

CERTIFICATE OF THE COURT IN REGARDS TO

Spl. Anti-Ter. A 218 of 2018  
 Spl. Anti-Ter. A 219 of 2018  
 Conf. Case (A.T.A) 10 of 2018  
SINDH HIGH COURT

Composition of Bench.

Single/D.B. ✓

HONORABLE MR JUSTICE KARIM KHAN AGHA  
 HONORABLE MR. JUSTICE MUHAMMAD SALEEM JESSAR

Dates of hearing: 10 - 03-2020

Decided on 20-03-2020

(a) Judgment approved for reporting.

Yes ✓  
~~No~~CERTIFICATE

Certified that the judgment \*/Order is based upon or enunciates a principle of law \*/decides a question of law which is of first impression/distinguishes/over-rules/ reverses/explains a previous decision.

\*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

- (ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
- (iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
- (iv) Those directions which are not to be used should be deleted.

SGP., Kar.—L (iii) 1459—5,000—6-93—T.S.S.

06-08-2018

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*[Signature]*

2676

IN CUSTODY**IN THE HIGH COURT OF SINDH AT  
KARACHI.***(Criminal Appellate Jurisdiction)*Spl. Cr. A.T.A. Appeal No. <sup>718</sup> /2018

Asif Iqbal son of Muhammad Quddos  
 Muslim, adult  
 Presently detained as  
 Condemned prisoner  
 at Central Prison, Karachi. .... Appellant.

*Versus*

The State ..... Respondent.

FIR No.213/2011  
U/S: 302/392/34 PPC  
R/W Section 7 ATA 1997  
P.S: FBIA

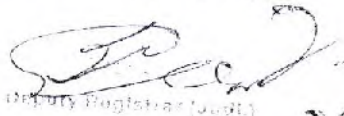
**APPEAL UNDER SECTION 25 OF THE  
 ANTI-TERRORISM ACT, 1997 READ WITH  
 SECTION 561-A CRIMINALPROCEDURECODE.**

Being aggrieved and dis-satisfied with the judgment, sentence and fine passed by the learned Judge, Anti-Terrorism Court No.VI dated 27.07.2018, in Special Cases Nos.199/2011 and A-92/2012 respectively, sentencing the Appellant as follows:-

- i) UNDER SECTION 7 (i) (a) of ATA 1997,  
 R/W SECTION 302 (b) /34 PPC.

To be hanged till death, subject to the confirmation by the High Court as provided u/s 374 CrPC. The convict is also ordered to pay compensation of Rs. 1,00,000/- (one Lac) to the legal heirs of deceased u/s 544-A CrPC and in default of such payment he shall undergo SI for six months.

- ii) UNDER SECTION 364/34 PPC

PRESENTED ON  
06-08-2018


Deputy Registrar (Judicial)


2677

①

IN CUSTODY

**IN THE HIGH COURT OF SINDH AT  
KARACHI.**

*(Criminal Appellate Jurisdiction)*

Spl. Cr. A.T.A. Appeal No.  /2018

Asif Iqbal son of Muhammad Quddos

Muslim, adult

Presently detained as

Condemned prisoner

at Central Prison, Karachi.

.....

Appellant..

*Versus*

The State

.....

Respondent.

FIR. No.141/2011U/S: 302/364/34 PPCR/W Section 7 ATA 1997,P.S: Liaquatabad.

**APPEAL UNDER SECTION 25 OF THE  
ANTI-TERRORISM ACT 1997, READ WITH  
SECTION 561-A, CRIMINAL PROCEDURE CODE.**

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OFFICE OF THE JUDGE, ANTI-TERRORISM COURT NO: VI, KARACHI.  
 No: ATC-VI/K-DIV/ 287 of 2018 Karachi dated: 27-07-2018

To,  
 The Registrar  
 Honorable High Court of Sindh  
 Karachi.

Subject:- REFERENCE FOR CONFIRMATION OF DEATH SENTENCE  
 U/S 374 CRPC IN SPECIAL CASE NO. 199 of 2011, FIR NO. 141 of 2011  
 U/S 302/364/34 PPC OF PS LIAQUATABAD AND SPECIAL CASE NO.  
 A-92 OF 2012, FIR NO.213 OF 2011, U/S 302/392/34 PPC OF PS F.B.I.  
 AREA, KARACHI.

