

# **IN THE HIGH COURT OF SINDH AT KARACHI**

PRESENT:

***Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Amjad Ali Bohio***

**Spl. Criminal A .T. Jail Appeal No. 135 of 2022**

**Confirmation Case No.05 of 2022**

Appellant : Muhammad Asif alias Bhaya  
Son of Ghulam Muhammad  
Through Mr. Iftikhar Ahmed Shah,  
Advocate.

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

Date of Hearing : 12.09.2023

Date of Judgment : 21.09.2023

## **J U D G M E N T**

**AMJAD ALI BOHIO, J**:-The appellant underwent through trial of cases before Judge Anti-Terrorism Court No. XVI, Karachi. These cases bearing New Special Case No. 177/2021 (formerly Old Special Case No. 456/2021), stemmed from Crime No. 75 of 2021 at P.S. CTD, Karachi, for offenses under Section 302, 324, 34 PPC, read in conjunction with Section 7 of the Anti-Terrorism Act, 1997; and New Special Case No. 208/2021 (formerly Old Special Case No. 510/2021), registered on the basis of Crime No. 83/2021 at P.S. CTD, Karachi, for offenses under Section 24/25 of the Sindh Arms Act, 2013.

2. Both cases were proceeded through joint trial vide order dated 18.12.2021 u/s 17 & 21(M) of the Anti-Terrorism Act, 1997. Special Case No. 456/2021 was leading case and on conclusion of the trial, the appellant being found guilty was convicted and sentenced as under:

“a) For offence of Qatl-i-Amd of the deceased **ASI Akram Khan**, punishable under section 302 r/w 34 PPC the accused **Asif @**

**Bhaya S/o Ghulam Muhammad** is sentenced to death; the accused shall be hanged by neck till death.

- b) For causing death of the deceased **ASI Akram Khan** by firing, punishable under section 7(a) of the Anti-Terrorism Act, 1997, the accused **Asif @ Bhaya S/o Ghulam Muhammad** is also sentenced to death with fine of Rs.200,000/- (two lacs); **the accused shall be hanged by neck till death.**
- c) The accused Asif @ Bhaya S/o Ghulam Muhammad is also directed to pay an amount of Rs.200,000/- (two lacs) to the legal heirs as compensation, as provided under Section 544-A Cr.P.C. and in default of such payment the accused shall undergo SI for six months.
- d) Accused **Asif @ Bhaya S/o Ghulam Muhammad** is hereby also convicted for the offence u/s 25 SAA and sentence him to simple imprisonment for seven years with fine of Rs.10,000/- and in default of such payment the accused shall undergo SI for six months more.
- e) For the act of terrorism committed by the accused, punishable u/s 7(1)(h) of Anti-Terrorism Act, 1997, the accused is hereby also sentenced to undergo RI for (10) ten years, and to pay the fine of Rs.50,000/- (fifty thousand).
- f) The property of the accused is directed to be forfeited as required u/s 7(2) of Anti-Terrorism Act, 1997.
- g) All the sentences are directed to run concurrently. The sentence of death awarded to accused is subject to the confirmation by the High Court of Sindh.

3. The facts of prosecution case as per FIR are that the complainant along with ASI Akram Khan (now deceased) while conducting investigation in Crime No. 853/2021 of P.S Manghopir arrived at Saffron Hotel, Gulshan-e-Bahar, Sector-16, Karachi, on 28.08.2021 at about 23:50 hours. While waiting for informer, one person having short beard wearing shalwar kameez, approached them and opened fire upon them as a result ASI Akram Khan sustained gunshot wounds and died on the spot, while the complainant managed to escape and save his life. The said culprit along with unidentified accomplice then succeeded to escape from the scene on unidentified motorcycle. The complainant immediately informed the authorities and ASI Akram Khan's body was transported to Abbasi Shaheed Hospital via *Chhipa* Ambulance. The complainant subsequently lodged such FIR.

