

**IN THE HIGH COURT OF SINDH KARACHI**

Present:

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Arshad Hussain Khan,*

**SPL. CR. A .T. APPEAL NO. 59 OF 2021**

Appellant	Muhammad Abid son of Nazeer Ahmed through Ms. Abida Hashmi, Advocate.
Respondents	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. APPEAL NO. 60 OF 2021**

Appellant	Faisal Mehmood @ Motta son of Mehmood Hussain through M/s. Raj Ali Wahid Kunwar and Abdul Qadir, Advocates.
Respondents	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. APPEAL NO.67 OF 2021**

Appellant	Muhammad Shakeel @ Banarsi son of Muhammad Haroon through Mr. Muhammad Imran Meo, Advocate.
Respondents	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. APPEAL NO.68 OF 2021**

Appellant	Abdul Qadir Hingoro son of Muhammad Hingoro through Mr. Muhammad Imran Meo, Advocate.
Respondents	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. APPEAL NO.69 OF 2021**

Appellant	Syed Kazim Raza Rizvi son of Syed Nasir Raza through Mr. Muhammad Imran Meo, Advocate.
Respondents	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. APPEAL NO.70 OF 2021**

Appellant	Shabbir Ahmed @ Farhan Mulla son of Dabir Ahmed through Mr. Inayat Ali Mirza, Advocate.
Respondents	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. APPEAL NO.71 OF 2021**

Appellant	Mehmood Hassan Khan son of Moazzam Hussain through Mr. Muhammad Aqil Zaidi, Advocate.
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Respondents The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.  
Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. APPEAL NO.75 OF 2021**

Appellant Aamir Ali @ Sarphata son of Shoukat Ali through M/s. Muhammad Ilyas Awan and Asghar Qureshi, Advocates.

Respondents The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.  
Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. APPEAL NO.79 OF 2021**

Appellant Imtiaz Hussain son of Shamim Hussain through Mr. Muhammad Jiwani, Advocate.

Respondents The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.  
Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. APPEAL NO.80 OF 2021**

Appellant Nadeem Ahmed son of Mushtaq Ahmed through Mr. Muhammad Jiwani, Advocate.

Respondents The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh.  
Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. APPEAL NO.81 OF 2021**

Appellant	Muhammad Amir @ Tutla son of Muhammad Moeen through Mr. Muhammad Jiwani, Advocate.
Respondents	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. JAIL APPEAL NO.88 OF 2021**

Appellant	Ubaid @ K-2 son of Khursheed through Raja Rashid Ali, Advocate.
Respondents	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General, Sindh. Mr. Rana Khalid Hussain, Senior Public Prosecutor, Pakistan Rangers.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.107 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Faisal Mehmood @ Mota son of Mehmood Hussain.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.108 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Syed Nadir Shah son of Syed Munawar Shah. }

**SPL. CR. A .T. ACQUITTAL APPEAL NO.109 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Syed Nadir Shah son of Syed Munawar Shah.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.110 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Shabbir Ahmed @ Farhan Mullah son of Dabeer Ahmed.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.111 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Aamir Ali @ Sarphata S/o. Shaukat Ali.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.112 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Imtiaz Ahmed son of Shamim Ahmed.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.113 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Kazim Raza Rizvi son of Syed Nasir Raza.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.114 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Abdul Qadir son of Muhammad Hingoro.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.115 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Nadeem Ahmed son of Mushtaq Ahmed.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.116 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Muhammad Javed son of Muhammad Ibrahim.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.117 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Muhammad Aamir @ Totla son of Muhammad Moin.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.118 OF 2021**

Appellant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent	Muhammad Shakeel @ Banarsi son of Muhammad Haroon. }

**SPL. CR. A .T. ACQUITTAL APPEAL NO.119 OF 2021**

Appellant The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.

Respondent Mehmood Hussain son of Muhammad Moazzam.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.120 OF 2021**

Appellant The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.

Respondent Muhammad Abid son of Nazir Ahmed.

**SPL. CR. A .T. ACQUITTAL APPEAL NO.121 OF 2021**

Appellant The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.

Respondent Ubaid @ K-2 son of Khursheed Ahmed.

**CR. RIVISION APPLICATION NO.192 OF 2021**

Applicant The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.

Respondent/ Accused Faisal Mehmood @ Mota son of Mehmood Hussain.

**CR. RIVISION APPLICATION NO.193 OF 2021**

Applicant The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.

Respondent/ Accused Shabbir Ahmed @ Farhan Mullah son of Dabeer Ahmed.



**CR. RIVISION APPLICATION NO.194 OF 2021**

Applicant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent/ Accused	Aamir Ali @ Sarphata son of Shoukat Ali.

**CR. RIVISION APPLICATION NO.195 OF 2021**

Applicant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent/ Accused	Imtiaz Ahmed son of Shamim Ahmed.

**CR. RIVISION APPLICATION NO.196 OF 2021**

Applicant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent/ Accused	Kazim Raza son of Nasir Raza.

