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IN THE HIGH COURT OF SINDH, KARACHI

Present:

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

Spl. Criminal A.T.A. No.87 of 2020
Conf. Case No.05 of 2020

Appellant: Furqan alias Farooq alias Azam alias
Abdullah S/o. Abdul Majeed through
Mr. Hashmat Khalid, Advocate.

Respondent: The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General.

Spl. Criminal A.T.A. No.95 of 2020
Spl. Criminal A.T.A. No.96 of 2020
Spl. Criminal A.T.A. No.97 of 2020

Appellant: Nadir Ali S/o. Ghulam Rasool Jakhrani
through Mr. Tariq Ali Jakhrani,
Advocate.

Respondent: The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General.

Date of hearing: 25.04.2022.

Date of Announcement: 13.05.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- The appellants Furqan alias Farooq alias Azam alias Abdullah son of Abdul Majeed and Nadir Ali @ Murshid son of Ghulam Rasool Jakhrani have preferred these appeals against the judgment dated 18.05.2020 passed by learned Anti-Terrorism Court No.XVI, Karachi in Special Case No.63 of 2017 arising out of Crime No.16 of 2017 u/s. 302/324/353/295/120-B/440/149 PPC read with Section 7 ATA of P.S Sehwan Sharif, Spl. Case No.2088 of 2017 arising out of Crime No.178 of 2017 u/s. 4/5 Explosive Substances Act 1908 read with Section 7 ATA of P.S CTD/STIG,

Karachi and Special Case No.2089 of 2017 arising out of Crime No.179 of 2017 u/s. 23(I) SAA 2013 of P.S CTD/STIG, Karachi whereby the appellants were convicted and sentenced u/s 265-H(2) Cr.P.C as under;

- a. For causing death of 70 innocent people (men, women and children) named in para No.13, 14 & 15 of the impugned judgment through bomb blast, punishable under Section 302 r/w 34 PPC, both the appellants namely Nadir Ali @ Murshid son of Ghulam Rasool Jakhrani and Furqan @ Farooq son of Abdul Majeed, were sentenced to death on each count subject to confirmation by this court.
- b. For causing death of 70 people (men, women and children) named in para No.13, 14 & 15 of the impugned judgment through bomb blast, punishable under Section 7(a) of the Anti-Terrorism Act, 1997, both the appellants namely Nadir Ali @ Murshid son of Ghulam Rasool Jakhrani and Furqan @ Farooq son of Abdul Majeed, were sentenced to death on each count subject to confirmation by this court with fine of Rs.200,000/- each.
- c. For causing serious injuries to 65 devotees as named in above mentioned para No. 13, 14 & 15 of the impugned judgment, punishable under Section 324 read with 34 PPC, both the appellants namely Nadir Ali @ Murshid son of Ghulam Rasool Jakhrani and Furqan @ Farooq son of Abdul Majeed, were sentenced to suffer rigorous imprisonment for ten (10) years on each count with fine of Rs.100,000/- each and in case of failure to pay the fine, they were directed to suffer S.I for six months more.
- d. For causing serious injuries to 65 devotees as named in above mentioned para No.13, 14 & 15 of the impugned judgment, punishable under section 7(C) of Anti-Terrorism Act, 1997, both the appellants namely Nadir Ali @ Murshid son of Ghulam Rasool Jakhrani and Furqan @ Farooq son of Abdul Majeed, were sentenced to suffer rigorous imprisonment for ten (10) years on each count with fine of Rs.100,000/- each and in case of failure to pay the fine, they were directed to suffer S.I for six months more.
- e. For involvement in explosion by bomb blast and committing the act of terrorism, punishable under Section 7(ff) of Anti-Terrorism Act, 1997, both the appellants were sentenced to suffer R.I for fourteen (14) years.

- f. For causing explosion by bomb blast which damaged the premises of shrine of Hazrat Laal Shahbaz Qalandar punishable u/s 7(d) of Anti-Terrorism Act, 1997, both the appellants were sentenced to suffer R.I. for ten (10) years with fine of Rs.100,000/- each.
- g. For having possession of explosive material, punishable u/s 4 of Explosive Substance Act, 1908, appellant Nadir Ali was sentenced to undergo R.I. for life imprisonment, and the property of the appellant was directed to be forfeited to the Government u/s 5-A of the Explosive Substance Act, 1908.
- h. For having possession of explosive material for making or possessing explosives under suspicious circumstances, punishable u/s 5 of Explosive Substance Act 1908, appellant Nadir Ali was sentenced to undergo R.I. for fourteen (14) years and the property of the appellant was directed to be forfeited to the Government u/s 5-A of the Explosive Substance Act, 1908.
- i. For the act of terrorism committed by both the appellants punishable u/s 7(1)(h) of Anti-Terrorism Act, 1997, both the appellants were sentenced to undergo R.I. for ten (10) years with fine of Rs.50,000/- each.
- j. For committing an offence for creating sense of fear and insecurity in the minds of general public, punishable u/s 7(i) of Anti-Terrorism Act, 1997, both the appellants were sentenced to suffer R.I. for five (5) years with fine of Rs.10,000/- each.
- k. Appellant Nadir Ali was convicted for the offence u/s 23(I)(A) SAA 2013 and was sentenced to undergo rigorous imprisonment for seven years with fine of Rs.50,000/- and in case of failure to pay the fine, he was directed to suffer S.I for three months more.
- l. Both the appellants were convicted for the offence u/s 11-F and sentenced to R.I. for six months with fine of rs.10,000/- each and in case of failure to pay the fine, they were directed to serve R.I. for one month more.
- m. Both the appellants were directed to pay an amount of Rs.2,00,000/- each for each deceased to the legal heirs as compensation, as provided under section 544-A Cr.P.C and in default of such payment the accused were directed to undergo SI for six months.
- n. Both the appellants were directed to pay an amount of Rs.1,00,000/- each for each injured as compensation, as provided under Section 544-

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A Cr.P.C and in default of such payment, they were directed to undergo SI for six months.

