IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr.Appeal.No.D- 22 of 2013
Cr.Jail.Appeal.No.D- 23 of 2013
Confirmation case No. 05 of 2013

Present:-

Mr. Justice Naimatullah Phulpoto.
Mr. Justice Mohammad Karim Khan Agha.

Date of hearing: 17.05.2017 & 19.05.2017.
Date of judgment: 30.05.2017.

Appellant Muhammad Ishaque s/o Sain Bux by caste Panhwar :	Through Syed Tarique Ahmed Shah, Advocate.
Respondent the State :	Through Mr.Syed Meeral Shah, Addl: P.G.
Complainant Muhammad Ameen :	Through Mr. Muhammed Jameel Ahmed, Advocate

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J. - Appellant Muhammad Ishaque was tried by learned Sessions Judge, Mirpurkhas in Sessions Case No.136 of 2002 for offence u/s 302 PPC. By judgment dated 27.03.2013, (the impugned Judgment) appellant Muhammad Ishaque was convicted and sentenced as under:-

1. U/s 302 (a) PPC for the Qatl-e-amd of deceased Ghulam Hyder s/o Muhammad Alam and sentenced to death as Qisas, he be hanged by neck till death and to pay the compensation of Rs.2, 00,000/- to the L.Rs of deceased Ghulam Hyder u/s 544-A Cr.P.C for the mental anguish or psychological damage caused by him to legal heirs, which shall be recoverable as land revenue arrears and in default he shall undergo SI for six months.

2. U/s 302 (a) PPC for the Qatl-e-amd of deceased Mst. Sahib Khatoon w/o Ghulam Hyder and sentenced to death as Qisas, he be hanged by neck till death and to pay the compensation of Rs.2,00,000/- to the L.Rs of deceased Mst. Sahib Khatoon u/s 544-A Cr.P.C for the mental anguish or psychological damage caused by him to legal heirs, which shall be recoverable as land revenue arrears and in default he shall undergo SI for six months.

3. U/s 302 (a) PPC for the Qatl-e-amd of deceased Muhammad Alam s/o Ghulam Hyder and sentenced to death as Qisas, he be hanged by neck till death and to pay the compensation of Rs.2,00,000/- to the L.Rs of deceased Muhammad Alam u/s 544-A Cr.P.C for the mental anguish or psychological damage caused by him to legal heirs, which shall be recoverable as land revenue arrears and in default he shall undergo SI for six months.

4. U/s 302 (a) PPC for the Qatl-e-amd of deceased Muhammad Azam s/o Ghulam Hyder and sentenced to death as Qisas, he be hanged by neck till death and to pay the compensation of Rs.2,00,000/- to the L.Rs of deceased Muhammad Azam u/s 544-A Cr.P.C for the mental anguish or psychological damage caused by him to legal heirs, which shall be recoverable as land revenue arrears and in default he shall undergo SI for six months.

5. U/s 302 (a) PPC for the Qatl-e-amd of deceased Muhammad Nazim s/o Ghulam Hyder and sentenced to death as Qisas, he be hanged by neck till death and to pay the compensation of Rs.2,00,000/- to the L.Rs of deceased Muhammad Nazim u/s 544-A Cr.P.C for the mental anguish or psychological damage caused by him to legal heirs, which shall be recoverable as land revenue arrears and in default he shall undergo SI for six months.

6. U/s 338 (c) PPC for Isqat-e-Janeen of an unborn child in the womb of deceased Mst. Sahib Khatoon and sentenced to pay 1/20th of Diyat and also undergo RI for seven years. Benefit of UTP period is extended to the accused as per section 382(b) Cr.P.C.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 23.09.2002 at about 0215 hours one Muhammad Ameen s/o

Shafi Muhammad by caste Panhwar r/o village Shafi Muhammad Panhwar Taluka Mirpurkhas lodged FIR with PS Taluka Mirpurkhas, alleging therein that he is Zamindar. On 22.09.2002 he, his cousin namely Azizullah and Yameen were sleeping in the cattle pen. On 23.09.2002 at about 0130 hours they heard the sound of firing, whereupon they immediately rushed towards the place of firing and saw that the firing was going on in the house of his maternal uncle Ghulam Hyder Panhwar. They entered into the house and saw that Muhammad Ishaque s/o Sain Bux, who was having dispute on the landed property with Ghulam Hyder Panhwar, in order to usurp the agricultural land had fired upon Ghulam Hyder s/o Muhammad Aslam Panhwar aged about 69/70 years, Muhammad Azam s/o Ghulam Hyder Panhwar aged about 5/6 years, Muhammad Nazim s/o Ghulam Hyder Panhwar aged about 3/4 years and they had been killed and blood was oozing from them. While Mst. Sahib Khatoon w/o Ghulam Hyder Panhwar aged about 30 years and Muhammad Alam s/o Ghulam Hyder Panhwar aged about 8/9 years were injured and due to fire arm injuries blood was oozing from them. On seeing them accused Muhammad Ishaque fled away. Thereafter complainant and Yameen immediately brought the injured Mst. Sahib Khatoon and Muhammad Alam to civil hospital, for medical treatment, while Azizullah was left over the dead bodies of Ghulam Hyder, Muhammad Azam and Muhammad Nazim. Thereafter, complainant came at police station and reported the incident to SIP/SHO Khuda Bux Panhwar who recorded the FIR of the complainant.