**CR. RIVISION APPLICATION NO.197 OF 2021**

Applicant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent/ Accused	Abdul Qadir son of Muhammad Hingoro.

**CR. RIVISION APPLICATION NO.198 OF 2021**

Applicant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent/ Accused	Nadeem Ahmed son of Mushtaq Ahmed.



**CR. RIVISION APPLICATION NO.199 OF 2021**

Applicant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent/ Accused	Muhammad Javed son of Muhammad Ibrahim.

**CR. RIVISION APPLICATION NO.200 OF 2021**

Applicant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent/ Accused	Muhammad Aamir @ Totla son of Muhammad Moin.

**CR. RIVISION APPLICATION NO.201 OF 2021**

Applicant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent/ Accused	Muhammad Shakeel @ Banarsi son of Muhammad Haroon.

**CR. RIVISION APPLICATION NO.202 OF 2021**

Applicant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent/ Accused	Mehmood Hussain son of Muhammad Moazzam.

**CR. RIVISION APPLICATION NO.203 OF 2021**

Applicant	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent/ Accused	Muhammad Abid son of Nazir Ahmed.

**CR. RIVISION APPLICATION NO.204 OF 2021**

Applicant:	The State through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Respondent/ Accused:	Ubaid @ K-2 son of Khursheed Ahmed through Raja Rashid Ali, Advocate
Date of Hearing.	05.12.2022.
Date of Announcement	12.12.2022

**JUDGMENT**

**Mohammad Karim Khan Agha, J.** Appellants namely (1) Faisal Mehmood @ Mota (2), Nadir Shah (3) Shabbir Ahmed @ Farhan Mulla (4) Aamir Ali @ Sarphata (5) Imtiaz Hussain (6) Syed Kazim Raza Rizvi (7) Abdul Qadir (8) Nadeem Ahmed (9) Muhammad Javed (10) Muhammad Amir @ Totla (11) Muhammad Shakeel @ Banarsi (12) Mehmood Hassan (13) Muhammad Abid and (14) Ubaid @ K-2 were charge sheeted to face their trial in Special Cases No.B-238 to B-238-AA of 2015 arising out of the FIRs No.52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64 and 65 all of 2015 under section 4/5 Explosive Substance Act, 1908 r/w Section of ATA, 1997 and 23(I)(A) of Sindh Arms Act, 2013 all registered at PS Azizabad, Karachi. All the appellants vide impugned judgment dated 23.04.2021 passed by the learned Judge, Anti-Terrorism Court No.XVI, Karachi were convicted and sentenced each of them u/s.265-H(2) Cr.PC as under:-

- i) The accused Faisal Mehmood @ Mota s/o Mehmood Hussain was convicted for the offence u/s.23(I)(A) SAA 2013 and sentenced him to suffer simple imprisonment for (10) ten years with fine of Rs.50,000/- (Rupees Fifty Thousand) and in case of failure to pay the fine, he was ordered to suffer SI for six (06) months more.
- ii) The accused Muhammad Abid S/o Nazeer Ahmed and Ubaid @ K-2 S/o. Khursheed were convicted for the offence u/s. 23(I)(A) whereas Shabbir Ahmed @ Farhan Mullah S/o Dabeer Ahmed was convicted u/s. 23(I)(A) in the light of Section 32 of SAA, 2013 and sentenced them to suffer simple imprisonment for (8) eight years with fine of Rs.30,000/- (Rupees Thirty Thousand) each and in case of failure to pay the fine, they were ordered to suffer SI for three (03) months more.

- iii) All the accused Amir Ali @ Sarphata S/o Shoukat Ali, Muhammad Javed S/o Muhammad Ibrahim, Muhammad Amir @ Totla S/o Muhammad Moeen, Mehmood Hassan S/o Muhammad Moazzam were convicted for the offence u/s. 23(I)(A) whereas Imtiaz Hussain S/o Shamim Ahmed, Syed Kazim Raza Rizvi S/o Syed Nasir Raza, Abdul Qadir S/o Muhammad Hingoro, Nadeem Ahmed S/o Mushtaque Ahmed and Muhammad Shakeel @ Banarsi S/o Muhammad Haroon were also convicted for the offence u/s.23(I)(A) SAA 2013 in the light of Section 32 and sentenced each of them to suffer simple imprisonment for (06) six years with fine of Rs.10,000/- (Rupees Ten Thousand) each and in case of failure to pay the fine, they were ordered to suffer SI for two (02) months more.

All the above named accused persons were acquitted from the charge of offences punishable u/s. 4/5 Explosive Substances Act by extending benefit of doubt. Benefit of Section 382-B Cr. P.C. was also extended in favour of all the convicted accused.