4. Inspector Chaudhary Zafar Iqbal conducted investigation, resulting in the arrest of the appellant from the roof of the German

School in Sindh, Sector-16, Gulshan-e-Bahar, Karachi, on midnight, September 1, 2021. During interrogation, the appellant confessed for the murder of ASI Akram Khan allegedly under the instructions of co-accused Shaheen. During investigation, identification parade of the appellant was conducted on September 6, 2021, before Judicial Magistrate West, Karachi during which complainant ASI Syed Zafar Hussain Shah, correctly identified the appellant. Subsequently, the appellant's confessional statement was also recorded before the Magistrate under Section 164 of the Cr.P.C on September 18, 2021. The investigating officer (I.O) collected relevant evidence including the DVR footage from the CCTV camera installed at the Saffron Hotel (place of occurrence) on August 29, 2021, at 0615 hours, two USBs containing CCTV coverage and Call Detail Records (CDRs) of cell phone numbers related to the accused. After completing the investigation, the I.O submitted his report under Section 173 of the Cr.P.C.

5. The appellant pleaded not guilty to the charge framed against him and claimed for trial.

6. In order to establish its case, the prosecution examined series of witnesses namely Iqbal Khan (PW-01), M.O / Dr. Syed Umair Ahmed (PW-02), ASI Arab Khan (PW-03), Judicial Magistrate Mr. Sajid Ali Chand (PW-04), Noor Alam Bihari (PW-05), complainant ASI Syed Zafar Hussain Shah (PW-06), Mashir HC Shahid Hussain Khatak (PW-07), ASI Syed Jamal Shah (PW-08), ASI Muhammad Saeed Tanoli (PW-09), Driver Chippa Ambulance Ghulam Mustafa (PW-10), ASI Ghazan Zada (PW-11), Mashir HC Muhammad Nasir Zaid (PW-12), Inspector/I.O Sarfaraz Ahmed Khan (PW-13), and Inspector/I.O Chaudhry Zafar Iqbal (PW-14). Thereafter APG for the State concluded the prosecution side of case as indicated in statement dated 04.01.2022 (Exh-25).

7. On closure of prosecution evidence, appellant during his statement u/s 342 Cr.P.C. denied the allegations against him, asserting that he has been falsely implicated. He claimed his innocence. However he did not opt for record his statement on oath under Section 340(2) of the Cr.P.C. so also did not produce evidence in his defense.

8. After the evaluating evidence and considering the arguments from both parties, the trial court convicted and sentenced the appellant, as mentioned above. This led to the filing of the instant appeal.

9. At the outset, the appellant's counsel raised several contentions. According to him First Information Report was lodged against unknown culprits, and the complainant's statement under Section 154 of the Cr.P.C. lacked any description, features, or physical attributes of the alleged offenders and absence of identifying information renders the subsequent identification of the appellant before the Magistrate irrelevant. Secondly, it is contended that the identification parade was held five days after appellant's arrest, during which he had already been shown to the complainant. Thirdly, there was inordinate delay in recording the appellant's confession, which he argued was inadmissible under the law. Fourthly, it was argued that the Digital Video Recorder (DVR) evidence produced in court pertained to a rehearsal of the incident. Fifthly, concern was raised regarding the absence of forensic reports for the Call Data Records (CDR) and DVR obtained by the Investigating Officer (I.O.). Lastly the defense maintained the appellant's innocence and asserted that he had been falsely implicated in this case and convicted without sufficient proof.

10. In support of these contentions, the appellant's counsel has relied upon cases reported as Muhammad Yameen alias Raja v. The State and others (2009 SCMR 84), Javed Khan alias BACHA and another v. The State and another (2017 SCMR 524), Ishtiaq Ahmed Mirza and 2 others v. The Federation of Pakistan and others (PLD 2019 Supreme Court 675), Hayatullah v .The State (2018 SCMR 2092), Abdul Sattar and others v. The State (2002 P Cr. L J 51), Abdul Khaliq v. The State (1996 SCMR 1553), Muhammad Shah v. The State (2010 SCMR 1009), State/Government of Sindh through Advocate General, Sindh, Karachi v. The Sobharo (1993 SCMR 585), Syed Azeem Shah v. The State (PLD 1987 Quetta 96), and Naqibullah and another v. The State (PLD 1978 Supreme Court 21).