Respected Sir,

With reference to the above noted subject matter, I have the honor to submit that in the Special case No.199 of 2011, FIR No.141 of 2011, u/s 302/364/34 PPC of PS Liaquatabad and Special Case No. A-92 of 2012, FIR No.213 of 2011 u/s 302/392/34 PPC of PS F.B.I. Area, Karachi, single judgment passed thereon in both cases by the undersigned vide judgment dated 27<sup>th</sup> July 2018, against accused namely, Asif Iqbal s/o Muhammad Quddos he has been convicted and sentenced under:-

01. For offence U/s: 7 (i) (a) of Anti-Terrorism Act 1997, R/w Section 302 (b)/34 PPC, to be hanged till death, subject to the confirmation by the Hon'ble High Court as provided U/s: 374 Cr.P.C. The convict is also ordered to pay compensation of Rs. 100000/- (one Lac) to the legal heirs of the deceased U/s: 544-A Cr.P.C and in default of such payment he shall undergo S.I for six months.
2. I also hereby convict the accused **Asif Iqbal s/o Muhammad Quddos** for the offence u/s 364/34 PPC and he is sentenced to suffer Rigorous Imprisonment for ten (10) years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall serve S.I four months more.
3. I also hereby convict the accused **Asif Iqbal s/o Muhammad Quddos** for the offence u/s 392/34 PPC and he is sentenced to suffer Rigorous Imprisonment for ten years (10) years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall suffer SI four months more.

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

Spl. CrI. Anti-Terrorism Appeal No.218 of 2018.  
Spl. CrI. Anti-Terrorism Appeal No.219 of 2018.  
Confirmation Case No.10 of 2018.

Present:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Muhammad Saleem Jessar.

|                   |  |
|-------------------|--|
| Appellant:        | Asif Iqbal son of Muhammad Quddos through Mr. Muhammad Farooq, Advocate.   |
| Complainant       | Arif Jan through Mr. Khawaja Naveed Ahmed, Advocate.                       |
| Respondent:       | The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General. |
| Date of hearing:  | 10.03.2020   |
| Date of Judgment: | 20.03.2020.  |

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

**MOHAMMAD KARIM KHAN AGHA, J:-** Accused Asif Iqbal son of Muhammad Quddos was tried by learned Judge, Anti-Terrorism Court No.VI, Karachi in Special Case No.199 of 2011 arising out of Crime No.141/2011 u/s. 302/364/34 PPC read with Section 7 of Anti-Terrorism Act, 1997 registered at P.S. Liaqutabad Karachi and Special Case No.A-92 of 2012 arising out of Crime No.213 of 2011, u/s. 302/392/34 PPC r/w. Section 7 of ATA 1997 registered at PS F.B. Industrial Area, Karachi. After trial vide judgment dated 27.07.2018 the appellant namely Asif Iqbal was convicted and sentenced as under:-

1. For offence u/s.7(i)(a) of Anti-Terrorism Act, 1997 r/w. Section 302 (b)/34 PPC, to be hanged till death, subject to the confirmation by the Hon'ble High Court as provided u/s.374 Cr.P.C. The convict is also ordered to pay compensation of Rs.100000/- (one lac) to the legal heirs of the deceased under Section 544-A Cr.P.C. and in default of such payment he shall undergo S.I. for six months more.
2. For offence u/s.364/34 PPC to suffer Rigorous Imprisonment for ten (10) years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall serve S.I. for four months more.
3. For offence u/s.392/34 PPC to suffer Rigorous Imprisonment for ten (10) years with fine of Rs.10,000/- and in case of failure to pay the fine, he shall suffer SI for four months more.

All the above sentences were ordered to be run concurrently. The appellant was extended the benefit of section 382(b) Cr.P.C.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.VI Karachi, these appeals have been preferred by the appellant against his conviction.