3. The investigation of the crime was conducted by SIO Ghulam Ali Chandio who prepared inquest reports in presence of mashirs. Memo of inspection of dead bodies, memo of injuries of injured Mst. Sahib Khatoon and Muhammad Alam and gave letters to medical officer Civil Hospital, Mirpurkhas for examination of the deceased namely Ghulam Hyder, Muhammad Azam and Muhammad Nazim and for medical treatment of injured Mst. Sahib Khatoon and Muhammad Alam. Thereafter, on 23.09.2002 at about 0630 hours arrested accused Muhammad Ishaque in presence of mashirs namely PC Shah Nawaz and PC Bhojraj and recovered crime weapon viz. one TT pistol

of 30 bore loaded with three live bullets and one empty, license of pistol, two empty magazine of 30 bore and 22 live bullets. Thereafter, visited the place of vardat in presence of mashirs Mir Zafarullah and Ghulam Murtaza on the same date at about 0800 hours and recovered 13 empties of TT Pistol, 08 heads of fired bullets, blood stained beds and sealed the same. On 23.09.2002 he produced the accused before the learned Judicial Magistrate for recording the confessional statement of accused. SIO sent the blood stained clothes of deceased persons and beds and blood stained earth to the chemical examiner so also sent crime weapon i.e. 30 bore pistol No.B-705, one 30 bore crime empty, one magazine, 03 live bullets of 30 bore, 22 live bullets of 30 bore and 13 empties of 30 bore, 07 crime bullets of 30 bore, one 30 bore mutilated crime bullet and 05 live bullets of 30 bore to Ballistic Expert for F.S.L. report. During the course of investigation SIO also recorded dying declaration of injured Mst. Sahib Khatoon who was pregnant in presence of Doctor. Both injured i.e. Mst. Sahib Khatoon and Muhammad Alam expired at L.M.C.H. Hyderabad and I.O. collected such proof. After completing investigation accused was challaned before the Court of learned Judicial Magistrate and F.C.M-II, Mirpurkhas.

4. The charge against the accused was framed at Ex.2, to which the accused pleaded not guilty and claimed to be tried.

5. In order to substantiate its case, the prosecution examined 15 P.Ws. and thereafter, the prosecution side was closed at Ex.25.

6. The statement of the accused was recorded u/s 342 Cr.P.C.at Ex.28, wherein the accused denied the prosecution allegations and claimed his false implication in this case. The accused examined himself on oath at Ex.29, wherein he has stated that deceased Ghulam Hyder was his uncle as well as father-in-law. He used to reside with his father-in-law in the same house in the year 2002. He was posted in Intelligence Bureau as PC and after performing his duties he came to his house on 23.09.2002 at about 10.30 p.m. He entered in the house and saw that police party of PS Taluka was already available at the house and they captured him. They took him

to the police station and thereafter he came to know about the murder of his father-in-law Ghulam Hyder, and his cousins Muhammad Alam, Azam and third name he did not remember. He was kept at PS Taluka and after sometime he was taken to PS City. The police of PS City issued threats to him and were compelling him to confess to the murders. They produced him in the Court; name he did not know, for confession, where he confessed the commission of the murders due to compulsion. He had no enmity of whatsoever with Ghulam Hyder and his sons. Ameen (the complainant) was also son-in-law of Ghulam Hyder. Ameen is his relative as well as relative of Ghulam Hyder deceased. There was dispute between Ameen and Ghulam Hyder, over house prior to the murder. The accused claimed innocence and stated that he had not committed any murder. However, accused did not call defense witnesses in support of his case.

7. Learned Sessions Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above through the impugned judgment and made reference for confirmation of death sentence. Hence this appeal.

8. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition

9. Mr.Syed Tarique Ahmed Shah, learned advocate for the appellant has contended that the prosecution has failed to prove its case against the appellant for the following reasons; that the charge is defective in that it has charged the appellant with 3 murders, 2 attempts to murder and without mention of S.338(c) PPC but the appellant has been convicted for 5 murders and under S.338(c) and due to such defects in the charge the case may be remanded back for retrial; that there has been an improvement in the evidence of the PW's at trial as against their earlier S.161 and 164 Cr.PC statements; that the ocular evidence contradicts the medical evidence in particular the deceased Mohammed Alam and Mrs Khatoon's injuries were not all consistent with bullet wounds and that as per the defense version

the deceased persons were all murdered by the complainant and the 2 other eyewitness (PW Azizullah and Mohammed Yameen) who had a property dispute with the deceased Ghulam Hyder; that the complainant and the 2 other aforesaid eyewitnesses were chance witnesses since they had their own homes yet for inexplicable reasons they were all on that particular night staying at the cattle pond where they had conspired to murder Ghulam Hyder; that their story does not appeal to reason as according to their own evidence they were awaken by about 15 gun shots and were staying at a distance of about one acre from Ghulam Hyder's house which was the scene of the murder so how was it possible for them to reach the scene and be eye witnesses to the murder? As such it was contended that there were no eye witnesses to the incident and the complainant and the 2 other eye witnesses were the real murderers and as already shown by the medical evidence the murders were caused by more than one person and that the complainant and the other 2 eye witnesses had the means, motive and opportunity to carry out the murders; that there are major contractions in the evidence of the PW's for instance PW Abdul Jabbar puts the time of the incident in doubt and the PW IO Ghulam Ali went to arrest the appellant by motor bike when according to the other members of the arrest party they went in a private taxi; that there was a delay in sending the empties for the ballistic report of about one month which delay has not been explained; that the appellants confessional statement was inadmissible as it was not in accordance with law; namely after the confession was recorded the appellant was handed back to the same police officer for judicial custody who had brought him for recording the confession which was completely illegal; that the dying declaration of Mrs Khatoom was fabricated as the PW Dr. Jillani who was present when it was allegedly made to the IO did not mention it in his evidence; that the PW's are all related to either the deceased or each other and as such cannot be safely relied upon especially as there were many other persons who had gathered at the house of the incident yet none of them had given evidence or been used as mushirs and thus for all the above reasons the appellant was entitled to the benefit of the doubt and may be acquitted.