- o. The property of the accused were directed to be forfeited as required u/s 7(2) of Anti-Terrorism Act, 1997.

All the sentences were directed to run concurrently. The benefit of section 382-B Cr.P.C. was also extended to both the accused.

2. The brief facts of the prosecution case are that on 16.02.2017 SHO Rasool Bux Panwar lodged FIR that on 16.02.2017 while they were patrolling along with staff for checking of Imam Bargha, Mosque and Dargha Laal Shahbaz Qalandar at Dargha Lal Shahbaz when they were meeting with staff of Dargah they saw four persons of suspicious condition in Shalwar Kamiz. Out of them three persons hugged to one person congratulating him said Khudahafiz. The SHO therefore directed HC Abdul Aleem to stop the person who has been hugged, he chased him and tried to stop him, but in the meantime at about 1901 hours a blast occurred in Dargah, resultantly, the people ran away and clamored while the three persons who hugged the accused also disappeared in the outcry. The HC Abdul Aleem was martyred and the dead bodies and injured were taken to hospital. Accordingly, FIR was lodged against the unknown suicide bomber and his accomplices for the above crime.

3. After registration of FIR, investigation was entrusted to Inspector Sohail Ahmed Mirza and then the investigation was transferred to Inspector Imtiaz Ali. On 15.11.2017 accused Nadir Ali was arrested from Abdullah Goth near Dargah Mai Garhi, Mai Garhi road, Karachi and found in possession of two hand grenades and other explosive materials which case was investigated by Inspector Ali Hyder. On his disclosure for the above crime his confession was recorded before JM on 25.11.2017 where he had also shown his association with international organization and afterward on 27.02.2019 accused Furqan @ Farooq @ Azam @ Abdullah Bangalzai was also arrested in this case who was previously arrested in case FIR No.454/2019 of P.S Gadap u/s 4/5 Explosive Substance Act, who during interrogation made disclosure that he belongs to banned organization DAESH and he was involved in facilitating the suicide bomber to cause bomb blast at Shrine of Lal Shahbaz Qalandar at Sehwan.

4. After investigation, I.O resubmitted the challan before the Administrative Judge, Anti-Terrorism Courts, Karachi Division, for disposal. The case was

transferred to the concerned ATC which charged the accused. The accused plead not guilty to the charge and claimed trial.

5. The prosecution in order to prove its case examined 29 witnesses and exhibited various documents and other items. The statements of accused were recorded under Section 342 Cr.P.C in which they denied the allegations leveled against them and claimed false implication. They did not give evidence under oath or call any DW in support of their defence case.

6. After hearing counsel for the parties and appreciating the evidence on record the trial court convicted the appellants and sentenced them as stated above, hence, the appellants have filed these appeals against their convictions.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 18.05.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellant Nadir has contended that the appellant has been falsely implicated in this case by the police in order to show there efficiency; that the appellant had been arrested much before the bomb blast and a petition had even been filed on his behalf in support of his illegal confinement and as such he was not present when the bomb blast occurred; that all the prosecution eye witnesses who allegedly picked him out at an identification parade had already seen him on T.V and in the press as being named as one of the facilitators in the bomb blast and as such their identification of him at the identification parade could not be safely relied upon; that the CCTV footage could not be safely relied upon; that his later retracted judicial confession had not been made voluntarily as the police had tortured him and as such it could not be relied upon; that on his arrest the police had foisted the pistol and explosive material on him and as such for all or any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. Learned counsel for appellant Faquan whilst adopting the arguments of learned counsel for the appellant Nadir contended that his case was on an even better footing as none of the so called eye witnesses had picked him out at any identification parade and like appellant Nadir he should also be acquitted of the charge by being extended the benefit of the doubt. In support of their contentions the appellants relied on the following cases **Babar Mashi v The State** (2020 YLR

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1557), **Muhammad Yousuf v The State** (2016 P Cr. L J 1608), **Sabir Ali alias Fauji v The State** (2011 SCMR 563), **Muhammad Pervez v The State** (2007 SCMR 670), **Ishtiaq Ahed Mirza v The Federation of Pakistan** (PLD 2019 SC 675), **Farhan Ahmed V Muhammad Inayat** (2007 SCMR 1825), **Kanwar Anwaar Ali Special Judicial Magistrate** (PLD 2019 SC 488), **Javed Khan alias Bacha v The State** (2017 SCMR 524), **The State v Ahmed Omar Sheikh** (2021 SCMR 873), **Gul Hassan v The State** (2008 MLD 668), **Qadir Bakhsh v The State** (2021 P Cr. L J 1169) and **Ameer Muhammad v The State** (2019 P Cr.L J 1033).