2. The brief facts of the prosecution case are that on 11.03.2015 Inspector Muhammad Latif of Pakistan Rangers Wing-73 received information about presence of absconding accused Faisal Mota along with other accused in Khursheed Memorial Hall, Block-08, FB, Area, Karachi (9 Zero). On such information on 11.03.2015 at about 0530 hours the inspector along with staff raided the place and found 14 armed persons. The rangers arrested an accused who disclosed his name as Faisal Mehmood @ Mota and recovered from his possession one 9mm pistol loaded with rounds in magazine and one Avon bomb, he also disclosed about concealing of weapons, arms and ammunitions etc. and led the raiding party to the hall and pointed out four bags of weapons, arms and ammunition and one bag containing rounds, which were opened and found 07 rifle G22, 19 rifle 7mm, 18 SMG, 02 rifle 222, 22 repeater 13-bore, 02 rifle 223, 11 rifle GSAS, 01 rifle 22, 14 pistol 30-bore, 02 pistol 9mm ammunition 6000 rounds of 9mm, 800 rounds 7.62, 800 rounds of G3, 1000 rounds of 22 bore, 2000 rounds of 12 bore, 50 rounds of 7mm, 100 rounds of 30 bore, 2500 rounds of M4, 300 rounds of 303 bore. The raiding party also recovered from accused Nadir Shah one 9mm pistol without 5 rounds and one Avon bomb, from accused Shabbir Ahmed @ Farhan Mullah one G3 rifle with five rounds and one Avon bomb, Amir Ali @ Sarphata one LMG with 40 rounds and Avon bomb, Imtiaz Ahmed G3 rifle without ten rounds and Avon bomb, Kazim one G3 rifle without ten rounds and Avon bomb, Abdul Qadir one G3 rifle with ten rounds and Avon bomb, Nadeem Ahmed one G3 rifle with ten rounds and Avon bomb, Javed

8mm rifle and Avon bomb, Muhammad Amir Khan 8mm rifle and Avon bomb, Shakeel @ Banarsi 8mm rifle and Avon bomb, Mehmood-ul-Hassan 8mm rifle and Avon bomb, Muhammad Abid one SMG with 20 rounds and Avon bomb and from accused Ubaid @ K-2 the raiding party recovered one LMG with 40 rounds and Avon bomb, hence FIR's were lodged against each of the accused separately.

3. After registration of the FIR's investigation was assigned to five Inspectors namely Changaiz Khan, Arshad Hussain, Javed Ahmed Yousuf Zai, Ather Ahmed and Akhtar Javed who after usual investigation submitted Challan before the Hon'ble Administrative Judge, Anti-Terrorism Courts, Karachi.

4. The accused plead not guilty to the charge and claimed trial. The prosecution in order to prove its case examined 10 witnesses and exhibited various documents and other items. The statement of accused were recorded under Section 342 Cr.P.C in which they denied the allegations leveled against themselves and claimed false implication by the police at the behest of Pakistan rangers. The accused all gave evidence on oath and called 11 DW's between them in support of their defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellants and sentenced them as set out earlier in this judgment; hence, the appellants have filed this appeal against their convictions. It is to be observed that one of the accused Nadir was acquitted of all charges whilst the appellants were convicted of the charges under the Sindh Arms Act 2013 but were all acquitted in respect of the charge under the Explosive Substances Act 1908 for which the State has filed appeals against acquittal in respect of all the appellants/respondents including Nadir and the State has also filed applications for enhancement of sentences of all the convicted appellants under the SAA 2013 in the event that this court dismisses there appeals against conviction. By this common judgment we shall decide the appeals against conviction, the enhancement applications, if necessary, and also determine whether the appeals against acquittal warrant admission to regular hearing.



715

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

**Turning firstly to the appeals against conviction.**

7. Learned counsel for the appellants have contended that the appellants are all innocent and have been falsely implicated in this case by the police at the behest of the rangers due to their affiliation with the political party known as the MQM; that the motive for the raid was false as no case was outstanding against any of the MQM members said to be present at 9 Zero; that only two of the appellants were actually present at 9 Zero at the time of the raid by the rangers whilst the others were either arrested from their houses or else where and falsely implicated in this case; that there were major contradictions in the evidence of the prosecution witnesses and as such there evidence could not be safely relied upon; that the weapons allegedly recovered from the accused had been foisted on them; that there was not a stock pile of arms and ammunition at 9 Zero which had all been foisted on the appellants; that S.103 Cr.PC had not been complied with; that the joint mashirnama was inadmissible under the law in respect of the recovered weapons and bombs; that no safe custody of the recovered weapons had been proven; that the video clip which was admissible in evidence showed that a number of the appellants were unarmed at the time of their arrest by the rangers; that if on the same set of evidence the appellants were acquitted in respect of the offence under the Explosive Substances Act 1908 they should also be acquitted for the offences under the SAA and that for any or all of the above reasons the appellants should be acquitted of the charge by being extended the benefit of the doubt. In support of their contentions, they placed reliance on the cases of **Muhammad Pervaiz v. The State and other** (PLD 2019 Supreme Court 592), **Ghulam Hussain and others v. The State and others** (PLD 2020 Supreme Court 61), **Ali Gohar and others v. Pervaiz Ahmed and others** (PLD 2020 Supreme Court 427), **Owais and another v. The State** (2022 P Cr.LJ 920), **Fazal Hussain alias Faqera and others v. The State** (2020 P Cr.LJ 311), **Muhammad Umair alias Bhutto v. The State** (2018 MLD 1196), **Waris Ali and 5 others v. The State** (2017

