

**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.282 OF 2019.

**Appellant:** Abdul Rehman Shaikh S/o. Qutubuddin through M/s. Aamir Mansoob Qureshi and Iftikhar Ahmed Shah Advocates.

**Respondent:** The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

SPL. CRIMINAL A.T.A. NO.283 OF 2019.

**Appellant:** Rafiq Ahmed Channa S/o. Ghulam Nabi through Mr. Muhammad Farooq Advocate.

**Respondent:** The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

SPL. CRIMINAL A.T.A. NO.288 OF 2019.

**Appellant:** Ghulam Murtaza Shaikh S/o. Ghulam Mustafa Shaikh through Mr. Shahab Osto, Advocate.

**Respondent:** The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

SPL. CRIMINAL A.T.A. NO.291 OF 2019.

**Appellant:** Salik Ayaz S/o. Amjad Ali Shaikh through Mr. Zulfiqar Ali Langah, Advocate.

**Respondent:** The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

## SPL. CRIMINAL A.T.A. NO.294 OF 2019.

**Appellant:**

1. Nadir Hussain S/o. Dur Muhammad.
2. Raja Muhammad Sajjad S/o. Muhammad Asghar,
3. Muhammad Taghyal Mehar S/o. Naseer Muhammad Mehar and
4. Farosh Muhammad S/o. Shireen through Mr. Mehmood Anwar Hussain Baloch, Advocate.

**Respondent:** The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

## SPL. CRIMINAL A.T.A. NO.295 OF 2019.

**Appellant:** Yasir Ali S/o. Din Muhammad through Mr. Mehmood Anwar Hussain Baloch, Advocate.

**Respondent:** The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

## Spl. Criminal A.T.A. No.296 of 2019.

**Appellant:**

1. Naveed Ahmed Khan S/o. Muhammiad Ahmed Khan,
2. Saeed Ahmed S/o. Abdul Aziz through Mr. Shoukat Hayat, Advocate.

**Respondent:** The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

## SPL. CRIMINAL A.T.A. NO.297 OF 2019.

**Appellant:** Faheem Anwar Memon S/o. Anwar Qadir Memon through Mr. Shoukat Hayat, Advocate.

**Respondent:** The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

**SPL. CRIMINAL A.T.A. NO.298 OF 2019.**

**Appellant:** Atta Muhammad S/o. Muhammad Bux through Mr. Nehal Khan Lashari, Advocate.

**Respondent:** The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

**SPL. CRIMINAL A.T.A. NO.304 OF 2019.**

**Appellant:** Abdul Ghafoor S/o. Haji Suleman through Mr. Nehal Khan Lashari, Advocate.

**Respondent:** The State through Mr. Saleem Akhtar Buriro, Additional Prosecutor General.

**Dates of hearing:** 14.03.2022 and 15.03.2022.

**Date of Announcement:** 25.03.2022.

**JUDGMENT**

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellants Abdul Rehman Shaikh S/o. Qutubuddin, Rafiq Ahmed Channa S/o. Ghulam Nabi, Ghulam Murtaza Shaikh S/o. Ghulam Mustafa Shaikh, Salik Ayaz S/o. Amjad Ali, Nadir Hnssain S/o. Dur Muhammad, Raja Muhammad Sajjad S/o. Muhammad Asghar, Muhammad Taghyal Mehar S/o. Naseer Muhammad Mehar, Farosh Muhammad S/o. Shireen, Yasir Ali S/o. Din Muhammad, Naveed Ahmed Khan S/o. Muhammad Ahmed Khan, Saeed Ahmed S/o. Abdul Aziz, Faheem Anwar Memon S/o. Anwar Qadir Memon, Atta Muhammad S/o. Muhammad Bux and Abdul Ghafoor S/o. Haji Suleman have preferred these appeals against the judgment dated 12.10.2019 passed by Learned Anti-Terrorism Court No.XIX, Karachi in Special Case No.121/2017 arising out of Crime No.149/2017 U/s. 223, 224, 225-A, 114, 216, 34 PPC read with section 7 of ATA, 1997, registered at Police Station New Town, Karachi whereby the appellants were convicted and sentenced as under:-

- 1) Accused persons were convicted u/s 265-H (ii) Cr.P.C. for committing offence u/s 223 PPC to suffer S.I. for two (02) years and fine of Rs.2000/- each and in case of default of payment of fine, they shall suffer S.I. for one month more.
- 2) Accused persons were convicted u/s 265-H (ii) Cr.P.C. for committing offence u/s 225-A PPC to suffer S.I. for two (02) years and fine of Rs.2000/- each and in case of default of payment of fine, they shall suffer S.I. for one month more.
- 3) Accused persons were convicted for committing offence u/s 7(g) of ATA, 1997 to suffer S.I. for two (02) years and fine of Rs.2000/- each and in case of default of payment of fine, they shall suffer S.I. for one month more.

All the sentences were ordered to be run concurrently. The benefit of S.382-B Cr.P.C. was also extended to all the accused.

2. The brief facts of the prosecution case are that on 14.06.2017, Ashraf Ali Nizamani, Deputy Inspector General of Prisons at Karachi Region (the complainant) vide his letter No. Secret 01/2017 dated 14.06.2017 got an FIR registered regarding escape of two UTPs **Shaikh Muhammad Mumtaz @ Firoon @ Sher Khana @ Shahzad @ Bhai son of Shaikh Muhammad Muslim @ Shaikh Muhammad Aslam @ Muhammad Saleem and Muhammad @ Munna son of Muhammad Shafi** from Judicial Complex of Central Prison Karachi. It was informed that above two UTPs were found missing and reported to have escaped away from Judicial Complex adjacent to Central Prison, Karachi. The complainant requested for registration of FIR under relevant sections of law against officials viz. Ghulam Murtaza Shaikh Superintendent, Faheem Anwar Memon, Deputy Superintendent, Abdul Rehman Shaikh, Assistant Superintendent, ASI Faroosh Muhammad, SPC Nawab Ali, PC Atta Muhammad, PC Muhammad Amir, PC Abdul Ghafoor, PC Saeed Ahmed, PC Muhammad Sajjad, PC Taghyal and PC Nadir Hussain regarding their negligence in escape of UTPs. The complainant has also mentioned the list of cases in which escapee UTPs were facing trial.