9. On the other hand learned Additional Prosecutor General appearing on behalf of the State fully supported the impugned judgment. In particular he has contended that the eye witnesses have correctly identified the appellants as being accomplices/facilitators who were with the suicide bomber prior to the blast and that their evidence can be safely relied upon; that the identification parade had been carried out fully in accordance with the law; that the retracted judicial confessions of the appellants had been made voluntarily and could be relied upon to convict the appellants; that the CCTV/VCR recordings tied the appellants to the scene of the crime and connected them with the suicide bomber and thus the prosecution had proved its case beyond a reasonable doubt against the appellants whose appeals should be dismissed and since so many innocent men, women and children had been murdered by this wanton act of terrorism the confirmation references in respect of each appellant should be answered in the affirmative. In support of his contentions, he placed reliance on the cases of **Muhammad Akram Rahi and others Versus The State and others** (2011 SCMR 877), **Rafaqat Ali and others Versus The State** (2016 SCMR 1766), **Abdul Haq and another Versus The State** (2015 SCMR 1326), **Noor Muhammad Versus The State** (1999 SCMR 2722), **Dadullah and another Versus The State** (2015 SCMR 856), **Muhammad Zaman Versus The State** (2007 SCMR 813), **Ghulam Qadir and others Versus The State** (2007 SCMR 782), **Manjeet Singh Versus The State** (PLD 2006 Supreme Court 30), **Muhammad Amin Versus The State** (PLD 2006 Supreme Court 219), **Murad Ali Versus The State** (2007 SCMR 146), **Khan Muhammad and others Versus The State** (1999 SCMR 1818), **Muhammad Gul and others Versus The State** (1991 SCMR 942), **Maj. (Retd.) Tariq Mehmood and others Versus The State and others** (2002 SCMR 1493) and **Ghazanfar Ali @ Pappu and another Versus The State** (2012 SCMR 215).

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

11. Based on our reassessment of the evidence of the PW's, especially the PW eye witnesses, and the other prosecution witnesses especially the medical evidence and other medical reports including the post mortem reports of the deceased, recovery of ball bearings and other traces of explosive material recovered at the scene along with the expert evidence of the BDU expert and blood stained earth and body parts at the crime scene we find that the prosecution has proved beyond a reasonable doubt that on 16.02.2017 at about 1900 hours in the shrine of Hazrat Lal Shabaz Qalander at least 74 people were murdered and at least 140 more were seriously injured as named in the charge including some police officers by the detonation of a bomb by a suicide bomber. In fact both the learned counsel for the appellants conceded this issue which was an admitted fact.

12. The only question left before us therefore is whether either or both the appellants facilitated or aided and abetted the suicide bomber and as such were responsible for the death and serious injury to at least 150 dead and injured people at the said time, date and location?

13. We are acutely aware that this is a very sensitive case where over a hundred of innocent persons have been murdered and/or seriously injured by a suicide bomber in the most brutal manner without apparent reason by a group of terrorists. However, as Judges we have to put such aspects aside and decide the guilt or innocence of the appellants by dispassionately assessing the evidence before us and coming to a decision which is supported by the evidence on record and the governing law and not by our emotions or own personal feelings. We can only be guided by the evidence and the law and nothing else. This aspect of the judges role in such like cases was emphasized in the case of **Naveed Asghar V State** (PLD 2021 SC 600) at P.617 para 10 in the following terms:

"Heinous nature of allegations and appraisal of evidence"

10. The ruthless and ghastly murder of five persons is a crime of heinous nature; but the frightful nature of crime should not blur the eyes of justice, allowing emotions triggered by the horrifying nature of the offence to prejudice the accused. Cases are to be decided on the basis

of evidence and evidence alone and not on the basis of sentiments and emotions. Gruesome, heinous or brutal nature of the offence may be relevant at the stage of awarding suitable punishment after conviction; but it is totally irrelevant at the stage of appraising or reappraising the evidence available on record to determine guilt of the accused person, as possibility of an innocent person having been wrongly involved in cases of such nature cannot be ruled out. An accused person is presumed to be innocent till the time he is proven guilty beyond reasonable doubt, and this presumption of his innocence continues until the prosecution succeeds in proving the charge against him beyond reasonable doubt on the basis of legally admissible, confidence inspiring, trustworthy and reliable evidence. No matter how heinous the crime, the constitutional guarantee of fair trial under Article 10 A cannot be taken away from the accused. It is, therefore, duty of the court to assess the probative value (weight) of every piece of evidence available on record in accordance with the settled principles of appreciation of evidence, in a dispassionate, systematic and structured manner without being influenced by the nature of the allegations. Any tendency to strain or stretch or haphazardly appreciate evidence to reach a desired or popular decision in a case must be scrupulously avoided or else highly deleterious results seriously affecting proper administration of criminal justice will follow. It may be pertinent to underline here that the principles of fair trial have now been guaranteed as a Fundamental Right under Article 10 A of the Constitution and are to be read as an integral part of every sub-constitutional legislative instrument that deals with determination of civil rights and obligations of, or criminal charge against, any person" (Bold added)