SCMR 1572), **Manzoor Elahi v. The State** (2018 YLR Note 190), **Anwar Hussain and 2 others v. The State** (2019 YLR 1117), **Notice to Police Constable Khizar Hayat son of Hadaitullah on account of his false statement in the matter of Criminal Miscellaneous Application No.200 of 2019 in Criminal Appeal No.238-L of 2013** (PLD 2019 Supreme Court 527), **Aqeel Ahmed alias Tiloo v. The State** (2018 P Cr.LJ Note 12), **Faheem Ali v. The State** (2019 MLD 468) and **Mano v. The State** (2022 YLR 396).

8. On the other hand learned Additional Prosecutor General Sindh assisted by Special prosecutors Rangers has contended that the evidence of the witnesses who made the arrest and recovery from the appellants at 9 Zero was trust worthy confidence inspiring and could be safely relied upon; that the appellants were caught red handed during the raid on 9 Zero by the rangers with unlicensed firearms; that although the video evidence was inadmissible which the defence wanted to rely on even if it was admitted into evidence it supported the prosecution case of the presence of a number of the accused at the time of the raid and thus the prosecution had proved its case against the appellants beyond a reasonable doubt and as such the impugned judgment should be upheld and the appeals be dismissed. In support of his contentions, he placed reliance on the cases of **Ishtiaq Ahmed Mirza and 2 others v. Federation of Pakistan and others** (PLD 2019 Supreme Court 675), **Liaquat Ali and another v. The State** (2022 SCMR 1097), **Fazal Akbar v. The State through A.A.G. and another** (2013 P Cr.LJ 369), **Hameer v. The State** (2003 P Cr.LJ 1452), **Mir Muhammad v. The State** (1995 SCMR 614) and **Muhammad Yaqoob v. The State** (2020 SCMR 853).

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

10. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge for which the appellants were convicted keeping in view that each criminal case must be

decided on its own particular facts and circumstances for the following reasons;

(a) That the GEO reporter Wali Babar had been gunned down allegedly by appellant Faisal Mota and his accomplices for which an FIR was outstanding and the rangers had received intelligence that appellant Faisal Mota and some of his accomplices were armed and were present in 9 Zero. As such the rangers quickly put together a heavy raiding party consisting of 150 heavily armed rangers to arrest Faisal Mehmood aka Mota at 9 Zero. Hence the raid was motivated to capture Faisal Mehmood aka Mota and his accomplices and not based on any malafide.

(b) That the FIR was lodged with promptitude within 5 hours of the incident with the slight delay being explained by the time it took to cordon off the area, carry out the raid, arrest and recover the huge quantity of arms and ammunition at 9 Zero including counting the same and preparing the mashirnama of arrest and recovery and stopping off at ranger HQ to secure the accused and the case property before proceeding to PS Azizabad to lodge the FIR's. So even any slight delay has been explained and as such the slight delay in lodging the FIR is not fatal to the prosecution case which gave no time for the rangers and the police to cook up a false narrative against the appellants. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

(c) That PW 1 Muhammed Latif who headed the rangers raiding party gave evidence that when he raided 9 Zero the area was cordoned off and as such no member of the public could be associated with the arrest and recovery and as such he used PW 2 Fazal Rabi a fellow ranger to act as mashir. According to his evidence when he reached 9 Zero 14 persons were standing inside whom he apprehended each of whom had a firearm of some specified sort and a bomb on them. He arrested the appellants including acquitted accused Nadir and prepared the memo of arrest and recovery which was signed by Mashir PW 2 Fazal Rabbi. About 35 heavily armed rangers entered 9 Zero so quite logically it was pointless for the appellants to put up resistance who all surrendered. Appellant Faisal Mehmood aka Mota then took PW 1 to a room where on his pointation a large cache of arms and ammunition was placed in about 6 bags which were also recovered under same memo of recovery. Such large cache of arms and ammunition seems to have been kept at 9 Zero as according to numerous DW's 9 Zero was fearful of being attacked and as such its occupants needed to be ready to defend themselves. PW 1 Muhammed Latif then left 9 Zero with the arrested appellants and the recovered arms and ammunition and dropped the appellants and the recovered arms off at Rangers HQ before proceeding to PS Azizabad where he lodged numerous FIR's against each appellant in respect of the incident the main FIR being 52/2015 with the other FIR's being by reference to it. Quite sensibly he did not bring the appellants and the case property to the PS for security reasons since tensions were running high in the area following the raid on the



