

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio*

SPL. CRIMINAL A.T. APPEAL NO.219 OF 2020
CONFIRMATION CASE NO.03 OF 2021

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| Appellants: | 1) Muhammad Ishaque alias Bobi alias Hussain son of Muhammad Ibrahim and 2) Muhammad Asim @ Ahmad @ Capri @ Mamo through Mr. Hashmat Khalid, Advocate. |
| Respondent: | The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. |
| Date of Hearing: | 11.05.2022 |
| Date of Announcement: | 19.05.2022 |

J U D G M E N T

Mohammad Karim Khan Agha, J. Appellants Muhammad Ishaque alias Bobi alias Hussain and Muhammad Asim @ Ahmad @ Capri @ Mamo were charged sheeted to face their trial in Special Case No.2600 of 2016 (New Special Case No.225 of 2019) arising out of FIR No.402 of 2015 under section 302/109/34 PPC r/w Section 7 Anti-Terrorism Act 1997 registered at PS Aziz Bhatti, Karachi. The appellants were convicted vide impugned judgment dated 22.12.2020 passed by the learned Judge, Anti-Terrorism Court No.XVI, Karachi whereby they were awarded the following sentences:

- a) For causing death of the deceased Advocate Syed Ameer Haider Shah by firing, punishable under section 302 r/w 34 PPC both the accused are sentenced to death subject to confirmation by the High Court;
- b) For causing death of the deceased Advocate Syed Ameer Haider Shah by firing, punishable under section 7(a) of the Anti-Terrorism Act, 1997 both the accused are also sentenced to death subject to confirmation by the High Court with fine of Rs.2,00,000/- (two lacs) each;
- c) For the act of terrorism committed by the accused, punishable u/s.7(1)(h) of Anti-Terrorism Act, 1997 both the accused are hereby also sentenced to undergo RI for (10) ten years and to pay fine of Rs.50,000/- (Fifty Thousand) each.

⚡

- d) Both the present accused are hereby also directed to pay an amount of Rs.2,00,000/- (two lacs) each to the legal heirs of deceased Advocate Syed Ameer Haider Shah as compensation, as provided under Section 544-A Cr.P.C. and in default of such payment the accused shall undergo S.I. for six months.
- e) Both the accused are hereby also convicted for the offence u/s. 11-F and sentenced to RI for 06 months with fine of Rs.10,000/- (Ten Thousand) each and in case of failure to pay the fine, they shall serve R.I. for one month more.
- f) The property of the accused are directed to be forfeited as required u/s.7(2) of the Anti-Terrorism Act, 1997.

All the sentences are directed to run concurrently. The benefit of Section 382 Cr.P.C. was also extended to the accused persons.

2. The brief facts of the prosecution case are that on 30.08.2015 complainant Shahid lodged FIR that he resides in Rabia Duplex, Mosamyat, Gulistan-e-Jauhar, Karachi and working with Advocate Syed Ameer Hyder Shah. On 28.08.2015 when they were coming in his Toyota Corolla golden colour car No.APR-402, from his office situated at PECHS Society to home, at about 06:45 pm when they reached at main University road, Hassan Square three people on one motorcycle made firing upon them and fled away, resultantly Advocate Syed Ameer Hyder Shah received firearm injuries and shifted to Al-Mustafa hospital where he was pronounced dead. Accordingly the FIR was lodged against unknown accused persons.

3. After registration of FIR, the investigation was assigned to Inspector Zulfiqar Ali Bajwa of PS New Town, Karachi who after usual investigation filed the report under "A" class. Later on accused Muhammad Ishaq @ Bobi and Muhammad Asim @ Capri were arrested in other cases and during interrogation the accused made disclosure that they made firing upon the deceased Advocate Syed Ameer Hyder Shah, accordingly after collection of evidence the I.O. submitted challan against the said accused persons.

4. The prosecution in order to prove its case examined 12 PWs and exhibited various documents and other items. The statement of accused persons were recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them and claimed that they have been falsely implicated in this case.