14. After our reassessment of the evidence on record we find that the prosecution has proved the charge against the appellants beyond a reasonable doubt and as such uphold their convictions for the following reasons keeping in view that each criminal case must be judged on its own particular facts and circumstances;

(a) The FIR was lodged within one day of the incident by an eye witness on behalf of the state. Keeping in view the huge blast which lead to a massive loss of life and injuries to so many men, women and children all of whom had to have inquest reports carried out on them or be immediately transported to hospital in order to save their lives we find such delay in lodging the FIR to be fully explained. Furthermore it was against unknown persons so no attempt was made to falsely implicate any one and neither the prosecution benefited nor the accused were prejudiced by such delay and as such the slight delay in lodging the FIR based on the particular facts and circumstances of this case is not fatal to the prosecution case. In this respect reliance is placed on the cases of **Muhammad Nadeem alias Deemi Versus The State** (2011 SCMR 872) and **Qadan alias Qadir Bux and another vs. The State** (PLD 2015 Sindh 426).

(b) One of the **most important** pieces of evidence against each of the appellants is their retracted judicial confession which they made before a judicial magistrate. We set out the retracted judicial confessions of each appellant for ease of reference below;

Section 164, Cr.P.C. statement of Appellant Furqan

Question: What do you have to say?

Answer: Mufti Hidayatullah asked me to do my work/task. Firstly, he used to give me Rs.5000/- per month as expenses. After that he asked me to do my work, upon which, I said him that I will not do your work. Upon which, he said that if you will not do my work, I will kill you and your family. Then he gave me Rs.10000/-. My cousins use to pay visits at Sehwan on every year. He asked me you may also go. He got down at station; this matter is a month of February. Later on, as per directions of Mufti Hidayatullah I stayed three days at Lakyari Hotel in Sehwan Sharif and made recce of Sehwan Sharif. And I went back at Quetta and narrated all details to Mufti Hidayatullah. (After that, Hidayatullah, (Sentence Ambiguous) Nadir @ Rasheed who is in Jail. Mufti Hidayatullah gave a suicide jacket to Barar Brohi and sent him and he was killed in Sehwan bomb blast. Ghulam Mustafa @ Sain Mazari who was killed in police encounter in Mastung. Mufti Hidayatullah got committed a suicide bomb blast at Sehwan Sharif by sending each Safiullah Mazari, Abdul Sattar Mazari, Aijaz Bangul Zai, Maqbool @ Zul Qarnain and Nouman @ Tanveer at Sehwan Sharif, in which, number of peoples were killed. On 20th February 2019 Police Gadap arrested me and Ali Akbar @ Haji and recovered arms @ hand grenades. On my pointation, police recovered crime weapons and hand grenades. I have given this statement according to my own will and wish without any pressure, greed and fear. (bold added)

Sd/LTI Furqan Majeed

Sd/- VIIIth Civil Judge/
Judicial Magistrate, Malir Karachi

Section 164, Cr.P.C. statement of Appellant Nadir Ali

Question: What you have to say?

I am Nadir Ali @ Murshad S/o Ghulam Rasool by caste Jakhrani aged 27 years resident of Saeed Khan Jakhrani Deh Babar Warhi Tangwani, District Kashmore, Sindh. I am affiliated with DAISH. On 16th February 2017 I, Doctor Ghulam Mustafa Mazari, Barar Brohi and Safiullah all together committed suicide bomb explosion at Sehwan Shrine and this plan was made at Murad Jamali, Baluchistan. I, Nadir Ali, Barar Brohi, Safiullah, Dr.Ghulam Mustafa Mazari, Abdul Sattar, Aijaz Bangulzai, Farooq, Zulqarnain and Tanveer were present there. As I was acquainted of Sehwan that's why I was assigned task of leadership and I had also affiliation with Daish. After that, before one day of explosion, I, Barar Brohi and Safiullah boarded on a public bus came at Sehwan Shrine and then we took a room on rent, adjacent to shrine. After that, I, Barar Brohi and Safiullah went at shrine in order to visit and how to accomplish our task. Thereafter we showed the explosion place to Barar Brohi where 'DAMAL' is performed. After that, we again went in our room. Thereafter, Dr.Ghulam Mustafa who is 'AMEEN' of Daish at about 10.00 p.m. made call to us through free app and asked me that you Nadir Ali come at Jahaz Chowk. After that, Dr.Ghulam Mustafa Mazari handed over a bag which was containing a jacket. Thereafter, doctor said that at about 06.30 p.m. an electricity go off then that time you will make explosion. I come back in the hotel room by bringing the said bag. On next day on 16.02.17 having prepared/made the said jacket and worn to Barar Brohi that time was of 6.00 p.m. Then we all three went at shrine/Dargah where we got entered Barar Brohi in shrine of Sehwan Sharif and saw off him, and I Nadir Ali activated device. Thereafter, I and Safiullah were coming

towards Jahaz Chowk, in the way we heard powerful explosion, upon which we said that our mission accomplished and then we reached at Jahaz Chowk where Dr. Ghulam Mustafa was waiting of us. After that, I, Safiullah and doctor all together went at the village of Safiullah Ronjhan Punjab by a car which car was driven by doctor himself. Thereafter, one my friend informed that Dr. Ghulam Mustafa Mazari was killed in a military operation in Mustung. As I was available in area of Mustung that Aijaz Bangulzai informed me by calling that ammunitions and arms have to deliver at Karachi for conducting another attack. After that, I put arms ammunitions material/devices i.e. one pistol (word illegible), 2 hand grenades, detonator, one circuit receiver, one remote control, (explosive 400gm), one circuit plate in said bag by packing, rode on a motorcycle was coming to Karachi from Katcha area that on 15.11.17 at about 12.30 (night) police arrested me alongwith bag at Dargah deh Mahi Gharhi. However, it is worthwhile to mention here that we had made explosion at Sehwan in which about 82 peoples were killed while 383 people became injured. As doctor gave me one S-6 samsung, cash Rs.65000/- and got purchased a house/site in Quetta (bold added)

Law on retraction of judicial confessions.