11. The learned Additional Prosecutor General (APG) countering the arguments of defence has supported the impugned judgment on the following heads:

(a) Successful Prosecution: The APG asserts that the prosecution has effectively proved the charges against the accused.

(b) Complainant's Identification: The complainant, being a natural witness of the occurrence, correctly identified the appellant during the identification parade conducted before the Magistrate. The description of the culprit's features, such as a small beard and wearing shalwar kameez was specifically mentioned in the statement recorded under Section 154 of the Cr.P.C.

(c) Voluntary Confession: The appellant voluntarily confessed to commission of offense before the Magistrate without any apparent pressure or duress.

(d) CCTV Evidence: The appellant's presence in the recording of the CCTV footage, played during the recording of evidence by independent witness Noor Alam (PW-05), was not challenged. Instead, a suggestion was made that the police had brought the appellant for a false rehearsal of the incident, which the witness denied.

(e) Criminal Record: The APG pointed out that the appellant has a criminal record, having been involved in seven criminal cases, including offenses under Sections 392, 302, 324, and the Sindh Arms Act.

(f) Recovery of Motorcycle: The motorcycle used in the commission of the offense was recovered based on information disclosed by the appellant from the house of co-accused which belonged to the co-accused's relative.

(g) Co-Accused's Suicide: It has been established during the investigation that co-accused named Shaheen committed suicide, as deposed by Investigating Officer (I.O.) Inspector Chaudhry Zafar Iqbal. The co-accused's criminal record pertains to different police stations, and this information suggests a connection between the appellant and criminal activities.

(h) Recovery of the Crime Weapon: Unlicensed pistol used in the crime was recovered which was matched with crime empties of the incident of murder.

(i) Motive and Preplanned Murder: The prosecution argues that the appellant is involved in the murder of a police official in a preplanned manner and had a motive against the deceased, who had confined the co-accused Shaheen.

12. The APG relying on such arguments asserts that the appeal may be dismissed and in support of his argument, he has relied upon case laws reported as Sharafat Ali v. The State (2016 SCMR 28), Ansar and others v. The State and others (2023 SCMR 929), Imran Mehmood v. The State and another (2023 SCMR 795), Muhammad Sadiq v. The State (2022 SCMR 690), Muhammad Ijaz v. The State (2023 SCMR 1375), Qasim Shahzad and another v. The State and others (2023 SCMR 117), Muhammad Amin v. The State (PLD 2006 Supreme Court 219), Khan Muhammad and others v. The State (1999 SCMR 1818) and Amjad Ali and others v. The State (PLD 2017 Supreme Court 661).

13. We have thoroughly reviewed the material and considered the arguments of both sides, so also carefully evaluated the evidence produced before the trial court.

14. After our re-assessment of the evidence, we find that the prosecution has successfully proved the charge beyond a reasonable doubt for the reasons to follow.

15. To establish the factum of unnatural death of the deceased ASI Akram, the prosecution examined Dr. Syed Umair Ahmed, MLO of Civil Hospital, Karachi. Dr. Ahmed testified that the deceased, identified as Akram Khan son of Sarwar Khan, was brought at the hospital for postmortem examination on August 29, 2021, where postmortem examination started at 01:30 a.m. and completed at 02:00 a.m. During the external examination of the deceased's body, the MLO noted the following injuries:

**“Surface wound and injuries:**

1. *Entry wound 0.5 x 0.5 cm over left cheek, 4 cm lateral and 2 cm above the left corner of mouth, inverted margin, no blackening and blood oozing from mouth seen, followed by exit wound 0.7 x 0.8 cm over left occipital region with everted margin.*

2. *Entry wound 0.5 x 0.8 cm over left lower chest, at the level of 7<sup>th</sup> intercostal space in mid clavicular line, inverted margin, no blackening and shows corresponding holes in clothes followed by no exit wound.*
3. *Multiple superficial entry wounds over (a) right forearm (b) right side of chest (c) right side of abdomen (d) left side of abdomen, which can be due to burst pieces of bullet.*