10. In support of his contentions, learned counsel for the appellants relied upon the cases of **Mubeen V State** (2006 YLR 359), **Mumtaz Ali V State** (2000 PCr.LJ 367) **Idrees Kiani V State** (2004 MLD 1762 ©) **Akhtar Ali V State** (2008 SCMR 6 (d)) **Kamal Hussain V State** (2004 PCrLJ 813) **Arshad Khan V State** (2017 SCMR 564), **Sardar Bibi V Munir Ahmed** (2017 SCMR 344) **Hajji Ghulani Hussain V State**(PLD 1976 Kar 1160), **Haji Said Muhammed V Munawar** (1994 SCMR 1842) **Farman BI V Ghulam Farid** (1994 SCMR 1852), **Mataro V State** (PLJ 1997 Cr.C (kar) 217), **Ali Akbar V State** (1988 MLD 186) and **Khalid V State** (1998 P.Cr.LJ 606)

11. On the other hand, Syed Meeral Shah, learned D.P.G. fully supported the impugned judgment and contended that if there were any defects in the charge they could be cured through S.232 Cr.PC and S.537 (a) Cr.PC; that there was no material improvement in the S.164 statements of the eyewitnesses and their evidence at trial; that the medical evidence was not contradictory to the ocular evidence; that the complainant and eye witnesses were not chance witnesses and were all present that day at the cattle pond and were eye witnesses to the incident, FIR was lodged promptly and who had provided the motive for the crime; namely that the appellant had a dispute over agricultural property with Ghulam Hyder and had murdered him and his family in order to obtain the agricultural property; that there were no major contradictions in the prosecution evidence; that the delay in sending the empties for ballistic report was not relevant especially as it was not put during cross examination; that the confessional statement had been made in accordance with law and was legally admissible and could be relied upon and the same was the position with the dying declaration and as such the appeal should be dismissed as there was no doubt that the appellant had committed the 5 murders and the prosecution had proved its case through evidence to the required criminal standard. In support of his contentions he placed reliance on **Faquirullah V Khalil Uz Zaman** (1999 SCMR 2203), **Mumtaz V State** (2012 SCMR 556), **Nazir Ahmed V State** (2009 SCMR 523) and **Dadullah V State** (2015 SCMR 856)

12. Learned counsel for the complainant adopted the arguments of learned APG and additionally added that where there was no firearm injuries on Mrs Khatoon such injuries had been caused when she fell down and that with Alam since he was a young boy his bone structure accounted for the appearance of a difference injury which had in fact been caused by a fire arm; that the appellants confessional statement which was voluntary not only proved his guilt but his motive for the murders; that the prosecution had fully proved its case through reliable evidence; that the appeals may be dismissed and that since there were no mitigating circumstances the death sentence may be confirmed. In support of his contentions learned counsel placed reliance on the following cases **Muhammed Ehsan V State** (2006 SCMR 1857), **Akthar Ali and others V The State** (2008 SCMR 6), **Idress Kiani and others V The State through Advocate-General (**2004 MLD 1763), **Irfan V Muhammed Yousaf** (2016 SCMR 1190), **Takdir Samsuddin Sheikh V State of Gujrat and another** (2012 SCMR 1869), **Khan Muhammad and others versus The State** (2011 SCMR 705), **Mumtaz Ali and another V The State** (2000 P Cr. L J 367) **Salamat Ali V The State** (MLD 2017 701), **Tariq Iqbal V State** (2017 SCMR 954), **Khalid Mahmood V State** (2017 SCMR 201) **Ashique Hussain V The State** (2017 SCMR 188), **Mohammed Sharif V State** (2006 SCMR 1170), **Mohammed Aslam V State** (2012 SCMR 593) **Inayatullah V State** (PLD 2007 SC 237)

13. We have considered the arguments of learned counsel, examined the entire evidence with their able assistance and considered the relevant law and authorities cited by them at the bar.

14. At the outset we would like to make it clear that we have considered the evidence in a holistic manner and considered each piece of evidence in isolation as well as how it fits in with the entire prosecution case to see if the prosecution has been able to prove its case beyond a reasonable doubt through such evidence.

15. We shall consider each argument in turn as raised by learned counsel for the appellant.

Defects in the Charge.

The Charge reads as under:

"IN THE COURT OF FIRST ADDL:SESSIONS JUDGE, MIRPURKHAS.
S.C. No. 136 of 2002.

The State. . . . . . Versus. . . . . . Muhammad Ishaque.

12-07-2003. **CHARGE**

I, Ghulam Qadir Leghari, First Addl: Sessions Judge, Mirpurkhas do hereby charge you:

Muhammad Ishaque s/o Sain Bux Panhwar, as under:-

That on 23.09.2002 at 0130 hours in the house of deceased Ghulam Hyder situated in deh Phandro Taluka Mirpurkhas, you accused intentionally made firing with T.T. pistol 30 bore which hit Ghulam Hyder and his sons Muhammad Azam and Muhammad Nazim resulting their death. You thus thereby committed Qatli-amd of the above deceased punishable U/s 302 PPC within the cognizance of this Court.

That on the same date, time and place you accused made firing with T.T. pistol with intention to commit Qatle-amd or by that act the death could be caused and the firing shots hit Mst. Sahib Khatoon and Muhammad Alam. You thus thereby committed offence punishable U/s 324 PPC within the cognizance of this Court.(bold added)

And I hereby direct you be tried of the aforesaid offences.

This 12th day of July, 2003.
Sd/-
12.07.03.
(GHULAM QADIR LEGAHRI)
First Additional Sessions Judge, Mirpurkhas."

16. According to S.221 to 225 Cr.PC the charge must state as under:

" **221. Charge to state offence.** (1) Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description. (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name. (3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as

to give the accused notice of the matter with which he is charged.

(4) **The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.**

What implied in charge. (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Language of charge. (6) The charge shall be written either in English or in the language of the Court.

Previous conviction when to be set out. (7) If the accused having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it at any time before sentence is passed.

222. Particulars as to time, place and person. (1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thinking (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 34:

Provided that the time included between the first and last of such dates shall note exceed one year.

223. When manner of committing offence must be stated. When the nature of the case is such that the particulars mentioned in section 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for the purpose.

224. Words in charge taken in sense of law under which offence is punishable. In every charge words used in describing an offence shall be deemed to have been used in the

sense attached to them respectively by the law under which such offence is punishable.