3. On receipt of such letter ASI Muhammad Sharif registered the FIR u/s. 223/224/225/225-A PPC against the two UTPs and above 12 officials/accused persons. After usual investigation challan was submitted against them in the court of Administrative Judge of ATCs of High Court of Sindh Karachi and the same was sent to the ATC-VIII for disposal according to law.

4. The prosecution in order to prove its case examined 27 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. None of the accused gave evidence on oath and none of the accused called any DW in support of their defence case. After 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.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 12.10.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. Learned counsel for the appellant Ghulam Murtaza Shaikh who was jail superintendant at the time of the escape of the UTP's has contended that although he was responsible for the security and management of the jail he had only been appointed 29 days before the incident and although the jail was in a mess being flooded with contraband items he had done his best to bring things under control by issuing two office orders assigning particular responsibilities to jail officials; contacted the Government of Sindh bringing to its attention the over crowding in the jail and lack of staff which was making it difficult to manage the jail efficiently and requesting for more staff; that he had also written to the Rangers requesting that some of their staff be released to assist him in searching the jail to confiscate any contraband items; that he was not responsible for micro managing the jail and he had to rely on his staff in ensuring that his office orders were carried out and that they fulfilled their own individual responsibilities for example by ensuring that accused were only produced before ATC courts pursuant to production orders and ensuring that all returned after court proceedings to the barracks; that he had not committed negligence in any criminal sense of its meaning and nor could he be held responsible for the escape keeping in view Prison Rules 693 and 948 and thus for any or all of the above reasons he should be acquitted of the charge by being extended the benefit of the doubt.

7. Learned counsel for the appellant Faheem Anwar Memon who was Deputy Superintendent of the jail at the time when the UTP's escaped contended that no specific role had been given against him in the charge sheet which made it hard for him to prepare his defence and as such the charge was defective; that the UTP's had not escaped from the prison barracks but had escaped from the judicial complex which was not under his control and as such he could have no responsibility in respect of the escapees; that ASI Faroosh had the responsibility for UTP's whilst they were in the ATC complex attached to the jail so he was guilty of negligence and not any one else if the UTP's escaped from the judicial complex where the bars had been broken to facilitate their escape and cutting items recovered especially as the escapees after being brought before the ATC court were never returned to the jail premises; that he had no responsibility in respect of sending UTP's to the ATC court and as such could not be liable if they escaped from the ATC courts; that his duty was limited to Rule 705 of the Prison Rules and the log which showed the counting of the UTP's after their return from the ATC complex had been signed by appellants Salek, Naveed and Ghulam Murtaza so if there had been any miscounting they were responsible for it and thus for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt.

8. Learned counsel for appellant Abdul Rehman who was Assistant Superintendent of the jail at the time of the jail break contended that he was not named in the FIR; that it was not his job to bring the UTP's to the ATC's; that he was hearing officer on the day in question as well as Tower in charge who hears the complaints of the prisoners and thus had no responsibility in respect of the UTP's who escaped from jail and no responsibility with respect to barrack 25 and 26 where the UTP's who escaped were lodged and thus for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt.

9. Learned counsel for appellant Naveed Ahmed who was Assistant Superintendent of the jail at the time of the jail break contended that he was not named in the FIR; that he was only arrested during the course of the investigation; that he had no role in sending the escapees to the Judicial complex from where they escaped and this was not one of his

duties; that no PW had deposed against him and that the responsibility of dealing with the escapees rested with appellants constables Nawab Ali, Atta Hussain and Ghafoor whose job it was to look after barrack 25 and 26 where the escapees were lodged and thus for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt.

10. Learned counsel for Salek Ayaz who was Assistant Superintendent of the jail at the time of the jail break contended that he was not named in the FIR; that no PW had deposed against him; that he had no concern with the UTP's and as such had not committed any negligence and should be acquitted of the charge by extending him the benefit of the doubt.

11. Learned counsel for appellant Saeed who was a police constable posted at ATC VII at the time of the jail break contended that no UTP was handed over to him and that no evidence had been brought on record to show that he had any involvement in the escape of the UTP and certainly the provisions regarded the ATC were not attracted to the case based on the particular facts and circumstances of this case and thus for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt.

12. Learned counsel for appellants Nadir, Sajjad and Tagial who were all police constables contended that the appellants were all on guard duty at ATC's 11 and 12 at the time of the incident and that they never came into contact with the UTP's who were not produced before their ATC's on the day of the incident; that the UTP's which they did take custody of at the ATC's were all safely returned to jail after appearing in the ATC's and as such they had played no role in the escape of the two UTP's; that no PW had deposed against them and that they were all exonerated after a detailed inquiry into the aspect of negligence shown by jail staff after the jail break. He however conceded that appellant Farosh who was a police constable was responsible for those UTP's in the ATC complex at the time of the incident but contended that all the appellants should be acquitted by being extended the benefit of the doubt.

13. Learned counsel for appellants Muhammed Atta and Abdul Ghafoor who were police constables at the time of the incident contended

that both the appellants had nothing to do with the UTP's who escaped; that no evidence had come on record against them and as such they should be acquitted of the charge by being extended the benefit of the doubt.

14. Learned counsel for appellant Rafique Channa who was head clerk at the time of the incident contended that he was an office worker in the main block of the prison and had nothing to do with production orders or UTP's; that he only dealt with general administrative work; that he was not named in the FIR or any statement made by the complainant; that he had not signed any document; that he had only been implicated by co-accused Nawab who had now died who had not even given a confession before a magistrate and other wise there was not a shred of evidence against him; that even PW Arshad whose implication had been proven in this case had not said a single word against him and as such he should be acquitted by being extended the benefit of the doubt.

15. Learned counsel for appellant Yasir Ali who was a clerk working with appellant Rafique Channa adopted the same arguments as Rafique Channa and contended that the only evidence on record was against Arshad who had been found by a hand writing expert to have added the name of one of the escaped UTP's for his production before the concerned court on the day in question and as such if any one was to blame for the escaping UTP's being brought out of their ward and produced before the court it was Arshad and not him and as such he should be acquitted by being extended the benefit of the doubt especially as he was not present being on leave that day.