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

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

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

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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. In our view however following the case of **Azeem Khan V Mujahid Khan** (2016 SCMR 274 such irregularities must be of a minor nature and must not have detracted from either the voluntariness or truthfulness of the confession.

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

In the case of **Manjeet Singh V State** (PLD 2006 SC 30) a further requirement seemed to be added that in determining the truthfulness of

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the confession it had to be placed within the context of the whole of the prosecution evidence/case.

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

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

Averting to the procedural safe guards which are applicable to the recording of confessions such principles were set out in the case of **Azeem Khan v. Mujahid Khan** (2016 SCMR 274) which concerned judicial confessions under S.164 Cr.PC before judicial magistrates.

14. The judicial confessions, allegedly made by both the appellants are the material piece of evidence in the prosecution hand, therefore, we would deal with the same in the first instance.

15. Keeping in view the High Court Rules, laying down a binding procedure for taking required precautions and observing the requirements of the provision of section 364 read with section 164, Cr.P.C. by now it has become a trite law that before recording confession and that too in crimes entailing capital punishment, the Recording Magistrate has to essentially observe all these mandatory precautions. The fundamental logic behind the same is that, all signs of fear inculcated by the Investigating Agency in the mind of the accused are to be shedded out and he is to be provided full assurance that in case he is not guilty or is not making a confession voluntarily then in that case, he would not be handed over back to the police. Thereafter, sufficient time for reflection is to be given after the first warning is administered. At the expiry of that time, Recording Magistrate has to administer the second warning and the accused shall be assured that now he was in the safe hands. All police officials whether in uniform or otherwise, including Naib Court attached to the Court must be kept outside the Court and beyond the view of the accused. After observing all these legal requirements if the accused person is willing to confess, then all required questions formulated by the High Court Rules should be put to him and the answers given, be recorded in the words spoken by him. The statement of accused be recorded by the Magistrate with his own hand and in case there is a genuine compelling reason then, a special note is to be given that the same was dictated to a

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responsible official of the Court like Stenographer or Reader and oath shall also be administered to such official that he would correctly type or write the true and correct version, the accused stated and dictated by the Magistrate. In case, the accused is illiterate, the confession he makes, if recorded in another language i.e. Urdu or English then, after its completion, the same be read-over and explained to him in the language, the accused fully understand and thereafter a certificate, as required under section 364, Cr.P.C. with regard to these proceedings be given by the Magistrate under his seal and signatures **and the accused shall be sent to jail on judicial remand and during this process at no occasion he shall be handed over to any police official/officer whether he is Naib Court wearing police uniform, or any other police official/officer, because such careless dispensation would considerably diminish the voluntary nature of the confession, made by the accused.**(bold added)

In the case of **Muhammad Ismail and others v. The State** (2017 SCMR 898) it was emphasized that if the judicial confession was the only piece of evidence against the accused then ignoring procedural safeguards would amount to the whole confession being disregarded **and in cases of judicial confessions as alluded to earlier there was a requirement of corroboration** in the following terms at P.898;

"The only other piece of evidence remaining in the field was a judicial confession allegedly made by Muhammad Iqrar, Khalid Hussain and Shakir Ali appellants before a Magistrate under section 164, Cr.P.C. but admittedly the said judicial confession had been retracted by the appellants before the trial court and in the absence of any independent corroboration such retracted judicial confession could not suffice all by itself for recording or upholding the appellants' convictions". (bold added).

Like wise in the case of **Fazal Rehman** (Supra) it was held as under at P.251;

"(d) For the purpose of arriving at the conclusion whether a retracted confession may form the basis of conviction if believed to be true and voluntarily made, the Court has to take into consideration not only the reasons given for making the confession or retracting but the attending facts and circumstances surrounding the same. There can be no absolute rule that a retracted confession cannot be acted upon unless the same is corroborated materially. But as a matter of prudence and caution which has sanctified itself into a rule of law, a retracted confession cannot be made solely the basis of conviction unless the same is corroborated. This, however, does not necessarily mean that each and every circumstance mentioned in the confession regarding the complicity of the accused must be separately and independently corroborated nor is it essential that the corroboration must come from facts and circumstances discovered after the confession was made.(bold added)

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(f) *The confession of an accused person is substantive evidence and a conviction can be based solely on the confession. The question however, as to whether on the facts and circumstances of a given case the Court should act upon such a confession alone is an entirely differently question, which relates to the weight and evidentiary value of the confession. Normally speaking it would not be quite safe, as a matter of prudence if not of law, to base a conviction for murder on the confession of the alleged murderer, by itself and without more, when the confession is open to good deal of criticism.* (bold added)