5. After hearing the parties and appreciating the evidence on record the trial court convicted the appellants and sentenced them as set out earlier in this judgment. Hence, the appellants have filed this appeal against conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 22.12.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellants has contended that the appellants are completely innocent and have been falsely implicated in this case by the police as is evident by the two day delay in lodging the FIR which enabled the complainant to cook up a false case against the appellants at the behest of the police; that the so called sole eye witness was a put up witness and was not present at the time of the offence and even otherwise would not have been able to safely identify the appellants as the persons who carried out the murder; that the identification parade was not in accordance with the law and as such is of no legal value; that the appellants did not make any confession before the judicial magistrate and even if such confessions were made they could not be relied upon as such confessions were retracted at trial and were not made voluntarily and as such for any or all of the above reasons the appellants should be acquitted of the charge by extending them the benefit of the doubt. In support of his contentions, he placed reliance on the cases of **Babar Masih vs. The State** (2020 YLR 1557), **Provincial Government of Khyber Pakhtunkhwa through Provincial Secretary Home and 7 others vs. Aftab Mohammad Usman Khan and another** (2020 YLR 1563), **Muhammad Pervez and others vs. The State and others** (2007 SCMR 670), **Imran Ashraf and 7 others vs. The State** (2001 SCMR 424), **Gulfam and another vs. The State** (2017 SCMR 1189), **Hayatullah vs. The State** (2018 SCMR 2092), **Muhammad Akram vs. The State** (2009 SCMR 230) and **Patoo and another vs. The State** (2012 MLD 1358).

8. On the other hand, learned Addl. Prosecutor General Sindh has fully supported the impugned judgment. In particular, he has contended that the evidence of the eye witness can be safely relied upon as to the correct identification of the appellants; that the identification parade was carried out strictly in accordance with law; that both the appellants made confessions before the judicial magistrate and although retracted at trial could be safely relied upon as they were made voluntarily and that a pistol recovered from

the appellants on their arrest matched with the empties recovered at the scene of the crime and as such the prosecution had proved its case beyond a reasonable doubt against both the appellants and their appeals be dismissed. He also contended that the confirmation reference be answered in the affirmative due to the lack of mitigating factors and the brutality of the crime. In support of his contentions, he placed reliance on the cases of **Noor Muhammad v The State** (1999 SCMR 2722), **Dadullah v The State** (2015 SCMR 856), **Muhammad Ehsan v The State** (2006 SCMR 1857), **Farooq Khan v The State** (2008 SCMR 917), **Khadim Hussain v The State** (PLD 2010 SC 669), **Sajid Sohail v The State** (2009 SCMR 356), **Muhammad Nadeem v The State** (2011 SCMR 872), **Sh. Muhammad Abid v The State** (2011 SCMR 1148), **Muhammad Ismail v The State** (2017 SCMR 713), **Solat Ali Khan v The State** (2002 SCMR 820), **Muhammad Zaman v The State** (2007 SCMR 813), **The State v Ahmed Omar Sheikh** (2021 SCMR 873), **Muhammad Amin V The State** (PLD 2006 SC 219) and **Manjeet Singh v The State** (PLD 2006 SC 30).

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

10. Based on our reassessment of the evidence of the PW's especially the medical evidence and other medical reports including the post mortem report of the deceased, recovery of empties and blood and car which the deceased was shot inside of at the crime scene we find that the prosecution has proved beyond a reasonable doubt that advocate Syed Ameer Haider Shah (the deceased) was shot and murdered by firearm on 28.08.2015 at about 1845pm whilst driving his car at main University Road near Bridge Hasan Square Gulshan-e-Iqbal Karachi..

11. The only question left before us therefore is who murdered the deceased by firearm at the said time, date and location?

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

(a) That the FIR was lodged after a delay of two days. The reason for the delay in lodging the FIR was that the complainant immediately after the deceased was shot took him to Al Mustafa hospital where he learnt that the deceased had died and then took the dead body to JPMC for legal formalities including post mortem and thereafter since the deceased's relatives were not from Karachi he helped take the body of the deceased to his ancestral village in District Khairpur for burial and thereafter he returned to Karachi and immediately lodged the FIR. As such any delay in lodging the FIR has been fully explained. **Importantly** the FIR is against unknown persons and as such there was no attempt to falsely implicate the accused or any other person or else the accused would have been specifically named in the FIR. **Furthermore**, the complainant had no enmity with the accused and had no reason to falsely implicate them and as such we find that the delay in lodging the FIR is not fatal to the prosecution case as the delay has been explained, the accused were not nominated in the FIR and as such the delay in filing the FIR has not benefited the prosecution or prejudiced the accused. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872)