16. In support of their contentions learned counsel for the appellants placed reliance on the cases of **Ghulam Hussain and others v. The State and others** (PLD 2020 Supreme Court 61), **Province of Punjab through Secretary Punjab Public Prosecution Department and another v. Muhammad Rafique and others** (PLD 2018 Supreme Court 178), **Muhammad Nawaz v. The State** (PLD 2002 Supreme Court 287), **Muhammad Yaqoob, Sub-Inspector v. The State** (PLD 2001 Supreme Court 378), **Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others** (2015 SCMR 630), **Muhammad Rashid**



@ Master and another v. The State (SBLR 2016 Sindh 1347), Azeem Khan and another v. Mujahid Khan and others (2016 SCMR 274), Muhammad Mansha v. The State (2018 SCMR 772), Abdul Khaliq v. The State (2006 SCMR 1886), Irfan and another v. Muhammad Yousaf and another (2016 SCMR 1190), Bashir Ahmed and another v. The State (PLD 2020 Sindh 202), Hashim Qasim and another v. The State (2017 SCMR 986), The State v. Muhammad Shafique alias Pappo and another (PLD 2004 Supreme Court 39), Muhammad Nawaz and others v. The State and others (2016 SCMR 267), Qaddan and others v. The State (2017 SCMR 148), Abdul Razzaq Butt v. Kalsoom Bibi (1999 MLD 30), (a full bench judgment by the Supreme Court dated 11.10.2019 in Civil Appeal No.1772 of 2008 and others), Mehram Ali and others v. Federation of Pakistan and others (PLD 1998 Supreme Court 1445), HC Muhammad Khan and 3 others v. The State (PLD 2017 Sindh 723), Allahi Bux and 7 others v. The State (2007 MLD 39), Mazhar Hussain and others v. The State (1986 P Cr.LJ 2842), Ahsan Ali v. Emperor (A.I.R. 1919 Lahore 229), a judgment of Allahabad High Court (Durga Prasad v. Emperor dated 19<sup>th</sup> July, 1910 and Muhammad Shah v. The State (2010 SCMR 1009).

17. On the other hand Additional Prosecutor General appearing on behalf of the State has fully supported the impugned judgment. He contended that from the evidence on record the only possible inference based on the circumstantial evidence was that all the appellants were negligent in their official duties which lead to the escape of the two dangerous UTP's and as such all the appeals should be dismissed as being without merit. In support of his contentions he has placed reliance on the cases of Ali Ahmad v The State (PLD 2020 SC 201), MD Nazir Hossain Sarkar v The State (1969 SCMR 388), Wazir Muhammad v The State (2005 SCMR 277) and Abdur Rehman alias Boota v The State (2011 SCMR 34).

18. We have heard the arguments of the learned counsel for the parties, 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.

19. At the outset we find it both extremely alarming and shocking that two such high profile UTP's who were facing trial in many heinous cases of murder could literally waltz out of the Central Prison Karachi which is one of the highest security prisons in Sindh and their absence remain unnoticed for a whole day and night. There was no secret tunnel or escape whilst being brought to trial outside the jail or fire fight by armed persons within the jail which resulted in their escape or caused any injury let alone loss of life. The two extremely dangerous UTP's it appears from the evidence were taken out of secure custody to the judicial complex which is within the boundaries of the jail without proper production orders whereupon as mentioned earlier they appeared to have simply strolled out under the eyes of the prison guards who did not even notice their absence for a day and a night. Just the above narration of events before even looking at the evidence prima facie screams out a case at a **minimum** of negligence on the part of the jail authorities who were supposed to ensure the continued custody of the two escaped UTP's. The irony of course being that such trials concerning heinous offences are held within the boundaries of central prison Karachi in a specially constructed judicial complex to ensure both an expeditious trial of the accused as per Article 10 (A) of the Constitution **but also** to ensure that potentially dangerous and most hardened criminals are prevented from escaping when produced from prison whilst being transported to the trial courts in the city of Karachi and then returned to prison.

20. We are not so naïve to not realize that contraband, phones and other prohibited articles also make their way into other jails in even developed countries as prisons world wide seem to have such problems but it is still the responsibility of prison officers in Pakistan to apply the relevant law and rules strictly and reduce if not eliminate such activities rather than turning the proverbial blind eye to them whilst ignoring the relevant rules. We also appreciate that most prisons in the world are over populated and understaffed since they appear to be regarded as a low priority in terms of budget allocation none the less those in charge of the prisons must still perform their duties and functions efficiently and in accordance with law and the relevant rules in a diligent manner without negligence or their part. We do however recognize that it is high time that such issues are addressed by the Provincial authorities and that more {

prisons are built in the province so that those confined therein can live in dignified conditions as envisaged by Article 14 of the Constitution which concerns the inviolability of the dignity of man especially if the concept of reformation is one of our penal objectives. Wiser men than us have observed that the manner in which a Society treats its prisoners is often a reflection on that society as a whole itself.

21. The accused being prison officers have in effect been charged and convicted of negligence in performing their duties by not preventing and in essence enabling two hardened UTP's to escape from Central Prison Karachi on 13.06.2017 and not realizing that such dangerous prisoners were even missing until the next day in violation of Sections 223 and 225 A PPC which are set out below for ease of reference;

*223. Escape from confinement or custody negligently suffered by public servant. Whoever, being a public servant legally bound as such public servant to keep in confinement any person charged with or convicted of any offence [or lawfully committed to custody], negligently suffers such persons to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

*225-A. Omission to apprehend, or sufferance or escape, on part of public servant, in cases not otherwise provided for. Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222 or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement shall be punished;*

- (a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and
- (b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine or with both.

22. One of the key questions of law before us is what actually amounts to criminal negligence for the purposes of Sections 223 and 225A PPC.