225. Effect or errors. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, **unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."** (bold added)

17. In essence the object of the charge is to enable to the accused to know the case against him with sufficient detail so that he may be in a position to defend the case against him. In this regard reference is made to **Idress Kiana's case** (supra) which held as under at P.1766

"The object of charging accused is to make him aware, abreast and alert about the allegations and the basis on which the allegations are leveled against him. **It enables the accused to know the precise accusation against him which he is required to meet before commencement of evidence of the prosecution**." (bold added)

18. Likewise in **Mumtaz Ali's case** (Supra) at P. 370, which is set out as under:

"It is mandatory that charge shall contain all material particulars as to time, place as well as specific name of the alleged offence, the manner in which the offence was committed and the particulars of the accused so as to afford accused an opportunity to explain the matter with which he is charged. **The purpose behind giving such particulars is that the person against whom such charge is framed should prepare his case accordingly and may not be misled in preparing his defence.** Charge is the very start of trial and it is at this stage that an accused comes across the accusation leveled by the prosecution against him, as such he will have to keep such material in his mind during the proceedings of the trial. **By now it is well-settled that if any person is misled in preparing the defence by absence of necessary particulars, as stated above, or there is a serious defect in the charge, retrial is the remedy. The material thing for directing the retrial is to be seen as to whether by framing an improper charge, quite contrary to the case of prosecution, a prejudice was caused to the accused or not."** (bold added)

19. In connection with curing any errors in a charge S.232 and S.357 Cr.PC are relevant and are set out below for ease of reference:

"S. 232. Effect of material error. (1) If any Appellate Court, or the High Court for the Court of Session in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion **that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it think fit.** (bold added)

(2) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

S.537 Cr.PC provides as under:

"537. **Finding or sentence when reversible by reason of error or omission, in charge** or other proceedings. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or **on appeal** or revision on account:

(a) **of any error, omission or irregularity** in the complaint, report by police-officer under section 173, summons, warrant, **charge**, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(b) of any error, omission or irregularity in the mode of trial, including any misjoinder of charge, **unless such error, omission or irregularity has in fact occasioned a failure of justice**.

Explanation**. In determining whether any error, omission or irregularity in any proceedings under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings**."(bold added)

20. With respect to being convicted for an offense for which the accused has not been charged S.236 and S.237 Cr.PC are relevant which state as under:

" 236. *Where it is doubtful what offence has been committed.* If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at one; or he may be charged in the alternative with having committed some one of the said offences.

> S. 237. *When a person, is charged with one offence, he can be convicted of another.* (1) If in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it."

21. In our view the charge contains the time, place and the appellant name in the offenses set out therein. In our view it is clear that the appellant had notice that he was being charged with 3 murders and had adequate chance to defend himself on those aspects of the charge (for which he could be sentenced to death if convicted for any one of those murders). He also had notice that he was being charged with 2 attempts to murder. In our view, similar preparation would have been needed to be made for a case of attempt to murder as murder and even otherwise he was fully aware before the trial based on the material which he had received under S.265 © Cr.PC that he was in fact facing 5 separate murder trials as Mrs Khatoon and Mr. Alam had succumbed to their injuries and died on the same night and that in effect he had sufficient notice that he was defending a charge of their murders and hence he crossed examined on such points accordingly and as such he was neither misled as to the offenses of murder in respect of Mrs Khatoon and Alam against him and nor did such conviction prejudice him or lead to a miscarriage of justice.

22. Thus in our view in respect of the 5 murders the appellant has not been misled in his defense and no prejudice has been caused to him by the charge stating that "he was charged with attempting to murder Mrs Khatoon and Alam" as opposed to murdering them especially as he made no complaint in this respect during the course of the trial and in our view there has been no miscarriage of justice. Thus, the charge against the appellant for committing 5 murders of the named deceased on the date time and place as mentioned in the charge is not defective and the charge remains in full force and effect in this regard and in this respect S.232 Cr.PC is not relevant but rather Sections 225, 537 and 237 Cr.PC are applicable based on the

particular facts and circumstances of this case. In this respect reliance is also placed on **Muhammed Sharif's case** (Supra)

23. However we find that the charge is silent in respect of the offense u/s 338 PPC and as such the appellant would not have been put on notice that he was defending such offence and would not have been put in a position to prepare a defense to such offense and as such since this offense was not mentioned in the charge and he might have been misled in not preparing a defense in this regard and he might have been prejudiced by a conviction u/s 338 PPC we are of the view that he cannot be legally convicted of this offense and thus the appellant stands acquitted for the offense u/s 338 PPC only.

Improvements in Evidence when compared with S.164 statements.

24. We do not find any substance in this submission.The improvements which have been made in the evidence from the S.164 statements in our view are only minor in nature and have not been materially altered by the evidence given at trial. In any event it is observed from the evidence that the particular parts of the S.164 statements, word for word, which are under challenge have not been read out in the evidence and noted by the learned trial court in the evidence so such attacks on the S.164 statements seem to be generalized in nature as opposed to specific.

Eye witnesses and chance witnesses.

25. In this case there are 3 eye witnesses. It is settled law that an accused can be convicted on the evidence of one eye witness alone provided that such eye witness is found to be reliable, trustworthy and confidence inspiring. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857) where it was held at P.1860 at Para 6 as under:

> "6. It is true that there is only ocular testimony of P.W. 4 Mst. Khatun Bibi corroborated by medical evidence, P.W. 6 Dr. Muhammad Sarfraz Sial. The fact that there is only ocular testimony of one P.W. which is unimpeachable and confidence-inspiring corroborated by medical evidence would be sufficient to base conviction. **It be noted that this Court has time and again held that the rule of corroboration is**

> **rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence".** (bold added)

26. Based on the evidence we find that these 3 eye witnesses (the complainant, PW Azizullah and PW Yameen) are reliable, trust worthy and confidence inspiring and thus the appellant can be convicted on a single one of their evidence alone. In this case all 3 eye witnesses corroborate each other as there is no material difference in their evidence. We do not consider them to be chance witnesses for the following reasons (a) they had given reasonable, believable and corroborated explanations as to why they all happened to be where they were on that night i.e. at the cattle pond which is distinguishable from **Sardar Bibi's case** (Supra) where the witnesses were unable to adequately explain why there were not at their homes at the times of the incident which was also at night **and** (b) as a rule if the FIR is lodged quickly, as it was in this case being about 45 minutes after the incident then generally the prospect of a chance witness is ruled out as there has been insufficient time to fabricate a false case. In this respect reliance is placed on the case of **Sharafat Ali V The State** (2016 SCMR P.28) at P.30 which held as under