(b) We find that the prosecution's case primarily rests, but not exclusively, on the **sole eye witness** to the murder of the deceased and in particular his correct identification of the appellants as the persons who respectively drove the motorcycle and shot the deceased which lead to his murder whose evidence we shall consider in detail below;

(i) **Eye witness PW 7 Shahid. He was the court clerk of the deceased lawyer who also lived with the deceased at his home.** According to his evidence on 28.08.2015 as per routine he and the deceased went from the home of the deceased to the city court and then returned to the deceased office and thereafter at 6.10pm left for home in the car of the deceased who was driving the car whilst he was sitting in the rear seat. When they reached at Hassan Square Bridge at about 6.45pm **he saw** three persons on a motor cycle appear with two persons sitting behind the motor cycle driver who fired at them and due to their firing the deceased was injured. Their car immediately stopped and with the help of people he shifted the injured deceased to Al Mustafa hospital where the deceased was pronounced dead.

The witness was **not** a chance witness as he was the court clerk of the deceased for over 14 months and lived with him at his house a position which was never challenged at trial and would have been returning to the house of the deceased in the deceased's car at the time of the incident and as such was a natural witness. He lodged the FIR after a short delay which has been explained as he took the body of the deceased to the deceased's relatives at Khairpur which again goes to show his closeness to the deceased. He also gave his S.161 Cr.PC statement and there is little improvement in his FIR and S.161 Cr.PC statement to the evidence which he gave at trial. He was not related to the deceased and was an independent witness who had no reason to falsely implicate the accused. **It was a day light incident and as the firing was from close range the witness would have gotten a good look at the accused for a reasonable period of time.** According to the evidence of the witness the

firing went on for 30 seconds to one minute which gave him plenty of time to focus on the one motor cycle and the persons driving it and firing from it especially as the traffic was going very slowly under the bridge and the motorcycle had to come close to the car in order to fire at it in the heavy traffic. He gave some hulia of both the accused in his FIR and picked out both the accused at an identification parade with a specific role. Namely, appellant Muhammed Ishaque was driving the motor cycle whilst the appellant Muhammed Asim was firing from behind the driver appellant Muhammed Ishaque which aspect was corroborated by PW 2 Vinod Kumar who carried out the identification parade whilst following all the necessary legal formalities. The identification parade was conducted about 14 months after the incident and about 14 days after the arrest of the accused in this case which delay has been explained in the evidence by the fact that the appellants were busy going before other identification parades, going to other wardats on their pointation and giving confessions in other cases. Even otherwise the slight delay in holding the identification parade is not of much consequence and in this respect reliance is placed on the case of **Muhammad Zaman v. The State** (2007 SCMR 813). Although 14 months might seem quite a long time there is no hard and fast rule as to the time in which an identity parade can be carried out after the incident as very often accused do escape from the crime scene and are captured much later, often after years, but obviously the sooner the identification parade is carried out the more accurate it is likely to be. In this respect reliance is placed on the case of **Solat Ali Khan** (Supra). The eye witness gave his evidence in a natural and straightforward manner and emerged undented from a lengthy cross examination and as such we have no reason to doubt his evidence.

Thus, for the reasons mentioned above, whilst being on caution, we find the evidence of the eyewitness to be reliable, trustworthy and confidence inspiring and we believe the same **especially with regard to the correct identification of the appellants as the persons who drove the motor bike and shot and murdered the deceased respectively** and can convict on the evidence of this sole eye witness alone although it would be of assistance by way of caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammed Ismail** (supra). That what is of significance is the quality of the evidence and not its quantity and in this case we find the evidence of this sole eye witness to be of good quality and believe the same **especially** in terms of the correct identification of the appellants who drove the motor cycle and fired on and murdered the deceased respectively.

Thus, based on our believing the evidence of the PW eyewitness especially in terms of him correctly identifying the appellants as the persons who murdered the deceased what other substantive

/supportive/corroborative material is there against the appellants? 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)

(c) That both the appellants gave confessions before a judicial magistrate albeit later retracted that they took part in the murder of the deceased. We set out the confessions of both the accused below for ease of reference;

CONFESSIOAL STATEMENT OF ACCUSED
MUHAMMAD ISHAQUE U/S.164 CR.P.C.