23. In the case of **Muhammed Yaqoob V State** (PLD 2001 SC 378) which is a similar case which also concerned a jail break where a prisoner had escaped after being produced before a trial court it was held as under as what amounted to criminal negligence under S.223 PPC in the following terms at P.382;

*"There is no cavil to the proposition that negligence is a term of art having multiple dimensions in different jurisdictions. It however, can be defined as "the omission to do an act which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, A would do, or doing an act which reasonable and prudent man would not do. "Negligence" is the absence of such care, skill and diligence as it was the duty of the person to bring to the performance of the work which he is said not to have performed. There are three degrees of negligence: (1) ordinary: which is the want of ordinary diligence, (2) slight: the want of a great diligence, (3) gross: the want of even slight diligence. (Kedarnath v. State AIR 1965 All. 233, Nemichand v. Commissioner, Nagpur Division Nagpur, ILR 1947 Nag. 256; 228 IC 525; 1947 NLJ 281. The factum of negligence as discussed hereinabove can be taken into consideration and negligence may be proved on the basis of presumption or surrounding, circumstances while B taking disciplinary action, but in criminal proceedings definite and concrete evidence would be required to prove the factum of negligence which is lacking in this case. There is no iota of evidence to show that proper custody of Jumma Khan was handed over to petitioner or he was factually included or physically present amongst the undertrial prisoners custody whereof was allegedly handed over to the petitioner. The remand order passed by learned Judicial Magistrate is also silent to the fact that Jumma Khan was produced before him. The remand appears to have been given without completion of mandatory legal requirement and such reckless conduct should be checked. Be as it may, when negligence is a part of the definition of a Penal Section it implied that the act constituting the offence must have been done by the accused himself and if it was accomplished by someone else, the accused cannot be held responsible for it. Criminal negligence can only be proved on the basis of solid and worthy of credence evidence which could not be produced by the prosecution". (bold added)*

24. In this case some of the appellants have contended that they could not be held liable under S.223 as interpreted by the Supreme Court in **Muhammed Yaqoob's case** (Supra) as they were not personally negligent. We find for the reasons mentioned below that most of the appellants were personally negligent in the performance of their duties which allowed the UTP's to escape keeping in view their senior positions and functions for the reasons elucidated later in this judgment.

25. With regard to the charge the sections cited therein which the appellants had been charged with and the use of the word **negligence** in the charge made it abundantly clear that the appellants were facing a trial regarding their negligent conduct which lead to the escape of two,

dangerous UTP's and as such they had full notice from the outset of the charge of negligence which they had to defend themselves against and as such we find no defects in the charge.

#### **Categories of Appellants.**

26. The appellants essentially split into three categories (a) More senior officers serving at the jail being Ghulam Murtaza Shaikh, Faheem Anwar Memon, Abdul Rehman Shaikh, Naveed Ahmed and Salik Ayaz (b) Office clerks serving at the jail being Rafique Channa and Yasir Ali and (c) Police constables/ASI's serving at the jail being Saeed, Nadir, Sajjid, Tagial, Muhammed Farosh, Atta Muhammed and Abdul Ghaffor.

27. It is noted that the appellants being public servants and being trustees of the public in ensuring that all prisoners in the jail, some for very heinous crimes such as the two escapee UTP's, had an obligation to keep such prisoners within the boundaries of the prison and not let them escape by any means and thus had an added duty of care towards the public as if such prisoners managed to escape they might not only cause havoc in society but also might seek reprisals against those who had testified against them or were yet to testify against them and as such their duty of care was magnified. The public must also have confidence in the prison system that no prisoner and in particular dangerous and hardened criminals can escape and are securely confined.

#### **Negligence of more senior officers serving at the jail at the time of the escape of the UTP's.**

28. With regard to appellants Ghulam Murtaza Shaikh who was posted as Superintendent, Faheem Anwar Memon who was posted as Deputy Superintendent, Abdul Rehman Shaikh, Naveed Ahmed and Salik Ayaz all of whom were posted as Assistant Superintendants at the time of the so called jail break all of whom are relatively senior officers in the chain of command it is worth setting out what some of their legal obligations and responsibilities were whilst serving at Central Prison Karachi in the positions which they held as per the Prison Rules (which they all personally violated and were negligent in respect of) which have been well set out in the impugned judgment and which we set out for ease of reference below;

"All the jail officials have not denied during course of trial of this case that whether escapee accused were not confined in the jail but they have only stated that there is no negligence on their part.

I have gone through the prisons laws and found duty of Jail Superintendent in Rule 723.

"(i) special precautions shall be taken for the safe custody of dangerous prisoners declared as such by the Superintendent and the following shall be strictly observed".

"A list of such prisoners shall be prepared under the signatures of Deputy Superintendent which shall be reviewed by Superintendent at least once a week. A separate register shall be maintained by the Deputy Superintendent for all dangerous prisoners whose place of night confinement shall be marked daily by him and carried out by the Chief Warder or any other official detailed for the purpose.

It was further mentioned in sub-rule (viii) of rule 723:

"(ii) Dangerous accused are required to submit the list of their relatives for approval by the Superintendent, who will fix the date of interview".

"(iii) All the dangerous prisoners shall be required to submit a list of their relatives to the Superintendent jail on their admission to jail. No friend will be allowed interview with them".

From the perusal of above Rules, it appears that Deputy Superintendent of Jail was duty bound to prepare list of dangerous prisoners reviewed by Superintendent at least once a week, but Jail Superintendent and Deputy Superintendent has failed to do their job properly and it is admitted fact that escapee accused persons were very dangerous and they were involved in murders of police personals, doctors and Ulmah of Shia community but inspite of that no such list was prepared so also no list of their relatives were obtained that who had come to see at jail to them. The escapee accused persons had used some material in escaping i.e. Ary Blade, plaus and above things which are prohibited in the jail and it was duty of the Jail Superintendent and Deputy Superintendent to verify and check each visitors and each accused persons once a week without checking of prisoners above material was brought inside of the jail which is negligence of jail officials.

I have gone through the Prison Law/Jail Manual Rule 693- A reproduce as under:-

"Every Prisoner in a prison shall at all times, both by day and night, be in the charges or some officer, a record of the name of every prisoner shall be kept in a register for the day and in the barrack register for the night so that the responsibilities for an escape or other incident resulting from the negligence of the prison staff can be fixed definitely and beyond all doubt".

But in this case there was no vigilance over the escapee accused persons by jail authorities and no such register was maintained.

From the perusal of the evidence of witness Choudhry Zafar Iqbal, it appears that escapee accused persons were openly walking in the jail and they were gossiping with police personals and they had keys of the barracks were having with them and they were producing co-prisoners to the courts, it means they were not properly dealing as high profile criminals due to negligence of Superintendent, Deputy Superintendent and other officials of jail.

I have gone through the Prison Law/Jail Manual Rule 694 reproduced as under:-

"(i) the officers in immediate charge of prisoners shall carefully watch the prisoners in their charge in all their movements and employments and use the utmost alertness and vigilance in order to prevent escape".