HQ of the MQM in Karachi. PW 1 Muhammed Latif who was the complainant in the case had no ill will or enmity with any of the accused and as such had no reason to implicate them in a false case. His FIR was lodged with promptitude and no material improvements have been made in his evidence and his FIR. He gave his evidence in a straightforward, natural manner and was not dented despite a lengthy cross examination by numerous defence counsel. He was corroborated in all material respects by PW 2 Fazal Rabbi who was the mashir of the arrest and recovery and to whom the same considerations apply especially as his S.161 Cr.PC statement was recorded promptly and no material improvements have been named in his evidence and as such we find his evidence to be reliable, confidence inspiring and trustworthy and we believe the same. The same considerations apply to PW 2 Fazal Rabbi.

(d) That the appellants were therefore all caught red handed on the spot with firearms for which they had no licenses and were arrested and named in the FIR's.

(e) That the FIR's were divided up amongst separate IO's PW 4 Ather Ahmed, PW 5 Akthar Javed, PW 7 Jawed Ahmed Yousafzai, PW 8 Arshad Hussian and PW 10 Chagez Ali Khan who all according to their evidence recovered the appellants in their FIR's and relevant case property from the Rangers HQ, inspected the wardat, recorded the S.161 Cr.PC statements on the same day. Then sent recoveries for FSL which produced positive reports regarding the recovered weapons being in working order. No ill will or enmity has been suggested against any of them by any of the appellants and as such they had no reason to falsely implicate any of the appellants. They gave their evidence in a straightforward, natural manner and were not dented despite a lengthy cross examination by numerous defence counsel and as such we find their evidence to be reliable, confidence inspiring and trustworthy and we believe the same. We also find that safe custody of the recovered weapons has also been proven. PW 6 Saleem Siddiqui who was duty officer at the time at PS Azizabad who recorded the FIR's of the complainant also corroborates their evidence. That since it has not been proven through evidence that any of the police PW's who gave evidence had any enmity or ill will towards the appellants and had no reason to falsely implicate them in this case for instance by planting weapons on any of the appellants in such circumstances it has been held that the evidence of the police PW's can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed v. The State** (2020 SCMR 474).

(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 and the conviction of the appellants. In this respect reliance is placed on the cases of **Zakir Khan v. State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the time the rangers received intelligence information

about the presence of Faisal Mehmood aka Mota at 9 Zero who was wanted in the Wali Khan murder case to putting together a raiding party to raid 9 Zero to the actual raid itself to the arrest and recovery of the appellants (including Faisal Mehmood aka Mota) armed with pistols and other rifles and weapons to a positive FSL report stating that such weaponry was in working order.

(g) The fact that S.103 Cr.PC was not complied with based on the particular facts and circumstances of this case and the other available evidence on record we do not give much significance to as it has now virtually been judicially recognized that in such type of criminal cases now a days due to general apathy in the public and fear of reprisals independent people are not willing to act as mashirs and unnecessarily embroil themselves in the legal process which may have repercussions on both them and their family. In this respect reliance is placed on the cases of **Salah-uddin v. The State** (2010 SCMR 1962) and **Ibrarullah v. State** (2021 SCMR 128)

(h) With regard to the video of the news report by ARY news as attempted to be authenticated by DW 11 Afzal Pervaiz even if this video of Mubashir Luqman is held to be admissible as urged by the defence in our view it actually goes against the defence case as it shows the presence of a number of the accused who claim to be else where at the time of the incident and negates there defence, for example, Faisal Mehmood aka Mota. Even if the video does not show the accused as being armed this is of little consequence as there is no time stamp on the recording and the incident went on for a number of hours and as such the accused may well have been disarmed before this news report. The video only seems to benefit the acquitted Nadir and none other of the appellants.

(i) That the fact that the appellants were acquitted in the associated case under the Explosive Substances Act 1908 we find to be of no relevance as such weapons (bombs) could not be used without a launcher which was not recovered at 9 Zero and as such were useless as weapons. It is noted that appellant Nadir was acquitted in the Arms case as he produced much more evidence in his defence in terms of his apparent arrest from his house in the video and the evidence of his wife and as such his case was on a different footing to the other co-accused who were convicted in the Arms case.

(j) That there is no illegality in having a joint mashirnama of arrest and recovery based on the particular facts and circumstances of the case where all the accused are arrested at the same time and place and all the recoveries are made from them at the same time and place as part of the same transaction as in this case. In this respect reliance is placed on the case of **Akbar v. The State** (2017 YLR Note 277).