Turning to the judicial confessions of the appellants we find that both of the retracted judicial confessions were made voluntarily (since there is no compelling material on record to indicate otherwise) and there object was to state the truth (as they are fully in line with the prosecution case) and that there are hardly any procedural irregularities in the manner in which the judicial confessions were recorded keeping in view the fact that the confessions in each case were made between 7 to 10 days of the arrest of each of the accused in this case and such a relatively minor delay in recording the confessions will not effect their legally validity as there is no hard and fast rule in this respect and thus we rely upon them as against each accused. We do note however that the judicial confession of appellant Nadir Ali is much stronger than of appellant Furqan's since it is in far greater detail and reveals that appellant Nadir played a far greater role as facilitator of the suicide bomber and as such we place greater reliance on his (Nadir's) judicial confession.

So what other supportive or corroborative evidence is there against the appellants apart from the judicial confessions.

© There is **direct evidence** against both the appellants through 5 eye witnesses which supports the confessions of the appellants however we have not considered it at the start because although we find the eye witness evidence to be reliable, trust worthy and confidence inspiring overall and believe the same entirely with regard to the incident however we find that we can only give them a small amount of weight on their own in terms of correctly identifying the appellants at the scene with the suicide bomber as all the eye witnesses failed to give any hulia of the appellants either in the FIR (one was the complainant) or in their S.161 Cr.PC statements and two of them saw the appellants on TV and in

newspapers as the facilitators of the bomb blast **before** there identification of the appellants (PW 23 Hassan Ali and PW 24 Syed Muhammed Shah) at the identification parade along with the fact that the identification parade was conducted approximately two years after the bombblast. We shall discuss the evidence of the eye witnesses below in detail.

(i) **Eye witness PW 10 Rasool Bux.** On 16.02.2017 he was posted at PS Sehwan as SHO. According to his evidence he was on patrol with PW 12 Abdul Ghaffar, PW 15 Muhammed Usman and other police officials when he reached the shrine as he was tasked to check the police on duty at the shrine. He saw 4 unknown persons in plain clothes and three of them were hugging the fourth and congratulating him and saying Allah Hafiz who went inside the Shrine. He thought they were acting suspiciously and sent HC Abdul Aleem who was on duty at the shrine to check the fourth person who headed towards the shrine after leaving the other three who were hugging and congratulating him. HC Abdul Aleem followed him but then the blast occurred and the three suspects escaped in the chaos. HC Abdul Aleem was martyred along with many other devotees at the shrine.

He registered the FIR with promptitude. He was a natural witness and had no enmity with the appellant Nadir and had no reason to implicate him in a false case and was close enough to identify the appellants in what would have been good light as the shrine was lite up. He also states in his FIR which was registered with promptitude **that he saw the three suspects very well and could identify them if he saw them again.** He made no material improvements in his evidence from his FIR. He was not dented despite a lengthy cross examination and since we find his evidence to be reliable trust worthy and confidence inspiring we believe his evidence.

He picked out appellant Nadir at an identification parade which was held two years later **however** since he gave no hulia at the time and as discussed above we give his correct identification of the appellants some but little weight considering that it is supported by 4 other eye witness PW's whose evidence we discuss below but in order to fully rely on his correct identification of the appellants it would need to be corroborated by **some other** strong independent corroborative evidence **apart** from the confession of the appellants which we believe and have already relied upon. With regard to the importance of an early hulia in a S.161 Cr.PC witness statement for correct identification before a later identification parade reliance is placed on the case of **Javed Khan alias Bacha and another v. the State and another** (2017 SCMR 524). The case of **Mian Sohail Ahmed and others v. the state and others** (2019 SCMR 956) also emphasized the great care and caution which must be taken by the courts in determining that the accused has been correctly identified.

(ii) **Eye witness PW 12 Abdul Ghafoor.** On 16.02.2017 he was a police officer who accompanied PW 10 Rasool Bux to the shrine in the police mobile and was a natural witness. He is named in the FIR

which was lodged with promptitude by complainant eye witness PW 10 Rasool Bux and signed numerous memo's/mashirnama's on the spot and as such his present is not doubted at the scene at the time of the bomb blast. His evidence corroborates that of PW 10 Rasool Bux in all material respects regarding the events at the shrine and the identification of appellant Nadir at the identification parade. Thus we rely on his evidence but the same considerations apply to him in respect of the identification of the appellants as for PW 10 Rasool Bux .

(iii) **Eye witness PW 15 Muhammed Usman.** On 16.02.2017 he was a police officer who accompanied PW 10 Rasool Bux and PW 12 Abdul Ghaffor to the shrine in the police mobile and was a natural witness. He is named in the FIR which was lodged with promptitude by complainant eye witness PW 10 Rasool Bux and signed numerous memo's/mashirnama's on the spot and as such his presence is not doubted at the scene at the time of the bomb blast. His evidence corroborates that of PW 10 Rasool Bux and PW 12 Abdul Ghaffor in all material respects regarding the events at the shrine and the identification of Nadir at the identification parade. Thus we rely on his evidence but the same considerations apply to him in respect of the identification of the appellants as for PW 10 Rasool Bux and PW 12 Abdul Ghaffor.