> "During trial, five police officials had appeared as eye-witnesses. They remained firm on all major particulars of the case i.e. date, time and place of occurrence and despite lengthy cross-examination their credibility could not be shaken. The PWs had no enmity with the appellant to falsely implicate him in the case. **The incident had taken place at 5.30 am whereas the FIR was registered on the same day at 6.00 am i.e. after thirty minutes of the occurrence wherein the appellant was specifically nominated with a specific role. Such a promptly lodged FIR excludes any chance of false implication."** (bold added)

27. Likewise in the case of **Abdul Haq V The State** (2015 SCMR 1326) it was held at P.1332 as under:

> **"Both the appellants have been specifically named in the FIR which was got registered after about 30 minutes of the occurrence. As such this is a case of promptly lodged FIR**

> **and the same excludes the chance of any deliberation or false implication.** The eye-witnesses are natural witnesses as they were present at the spot to attend the Majlis. The eye-witnesses have narrated the story in a natural manner and they remained consistent on all major particulars of the case………. Medical evidence also fully supports the ocular account so far as the nature and locale of injury. The weapon of offence recovered from the appellants and the empties which were taken into possession from the place of occurrence were sent to Forensic Science Laboratory and the report was positive."

28. It is true that the 3 eye witnesses state that they had been awaken by the shots and it would have taken them some minutes to reach the scene of the crime but importantly none of them say that they saw any but the injured Ms Khatoon and Mr.Alam being shot. According to their evidence they witnessed general firing on all the bodies and as such they have not claimed that they were present at the start of the firing which clearly went on for some time as can be judged by the number of injuries on the deceased and the number of empties found at the scene of the incident. They saw the incident through a light from relatively close range and quite reasonably explained that they did not intervene because they were all unarmed whilst the appellant was armed and was busy firing hence their non intervention is explainable especially as the appellant ran away on their arrival at the scene. They did not claim to have seen the incident from start to finish which was already underway on their arrival which ties in with their evidence. There conduct also appeals to reason in that they took the injured to hospital immediately because they could potentially be saved, left one of them behind to deal with the dead bodies and thereafter one of the persons (the complainant) who accompanied the injured to the hospital only then went to lodge the FIR within 45 minutes of the incident giving him no time to concoct a false story which as mentioned above is one of the main and well settled reasons that the promptitude in filing an FIR adds to its reliability and credibility as it rules out the chance of making up a concocted story.

29. Furthermore, if as per the appellants defense if the complainant and the eye witnesses had murdered the deceased why would they have left 2 persons living who could have identified them? They were

not disturbed so logically they would have killed all the 5 deceased and would not have taken the risk of any injured person later identifying them instead they took the injured promptly to hospital and attempted to save them. With regard to the identification of the appellant by the eye witnesses admittedly their was a light bulb burning which would have assisted their vision and they were relatively close by but more importantly however they knew the appellant as he was a relative and a neighbor and thus were able to easily recognize him. This was not a case where one person got a fleeting look at a person who he had never seen before so in our view there is no doubt about the identification of the appellant by the eyewitnesses especially when it is considered in the light of all the other evidence on record. In this respect reliance is placed on **Ashique Hussain's case** (Supra). This case in our view based on its own particular facts and circumstances is fully distinguishable from **Arshad Khan's case** (Supra) where the complainant in that case had lodged the FIR when "*per chance*" he had met a police officer. In this case the complainant promptly and deliberately went to register the FIR as soon as was possible after the incident bearing in mind his concern to care for the injured first. Based on the particular facts and circumstances of this case where the appellant was well known to the eye witnesses and his prompt confessional statement within hours of his arrest there was also no need for an identification parade especially when the other corroborative evidence was taken into account for example the murder weapon being his own licensed weapon which was recovered from him and the medical evidence. In this respect reliance is placed on **Haq Nawaz v State** (2000 SCMR 785). The three eye witnesses we found to be confidence inspiring and none of whom was damaged on cross examination and therefore their evidence alone is sufficient to convict the appellant provided that it is not contradicted in any material way by any other piece of evidence on record.

30. Furthermore, the defense plea that there was more than one person who committed the crime also does not stand up to scrutiny as the empties recovered all came from one weapon and no other

murder weapon was found. Logically if 3 people want to kill 5 others they would all have been armed and not carrying one TT pistol between them. Thus, having found the evidence of the complainant and 2 eye witnesses to be confidence inspiring we now turn to examine the other evidence and potential defects in the prosecution case as raised by the appellant to see if this in any way can damage the prosecution case in any material aspect so as to caste doubt on it.

The medical evidence.

31. The medical evidence categorically shows that all 5 of the deceased died of fire arms injuries which corroborates the ocular account.There appear to be only two minor discrepancies. One in the case of Mrs Khatoon and the other in the case of Mr.Alam.In each case one of their injuries were potentially found to be non fire arm. Based on the fire arm injuries sustained by each and every one of the deceased it is apparent that the cause of death was from a fire arm injury so in this respect we do not find it of great significance that one injury each was caused on Ms Khatoon and Mr.Alam potentially not by a fire arm especially as the cause of death of each deceased was through a firearm injury. The inquest reports completed by the police match the cause of death and the post mortems were carried out promptly and all other official documentation in respect of the death's and injuries have been placed on record and have not been disputed in any meaningful way.