*All the injuries mentioned above were fresh within 2 to 3 hours and all are of anti-mortem type injuries.”*

On internal examination of the dead body, following injuries were noted:-

**“Internal Examination:**

**Head:** *Bullet tracks identified, fracture mandible bone + left upper molar plus pre-molar fracture seen. Brain contusion + bruising seen.*

**Thorax:** *Upon exploration blood in pleural cavity seen with punctured left lower zone of lungs noted, a bullet extracted from back of right side of chest wall from the soft tissue.*

**Abdomen:** *No visceral injuries, only superficial wound as mentioned above.*

**Spine and Spinal Code:** *Brain stem injuries noted upon exploration.”*

16. It is observed that both the external and internal examinations of the deceased's body, conducted by the Medical Officer, concluded that the cause of death was a cardio-pulmonary arrest resulting from secondary hemorrhagic and neurogenic shock, which were consequences of firearm injuries. The MLO's opinion was brought on record during evidence before the court and the MLO was subjected to cross-examination by the defense counsel during the trial proceedings. Despite such cross-examination, the factum of unnatural death of deceased ASI Akram Khan because of such incident has not been disproved by the defense. The medical evidence provided by the Medico Legal Officer effectively establishes the injuries sustained by the deceased due to firearm shots during the tragic incident.

17. To substantiate the ocular account of evidence, the prosecution examined Complainant ASI Syed Zafar Hussain Shah (PW-06) who being the first informant is also an eyewitness of the occurrence. In his testimony, he deposed that both he and ASI Akram were present at place of incident with regard to the investigation of Crime No.853/2021 of P.S. Manghopir. They were there for having dinner, that suddenly a young man with a short beard and a piece of cloth (*Roomal*) on his shoulders, brandishing two pistols in both hands, approached them. This individual did not issue any warnings or slogans; instead, he immediately opened fire on ASI Syed Zafar Hussain Shah and ASI Akram with the clear intent to kill them. During this brutal attack, ASI Akram sustained serious firearm injuries and in the ensuing chaos, the assailant hastily fled the scene on a motorcycle, accompanied by another individual wearing traditional shalwar kameez. Following the incident, ASI Syed Zafar Hussain Shah promptly reported the events to his superiors. Subsequently, ASI Akram's body was transported to hospital, and ASI Arab being the duty officer of P.S. Pakistan Bazar, arrived at the scene. Following the necessary medico-legal procedures at Abbasi Shaheed Hospital, where ASI Akram's body had been taken, ASI Arab recorded his statement under Section 154 of the Criminal Procedure Code (Cr.P.C) on August 29, 2021, at 0530 hours.

18. Noor Alam (PW-05), being an eyewitness and the owner of the restaurant "Saffron Catering," provided a vivid account of the incident. He testified that ASI Akram (the deceased) had visited his restaurant with a friend and they were seated inside. Approximately ten minutes later, an armed person with beard on his face and a piece of cloth (*Roomal*) on his shoulders, holding two pistols, entered the restaurant leaving his accomplice outside, waiting on a motorcycle. Without any further delay, the armed person opened fire on both ASI Akram and his friend. Noor Alam swiftly rushed out of the restaurant and observed that the assailant was being instructed by his waiting companion not to spare ASI Akram's friend. Subsequently, both assailants fired shots into the air and made their escape on the motorcycle, heading in the direction of German School Road. Following the incident, a crowd gathered and ASI Akram's body was transported to hospital. Though this witness was not associated in identification parade of the appellant but during his testimony, he identified the