My name is Muhammad Ishaq alias Bobi alias Hussain alias Abdul Jabbar s/o Muhammad Ibraim. I reside in Lalokhet No.2, Dakkhana Sabzi Market near Nayab Masjid. In January 2015 I and Kamran alias Kami, armed with weapon, left by a motorcycle and when we arrived at Orangi Town No.8 ½, so a JDC ambulance was parked there. I opened fire at the ambulance and having killed its driver, we escaped away from there and came back to our house. Subsequently, in February 2015 I and Kamran alias Kami, armed with weapon, left from home and arrived at Ghosia Chowk so two Ehl-e-Tashi persons having offered their prayers, were coming back. I targeted both of them and then both of us escaped from there. Subsequently in November 2015, I and Asim left by a motorcycle from Lalokhet Dakkhana and when we arrived at Orangi Town so there we met with Arshad Rickshaw Wala, who had three 9mm pistols. Then all three of us reached Ittehad Town from there. Arshad had recce of an FIA constable whose name I do not remember. When that person did not arrive there so we parked the rickshaw on the way and all three of us stood near the motorcycle. In the meanwhile, a Rangers mobile pulled over near Abu Huraira Mosque. That was the time of Friday prayers. At first we held a meeting and then having reached near them all of us opened fire at once. They were about four personnel. At first we murdered them then I picked up the SMG of one of the personnel and having chambered it, fired with it and then we took the SMG with us and threw the SMG at a plot at some distance and then we escaped from there. After travelling some distance we dropped off the rickshaw wala whose name was Samiullah alias Arshad and handed over the weapons back to the rickshaw wala and I and Asim came back to Liaqutabad. Then I and Asim committed the next crime in December, 2015. I and Asim, armed with 9mm pistol, left Lalokhet by our motorcycle and when we reached Parking Plaza so there we saw a military police jeep then we started its chasing it. We arrived at Gul Plaza near Tibet Centre so Asim took the motorcycle near them after that I opened fire at those police constables and then we escaped away from there and came back to our house by passing from different ways. After that we carried out our next crime against a lawyer, whose name was Ameer Haider Shah. I carried out his recce from Tariq Road. This incident is of December 2015. When that lawyer arrived near Civic Centre so I was riding the motorcycle and when we arrived near him so Asim fired upon him and then we escaped away from there. Then we committed crime against policemen in 2016. I and Asim took arms from Liaqutabad to Bangla Bazar, Orangi Town. A police mobile was parked there in which four constables were sitting out of which one of the constables got off and went to bring food so I parked the motorcycle near their mobile and both of us, having got off the motorcycle, went near the mobile. Asim fired upon the constable who had gone to bring food whereas I targeted the three constables boarded in the mobile out which one was sitting at the back

while two were sitting on the front side and I fired at them and then I lifted their SMG and escaped towards (word ambiguous) got. We had gone a few paces ahead that we saw three more policemen who were probably on polio duty. I fired at those three policemen with the same SMG I had lifted but after firing two shots, the SMG stopped working after which Asim fired at them with 9mm pistol and then we escaped away from there. After that we carried out our next crime in the month of Ramazan in 2016. I and Asim, took 9mm pistol from Lalokhet Godam and arrived near Amjad Sabri's house and kept waiting for Amjad Sabri. As soon as Amjad Sabri came out of his house we arrived before him at Lalokhet No.10 and started waiting for Amjad Sabri on the way which leads towards Civic Centre. As soon as Amjad Sabri's vehicle arrived so I fired twice or thrice at Amjad Sabri from my right side and after that Amjad Sabri's vehicle stopped so I fired four or five minutes from the front side and then we easily escaped from there. Then committed next crime in 2016 whose month I do not remember. I and Asim left with weapons and arrived at Saddar Parking Plaza. As soon as we arrived there so we saw a green color army vehicle. We parked our motorcycle next to it and I, having got off the motorcycle, fired at least 8-10 times at them and escaped away from there. Then we committed a crime at Ayesha Manzil where I and Asim targeted two traffic policemen. When I and Asim passing through various areas arrived at Ayesha Manzil so two traffic policemen were standing there at whom I opened fire and murdered them. After that I lifted their MP-5 and having escaped from there arrived in Lalokhet. Such is my statement which I have got recorded out of my own free will. I am not under any kind of pressure or influence. (bold added)

Sd/-05.12.2016

Civil Family Judge & JM Court
No.X, Karachi (West)"

CONFESSONAL STATEMENT OF ACCUSED
MUHAMMAD ASIM U/S.164 CR.P.C.