The escapee accused persons were not being carefully watched by the officials of prison and there was no proper vigilance on their movement.

I have gone through the Prison Law/Jail Manual Rule 703 reproduced as under:-

(i) "the chief warder or head warder shall check the out parties at least twice daily once before noon and once in the afternoon".

"(ii) The Deputy Superintendent of jail or an Assistant Superintendent of jail shall check the out-parties twice daily once in the morning and again in the after at uncertain hours".

"(iii) the superintendent shall pay surprise visits to the out-parties at least once a month and satisfy himself that the rules are duly complied with and shall record the fact in his order book".

I have gone through the Prison Law/Jail Manual Rule 704 reproduced as under:-

"After the evening meal is over, the prisoners shall be locked up in the following manner:- (i) every barrack ward and cell shall be searched by the head warder incharge".

I have gone through the Prison Law/Jail Manual Rule 706 regarding disposal of keys of prison laws/jail manual.

"on the completion of the lock up, the keys of the barracks, cells and other places where prisoners are confined shall be collected and counter in the presence of the Deputy Superintendent who shall note the number in the key-chest in the main gate and make over the key of such chest to the gate-keeper on night duty".

But in this case evidence of the Choudhry Zafar Iqbal who was I.O of the escapees, reveals that escapee, accused persons were having keys of the barracks, which is violation of the jail laws made

by Jail Superintendent and Deputy Superintendent of jail and they usually used to open the barracks and produce other prisoners in concerned courts for their hearings.

I have gone through the Prison Law/Jail Manual Rule 41 reproduced as under:-

**"Prisoner to be brought up upon delivery of any order under this part to the officer-in-charge of the prison in which the person named therein is confined, that officer shall cause him to be taken to the court in which his attendance is required".**

I have gone through the evidence and perused record very carefully.

But in this case one escapee accused was brought without his hearing and it is great negligency on the part of the jail officials who allowed him to appear before the court where he was not required to be produced.

I have gone through chapter-39 of jail Manual, Prison Rule 1978 wherein duties of Superintendent are assigned Rule 393(i) reproduced as under:-

**"The overall responsibility for the security and management of the jail, shall squarely devolve on the Superintendent".**

I have gone through chapter-39 of Jail Manual, Prison Rule 941 reproduced as under:-

**"The Superintendent shall visit the prison at least once on every working day and also on Sundays and public holidays when special circumstances require his attendance. If from any cause; the Superintendent is unable to visit the prison on any working day, he shall record the fact and the cause of his absence in his order book".**

I have gone through chapter-39 of Jail Manual, Prison Rule 943 reproduced as under:-

**"The Superintendent of a District Prison shall as far as practicable, see every prisoner in his charge daily, and Superintendent of a central prison shall likewise see every prisoner once in every two days".**

I have gone through the duties of Superintendent, it is the duty of the Superintendent of jail to maintain the discipline of the jail and strict watch over the each prisoner.

According to the evidence of Choudhry Zafar Iqbal as if it appears that escapee accused persons were free and they themselves were appearing before the courts without their hearings. It has been come on the record that Narcotics and prohibited things were also used in the jail, it means discipline of jail was not properly maintained by the Superintendent which is a major negligency on the part of the Superintendent.

I have gone through the Jail Manual, Prison Rule 1009 reproduced as under:-

**"(i) the Deputy Superintendent shall regularly maintain a report book, in which he shall record all reports and other matters which these rules and the**



departmental instructions require him to record, and all important events connected with the administration of the prison. The report book shall be put up before the Superintendent every day and signed by him"

"(ii) No space shall be left blank either below or on top of the pages or between the reports. Each report shall be serially numbered and numbering shall be renewed on the first of each months. Important reports shall be underlined and the Superintendent shall initial them and pass necessary orders. The Superintendent shall also affix his initials at the bottom of each page of the report book".

I have gone through Prison Rule Jail Manual Rule 1010 reproduced as under:-

Deputy Superintendent of jail shall record in his report book

(a) "the time of unlocking of the prison, and the number of prisoners unlocked".

(b) "the time the lock-up was completed and the number of prisoners locked up"

In this case escapee accused persons had escaped away prior to one day of lodging of FIR. Superintendent and Deputy Superintendent of jail were unaware about the escaping of accused persons, it means they were ignorance of law regarding numbers of prisoners locked and unlocked and so also counting which is great negligency on the part of Superintendent and Deputy Superintendent of jail.

I have gone through Prison Laws/ Jail Manual Rule 1013 reproduced as under:-

"Deputy Superintendent of jail shall be present at and supervise the locking up of the prisoners. He shall satisfy himself, both morning and evening, that all the prisoners are present and in safe custody".

In this case the jail officials were unaware about number of prisoners counted on 13.06.2017, when escapee accused persons had escaped away and counting and number of prisoners found complete. Deputy Superintendent and Superintendent were unaware about escaping of accused persons about one day before lodging of FIR this is great negligency on the part of above both officials.

I have gone through Prison Laws/ Jail Manual Rule 1017 reproduced as under:-

"upon the admission of every prisoner the Deputy Superintendent shall

(a)---examined the warrant or order under which such prisoner is committed to the prison and satisfy himself that it is in all respects complete, in order and valid".

In this case the name of one accused was inserted in the register alongwith other accused persons and he was not required

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to be produced in the concerned court of law and his warrant was not verified and checked by any official of the jail authorities.

I have gone through Prison Laws/ Jail Manual Rule 1027 reproduced as under:-

*"The Deputy Superintendent shall be responsible for the safe custody of the records to be maintained under section 12, of the Prisoners Act for the commitment of warrants and all other documents confined to his care"*

In this case escapee accused were produced without warrants and the same were not verified by the Deputy Superintendent so also Superintendent.

I have gone through the duties of Assistant Superintendent of jail mentioned in the Prison Laws/ Jail Manual Rule 1045 reproduced as under:-

*"The Assistant Superintendent shall perform such duties as the Superintendent may prescribe in writing in his order book".*

It is further mentioned in Sub Rule (9) search of prisoners and buildings under their charge and sub Rule Says 13, night round on turn and search of relieving and relieved night guard once a week.