32. The cause of death of 3 of the deceased who died on the spot as opined by PW Dr.Ghulam Jillani and the cause of death of the other 2 deceased who were seriously injured and died in hospital shortly after the incident by PW Dr.Amna and PW Dr.Abdul Samad below for ease of reference:

1. **Post Mortem (PM) of Ghulam Hyder s/o Muhammad Alam by Dr.Jillani.**

   Opinion : From the external and internal physical examination of deceased Haji Ghulam Hyder s/o M. Alam, I am of the opinion that he has **died due to firearm injury**, resulting in severe blood loss and shock finally death.(bold added)

2. **PM of deceased Muhammad Azam s/o Haji Ghulam Hyder by Dr. Jillani.**

   Opinion : From the external and internal physical examination of deceased M. Azam s/o I am of the opinion that **he has died due to firearm injuries** resulting in severe blood loss, result in shock and finally death (bold added)

3. **P.M. of Muhammad Nazim s/o Ghulam Hyder by Dr. Jillani.**

   Opinion : From the external and internal physical examination of deceased M. Nazim s/o Ghulam Hyder I am of the opinion that he has **died due to firearm injury** resulting in severe blood loss and shock and then finally death (bold added).

4. **PM. of Mst. Sahib Khatoon by PW Dr. Amna.**

   Opinion: I am of the opinion that **the cause of death is firearm injuries** resulting into multiple perforations of the abdominal viscera leading to severe hemorrhage-hypovolemic shock-death (bold added).

5. **PM. of Muhammad Alam by Dr. Abdul Samad**.

   Opinion : I am of the opinion that the cause of death was extensive damage to vital organs of the body i.e. Brain and liver resulted from hard and blunt substance (Injury No.1) **and firearm injuries No.2 & 3. resulted into severe hemorrhage, shock, coma and death.** ***Injuries No.1, 2 & 3 individually or collectively are sufficient cause of death in ordinary course of nature.*** (bold and itailics added)

33. Thus, we find the medical evidence to be corroboratory of the eye witness oral evidence.

Contradictions in evidence of PW's.

34. As regards to some contradictions in the evidence of some of the PW's in particular PW Abdul Jabbar in respect of the timing of the incident. This timing however is not substantial and only differs by about 30 minutes from the time stated by the other witnesses otherwise his evidence is in conformity with the other PW's on the points which he gives evidence on. In our view however based on the overwhelming other ocular, medical and ballistic evidence this witnesses evidence when put in context is only of a minor

contradictory nature especially as the difference in time is only about 30 minutes and can be ignored.

35. With regard to the PW IO Ghulam Ali initially saying that he went to arrest the accused by bike when other arresting officers say they went to arrest the accused by taxi we note that this contradiction was later clarified in the evidence of the IO.In any event we do not consider that much hinges on it as the appellant admitted that the weapon belonged to him and he produced his license for the weapon in his own name and during cross examination he did not directly challenge his arrest and the recovery of the weapon from him which was his own licensed pistol. As was held in the case of **Zakir Khan & others v. The State** (1995 SCMR 1793) minor contradictions will not be fatal to the prosecution case as such contradictions are quite natural due to passage of time etc. Thus since these contradictions are only minor in nature and are not major or material in our view they can be ignored.

Motive.

36. As disclosed by the 3 eye witnesses the appellant had a clear motive to kill deceased Ghulam Hyder as according to them Ghulam Hyder was in an agricultural property dispute with the appellant as Ghulam Hyder was not handing over to him signed documents of the transfer of the property to the appellant. This would also tie in with his need to kill all the members of Ghulam Hyders family 4 of whom were male and thus would have had inheritance rights if only Ghulam Hyder was killed. This has also been admitted in the appellants confessional statement which he now asserts was coerced from him. Thus, we find that the appellant had a motive to kill all 5 of the deceased.

37. With regard to the complainants and 2 eye witnesses alleged motive by the appellant that they also had a motive to murder Ghulam Hyder on account of a property dispute it has come on record that such dispute had been compromised and that there was no remaining enmity between the parties.

Ballistic and chemical Reports.

38. It is a matter of record that the ballistic report was sent after a delay of one month however based on the particular facts and circumstances of this case we do not consider this delay to be of particular relevance. This is because the murder weapon i.e. the TT pistol was recovered from the appellant, which is not denied, and the TT pistol is his own registered pistol for which he had a valid license in his own name and as such there is no question that the pistol was foisted upon him. The ballistic report also shows that the recovered empties, which were sealed and were kept in safe custody, only came from his pistol and none other. Thus we find that the ballistic evidence also fully supports the prosecution case. In this respect reliance is placed on **Muhammed Aslam's case** (Supra) which at P.597 held as under:

> "8. In the above circumstances we find that both the eye-witnesses are consistent in their statements and the manner in which the incident had taken place. There is no contradiction in the statements of both the eye-witnesses on material points. Their statements are fully supported by medical evidence. F.I.R. in the present case was recorded with a promptitude and in such circumstances prosecution has been able to prove the case against the appellant beyond any shadow of doubt.
>
> 9. Coming to the question of delay in sending crime weapon and crime empty, admittedly, the crime empty was recovered on the day of incident and the crime weapon was recovered on 15-8-2003. It appears that the same were, however, received in the office of Forensic Science Laboratory on 27-9-2003 with considerable delay but such delay shall not in the facts and circumstances of this case, outweigh the ocular evidence found in line with and supported by the medical evidence. Reference in this behalf is made to *Nizamuddin v. The State* (2010 SCMR 1752).

39. With regard to the chemical report this has been found to be positive in respect of the human blood, on the clothes of the deceased and on the soil and has not been disputed and also supports the prosecution case.

The Appellant's Confessional Statement.

40. From the evidence of PW Mr.Anwer Ahmed who was the judicial magistrate who recorded the confessional statement of the appellant his evidence shows that this statement was taken fully in accordance with the law and is legally valid. The appellant himself admitted in his own evidence to making the statement although he claimed this was out of coercion. In our view one of the importance aspects of the truth of this confessional statement is that it was taken within 6 hours of the arrest of the appellant thus there was no opportunity for the police to otherwise coerce or torture the appellant into confessing and in any event the confessional statement clearly shows that there is no evidence of maltreatment at the time of the confession. It therefore seems likely that so soon after the incident the appellant was prepared to get the matter off his chest and showed genuine remorse for his actions before he had a chance to consult a lawyer and later resile from the statement. It is also relevant that the appellant was not a layman. He was a police officer and would have been well aware of the consequences of giving such a confessional statement.