accused in court and also in the CCTV recording of the incident that occurred within his restaurant. Importantly, this identification by PW Noor Alam remained unchallenged during cross-examination, and nothing was extracted to suggest that he deposed falsely. The evidence of PW Noor Alam is compelling and inspires confidence being an independent witness of the incident. It is quite significant that the appellant did not deny his presence at the scene, nor did he contest the presence of PW Noor Alam. On these points, reference may be made to case law reported as Ansar and others v. The State and others (2023 SCMR 929). Besides above, both eye witnesses of occurrence being the prosecution witnesses-5 and 6 were subjected to lengthy cross-examination by the defence but nothing favorable to the appellant or adverse to the prosecution could be brought on record. They remained consistent on each and every material point inasmuch as they deposed exactly according to the circumstances that happened in this case, therefore, it can safely be concluded that the ocular account furnished by these prosecution witnesses is reliable and trustworthy. Presence of both PWs at the place of occurrence was established during their evidence. Under such circumstances, their evidence cannot be disbelieved that they would substitute the present appellant in place of real culprits. In this regard, reliance is placed on the judgment of august Supreme Court of Pakistan in the case titled Muhammad Waris v. The State 2008 SCMR 784, wherein it was held that:-

"Eye-witness had explained their presence at the place of occurrence at the relevant time and thus, they were natural and independent witnesses of the incident. Medical evidence was not destructive of the ocular testimony".

19. Inspector/Investigating Officer (I.O) Zafar Iqbal (PW-14) testified that during the course of the investigation, he arrested the appellant under arrest memo dated 01.09.2021 from rooftop of the German School building. Upon the appellant's arrest, the I.O recovered a Nokia mobile phone and a Vigo Mobile from his possession. According to him, at the time of his arrest, the appellant confessed to murdering ASI Akram, explicitly admitting to firing the fatal shots. Such fact of admission of offence was further corroborated by Mashir HC Shahid Hussain being one of the witnesses of arrest memo.

20. After arrest of appellant, identification parade of the appellant was conducted before a Magistrate on September 6, 2021. Complainant ASI Syed Zafar Hussain Shah had already provided description of the accused in his statement under section 154 Cr.P.C. and reiterated such description during his testimony before the Magistrate. He described the accused as having a light beard, mustache on his face, long hair, and carrying a piece of cloth (*Roomal*) on his shoulder. The accused was clad in shalwar kameez and holding pistols in both hands. The complainant correctly identified the appellant from amongst the dummies during such identification parade.

21. Judicial Magistrate Sajid Ali (PW-04) before whom the identification parade was held deposed that Inspector Zafar Iqbal produced the suspect before him on September 6, 2021, without disclosing his identity. The Magistrate then entrusted the custody of suspect to the court staff and instructed him to wait in his chamber. Subsequently, ASI Syed Zafar Hussain Shah appeared before the Magistrate and was directed to sit in the courtroom of the learned Judicial Magistrate-II, Karachi West. The court staff then arranged the dummies, who were stood alongwith the suspect and suspect was allowed to stand at any place with dummies as per his choice. ASI Syed Zafar Hussain Shah was then called upon to identify the suspect among the individuals standing before the court. The Magistrate deposed that the witness pointed his finger at the person positioned at Sr. No. 6 from the right side and identified him as the accused who had murdered ASI Akram, specifying the accused's role. The Magistrate produced the identification parade memo, which he had prepared in the presence of Mashirs Raja Adnan and Haider Ali, and confirmed its authenticity. During cross-examination, the Magistrate deposed that the FIR did not include details about the accused's physical features or physique. However, he voluntarily testified that the FIR did mention that the person with the pistols had a light mustache on his face, long hair, and was dressed in shalwar kameez. Therefore, the defense counsel's argument that the FIR lacked descriptions of the accused's identification parade of the appellant was contradicted by the FIR's contents. The defense counsel did not suggest during cross-examination that the accused was shown to the

complainant prior to the identification parade, as he contended before this court at appellate stage.

22. The prosecution further bolstered its case with substantial evidence in the form of appellant's confession, officially recorded before Judicial Magistrate on September 18, 2021. To further substantiate this confession, the prosecution summoned Magistrate Sajid Ali as a witness who testified confirming that he had himself recorded the confessional statement of the appellant, Muhammad Asif, alias Bhaya, on the specified date.