(k) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is simply one of false implication by the police at the behest of the rangers on account of

5

political reasons. Although the appellants all gave evidence on oath and called 11 DW's we find that most of the DW's were relatives who made no report of any illegal arrest until the time when the prosecution case was over. That none of the DW's who claimed to have a firearms license for a weapon which was allegedly recovered from 9 Zero and/or allegedly foisted on a particular appellant had a valid license as they had all expired, there was no evidence that any of the appellants had written permission to have their firearm as a retainer and even otherwise there logic of keeping a firearm in 9 Zero for protection does not stack up as what good is a firearm for protection when it is left in a building which you are absent from? Even if the MQM was fearful of an attack on its premises this does not justify stockpiling such a large quantity of unlicensed arms and ammunition at its HQ's. In such a scenario the police should be called to deal with the situation. Thus, for the reasons mentioned above we disbelieve the defence case as an afterthought in the face of reliable, trust worthy and confidence inspiring prosecution evidence which has not at all dented the prosecution case. As was correctly found in the impugned judgment at para 55 which is reproduced below for ease of reference;

*"55. From the perusal of above list only 62 weapons/arms matched with the claim of DW Muhammad Farooq Sattar whereas rest of the weapon recovered from Khursheed Memorial Hall are illegal and illicit as has also been shown in the CD with commentary that some weapons were of US Navy and of Tliban, hence the defence plea of the accused is not comprehensive and is only accepted to the extent of verified weapons from the Ministry of Interior, whereas total weapons recovered from exclusive possession of each accused is 14 and from Khursheed Memorial Hall number of Arms is 98; total number of arms secured/recovered is 112" (bold added)*

11. Based on the above discussion we have no doubt that the prosecution has proved its case against the appellants beyond a reasonable doubt for the offences for which they have been convicted and sentenced and hereby uphold the impugned judgment and dismiss the all the appeals.

**Turning to the Enhancement of sentences of the appellants.**

12. In the case of **Abdul Malik and others v. The State and others** (PLD 2006 Supreme Court 365) the court laid down the following principles governing the enhancement of sentence.

*"To say that an appellate or revisional Court cannot enhance the sentence of a convict who during the pendency of the appeal or revision, as the case may be, has undergone the sentence under challenge is to negate the mandatory provisions relating to the powers of the appellate Court under sections 423, 427 of Cr.P.C. and of the revisional Court under sections 435 and 439 of the same Code. Under these provisions, the concerned Court, seized of the appeal or revision, has the power to annul, to reduce or to enhance the sentence.*

*The question of sentence is primarily a matter of judicial discretion to be exercised in the first instance by the Trial Court. The Court of appeal can enhance the sentence if the same is found to be inadequate or not in accord with judicial principles laid down by superior Courts in this regard. But it will depend on circumstances of that case and it would be undesirable to lay a principle of general application.*

*There are four broad principles/guidelines in this regard where the Court could interfere and enhance the sentence. Those are as under:-*

- (i) Where the sentence was not justified by law.*
- (ii) Where a person was sentenced upon a wrong factual basis.*
- (iii) Matters improperly taken into consideration or fresh matters to be taken into account.*
- (iv) The sentence manifestly is excessive or wrong in principle.*

*These are mere guidelines and their application would depend on each case. The cases entailing capital charge are to be decided with, utmost care. When law vests a discretion in Courts to award sentence of death or life imprisonment, it casts a heavy duty to balance the various considerations which underlie these sentencing provisions. The circumstances surrounding the offence, the question of mens rea, the principle of proportionality of sentence, of the gravity of the offence charged, the considerations of prevention or of deterrence and of rehabilitation may also be kept in view if the circumstances of the cases and the law applicable so warrant.*

*There is no rule of general application that the serving out of sentence during the pendency of appeal or*



*revision, by itself, would constitute a bar for enhancement of sentence or that any exercise to that effect would be violative of Article 13 of the Constitution. This could be one factor which the Court may consider, along with other factors and the principles while deciding the question of enhancement.*(bold added)

13. In the later case of **Muhammad Juman v. The state and others** (2018 SCMR 318) it was emphasized that sentencing was not a mechanical exercise in the following terms;

*“Inflicting conviction and imposing sentence is not a mechanical exercise but it is onerous responsibility to inflict, fair, reasonable and adequate sentence, commensurate with gravity and or severity of crime, looking at the motive, attending and or mitigating circumstances that provoked or instigated commission of crime and it involves conscious application of mind. No mathematical formula, standard or yard stick could be prescribed or set out to inflict conviction and sentence, such factors vary from case to case and while undertaking such exercise Court must keep in sight provisions contained in Chapters-III and IV of the P.P.C. Unfortunately, no sentencing guideline is laid down in Pakistan, though Courts have set out certain parameters in many cases as to what is mitigating and or aggravating circumstances that may warrant alteration and or varying in conviction and or sentence within the parameters of provided under the charging or penal provision”.*(bold added)