My name is Muhammad Asim alias Capri alias Ahmed son of Abdul Rehman (late). I am resident of Karachi. In November 2015 on a Friday I and Ishaq left Liaquatabad and we met with a rickshaw wala inside Orangi Town from where way to Ittehad Town begins. I and Ishaq were boarded on a motorcycle. Then we left with the rickshaw wala from there because the weapons were inside the rickshaw, it kept travelling with us. Then we arrived at Abu Hurraira Masjid. The rickshaw wala parked his rickshaw at some distance from the masjid and took our weapon from it which was inside a shopper and then he boarded our motorcycle with us. When we arrived there so the person was not there for whom he had taken us there after that he told us that Rangers personnel are deputed here, let us target them. We saw that the Rangers personnel were performing their duties near the mosque. As soon as the prayers ended, the place got a bit crowded after which we drew our pistols from the shopper and kept under our clothes and went near the Rangers personnel and then we, having conducted a meeting, encircled those personnel and then opened fire at them all at once due to which they did not even get the chance to react. After that Ishaq lifted the SMG of a Ranger personnel and in order to spread panic and fear, carried out firing from the SMG as well. Then we immediately ran away from there and having started our motorcycle crossed a ground at some distance and hid the SMG under the ground in a street and then we went to the place where the rickshaw was parked and dropped that boy near the rickshaw. Then we again started going back towards Orangi Town and again reached the same place where we had met with the rickshaw wala. We then handed over the weapons to the rickshaw wala. Then the rickshaw wala went to his home and I and Ishaq came back to our houses in

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Liaquatbad. Then after some days I and Ishaq again left by the motorcycle. I think it was December. We came towards Saddar Parking Plaza, where we saw that a jeep of military police was going, we chased it and when it pulled over in front of Gul Plaza before Tibbet Centre in Saddar, there were two personnel boarded in it. One of the personnel got off the vehicle and went to the market. When we were at some distance the personnel also came back and sat down on the backseat. I took the motorcycle near the jeep so Ishaq fired 5-6 times at them and we, having left from there, came back to Liaquatbad through Tibbet Centre. Then in April 2016 I and Ishaq armed with 9mm pistols, left and arrived at Banala Bazar, Orangi Town and we came on the road so a police mobile was parked there and there were three policemen inside it and one of the personnel was purchasing something from outside. They were about four policemen. We went near them and parked the motorcycle after that Ishaq fired at the personnel sitting at the back of the mobile and I fired at the personnel outside the mobile and then I and Ishaq moved towards the front side so that we may fire at the policemen sitting on the front side then we fired at both of them and Ishaq lifted the SMG of a policeman and fired for causing fear among the public. Then we left from there where three policemen who were probably on polio duty. We, having pulled over, fired at all three of them due to which they got injured and fell down and then we left from there as well. We used to carry out such crimes. In May, 2016 I and Ishaq went for patrolling by the motorcycle and we also took 9 mm pistols with us and when we arrived at Ayesha Manzil so we saw that two traffic police personnel were standing. I took the motorcycle near them so Ishaq fired at them due to which one of the personnel fell down whereas the other tried to run away whom we chased and Ishaq also fired at him and then we lifted his MP-5 and from there went to our house. Then after some days we again left our house in Liaquatbad and arrived at the backside of Saddar Parking Plaza, where army's double-cabin was going in an alley near the Parking Plaza near which I took the motorcycle so Ishaq also fired 7-8 times at them and then we ran away from there and came back to our house in Liaquatbad. In 2015 Ishaq was provided recce of a lawyer that a lawyer is Ehl-e-Tashih. When we arrived at the Civic Centre, he had left, whom we chased and after passing some distance, we saw him and then we fired at him due to which he got injured and fell down. Then we carried out our next crime in the month of Ramazan in 2016. At first, we conducted recce of Amjad Sabri, and then we went with the motive to kill him. At first we carried out his recce that at what time he leaves house. On the day of occurrence, when he left his house so we chased him and when he arrived at the No.10 road which leads to towards Civic Centre so we were already present there as soon as his car arrived there I took the motorcycle near his car and then Ishaq fired upon him and then we also left from there. I am getting this statement recorded in my complete senses. I am not under any kind of pressure or coercion.(bold added)

Sd/-05.12.2016
Civil Family Judge & JM Court
No.X, Karachi (West)"

After a review of the relevant law on the legal validity of judicial confessions albeit retracted at trial the Hon'ble Supreme court in the case of **Ch. Muhammad 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)

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 at P.224 Para 9 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)

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. 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.

