The State*** **(2012 SCMR 327)**.

11. The statements of PW-5 and PW-6 were recorded on 26.09.2011 after considerable delay of 38 days by the Investigation Officer and on this point again no explanation for delay was given by prosecution which has lost validity of probative evidence in view of dictum laid down by Hon'ble Supreme Court in ***Muhammad Khan versus Maula Baksh and another (1998 SCMR 570)*** the Supreme Court held that *"It is a settled law that credibility of a witness is looked with serious suspicion if his statement under section 161, Cr. P.C. is recorded with delay without offering any plausible explanation."*

12. Apart from this infirmity, the prosecution's case primarily rests upon the statements of these two eyewitnesses. The testimony of the PW-5 Abdul Hai and PW-6 Wafa and their identification parade. According to their testimony, both witnesses not only observed the incident but also remained at the crime scene until the arrival of the police, and they had claimed that such facts were immediately disclosed to the police at the place of occurrence. However, this met with multifarious

infirmities despite being eyewitnesses, neither of them lodged the FIR nor one became Mashir of place of incident on the same day. Surprisingly, after a delay of three days, PW-2, a distant acquaintance of the deceased came forward to register the FIR.

13. Second, by their own account, they were chance witnesses, having been invited for "Iftar" by a host residing in an apartment within the City View Project, situated near the crime scene. Both PW-5 and PW-6 as well as the deceased, were permanent residents of District Quetta. This point has also admitted by the PW-17 IO of the case. He disposed: "***It is correct to suggest that deceased, complainant and both eye witnesses are permanent resident of Quetta. Vol. says that the deceased, complainant and both eye witnesses also temporarily resident at Karachi. ……It is correct to suggest that I had not checked the physical position of the eye witnesses at the place of incident through CDR. Vol. says that this fact was disclosed to me by Pan Wala namely Noor-ul-Amin. It is correct to suggest that PW Noor-ul-Ameen in his statement u/s 161 Cr.P.C did not disclose about name of eye witnesses nor I had enquired from him. ...".*** Third, PW-5 deposed that they had come to Civic View Apartments, Gulshan-e-Iqbal, Karachi, to attend an Iftar party, and while proceeding towards a Pan Cabin to purchase cigarettes at about 11:00–11:15 p.m. when at that time they witnessed the arrival of a car followed by a motorcycle carrying the accused persons. No plausible explanation for the prolonged presence of these chance witnesses—nearly 3 to 4 hours—after the Iftar party

until the time of the incident were explained. Fourthly, neither the name of the host of the Iftar party was disclosed by the witnesses, nor statement of such host was recorded by the Investigating Officer, nor was the apartment number or address of such host was brought on record. Fifthly, PW-5 and PW-6 testified that many persons had gathered at the crime scene, none of those individuals were joined in the investigation, further weakening the evidentiary foundation of the prosecution's version.

14. Lastly, though PW-5 deposed that he was present at the crime scene at the time of the alleged offence, he did not confirm that he personally witnessed the appellants firing upon the victim and did not attribute any specific or individual role to the appellants in relation to the act of firing amongst two motorbike riders and four culprits travelled in car. The relevant portion of evidence reproduced as under:

> ***"…. it was at about 11.00/11.15 PM and as soon as car reached there one motorcycle also followed the said car on which two accused were sitting one was driving. The accused who was sitting on the back side of the motorcycle started firing on the car and the car driver tried to run the car speedly but the car become out of the control of the driver and hit to telephone pole and both the motorcyclist stopped their motorcycle and again started firing at the car. In the meantime, one black color car also came there and 4 armed persons alighted from the said car and they also started firing at persons sitting in the white color car and the persons who were sitting in the car raised cries save, save and the accused persons went away on the car as well as on the motorcycle. Due to fear I hidden myself on the side of wall and when the accused persons went away and I seen all the incident over the wall. …"***

15. Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C. on 26.09.2011, and on the very same day conducted the identification parade. No explanation has been offered as to why both proceedings were carried out simultaneously, nor does the record disclose how or in what manner the Investigating Officer came to know of these chance witnesses one possibility that names of PW-5 & PW-6 were informed by police, who responded at place of incident or by PW-5 & PW-6 voluntarily after three months. Equally, no reference or material record exists regarding the preparation of any sketch of the appellants after the incident or prior to the recording of statements of the PW-5 & PW-6 that could establish a link for holding the identification parade on the same day. The credibility of this identification parade is further undermined by the fact that PW-5 and PW-6, during the parade, mentioned the names of the appellants Sohail and Kashif, when appellants were neither related nor acquainted with them, and the FIR itself was lodged against unknown persons. These circumstances raise a strong possibility of a set-up narrative. The presence of these witnesses at the crime scene becomes highly questionable. Therefore, the identification parade has become inadmissible evidence.

16. The identification evidence suffers from serious infirmities. In ***Muhammad Tasawar v. The State*** **(2004 P.Cr.L.J 230)** and ***Abid @ Rana v. The State*** **(2016 SCMR 1515)**, the courts have held that identification under doubtful conditions—

such as darkness or unclear visibility—cannot be safely relied upon. The absence of a formal identification parade, particularly where the accused were allegedly known to the complainant party, further compounds the uncertainty. While ***Rafaq Ali v. The State*** **(2016 SCMR 1766)** recognizes that court identification may suffice in certain circumstances, the overall dubious nature of the ocular account in the present case renders such identification unsafe. Implicit reliance on it would therefore be legally unsound.

17. Now turning towards the recovery of weapon and its forensic matching with the crime empties (cartridges). First, we deal with the crime empties seizing and dispatchment to the forensic analysis, the evidence of PW-14 & 15 is relevant. PW-14 Inspector Muhammad Shoaib and PW-15 PC Syed Younus Ali arrested the appellants and recovered from appellant Sohail a 30 bore pistol alongwith five live rounds and from appellant Kashif recovered one Kalashnikov loaded magazine with 15 rounds, one 9mm pistol loaded magazine with eight live rounds and one hand grenade, which were secured under proper seizure memo at Exh.30/B and separate FIR(s) on account of police encounter and recovery of unlicensed weapons were registered. Thereafter, the PW-17 SIP Waqar re-arrested the Appellant in the present case.

18. PW-7 ASI Saleem Khan, being the first responder at the crime scene, produced Exh.17/A to Exh.17/I, which comprise related entries and subsequent proceedings including collection of dead bodies, inquest report, death certificate, etc. However, he did not collect the empty cartridges from the crime scene, despite

their availability at the time of the alleged offence. Similarly, PW-4 Din Muhammad, who acted as mashir of Exh.13/A, confirmed that the police secured bloodstained stones from the place of incident and sealed them in a tin box. Yet, his testimony also failed to confirm the crime scene empties and cartridges were collected for timely forensic analysis. PW-10 SIP Azhar Ali deposed that he collected the crime scene empties (cartridges) and produced them at Exh.22/B, which was prepared on next day at 1900 hours after 20 hours from the time of incident. His statement was recorded with a delay of three months on 18.08.2011. Importantly, his evidence remained silent on whether Exh.22/B, after being sealed, was dispatched for forensic analysis at the relevant point in time or he handed over to I.O. Instead, he himself produced and de-sealed in Court.

19. The delay in sending the crime empties and other articles for forensic analyzes has lost evidentiary value and hit under the doctrine of improvement, therefore, forensic report Exh.33/Y cannot be taken into consideration. The evidence of PW-17 Investigating Officer SIP Syed Waqar Mustafa established that crime empties were not timely dispatched for forensic analyzes and he sent on 29.08.2011 for the incident occurred on 15.06.2011. The relevant portion reads as under: -

> ***" …… On 29.08.2011 I also sent the 17 crime empties collected from the place of incident to the office of Incharge FSL through my letter which I produce at Ex.33/G and say that it is same correct and bears my signature. …… It is correct to suggest that at Ex.14/A the source of light is not mentioned.***