I have gone through Prison Laws/ Jail Manual Rule 1047 reproduced as under:-

*(c) check the barrack register and satisfy themselves that every prisoner is present or accounted for, and*

*Assistant Superintendent of jail have failed to proper counting of all the prisoners on the day of incident viz. 13.06.2017, and they signed and submitted OK report that all the prisoners are completed and counting is completed, however, two dangerous accused persons were missing on the day 13.06.2017. It means Assistant Superintendents of Jail failed to perform their duties as per law and there is great negligency on their part. Assistant Superintendents Salik Ayaz and Nabeed Ahmed they are relieving and relived office on dated 13.06.2017 and 14.06.2017 but they both were unaware about proper counting of prisoners. It means counting was not made by them properly".*

29. With regard to the evidence of PW Choudhry Zafar Iqbal cited in the above extracts he was in prison at the time of the jail break for an offence for which he was later acquitted. He had been the IO in a murder case related to the 2 UTP's who escaped. He had as IO handed over custody of the 2 UTP's to the jail authorities on 15.01.2014 at which time he informed the jail authorities that the 2 UTP's who escaped were dangerous hardened and desperate criminals. According to his evidence such annotation was marked in red ink over the jail remand letter. Whilst in custody at Central Prison Karachi he gave evidence that the 2 escaped UTP's were confined in barrack 25 and 26 but he always saw them

sitting outside the barrack with the keys of the barrack. He saw police officials gossiping with UTP Shaikh Mumtaz who told him that he has arranged for himself. During hearing in ATC VII he also informed Presiding officer and staff about UTP Shaikh Mumtaz's conduct. He observed that UTP Shaikh Mumtaz was arranging production of UTP's in the courts and despite him warning the other jail police about the serious crimes which UTP had committed against fellow police officers the jail police continued to fraternize with him. He often saw UTP Shaikh Mumtaz with police personnel by Tower. When he heard about the escape of UTP he told appellants Nisar and Gul about him informing the jail authorities and other prison guards how dangerous UTP Shaikh Mumtaz was. On 13.06.17 he made hunger strike against jail officials. He was not provided water, medical care and was not produced for his own trial because he was speaking out against the jail officials and was placed in a ward consisting of the most dangerous prisoners where he met PW Asif Buledi. He gave Buledi a letter concerning the jail break and the mal treatment of prisoners which was corroborated by PW Asif Buledi in his evidence. After his release he recorded his statement before the last IO PW Naved Khawaja. He with stood a lengthy cross examination and his evidence was not dented during the same. He had no proven enmity against any of the appellants and was not related to the escaped UTP's and thus he had no reason to implicate any of the appellants in a false case or lie about what he saw whilst he was confined in Central Prison Karachi. His evidence is also corroborated by PW Asif Buledi. A memory stick concerning illegal activities in the jail has also been exhibited which supports his evidence although we give little weight to that memory stick due to the issue of safe custody. In short however we believe his evidence and the conclusions which the trial court drew from it in terms of negligence at the jail by the senior officers which we have already reproduced above.

30. The case against the Assistant Superintendants is further strengthened by the two office orders issued by the Superintendent prior to the jail break which underlines their specific duties. Both orders are reproduced below for ease of reference:

**OFFICE OF THE SENIOR SUPERINTENDENT  
CENTRAL PRISON KARACHI.**

NO.AS-STAFF/13832/39 OF 2017

DATED: 12.05.2017.

**OFFICE ORDER**

The following duties and beats are hereby assigned to below noted Assistant Superintendent with immediate effect till further orders:-

S. No.	Name of Assistant Superintendent	Duties	Beats
01.	Mr. Kamal Hussain Shah	Incharge Accounts, Ration/Misc. Store and Building Branch, Production of Prisoners District East & West with related correspondence.	Ayoub Ward, Main Wall between Watch Tower No.03 to 04.
02.	Mr. Naseem Ali	Incharge Factory (upon Shuttle Less Looms), Production of Prisoners of District South, Drugs/Anti-Corruption Courts, Accountability Courts, Banking Courts with related correspondence	Haider Ward, main wall between Watch Tower No.08 to 10.
03.	Mr. Salik Ayaz Shaikh	Incharge Staff Establishment	Office Block, Staff Colony, Quarter guard and look after under construction work of ATC Courts.
04.	Mr. Mujahid Khan	Incharge Judicial Branch, Medical Affairs of UTP's/Convicted prisoners also dealing of death cases inside/outside with related correspondence.	Shifa Block, Main Wall between Watch Tower No.07 to 08.
05.	Mr. Asif Sarfaraz Raja	Incharge Under Trial Branch (A&R) Production of Prisoners of CNS-I & II Courts, Out Court and District Malir with related correspondence.	Security Wards No.1, 2, 3, 5 to 8, 11 to 15 and Taleem-ul-Quran/Dar-ul-Quran Wards, Court Room, Computer Classes Room, Correction Centre (SAHEE), Fine Arts School & Madina Masjid, Musarrat Ward, Subhan Allah, Security Wards No.16 and 18 Main Wall between Watch Tower No.01 to 03 and 04 to 05.
06.	Mr. Naveed Ahmed Khan	Incharge Production of Prisoners of	Raheem Ward including Security Ward No.25 & 26

		District Central before the Honourable High Court of Sindh/Inside trial court and receiving of Honourable Judges of ATC Courts and production of ATC Courts & Judicial Complex (High Profile Sectarian as Hardened Criminal)	Main Wall between Watch Tower No.05 to 06.
07.	Abdul Rahman Shaikh	Incharge Interview (Inside/Outside) Over all responsible for Interview)	Muhammad Ali Ward, Meo Ward, Main Wall between Watch Tower No.06 to 07.

The Assistant Superintendents are responsible for maintaining proper discipline, cleanliness in their respect beats and should ensure that no contraband articles is available there. Assistant Superintendents of Central Prison Karachi are hereby directed to stop the movement of prisoners from their Barracks/enclosures, without any valid reasons also permission from the competent authority. The Incharge of the respective wards is also directed to keep Vigilant Eye over the prisoner's movement, situation and report compliance in the letter in spirit.

2. The Incharge Assistant Superintendents, (All) of Production Branch are also directed to remain/available at the Prison at 08:00 am during the process of sending the prisoners to Honourable Courts.

Sd/-

SENIOR SUPERINTENDENT  
CENTRAL PRISON KARACHI.