Now when we consider the judicial confession of the appellants and the evidence on record we find that they were made voluntarily with the object to state the truth as per the case of the prosecution as set out in the FIR and the evidence of the complainant and other PW's. We also find that nearly all the procedural safe guards were carried out by the magistrate e.g hand cuffs were taken off, reflection time was given, they were informed of the legal consequences of their confession and they were not handed back to the police and instead went straight to judicial remand after the confession and if there were any procedural defects these were only very minor in nature and would not effect the voluntariness or truthfulness of the confessions as was held in the case of **Majed v. The State** (2010 SCMR 55). The fact that the judicial confession was carried out on the last day of police remand is also irrelevant as was held in the case of **Ghulam Nabi v. The State** (2007 SCMR 808). The fact that the judicial confession was made after 16 days of the appellants' arrest also does not impact on its voluntariness and truthfulness as was held in **Ch. Muhammad Yaqoob's case** (Supra).

As such we believe the retracted judicial confessions of both the appellants as they were made voluntarily with the object of telling the truth and their contents fit in with the prosecution case and there are no material defects in the manner in which they were recorded by PW 10 Saghir Hussain Shah who was the concerned judicial magistrate. His evidence also fully corroborates the content of the confessions and that all necessary procedural safe guards were adhered to. We **however** give such confessions **limited weight** since they are global in nature and seem to lack detail of the particular crime **however** we find that they do corroborate /support the ocular evidence of eye witness PW 7 Shahid which we have already believed in respect of the incident and the correct identification of the appellants as two of the persons responsible for the murder of the deceased.

(d) That the medical evidence and medical reports as discussed above fully support the eye-witness/ prosecution evidence. It confirms that the deceased was hit at least 4 to 5 times by firearm bullets and in most cases in the upper part of his body.

(e) That the car which was recovered by the police was the car which was driven by the deceased and was marked with bullets, stained blood was collected from inside it and its windows were broken as evidenced by the evidence of the police official PW's, positive FSL and chemical reports.

(f) That when the accused were arrested by PW 5 Malik Ayub from a shop after the incident the appellants were found in possession of two unlicensed firearms one of which matched empties which were recovered and sealed at the scene of the crime. Importantly the empties were first sent for FSL prior to the recovery of the pistol from the appellants a day after the incident and were again sent for FSL once the pistols were recovered from the appellants on their arrest and on both occasions a positive FSL report was received which proves that neither the empties nor the pistol were foisted. According to PW 9 Shukat Ali 4 of the empties were recovered from outside the car.

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(g) That the motor cycle used in the murder was recovered on the pointation of the appellants.

(h) Most of the relevant police entries have been exhibited concerning the shooting and murder which fully support the prosecution's case.

(i) That the police PW's had no enmity or ill will towards the appellants and had no reason to falsely implicate them 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).

(j) 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 provides a believable corroborated unbroken chain of events from the court clerk leaving in the morning with the deceased lawyer from his house in the deceased's car for court to the deceased driving the car home with the clerk in the back seat after leaving his legal office who was living with him to the motor cyclists who the clerk was able to identify firing on the deceased and his vehicle to the accused escaping on their motor cycle to the deceased being taken and being pronounced dead at hospital to the appellants then being arrested with unlicensed weapons and picked out at an identification parade with specific roles by the eye witness clerk to the judicial confessions of the appellants to the positive FSL report in respect of the pistol which was recovered from the appellants with the empties which were recovered at the scene with the pistol being used to fire at and murder the deceased to the identification of the motor cycle used in the murder on the pointation of the appellants.

(k) That the appellants were already under arrest in similar type cases (target killings) which indicates that they had a propensity to commit such like crimes and each had extensive CRO's.

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

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

corroborative/supportive evidence mentioned above, we have no doubt that the prosecution has proved its case against the appellants beyond a reasonable doubt for the offences for which they have been convicted and hereby maintain their convictions and sentences **except** with regard to the ATA offences for which they are both acquitted for the reasons set out below.