> ***It is correct to suggest that in Ex.33/B there is also nothing mentioned regarding electricity pole in the area where the incident was took place. It is correct to suggest that I have inspected the place of incident after 3 days of incident. … I had sent empties to FSL for examination and report on 29.08.2011 after lodgment of FIR. I had sent second time empties to FSL on 30.09.2011. ……..”***

20. Equally, no crime empty was secured from the place of occurrence during the immediate spot inspection (mashirnama), casting doubt on whether any empty was found at that time and why delay of one day was caused to inspect and seize the crime empties when according to the evidence of PW-5&PW-6 the police was reached at the crime scene immediately while the deceased in injured conditions were being shifted to the hospital for medical treatment. The dispatchment of crime empties after a two-month delay raises serious concerns of manipulation or planting, gravely compromising its authenticity and evidentiary value. Jurisprudence consistently holds that unexplained delays in recovering or dispatching crime empties render such evidence suspect.

21. The trial Court erred in treating these crime empties cartridges as corroborative of the ocular account. In ***Daniel Boyd v. The State*** **(1992 SCMR 196)**, the Supreme Court observed that ballistic reports lose probative force when empties and weapons remain in custody for months before forensic analysis. In ***Zahir Yousaf v. The State*** **(2017 SCMR 2002)**, the Supreme Court termed recovery of a pistol inconsequential where no crime empty was sent for comparison, noting that merely proving a weapon’s

working condition is meaningless. By the same reasoning, the belated empty in the present case cannot bolster the prosecution; rather, its delayed recovery undermines the integrity of the evidence and suggests afterthought patchwork. This fundamental failure to establish a direct forensic link between the weapon and the victim renders the recovery evidence unreliable and insufficient for corroboration. As held in ***Ali Sher v. The State*** **(2008 SCMR 707) and *Khuda-A-Dad v. The State* (2017 SCMR 701)**, such delays in sending crime weapons and empties to the FSL can destroy their evidentiary value, and the practice of dispatching empties after an accused's arrest has been consistently discarded by superior courts.

22. Taken together, the delayed and unreliable recovery of the crime empties, and the doubtful identification evidence fatally undermine the prosecution's case. These fundamental lapses create serious doubt, and no conviction can safely be based on such compromised material. Therefore, the Spl. Crl. Anti-Terrorism Appeal No.38 of 2023 is allowed. Consequently, the Impugned Judgment for conviction to the extent of sentence under the homicide charges in Crime No.518/2011 under Sections 302/34 PPC read with Section 7 ATA are set aside and the appellants are acquitted while extending benefit of doubts.

23. Another dilemma what we find is that the trial Court convicted the appellants under ATA and PPC separately. It is a settled principle of constitutional and criminal jurisprudence that no individual shall be prosecuted or punished more than once for

the same offence. This protection is firmly embedded in Article 13(a) of the Constitution of the Islamic Republic of Pakistan, 1973 which guarantees that *"no person shall be prosecuted or punished for the same offence more than once."* This constitutional safeguard is reinforced by Section 403 of the Code of Criminal Procedure, 1898 which bars retrial for the same offence or upon the same facts once a person has been acquitted or convicted. Additionally, Section 26 of the General Clauses Act, 1897, provides that although a single act may constitute offences under multiple enactments, the offender may be prosecuted under any one of those enactments but *"shall not be liable to be punished twice for the same offence."*

24. As far the other cases, the recovery of weapons upon the appellants have been proved so also the police encounter and the learned counsel for the appellant has failed to point out any illegality or infirmity in the Impugned Judgment, therefore, the Impugned Judgment to the extent of conviction recorded in Crime Nos.423/2011, 424/2011, 425/2011 and 429/2011 are maintained and Spl. Crl. Anti-Terrorism Appeals Nos.39, 40, 41 and 42 of 2023 stand dismissed.

25. In view of the above, the conviction and sentence passed under Section 7 ATA for the conviction of offence purportedly committed under Section 6(2) cannot be sustainable, as the prosecution has failed to prove any of the essential ingredients as required in Section 6(1) or (2) that may attract conviction under

ATA. Therefore, conviction passed by the trial Court under the Anti-Terrorism Act, 1997 are also set aside.

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