(iv) **Eye witness PW 23 Ali Hassan.** According to his evidence on 16.02.2017 he and his friend eye witness PW 24 Syed Muhammed Shah came to the shrine for paying homage. When they left the shrine and came into the parking area of the shrine at about 6.30pm he saw two persons congratulating a third person for travelling towards paradise. Whilst the two others left the third person went inside the shrine and at about 7pm he heard an explosion from inside the shrine where upon panic erupted and they left for their village. A few days later he saw on T.V after there arrest the two persons who were congratulating the third person who went inside the shrine and thereafter the blast occurred being shown as accused in the bomb blast case at the shrine. He recognized them as the two persons who he saw hugging and congratulating the suicide bomber before he left for the shrine. He and PW 24 Syed Muhammed Shah went to CTD police Hyderabad on 20.11.2022 where their S.161 Cr.PC statements were recorded by IO Imtiaz and he then appeared before an identification parade 2 days later on 22.11.2022 where he picked out appellant Nadir as one of the person's who was hugging and congratulating the suicide bomber before the blast.

He does not appear to be a chance witness as he came from Shikarpur to Sehwan to pay homage at the shrine and he appears to have got a good look at the appellants and his evidence corroborates that of the police official PW's 10, 12 and 15 whose evidence we have already discussed. He gave evidence in a natural and straight forward manner and was not dented during cross examination and we fully believe his evidence in respect of the incident and his presence at the time of the incident however he did not come forward for a period of two years to get his S.161 Cr.PC statement recorded (perhaps because he was unaware that the

appellants were facilitators) and his memory seems to have been awoken **after** he saw the appellants on T.V named as being involved in the crime. Hence we give his correct identification of the appellant Nadir some but little weight considering that it is supported by 4 other eye witness PW's who evidence however in order to fully rely on his correct identification of the appellant Nadir it would need to be corroborated by **some other** strong independent corroborative evidence **apart** from the confessions of the appellants which we believe and have already relied upon.

(v) **Eye witness PW 24 Syed Muhammed Shah.** He corroborates the evidence of **eye witness PW 23 Ali Hassan** in all material respects **except** that he states in his evidence that the person who headed towards the shrine was a fatty wearing waste which indicates that he was the suicide bomber as the suicide jacket would be under his clothes and making him look fat. The same considerations apply to him as to **eye witness PW 23 Ali Hassan.**

It is note worthy that all the five eye witness PW's whose evidence is discussed above **only** picked out appellant Nadir at the identification parade with a specific role and Furqan was not put up before any identification parade.

So what other evidence is there to corroborate/support the confessions and give further weight to the identification of the appellants as made by the eye witnesses.

(d) In terms of the correct identification of the eye witnesses of the appellant Nadir and the presence of appellant Furqan at the shrine and being facilitators of the bomb blast at the shrine an **extremely significant** piece of evidence is the CCTV/USB/DVR footage obtained from the shrine just before the bomb blast which is reproduced below for ease of reference with the footage being commented upon by PW 10 Rasool Bux in his evidence;

Evidence in chief of PW-10 Rasool Bux

DVR No.01 displayed in open court. After seeing each of the clip PW has deposed as under;

Video Clips dated 15.02.2017.

Camera No. 03: Video clip at 06:47:50 p.m (clip of 08 seconds) he has identified accused appearing walking in the premises of Dargah one by one following each other. **He pointed accused No. 01 heading rest of accused to be Nadir following him to be Furqan and third and last one to be suicide bomber.**

Camera No. 10: Video clip at 06:47:58 p.m to 06:48:08 p.m (clip of 10 seconds) he has identified accused Nadir and Furqan appearing in the clip.

Camera No. 08: Video clip at 07:30:25 p.m accused appear in camera and at 07:30:58 p.m one accused identified by the PW to be Furqan is seen leaving two of his companions co-accused seen in camera. Accused Furqan joins the scene i.e appears in the camera again at 07:32:20 p.m and again all of accused moves away disappearing from the range of camera at 07:37:40 p.m. The PW identified both the accused.

Camera No.04: Video clip at 06:46:29 p.m to 06:46:41 p.m (clip of 12 seconds). The PW has pointed out to accused seen in the clip. Video Clips dated 16.02.2017.

Camera No.04: Video clip at 06:52:03 p.m the suicide bomber appear in the camera and disappear from the range of camera at 06:52:18 and again appear in the range at 06:56:27 p.m till 06:56:33 p.m the PW had identified him. It has the video clip of suicide how he manages to enter without being made search by the police employee present at the gate.

Camera No.03: Video clip at 06:58:47 p.m to 06:58:54 p.m.

Camera No. 10: Video clip at 06:59:00 p.m to 06:59:11 and both these clips suicide bomber is identified by the PW which is just seconds before the incident.

DVR No.02.

Camera No. 03: Video clip at 07:00 p.m the suicide bomber appears in the shrine and blast at 07:01:25.

Camera No. 02: Video clip at 07:01:25 blast inside the shrine The dead bodies and injured and destruction seen in the video clips.

Note: The documentary evidence being in Sindhi language was interpreted to the counsel Mr. Ghulam Rasool Baloch in the Urdu language.