3. The brief facts of the prosecution case are notably that the **first FIR (the First FIR)** was lodged on 06.07.11 a day after the incident by PW 8 Gul Akhteen which set out similar facts as in the later lodged second and third FIR's referred to below **but was disposed of in "C" class** stating that he resides at the above address and has a personal Mazda-No.JE9027 of Route-No.D-7, which runs by my paternal cousin Mohammad Wali S/o Shaista Khan. Today morning the driver along with conductor Najeebullah as usual proceeded from Sohrab-Goth towards Landhi. As soon as they reached near Fazal Mills F.B. Area at about 05:30 Hrs, the motorcycle riding 4/5 boys kidnapped them on gunpoint. At that time, the conductor Najeebullah made his escape good from the vehicle. He boarded into rear coming vehicle Mazda-D/7, arrived to me and disclosed that my vehicle besides the driver Mohammad Wali with 3 to 4 passengers also present, were kidnapped along with vehicle by 4/5 unknown persons. We were in search of them then in the meantime the slide displayed from TV through which it revealed that my vehicle in which 4 dead-bodies were lying is found parked at main road near Caltex Fuel Pump in Block-I of Gulshan-e-Iqbal, while one dead-body was lying in gunny bag near the vehicle. All five dead bodies have been shifted to Jinnah Hospital by the Police of Gulshan-e-Iqbal. On such information, I accompanied with my other companions and reached at Jinnah Hospital and inside the mortuary found the dead bodies of my paternal cousin Mohammad Wali, relative Ghulam Jan his brother Ahmed Jan and Aurangzeb, who were brutally killed with firearm shots by terrorism. While one dead body whose name subsequently learnt as Riaz Baloch, who was killed by throttling. My complaint is against 4/5 unknown persons for kidnapping and committing the murder of my paternal cousin Mohammad Wali and other relatives and Riaz Baloch through terrorism at some unknown place, with firearm shots and throttling and fled away after throwing them at Gulshan-e-Iqbal. Action may be taken. This much is my statement.

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4. That on 29.10.2011 at 1700 hours a **second FIR (the Second FIR)** arising out of the same incident was lodged by complainant Arif Jan (FIR No.141 of 2011) at PS Liaqutabad, Karachi, stating that he resides at House No.11/69, Zaki Manzil, Juria Bazar Kharadar, Karachi along with his family. Originally, he is resident of Bajor Agency. His real brother Ahmed Jan aged about 32 years, brother Orangzeb aged about 15/18 years **and driver Fazul ur Rehman** s/o Gul Riaz Jan, plied their dumper No.TKT-626 in Hyderabad. On 05.07.2011, they were coming to Karachi for some maintenance work of the said Dumper. On instructions of elder brother Ghulam Jan, they loaded Reti in the dumper from Nooriabad. It was to be delivered in the area of Garden, where some construction work of the complainant's brother namely, Ghulam Jan was underway. When they made their way down to the Liaquatabad No.10 bridge, their tyre got punctured. They pulled the dumper over and asked the brother of the complainant, who was in contact with them, to reach for assistance and he arrived. In the meantime, at 5:00 am or 6:00 am one Mazda of Route N0.D-7 reached and pulled over right next to them. From that bus, three armed persons appeared. They took all four of them hostage in that Mazda bus, depriving them of their cash and mobile phones. On resistance, accused fired at Ahmed Jan whereas, **driver Fazal-ur-Rehman informed the complainant about the incident**, who went looking for them and found their dead bodies in Jinnah Hospital, as they had been killed with firearm weapons. Police of Gulshan-e-Iqbal shifted the dead bodies and contacted the complainant. Motorcycle of his brother and dumper were recovered from the place of incident, as such case against 6/7 unknown persons got registered

5. Later on 10.11.11. a **third FIR (the third FIR)** was lodged in respect of the same incident being FIR No.213 of 2011 under Section 364/302/392 read with Section 7 of ATA 1997 . The said FIR No.213 of 2011 was recorded on 10.11.2011 at 1630 hours on the basis of statement u/s. 154 Cr.P.C. of the complainant Najeebullah, in which he has stated that he was performing conductor duty on Mazda No.JE-9027, route D-7, which belonged to his real cousin namely, Gul Afsheen. On 06.07.2011, he along with driver Habib and Muhammad Wali, left Sohrab Goth for Landhi Quaidabad. At about 0530 hours they reached Gulshan-e-Iqbal from Rashid Minhas Road, went to the top of the bus to collect fare from the passengers present there. During such, some passengers boarded from CNG station stop. When the bus reached

Fazal Mill area, he heard noises and shouting coming from the bus, as someone was telling the passengers to get off. All the passengers got off the Mazda bus and he also got off from the back side and noticed that the driver had been moved away from the driving seat which had been taken over by a person clad in pants and shirt. He further noticed that there was no person/passenger except driver Muhammad Wali and the assailants, and they drove away. He remained there till the next bus arrived, in which he went to Landhi and narrated the incident to owner Gul Afsheen. He came to know that dead bodies of his paternal cousin Muhammad Wali along with some other four persons had been found in Gulshan-e-Iqbal Block No.1, near Caltex pump. On 09.07.2011, he along with owner of the bus went to PS Gulshan-e-Iqbal, where he pointed out the place of incident being Fazal Mill to Inspector Nazar Muhammad such inspector prepared memo of place of inspection. Since he was traumatized by the incident he went away to his native place. He later on returned and had his statement u/s 154 Cr.PC recorded, claiming against unknown culprits that they, on 06.07.2011 around 0500/0530 hours, took Muhammad Wali hostage with bus JE-9027, D-7 route, on force of weapons.