14. In the case in hand the appellants have been convicted u/s 23 (a) (i) of the SAA for having in their possession unlicensed firearms. The sentencing range for such offence is up to 14 years imprisonment. The State wants all the sentences of the appellants enhanced to the maximum of 14 years as the prosecution has proved its case against all the appellants beyond a reasonable doubt. It is however but logical that the maximum sentence of 14 years imprisonment would be reserved for the most grievous of cases where no mitigating factors existed at all. In fact we are aware that even when an accused is convicted for offences under S.353/324/34 PPC and SAA 2013 following a police encounter where a police man even suffers injuries on account of the discharge of the unlicensed firearm which is recovered from the appellant at the time of the arrest rarely does the sentence go beyond 7 to 10 years provided that

the offence does not fall under the ATA. In this case the firearms were recovered from each of the accused **without any firing actually being made** on any party as the accused surrendered and as such we find that the maximum sentence cannot be justified based on the particular facts and circumstances of this case. The appellants have been sentenced respectively to periods of 10, 8 and 6 years **and the trial court has given full reasoning for the quantum of sentence handed down to each accused and why there has been a differentiation in sentences between some of the appellants** which is set out below for ease of reference which we find no exception can be taken to and as such the revision applications for enhancement of the appellant's sentences are all dismissed and the sentences handed down to each of the appellants in the impugned judgment are maintained.

**QUANTUM OF SENTENCE**

78. *Quantum of the sentence is normally the discretion of court based on judicial reasoning keeping in view the facts and circumstances of the case (reference 2015 SCMR 735). Since the prosecution has proved the case of recoveries of arms and ammunition but case in hand has created mitigating circumstances as discussed above, yet cases of above named accused are on different footings, hence they are sentenced differently according to three categories of accused. The main accused first category is Faisal from whom illegal weapon was recovered and on his pointation huge arms and ammunition were recovered; the newspaper at Ex-39/B & C and filed with statement by learned counsel Mr. Mohammad Jiwani confirm that he was arrested from place of incident; CDs produced during evidence so also filed with statement of the learned counsel Mr. Mushtaque Ahmed also confirms that accused Faisal is arrested from Khursheed Memorial Hall; his written statement filed by counsel of accused confirms his arrest from Khursheed Memorial Hall. Second category accused Shabbir Ahmed @ Farhan and accused Muhammad Abid have also admitted in their statements that they were arrested from Khursheed Memorial Hall, Ubaid K2 falling in second category of accused despite his denial of arrest from Khursheed Memorial Hall yet the same is proved from defence version i.e. newspapers and CD that he was arrested from Khursheed Memorial Hall and there comes third category of accused who have denied their arrest from the place of incident, the CD and newspapers are also*

silent but their arrest from Khursheed Memorial Hall is proved by prosecution.(bold added)

79. The sequel of the discussion, the findings on point No.3 to 16, I come to the conclusion that prosecution has proved its cases against the accused beyond any reasonable shadow of doubt, I therefore, convict and sentence them u/s 265-H(2) Cr.P.C. as under:-

- iv) The accused Faisal Mehmood @ Mota s/o Mehmood Hussain is hereby convicted for the offence u/s.23(I)(A) SAA 2013 **and sentenced him to suffer simple imprisonment for (10) ten years** with fine of Rs.50,000/- (Rupees Fifty Thousand) and in case of failure to pay the fine, he shall suffer SI for six (06) months more.
- v) The accused Muhammad Abid S/o Nazeer Ahmed Ubaid @ K-2 S/o Khursheed are hereby convicted for the offence u/s. 23(I)(A) whereas Shabbir Ahmed @ Farhan Mullah S/o Dabeer Ahmed is convicted u/s. 23(I)(A) in the light of Section 32 of SAA, 2013 **and sentence them to suffer simple imprisonment for eight (8) Eight years** with fine of Rs.30,000/- (Rupees Thirty Thousand) each and in case of failure to pay the fine, he shall suffer SI for three (03) months more.
- vi) All the accused Amir Ali @ Sarphata S/o Shoukat Ali, Muhammad Javed S/o Muhammad Ibrahim , Muhammad Amir @ Totla S/o Muhammad Moeen, Mehmood Hassan S/o Muhammad Moazzam are hereby convicted for the offence u/s. 23(I)(A) whereas Imtiaz Hussazin S/o Shamim Ahmed, Syed Kazim Raza Rizvi S/o Syed Nasir Raza, Abdul Qadir S/o Muhammad Hingoro, Nadeem Ahmed S/o Mushtaque Ahmed and Muhammad Shakeel @ Banarsi S/o Muhammad Haroon are convicted for the offence u/s.23(I)(A) SAA 2013 in the light of Section 32 **and sentenced each of them to suffer simple imprisonment for (06) Six years** with fine of Rs.10,000/- (Rupees Ten Thousand) each and in case of failure to pay the fine, he shall suffer SI for two (02) months more.