A copy is forwarded for information to:-

1. The Deputy Superintendent-I, II & III Central Prison, Karachi.
2. All concerned for immediate compliance.

OFFICE OF THE SENIOR SUPERINTENDENT  
CENTRAL PRISON KARACHI.

NO.AS-STAFF/16896/16903 OF 2017

DATED: 06.06.2017.

OFFICE ORDER

The under mentioned Duties and Beats are hereby re-assigned to following Deputy Superintendent with immediate effect and till further orders:-

S. No.	Name	Duties	Beats
01.	Mr. Faheem Anwar Memon	General Administration Ration Stores.	Front wing i.e. Raheem Ward Security Ward No.25 & 26 Main Kitchen Office Block and Quarter Guard.
02.	Mr. Majid Akhtar	Staff Establishment, Buildings & Factories Inside production of Prisoners and receiving Honourable Judges.	Right Wing Taleem-ul-Quran/Dar-ul-Quran Wards, Court Room, Computer Classes Room, Correction Centre (SAHEE), Fine Arts School & Madina Masjid, Interview Room inside/outside.
03.	Mr. Sikandar Ali Solangi	Accounts, Admission Release and Medical Affairs of Convict & Detenues, Interview and Other All Correspondence.	Left Wing i.e. Hyder Ward, "B" Class, Shaheed Meo Ward, Shifa Ward Court Round Wall, Staff Colony.
04.	Mr. Agha Zulfiqar Ali	Admission, Release of UTPs & (All affairs UTPs), Medical affairs of Under Trial Prisoners. Production of under trial prisoners with related correspondence. MISC; Store	Right Wing i.e. Musarrat Ward, Subhan Allah Ward, Ayoub Ward, Security Wards Nos.1, 2, 3, 5 to 8, 11 to 18, Court Room.

The above stated officers are responsible for maintaining proper discipline amongst the prisoners confined in their beats and further directed to pay regular visits of their beats and shall arrange **KHULI KACHEHRY** to dispose of legal requests of prisoners.

Note:- In order to avoid ambiguity, any branch or area of the Jail not mentioned above shall be deemed as the responsibility of Deputy Superintendent.

Sd/-

SENIOR SUPERINTENDENT  
CENTRAL PRISON KARACHI.

A copy is forwarded for compliance to:-

1. DS-I, II, III & IV, Central Prison, Karachi.
2. Incharge Assistant Superintendent (All) Central Prison, Karachi.

31. Furthermore, according to the list of officers on official duty on the day of the escape of the UTP's at P.1819 of the paper book appellant Faheem Anwar Memon has been specifically given the charge and beats for Security of wards 25 and 26 and it was ward 26 from where the UTP's,

left and never returned on that day as such he is directly responsible for the release of the escapee UTP's to the ATC and the incorrect counting on their non return to the ward. In the same list of duties appellant Naveed Ahmed is specifically given the charge and beats concerning the receiving of Hon'ble Judges at ATC courts and production of ATC courts and judicial complex (High Profile Sectarian as hardened criminals). So once again he also had direct responsibility to ensure that only UTP's with production orders were admitted to the judicial complex within Central Prison Karachi and all those who entered returned to their respective wards after court hearings which he negligently failed to do which lead to the escape of the two UTP's. **In addition** appellants Ghulam Murtaza, Salik and Naveed all signed the register at P.1659 confirming that all the prisoners who were supposed to be confined in the Prison on 13.06.2017 were all present and correct when in fact two of the potentially most dangerous and hardened criminals had not been accounted for which was clear negligence on their part.

32. Now if we look to the facts and circumstances of the case and evidence produced at trial whereby hardened prisoners seem to have the run of the jail through having keys to their wards, whereby UTP's were produced before the ATC's in the prison without production orders by other UTP's, the counting of prisoners who were returned from the ATC's back to the barracks was done negligently, that the CCTV camera's on the day of the incident were not working even in respect of the most sensitive areas of the prison, that the UTP escapees managed also it appears to have passed through the outer gate of the prison (being the only entry and exit point to the prison) when the management and security of the prison was the sole responsibility of the Superintendent who appears to have done very little on the ground to ensure the security of the prison after assuming charge and blindly signed logs concerning the presence of prisoners who were missing, the violation of the rules mentioned above, the fact that all the five appellants were found guilty of violation of so many prison rules on account of their negligence by a high powered inquiry which report has been duly exhibited we have no doubt that the prosecution has proved beyond a reasonable doubt that all five senior officer appellants **through their own negligence** enabled the UTP's to escape and have committed the offences under 223 and 225 A PPC and as

such their convictions and sentences are maintained and their appeals are dismissed in respect of these offences. They shall be entitled to the benefit of S.382 (B) Cr.PC and any remissions available under the law especially as we do **not** maintain their convictions under the ATA for the reasons mentioned below.

33. With regard to their convictions and sentences for offences under the ATA 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 there to be an act of terrorism there had to be an object, intent, purpose and design to create terror on account of their 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 appellants were only negligent and did **not** have the design, intent or purpose to create terror and as such all offences under the ATA are dismissed.

**Negligence of office clerks serving at the jail being Rafique Channa and Yasir Ali.**

34. With regard to the clerks they had no direct responsibilities or obligations in respect of the UTP's serving at the jail. They were not court officials and were clerical officers sitting in the main office building of the jail performing clerical duties. Their duties are not set out in the list of officers and official duties. Their responsibilities appear to be typing and movement of papers.

35. The evidence reveals that there was no Production Order issued by any ATC court for either of the escapee UTP's for the day of the escape which had been issued from any source and as such neither of the escapee UTP's should have been produced before the ATC courts on the day they escaped. The clerks had no role in respect to the ward where the two escapee UTP's were confined and had no role in their physical production before any court. 3



36. The main allegation against the clerks is that they added to a list the name of one of the escapee UTP's Muhammed Ahmed who were to be produced before the ATC courts which lead to his production before the ATC courts in the day in question when he escaped which appears to be before ATC Court VII as per evidence of PW 9 Zeeshan who was the reader of that court on the day of the escape who the UTP's appeared before. It has already been established from the evidence from a hand writing expert that it was PW 13 Arshad Ali's hand writing which added the name of escapee UTP Muhammed Ahmed to the list who was to be produced before the ATC's and as such it has been established that he was responsible for this illegality. It is true that he was a convicted prisoner appointed by appellant Yasir Ali however it has come in his evidence that it was routine in jail for educated prisoners to be assigned clerical work so there was nothing exceptional in his appointment. Nothing has come on record to show that Yasir Ali or Rafique Channa deliberately recruited Arshad over and above any other prisoner or that they had any special relationship with him. Despite PW Arshad being a convict he did not implicate either appellants Yasir Ali or Rafique Channa in adding any name to the list or being aware of such addition or instructing him to do so.