6. After registration of the FIRs, usual investigations were carried out and on the conclusion of the investigations a challan was submitted before the competent court of law. The charge was also framed against the accused, which has been amended, against the accused to which he pleaded not guilty and claimed to be tried.

7. To prove its case the prosecution examined 21 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statement of the accused were recorded u/s 342 Cr.P.C in which he denied the allegations against him and claimed false implication. He did not examine himself on oath or call any witnesses in support of his defense case.

8. Learned Judge, Anti-Terrorism Court No.VI, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 27.07.2018, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.



9. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

10. Learned counsel for the appellant has contended that this is a cooked up case as can be seen by the fact that 3 separate FIR's were filed on 3 separate dates at 3 different PS's, that the sole eye witnesses identification cannot be safely relied upon especially as the identification parade was defective; that no recovery was made from the appellant, that the appellant's confession before the police is inadmissible, that he has been falsely implicated in this case and as such the appellant for any of the above reasons should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he placed reliance on **Qabil V The State** (2020 P Cr.L J Note 13), **Naib Subedar Nasabuddin, Frontier Corps (South) V Ali Nawaz and others** (2019 P Cr. L J 1539), **Muhammad Asif V The State** (2017 SCMR 486), **Rahat Ali V The State** (2010 SCMR 584), **Syed Saeed Muhammad Shah V the State** (1993 SCMR 550), **Mst. Asia Bibi V The State** (PLD 2019 SC 64), **Muhammad Sadiq V The State** (2017 SCMR 144), **Zeeshan @ Shani V The State** (2012 SCMR 428), **Kanwar Anwaar Ali, Special Judicial Magistrate in the Matter of Cr. Misc. No.183 of 2019 in Cr. Appeal No.259 of 2018** (PLD 2019 SC 488), **Kamal Din @ Kamala V The State** (2018 SCMR 577) and **Notice to Police Constable Khizar Hayat in the matter of (Asif Saeed Khan Khosa, C.J** (PLD 2019 SC 527).

11. On the other hand learned APG appearing on behalf of the State has fully supported the impugned judgment and in particular contended that the eye witness was reliable, trust worthy and confidence inspiring and had correctly identified the appellant at the identification parade; that the medical evidence supported the eye witness evidence, that the recoveries supported the prosecution case and as such the appeal against conviction should be dismissed. The same position was taken by learned counsel for the complainant.

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

13. In our view after our reassessment of the evidence based on the evidence of the PW's especially, PW MLO, post mortem reports and other medical evidence, PW police witnesses and IO, recovery of empties on the spot and mazda bus and positive chemical report we are satisfied that the prosecution has proved beyond a reasonable doubt that on 05.07.2011 at about 5 to 5.30am Muhammed Wali driver of Mazda bus bearing registration No.JE 9027 Route 7 D was kidnapped along with said Mazda and when the bus reached near fly over of Liaquatabd No.10 4 other persons (Ahmed Jan, Bilal Jan, Ghulam Jan, and Orngzaib) were kidnapped and made to forcibly sit in the mazda bus and were then murdered on account of firearm injuries. This position is admitted by the learned counsel for the appellant.

14. The only issue therefore, in our view, left before us is whether the appellant was one of the persons who shot the deceased by firearm on the mazda bus which lead to their deaths.

15. In our view after our reassessment of the evidence we find that the prosecution has **NOT** been able to prove beyond a reasonable doubt that the appellant was one of the persons who murdered any of the 4 deceased found in the mazda bus and hereby set aside the impugned judgment and allow the appeal for the following reasons;

(a) In our view the foundation of the prosecution case against the appellant is built on the evidence of the sole the eye witness **PW 20 Fazal ur Rehman** who we do **not** consider we can safely rely on in terms of him correctly identifying the appellant as one of the persons who opened fire on him and the deceased in the mazda bus for the following reasons:

(i) **Eye witness PW 20 Fazal ur Rehman** was related to some of the deceased and according to him he had managed to escape from the bus without being killed by the skin of his teeth. The **first FIR** in this case was lodged on 06-07-2011 a day after the incident but he did not come forward as a witness until 28.09.2011 which is **nearly 2 months** later without offering any explanation for failing to do so which does not appeal to reason, logic or common sense and leads to the conclusion that he may be a put up witness.