41. It is true that the appellant should not have been handed back to the same policemen who brought him for the confession to remand him into judicial custody but based on the facts and circumstances of this case we consider this to be only a minor flaw which does not effect the validity and admissibility of the confession which we find to have been legally taken by the concerned magistrate. The record reflects that after recording the confession the appellant was remanded to judicial custody but in the custody of the same policeman who had brought him to record his confession which in our view was a minor lapse. In this respect reliance is placed on the case of **Khan Mohammed V State** (2011 SCMR P.705) which held at P.710 that minor lapses on the part of police officers would not be sufficient to demolish otherwise unimpeachable evidence. Reliance is also placed on the case of **Salamat V The State** (2017 MLD 701) in respect of the admissibility of confessional statements when made shortly after arrest in which at P.710 it was held as under:

> "So far as the veracity of confessional statement is concerned, it is important that in order to ascertain the genuineness of the confessional statement the circumstances under which it was

> recorded are to be examined carefully. It is established legal position that for placing reliance on confessional statement it is to be seen that it is not only true, voluntarily and believable but should be without fear or any inducement. **As far as the present confessional statement is concerned, it is the case of prosecution that the accused was arrested at 01.00 a.m. on 30.09.2004, and on the same day his confessional statement was recorded at 12.00 noon. Learned magistrate before recording the confessional statement had given him two hours times to ponder, all relevant necessary questions and codal formalities were completed, therefore, it appears that the above confessional statement was voluntary and the trial Court has rightly believed it.** There is sufficient law on the point that capital punishment can be awarded on the basis of retracted confessional statement, if it is concluded that the same was voluntary. In this regard reliance can be placed to the cases of Muhammad Amin v. The State PLD 2006 SC 219, Nizam-ud-Din v. Riaz 2010 SCMR 457 and Muslim Shah v. The State, PLD 2005 SC 168 (bold added).

42. Likewise in **Dadullah's case** (Supra) it was held by the Hon'ble Supreme Court that even if there were procedural defects in a confessional statement provided that such confessional statement was found to be true , voluntary and confidence inspiring could form the basis of a conviction in the following terms at P.862

> "8. The appellants though retracted later on, have also earlier separately confessed the guilt before the Judicial Magistrate and have narrated the details and background of the occurrence. This is settled law that conviction could not be recorded on the sole basis of confessional statement and the prosecution has to prove its case beyond any shadow of doubt. However, having gone through the evidence, we have found that the confessional statements of the accused were not the result of maltreatment and coercive measures. The Judicial Magistrate has stated that the accused were given relaxation of time and they were told that they are not bound to record their statements. It was further clarified that if they did not want to make their statements, they will not be handed over to Levies and will be sent to Judicial lockup. Opportunity was provided to both the accused to cross-examine each other. Notwithstanding the procedural defect in the confessional statement, if any, a judicial confession if it is found true, voluntary and confidence inspiring, could safely be made basis for conviction. Retraction of confessions by the accused seems to be palpably false and incorrect only to save their skin and the only conclusion that could be drawn is that confessional statements were recorded by the accused voluntarily."

43. Thus, we find the confessional statement of the appellant to be legally admissible and place reliance on it for corroborative purposes.

Dying Declaration of Mrs Khatoon.

44. With regard to the dying declaration of Mrs Khatoon we note that all the 3 eye witnesses state in their evidence that she was in her senses when she was sent to hospital albeit in an injured condition. Even the complainant has stated in his evidence that Mrs Khatoon had told him before she was shifted to hospital that the appellant had fired on them all. At the hospital the evidence is that Ms Khatoon was still in her senses when the IO sought the permission of the Dr. to take her dying declaration which he did and was witnessed by the Dr PW Jillani. The dying declaration of Ms Khatoon specifically states that the appellant killed the deceased by firing on them. There seems to be no particular format for a dying declaration and the main requirement appears to be that it is made without influence which we find to be in this case as it was made only before the Dr, the IO and the person he was dictating the dying declaration to and no other person was said to be around Mrs Khatoon at the time when she made it. In this respect the case is distinguishable form **Farman BI's case** (Supra). The dying declaration thus, in our view, fulfills all the requirements of law and we find that it is admissible and can be relied upon. In this respect reliance is placed on **Majeed V State** (2010 SCMR 55) where at P.58 it was held as under

> "7. The evidence of P.Ws.3, 4 and 7 reveals that when they reached on the fire-arm reports they found the deceased Mir Shandad lying dead while Mujeeb-ur-Rehman was alive but lying in injured condition who disclosed that the appellant Majeed and Ismail had fired at them. P.W.7 apart from naming the above two persons also named Naseer and Bashir. All these three witnesses were cross-examined but nothing came on record to discredit their evidence. No serious effort was made to challenge their statement on the question of dying declaration. From the evidence it has been established beyond any shadow of doubt that deceased Mujeeb-ur-Rehman made dying declaration immediately after the incident, eliminating the possibility of influence etc. before the witnesses making the appellant responsible as one of the accused for causing them injuries. It is a well-settled principle of law that if dying declaration is made even before a private person, is free from influence and the persons before whom such dying declaration was made was examined then it becomes substantive piece of evidence and for that no corroboration is required and such declaration can be made basis of conviction. This Court gave following guiding

principles for relying upon the dying declaration in the case of Farmanullah v. Qadeem Khan 2001 SCMR 1474.

"(i) There is no specified forum before whom such declaration is required to made.

(ii) There is no bar that it cannot be made before a private person.

(iii) There is no legal requirement that the declaration must be read over or it must be signed by its maker.

(iv) It should be influence free.

(v) In order to prove such declaration the person by whom it was recorded should be examined.

(vi) Such declaration becomes substantive evidence when it is proved that it was made by the deceased.