37. With regard to Rafique Channa who was the supervisor of Yasir who was not named in the original FIR and was not named in the complainants three statements and was arrested later according to the evidence of the IO PW 26 Zahid Hussain there was no evidence against Rafique Channa except the statement of one Nawab who is a deceased co-accused. It is well settled led by now that the statement of a co-accused cannot be used to convict another co-accused alone and there must be strong corroboratory evidence from an independent source which is lacking in this case. During cross examination PW 26 IO Zahid Hussain stated as under with regard to appellant Rafique Channa;

"It is correct to suggest that there was no evidence against Rafique Chana till his arrest of dated 29.06.2017. I recorded the statement of PC Nawab, who deposed against Rafique Chana, but this fact is not mentioned in charge sheet. **It is correct to suggest that PC Nawab is co-accused of this case, and now he has been expired. It is correct to suggest that there is no evidence against Rafique Chana except statement of co-accused PC Nawab.**" (bold added) }

38. The same considerations apply to appellant Yasir Ali who was originally let off by IO Zahid Hussian. Appellant Yasir Ali might have even been on leave on the day of the escape. As such we find that the prosecution has failed to prove the charge against clerks Yasir Ali and Rafique Channa beyond a reasonable doubt and as such by extending them the benefit of the doubt the appeal in respect of both the appellants is allowed.

**Negligence of Police constables/ASI's serving at the jail being Saeed, Nadir, Sajjid, Tagial, Muhammed Farosh, Atta Muhammed and Abdul Ghaffor.**

39. With regard to appellant ASI Farosh it has been proved by the list of duties sheet that he was in charge ATC Courts and as such it was his responsibility and obligation to ensure that no UTP was let inside the ATC court complex from the jail without a production order. He failed in this regard. It was also his duty to ensure that any UTP who was let inside the ATC complex was kept under guard. He failed in this duty. It was his duty to ensure that all UTP's who came inside the ATC complex from the jail were returned to the jail. He failed in this duty. The internal inquiry also found him to be negligent. As such we find appellant Farosh guilty of negligence and as such his conviction under S.223 and 225A PPC are maintained however he is acquitted of any offence under the ATA. His appeal is therefore dismissed with the above modification.

40. With regard to appellant PC Saeed he was on duty at ATC Court VII as per the posting of officers which has not been denied by him. As revealed by the evidence the two escapee UTP's appeared before that Court as per PW 9 Zeshan who was the reader of that court. As such it was the duty and responsibility of appellant Saeed to ensure that the two UTP's were escorted by himself during their time in that court and ensure their safe custody was handed over to another PC to ensure that they were returned to their ward. He failed in his duty to do so and appears to have let the escapee UTP's who appeared in ATC Court VII which he was responsible for to come and go as they pleased. The internal inquiry also found him to be negligent. As such we find appellant Saeed guilty of negligence and as such his conviction under S.223 and 225A PPC are maintained however he is acquitted of any offence under the ATA. His appeal is therefore dismissed with the above modification.

41. With regard to appellant Abdul Ghafoor he was the constable posted at ward 26 where the escaped UTP's were lodged on the day of the incident and as such it was his responsibility and obligation to ensure that UTP's were only sent to the ATC Courts if there was a production order for them. On the day of the incident he allowed both the escaped UTP's to go to the ATC court without any production order. He was negligent in his duty in this regard. It was also his duty to ensure that when the UTP's returned they were properly counted before the ward was locked. In this regard he failed in his duty to count those in the ward before it was locked and as he locked ward 26 where the escaped UTP's were lodged despite the two escaped UTP's not returning and as such the escape of the two UTP's was not discovered until the count in the morning which was complete negligence on his part. The internal inquiry also found him to be negligent. As such we find appellant Abdul Ghafoor guilty of negligence and as such his convictions under S.223 and 225A PPC are maintained however he is acquitted of any offence under the ATA. His appeal is therefore dismissed with the above modification.


42. With regard to appellants Nadir, Sajjad, and Tagial these constables were responsible for ATC courts 11 and 12 only as per details of officer's assignments. The UTP's who were entrusted in their custody on the day of the incident who attended court were duly returned to the jail after the court hearings. There is no evidence that they had anything to do with the escaped UTP's or that they had any specific responsibility for the escaped UTP's on the day of the incident or even came across them on the day of the incident. The internal inquiry report also found all three of the appellants not guilty of negligence and as such all three appellants are extended the benefit of the doubt and are acquitted of the charge.

43. With regard to appellant Atta Muhammed he was a constable posted to ward 26. The escapee UTP's were not lodged in ward 26 and as such he had nothing to do with them being let out of ward 26 or allowing them to enter the ATC complex nor their counting on their return at the time of lock up. The internal inquiry report also found the appellant not guilty of negligence and as such the appellant is extended the benefit of the doubt and is acquitted of the charge.

**In summary.**

1. All the appellants are acquitted of the offence under the ATA.
2. The appeals of the following appellants are dismissed except in respect of their conviction under the ATA for which they stand acquitted and shall be taken into custody and returned to Central Prison Karachi in order to serve out the remainder of their sentences if any of their sentences remain to be undergone. The sentences shall run concurrently, they shall have the benefit of S.382 (B) Cr.PC and all remissions available under the law now that they have been acquitted of any offence under the ATA.
  - (a) Ghulam Murtaza Shaikh,
  - (b) Faheem Anwar Memon,
  - (c) Abdul Rehman Shaikh,
  - (d) Naveed Ahmed,
  - (e) Salik Ayaz
  - (f) Farosh
  - (g) Saeed
  - (h) Abdul Ghafoor.
3. The appeals of the following appellants are allowed;
  - (a) Rafique Channa
  - (b) Yasir Ali
  - (c) Nadir,
  - (d) Sajjad,
  - (e) Tagial
  - (f) Atta Muhammed
4. The appeals stand disposed of in the above terms.

  
JUDGE

  
JUDGE  
25/03/22