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

15. With regard to sentencing we find that there are no mitigating circumstances which might justify a reduction in sentence. In cases of target killing we do not find the absence of a motive to be relevant for sentencing purposes. If it were target killers would seldom receive the capital punishment as they are simply the instruments sent by others to settle scores or cause intimidation. They are the foot soldiers who follow the orders of their superiors without hesitation and murder innocent persons often for paltry sums. It is a phenomena which has been the curse of Karachi since the early 1990's and regrettable continues today and must be deterred for the benefit of society as a whole so that ordinary people can lead their lives with a feeling of security whether they are involved in the profession of business, politics, medicine, banking etc or in this case law. When an accused who is a target killer is convicted of a target killing he can expect no leniency from the courts as the courts also owe an obligation to the victim often whose family is traumatized for the rest of its life and society as a whole. Such target killings are also usually carried out in the most brutal fashion in front of the public including men, women and children as in this case where the deceased whilst driving a car home received 4/5 bullet wounds/injuries mainly on his vital body parts. We find that target killers represent a special class of criminal/murderer who if found guilty of such target killings must face the maximum sentence available under the law; namely the death penalty in

order to deter such menace and evil which is prevailing in and stalking our society and even those who **directly** assist target killers must also not be spared, for example, the persons who drive the motor cycle for the target killer who is riding pillion, as there case is the classic case of S.34 PPC. As was held in the case of **Sh. Muhammed Abid** (Supra) in cases of common intention under S.34 PPC it was irrelevant who actually caused the fatal shot on the deceased and the death penalty was handed down to all those involved in the murder under S.34 PPC notwithstanding the precise role of each of the accused in the crime as they all shared the **common intention** of murder even if they did not even make fire on the deceased. If they had not driven the motorcycle then the target killing could not have taken place at all or if so certainly with a greater chance of the target killer being caught. This is because most target killings in Karachi occur when a motor cycle either pulls up along side a car or a person on the street or outside his house or shop, opens fire (often excessively) and kills them (with complete disregard to the safety of the public who might be present) and then easily makes his escape good by weaving away through the traffic whilst making a chase of them almost impossible. Frequently, helmets and muffled faces are used to avoid identification which in and of itself protects the identity of the target killer and often reduces his chances of being brought to justice so that those who are caught by way of **deterrence** must face the full force of the law and not be released on technicalities unless it would cause a miscarriage of justice which is destroying the public's faith in the criminal justice system especially in Karachi where such a deadly and sinister practice is prevalent. In such cases the court must apply basic **common sense**. If a person drives a motorcycle with pillion rider(s) carrying firearms and he is told to go to a particular location or place to find a particular person (especially a member of the police or the Pakistan rangers or any other law enforcement agency) and that person is shot dead by the pillion riders without any kind of argument or altercation and the driver of the motor bike then helps the killers make their escape good rather than abandoning the bike and running away and later reporting the incident to the police there must at a minimum be a **reasonable inference that he knew** that the pillion riders were going to commit a target killing and by driving the get away vehicle he was a part and parcel of it or perhaps the **legislature** in its wisdom in such like cases might consider shifting the onus on the driver of the bike to reasonably prove that he had no knowledge that his pillion riders were armed and he was taking them to commit a target

killing or even reconnaissance as such is often the level and sophistication of such preplanned target killings? Is the get away driver, look out at a bank robbery not equally responsible as the person who enters the bank and steals the money which is then shared? Is not the person who provides food or security to kidnap for ransom victims not equally responsible for the kidnap for ransom as the actual kidnappers or those who collected the money which will be split between them? It is important to send a **clear message** to those motor cycle drivers who knowingly drive their pillion riders to a place where the pillion riders target kill a person that if he (the driver) knowingly involves himself in such an activity he will face the same legal consequences as the actual target killer perhaps only then will the level of target killings be reduced. Thus, for the reasons discussed in this appeal the confirmation reference in respect of each of the appellants is answered in the affirmative.

16. In summary the appellants are acquitted of all the charges **except** for the offence under S.302 (b)/34 PPC and as such the appellants are both convicted **only** under 302 (b) PPC r/w 34 PPC and sentenced to death on one count each with the confirmation reference being answered in the affirmative in respect of both of the appellants. However the appellants shall both be liable to pay the legal heirs of the deceased RS 200,000 u/s 544-A Cr.PC and in default of such payment the appellants shall undergo SI for six months. They shall however have the benefit of S.382 (B) Cr.PC and any remission available to them under the law now that the appellants have been acquitted of the ATA offences.

17. The appeal is partly allowed in respect of the ATA offences and dismissed in respect of the PPC offences and the confirmation reference is answered in the affirmative with respect to the PPC offences.

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