From the above DVR evidence it is abundantly clear that the eye witness PW 10 Rasool Bux who was also the complainant in the case has correctly identified the appellants with the suicide bomber at the shrine just before the suicide bomber made the bomb blast which DVR fully corroborates/supports the eye witness evidence of the 5 eye witnesses with regard to the correct identification of appellant Nadir being present at the scene and facilitating the suicide bomber and the confessions of both the appellants. It also clearly implicates appellant Furqan as being present and as an accomplice of the suicide bomber.

(e) Although the evidence against appellant Furqan appears to be less than that against appellant Nadir **further evidence** is available against appellant Furqan apart from his own judicial confession, his identification on the DVR with the suicide bomber at the time of the bomb blast and his identification by the eye witnesses and the confession of his co-accused Nadir who names him as part of the team sent to bomb

blast the shrine through a suicide bomber except naming him incorrectly as Farooq. The **further evidence** is found in the evidence of PW 28 Muhammed Bux who was the manager of Lakiyari Guest House at Sehwan Sharif who gave evidence that he recognized Furqan as a person who stayed at his guest house on 09.02.2017 which is supported by the hotel's register **which ties in with Furqan's own confession of coming to Sehwan Sharif in order to do a recce of the shrine for the purposes of the suicide bombing** and that he was there on the day of the blast.

(f) 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/evidence 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).

(g) The evidence of the PW's provides a believable corroborated unbroken chain of events from the appellants arriving at the shrine with a suicide bomber to the appellants embracing him and congratulating him to the police PW's arriving on the scene and requesting HC Abdul Aleem to stop the suicide bomber who was acting suspiciously to the suicide bomber exploding the bomb to the escape of the appellants amongst the confusion to the large scale loss of life and injuries by the bomb blast as evidenced by the BDU expert and the medial evidence to the arrest of the appellants (one with a pistol and bomb making material) to their confessions before the judicial magistrate to them being identified by 5 eye witnesses at an identification parade as being with and congratulating the suicide bomber just before the blast to the DVR recording showing the presence of the appellants at the scene with the suicide bomber which corroborated/supported both their judicial confessions and the 5 eye witnesses in terms of their correct identification to the appellant Furqan staying at the Lakiyira guest house in Sehwan whilst he was carrying out the recce for the suicide bombing at the shrine.

(h) That the official police witnesses 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 witnesses can be fully relied upon. In this respect reliance is placed on **Mushtaq Ahmed V The State** (2020 SCMR 474).

(i) It has also be proven through reliable prosecution evidence that police officials based on spy information arrested the appellant Nadir when he was crossing from Balochistan to Karachi with an unlicensed pistol and explosive material and equipment which both produced positive FSL reports and thus the prosecution has also proven the offences against Nadir under the Explosives Substances Act 1908 and Sindh Arms Act 2013 repectively. It also **significant** that appellant Nadir's arrest ties in with his confession whereby he had been called to Karachi in order to carry out more bomb blasts and hence he was caught red handed with explosives materials and equipment for that very purpose.

(j) 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 one of non presence at the scene however this defence is completely belied by the appellant's judicial confession and other supportive and corroborative evidence as discussed above. The appellants did not give evidence on oath or call any DW as a witness to support their defence case. Thus in the face of the appellants judicial confessions and other prosecution evidence linking them to the suicide bomber we disbelieve the appellants defence case as an after thought in order to save their skin.

15. We 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 there to be an act of terrorism there had to be an object, intent, purpose and design to create terror on account of that act. In this case through the confessions of appellants we have no doubt that object, intent, purpose and design of the appellants was to create terror by facilitating a massive suicide bomb blast at a shrine where many innocent people would be either murdered or seriously injured which did in fact achieve its object, purpose and design of creating terror throughout the province of Sindh if not throughout the whole of Pakistan.

16. Thus, based on the above discussion we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which they have been convicted and hereby maintain their convictions.

17. With regard to sentencing this court has hardly ever come across a crime of such brutality where more than a hundred men, women and children were murdered and/or seriously injured with some of the injured being crippled for life. For the scores of seriously injured their lives will never be the same again. Physically due to their injuries they may be never able to walk let alone work again which will have a direct impact on their ability to feed and look after the well being of their families. Many of them will also be psychologically traumatized for the rest of their lives; jumping at every loud noise, afraid of ever going into a crowded space again such as a wedding or place of worship, reliving the terrible carnage of dead bodies, blood and body parts through nightmares and possibly PTSD. For the survivors of the murdered the loss of their loved ones will forever haunt them especially if the deceased were children with their whole lives ahead of them. Innocent men, women and children do not expect to go to shrines, temples or other public places and be blown to pieces for

absolutely no reason apart from some other person's bigotry, intolerance or terrorist inclinations. Those who indulge in such inhumane activities/conduct must be sent a loud and clear message that if they engage in such inhumane activities/ conduct and they are proved guilty of the same after trial no leniency will be extended to them by the courts; instead they must expect to be dealt with by iron hands and face the deterrent sentence of the death penalty so as to dissuade others from treading in their barbaric footsteps. As such the death sentences handed down to the appellants and all other sentences handed down to the appellants in the impugned judgment are upheld with the confirmation reference being answered in the affirmative.

18. The appeals are dismissed and the confirmation reference is answered in the affirmative in respect of both the appellants.