(ii) **Eye witness PW 20 Fazal ur Rehman** gave his S.161 statement as mentioned **nearly 2 months** after the incident. The superior courts have placed doubt on the evidence of eye witnesses who failed without explanation to record their S.161 statements within 48 hours. In this respect reliance is placed on **Muhammed Asif's case (Supra)**

(iii) Eye witness PW 20 Fazal ur Rehman in his S.161 statement did not give any hulia of the appellant. He had not seen him before and only got a fleeting glance at him. The light was somewhat questionable and as such his ability to correctly identify the appellant at an identification parade is doubtful. In this respect reliance is placed on **Javed Khan V State** (2017 SCMR 524)

(iv) With regard to the conduct of the identification parade we are not persuaded that this was carried out in accordance with the guidelines as laid down in the case of **Kanwar Anwaar Ali** (PLD 2019 SC 488) when all the following factors are considered as a whole.

- (a) The identification parade took place 4 months after the incident.
- (b) The appellant was in police custody at the time of the identification parade and could have been shown to the eye witness PW 20 **Fazal ur Rehman** prior to the identification.
- (c) CNIC No.s, addresses and professions of the dummies were not recorded in the magistrates report
- (d) The dummies were not similar and only 7 to 8 dummies were used.

(v) The possibility exists that PW 20 **Fazal ur Rehman** was not present at the time of the incident as he appears to be a chance witness who is related to the deceased, according to him he was wounded when he escaped from the bus but he has not produced any medical certificate as proof of this and he has not produced his bloodied clothes and as noted earlier he did not come forward after the registering of the **first FIR** for **nearly 3 months** and his first S.161 statement was **nearly 3 months** after the incident.

(b) There is also very little other supportive or corroborative evidence that the appellant was involved in the murders. For example;

(i) His confession before the police is inadmissible in evidence

(ii) On his arrest in another case a pistol was recovered from him and it is the case of the prosecution that this pistol matched the empties recovered at the scene but in our view anyone could have given the appellant this pistol after the incident for his use.

(iii) His pointation of where the mazda bus was hijacked and where the kidnapped persons were murdered is irrelevant as the police already knew of both of these places.

(c) It is also relevant that in his S.342 Cr.PC statement he was not asked about the recovered pistol and as such this piece of evidence cannot be used to convict him.

(d) It also seems to us rather suspicious that the First FIR was lodged on 06.07.2011 and disposed of in "C" class yet on 28.09.2011 one day **before** the Second FIR is lodged PW 20 Fazal ur Rehman gives his S.161 statement as an eye witness and one day **after** giving his S.161 statement as an eye witness the Second FIR is lodged **after an unexplained delay of 4 months** naming PW 20 Fazal ur Rehman as an eye witness to the murders. The Third FIR is also lodged with an unexplained delay of over 4 months after the incident. To us all of the above tends to suggest that the case against the appellant being concocted cannot be ruled out as there was plenty of time for consultation between the complainant of the Second FIR, PW 20 Fazal ur Rehman who is related to the deceased and the police prior to the filing of the Second FIR keeping in mind that the First FIR was disposed of in "C" class. These unusual and suspicious circumstances create doubt in our mind about the prosecution case against the appellant.

(e) It is in our view also some what suspicious that after the filing of the Second FIR despite the appellant already being under arrest in police custody and the eye witness being available the appellant is not immediately taken before an identification parade or placed into judicial custody prior to an identification parade being held. Instead the appellant is placed before an identification parade a day **after** the lodging of the Third FIR. All of the above also raises eye brows and doubt on the prosecution case against the appellant.

16. Thus, based on the above discussion where we find that we do not consider it safe to rely on **PW 20 Fazal ur Rehman** correctly identifying the appellant as one of the persons who murdered the kidnapped persons and based on the lack of supportive/corroborative evidence by extending the benefit of the doubt to the appellant we hereby allow his appeal, acquit him of the charge and set aside the impugned judgment. The confirmation reference is answered in the negative. Consequently the appellant shall be released unless he is wanted in any other custody case

17. The appeal and confirmation reference stand disposed of in the above terms.