(vii) Corroboration of a dying declaration is not a rule of law, but requirement of prudence.

(viii) Such declaration when proved by cogent evidence can be made a base for conviction."

45. Thus, in our view, the prosecution has proved the dying declaration which by itself is sufficient to maintain the conviction and sentence and we place reliance on it for corroborative purposes.

Interested witnesses.

46. It is true that most of the witnesses as well as the appellant all appear to be interested witnesses as they all seem to be related to each other in one way or the other however no evidence has come on record that there was any open enmity or animus between the PW's and the appellant and as such since in our view all the evidence of the interested PW's seems to be reliable and corroborated by other independent evidence we do not consider that the aspect of interested witnesses is relevant based on the particular facts and circumstances of this case and the evidence on record. In this respect reliance is placed on the case of **Khizar V State** (2011 SCMR 429) and **Faisal Mehmood V The State** (2010 SCMR 1025)

Conclusion.

47. Thus, when we consider the evidence in both isolation and in a holistic manner we find that the evidence of the 3 eye witnesses is reliable, trust worthy and confidence inspiring and all acted in a manner which appealed to reason from the hearing of the shots which awakened them to the filing of the FIR promptly through to their evidence under oath which was not undermined despite being subject to lengthy cross examinations. That their evidence is corroborated by the medical evidence, the chemical report, the ballistic report, the confessional statement of the appellant and the dying declaration of Mrs Khatoon. The appellant had a motive for the murder, the means and the opportunity and the weapon used in the murder was his own which has not been denied. There are no major contradictions in the prosecution evidence and when read together creates a consistent unbreakable chain of events from the witnessing of the murder to the giving evidence at trial.

48. Although it is not for the appellant to prove his innocence rather as mentioned earlier it is for the prosecution to prove its case against him beyond a reasonable doubt his defense to our mind does not appeal to reason. Namely, the 3 persons he accused of the murder (the complainant, Azizullah and Yameen) had no real motive, the murder was committed with his own weapon which was found on him with no other empties being found at the scene. Even in his own evidence he claims to have been arrested **after** he has already given his confessional statement which does not seem to make any sense whatsoever. Furthermore, no one gave any evidence in support of his defense which he had relied upon based on the line of his cross examination, that is, neither his wife nor his brother. No record was produced or witness gave evidence to show that he was on duty at the time of the offense as claimed by him. According to the appellant he had also gone to lodge an FIR in respect of the incident against the complainant and the eye witnesses for the murder however this is not mentioned in his own evidence. As such his defense seems to us to be contradictory, untrue, implausible and an after thought.

49. Thus, for the reasons discussed above we find that the prosecution has proved its case against the appellant beyond a

reasonable doubt. We are in no doubt that a person of a reasonable and prudent mind would find that when all the evidence is examined in both an isolated and holistic manner he would have no doubt that the appellant committed the offences of 5 cold bloodied murders barring the offense under S.338 PPC for which we have already acquitted the appellant as he was not charged with such an offense.

50. As such, we uphold the impugned judgment except the conviction under S.338 PPC for which the appellant is acquitted and modify the convictions to five separate murders under S.302 (b) PPC as Ta'zir to death on each count rather than S.302 (a) PPC based on the evidence and the particular facts and circumstances of the case

51. With regard to the confirmation of the death penalty in the case of **Dadullah** (Supra) with regard to confirming the death sentence the need for deterrence and retribution was stressed by the Supreme Court in such heinous cases unless there were mitigating circumstances in the following terms:

> "Death sentence in a murder case is a normal penalty and the Court while diverting towards lesser sentence should have to give detailed reasons. The appellants have committed the murder of two innocent citizens and also looted the bank in a wanton, cruel and callous manner. Now a days the crime in the society has reached an alarming situation and the mental propensity towards the commission of the crime with impunity is increasing. Sense of fear in the mind of a criminal before embarking upon its commission could only be inculcated when he is certain of its punishment provided by law and it is only then that the purpose and object of punishment could be assiduously achieved. If a Court of law at any stage relaxes its grip, the hardened criminal would take the society on the same page, allowing the habitual recidivist to run away scot-free or with punishment not commensurate with the proposition of crime, brining the administration of criminal justice to ridicule and contempt. Courts could not sacrifice such deterrence and retribution in the name of mercy and expediency. Sparing the accused with death sentence is causing a grave miscarriage of justice and in order to restore its supremacy, sentence of death should be imposed on the culprits where the case has been proved."

52. The learned counsel for the appellant conceded that in this case there were no mitigating factors.

53. We have also carefully gone through the record and have come to the conclusion that there are no mitigating factors rather in our view there are aggravating factors in that the appellant by pre mediated murder killed 5 persons out of greed for land. This is a case of extreme brutality. In killing such persons he fired numerous rounds into each person and probably would have fired more had he not been interrupted in the middle of his actions which caused him to flee. Of his 5 victims 3 were minor boys (aged 8/9 years, 5/6 years and 3/4 years of age respectively) and one was an 8 month pregnant women whose pregnancy he must have known about due to her advanced stage of pregnancy and she was also a relative and a close neighbor. The evidence leaves us in no doubt that he aimed to deliberately and intentionally eliminate in cold blood an entire family (including a pregnant lady and 3 minors) by brutally and callously pumping numerous bullets into each of them in order to gain property. He has shown no remorse or regret for his actions and as such we consider that under such circumstances the 5 separate death penalties handed down to him by the trial court should each be confirmed and accordingly we confirm the same. In support of the confirmation of the death sentence in a brutal case such as this reliance is placed on **Tariq Iqbal's case** (Supra) **Khalid Mehmood's case** (Supra) and **Muhammad Akram V State** (2011 SCMR 145)

54. Thus, for the reasons discussed above the impugned judgment is up held except in respect of the conviction under S.338 PPC for which the appellant is acquitted, the appeals are dismissed and the reference for the confirmation of the death sentence is answered in the affirmative

Hyderabad:
Dated:30-05-2017 JUDGE

JUDGE