**Turning to the Appeals against Acquittal.**

15. As a matter of law the parameters for an appeal against acquittal to succeed are much narrower than in the case of an appeal against conviction. It is settled law that judgment of acquittal should not be interjected *until findings are perverse, arbitrary, foolish, artificial, speculative*



and ridiculous as held by the Honorable Supreme Court in the case of **The State v. Abdul Khaliq and others** (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cardinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the above referred judgment. The relevant para is reproduced hereunder:-

*“16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:*

***Bashir Ahmed v. Fida Hussain and 3 others** (2010 SCMR 495), **Noor Mali Khan v. Mir Shah Jehan and another** (2005 PCr.LJ 352), **Imtiaz Asad v. Zain-ul-Abidin and another** (2005 PCr.LJ 393), **Rashid Ahmed v. Muhammad Nawaz and others** (2006 SCMR 1152), **Barkat Ali v. Shaukat Ali and others** (2004 SCMR 249), **Mulazim Hussain v. The State and another** (2010 PCr.LJ 926), **Muhammad Tasweer v. Hafiz Zulkarnain and 02 others** (PLD 2009 SC 53), **Farhat Azeem v. Asmat Ullah and 6 others** (2008 SCMR 1285), **Rehmat Shah and 2 others v. Amir Gul and 3 others** (1995 SCMR 139), **The State v. Muhammad Sharif and 3 others** (1995 SCMR 635), **Ayaz Ahmed and another v. Dr. Nazir Ahmed and another** (2003 PCr. LJ 1935), **Muhammad Aslam v. Muhammad Zafar and 2 others** (PLD 1992 SC 1), **Allah Bakhsh and another v. Ghulam Rasool and 4 others** (1999 SCMR 223), **Najaf Saleem v. Lady Dr. Tasneem and others** (2004 YLR 407), **Agha Wazir Abbas and others v. The State and others** (2005 SCMR 1175), **Mukhtar Ahmed v. The State** (1994 SCMR 2311), **Rahimullah Jan v. Kashif and another** (PLD 2008 SC 298), **Khan v. Sajjad and 2 others** (2004 SCMR 215), **Shafique Ahmad v. Muhammad Ramzan and another** (1995 SCMR 855), **The State v. Abdul Ghaffar** (1996 SCMR 678) and **Mst. Saira Bibi v. Muhammad Asif and others** (2009 SCMR 946).”*

*From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals." (bold added)*

16. In the instant case the appellants have been acquitted of the charge under the Explosive Substances Act 1908 for the following reasons at para's 62 and 63 of the impugned judgment as set out below;

62. As far as the prosecution regarding recovery of rifle grenade from accused is concerned one single question arises as to why accused would carry rifle-grenades which cannot explode without its rifle as per admitted evidence of BDU as Ex-14. On this score only, benefit of doubt cannot be taken away from accused who are otherwise entitled for the same not as a matter of grace but as a matter of right.

63. Moreover, the memo of recovery at Ex-10/A does not describe any identity marks of the rifle grenade recovered from accused whereas the clearance certificate and final reports mentioned the description. The BD team has examined the rifle grenade on the next day i.e. the delay of one day, BD was examined during trial at Ex-12 as PW-03 Masab Hussain during cross has admitted "rifle grenade are not defused and rifle grenade are factory fitted. Rifle grenade fires from rocket launchers. I have only examined rifle grenade and did not examine any rifle." It has come during evidence that no rifle/launcher was collected/recovered either from accused or from Nine Zero/Khursheed Memorial Hall, the place of incident, does not attract the prudent mind to believe that rifle grenade would be kept by each accused for utilizing the same without any rifle/launcher. Despite recovery of huge arms and ammunition no any explosive is alleged to have been recovered from Nine Zero, no other rifle grenade is recovered from Khursheed Memorial Hall. The CD containing Khara Sach program and newspapers containing DAWN NEWS dated 12.03.2015 does not mention any explosive recovered from Khursheed Memorial Hall, hence the case of recovery of rifle grenade from each accused is not proved beyond shadow of doubt, the reference may be made to 2018 P Cr.LJ Note 146 (Sindh) Pl.-b, 2018 MLD 835, 2018 YLR 160, 2018 YLR 661, 2018 MOLD 716"

17. We find that it is quite natural during a raid for suspects to grab any firearm which was available and in fact the appellants had recovered from them assorted firearms ranging from pistols to SMG's to G3 Rifles to LMG's however it does not particularly appeal to logic, reason or commonsense that each and every one of the appellants would have a bomb which was useless without a launcher especially when no launcher was recovered from 9 Zero during the raid. Learned counsel for the State has not been able to point out any legal infirmity in the impugned judgment as to bring it within the purview of an appeal against acquittal being admitted to regular hearing let alone being successful keeping in view the relevant law and as such all the appeals against acquittal are dismissed in lime.

**Conclusion.**

1. All the appeals against conviction are dismissed.
2. All criminal revision applications for Enhancement of sentence are dismissed and the sentences handed down to each appellant in the impugned judgment are maintained.

3. All the appeals against acquittal are dismissed *in limine*.

18. The appeals against conviction, the criminal revision applications for enhancement of sentences and appeals against acquittal are all disposed of in the above terms.