23. According to the deposition of Magistrate, on the day in question, the appellant was granted a two-hour relaxation period from 09:30 to 11:30, during which his custody was entrusted to the Court Staff, specifically Aijaz Ahmed. Once the reflection period concluded and all necessary legal prerequisites were met, Magistrate proceeded to record the appellant's confessional statement. During this meticulous process, Magistrate also apprised the appellant that he was under no obligation to admit his guilt during confession. He emphasized that despite many warnings including that the appellant could still face conviction, the confessional statement was recorded. Furthermore, the appellant was questioned about whether he had been subjected to any form of torture, maltreatment, threats, or inducement that might have compelled him to make the confession. In response, the appellant vehemently denied any such coercion. Additionally, the appellant was informed that even if he chose not to admit guilt, he would not be handed over to the police but would instead be remanded in judicial custody. After conducting these thorough inquiries and providing assurances, the learned Magistrate then recorded the appellant's statement in the Urdu language. In such circumstances, it is observed that the confession of the accused appears to be true and voluntary. Any delay in recording the confessional statement does not suffice to cast doubt upon its authenticity, as there is no evidence to suggest that it was obtained under duress, pressure, or coercion. Reliance in this regard was rightly placed on the case reported in 1999 SCMR 1818. The learned Magistrate meticulously followed all legal formalities and allowed the accused sufficient time for reflection, as mentioned above. In case reported as Muslim Shah v. The State (PLD 2005 SC 168), it was observed that a retracted confession can be legally considered against the maker of that confession. Furthermore, the

defense counsel failed to point out any defects or violations committed by the Magistrate while recording the appellant's confessional statement. This suggests that the confession was recorded in strict observance of legal procedures and requirements. Moreover it is not brought on record if such confession was recorded through inducement, threat or compromise so as to exclude its admissibility and even otherwise mere delay in recording of confessional statement is not sufficient to discredit its authenticity when all other required measures to prove its authenticity have been successfully proved. Reference in this regard may be placed upon case titled as Khuda Bukhsh v. The State (2004 SCMR 331), wherein the Honorable Supreme Court of Pakistan has observed as under:--

*"The contention that the confessional statement of the appellant should be rejected outrightly as it was recorded belatedly and after Court-hours, is rejected mainly on the ground that the appellant during the entire trial did not claim that the same was extracted under duress or was tutored as given under influence or was not voluntarily made. In the similar circumstances, this Court in the case of Muhammad Yaqoob (supra) had accepted the confessional statement as true even if it was recorded after 15 days of the incident though there has been some lapses on the administrative side of the Magistrate while recording confession. As regards delay in recording the confessional statement, Investigating Officer, namely, Muhammad Ilyas and the Magistrate had furnished the explanation whereof which remained unchallenged though sufficiently cross-examined by the defence."*

In another case titled Shaukat Ali v. The State and others (PLD 2019 SC 577), the conviction was upheld where the dead body of the deceased was also recovered on the pointation of the accused and he retracted from his confessional statement. Even otherwise, if the confessional statement of the appellant is excluded from the consideration, there is sufficient material available on the record in shape of unbiased and unimpeachable ocular account supported by medical evidence, motive, undisputed CCTV recording of the occurrence and recovery to sustain conviction of the appellant.

24. It is observed that if the confession is found true and voluntarily then there is no need to look into the further corroboration but in the case in hand after identification parade and confession before the Magistrate, the evidence in shape of modern device viz. DVR of CCTV Recording of the crime scene collected by I.O. during investigation was also produced before the court. The court noted the presence of a DVR recording of CCTV cameras, which was collected by the Investigating Officer (I.O) in the presence of PW Noor Alam. During the trial, this DVR recording was played in open court. The recording as observed showed the accused entering the hotel at around 12:30 a.m., opening fire with both hands armed with pistols, and subsequently fleeing on a motorcycle. The court noted that the complainant, ASI Akram and the accused were all visible in the recording. This incriminatory evidence further supported the prosecution case against the appellant.

25. Based on the production of multiple pieces of evidence, including the identification of the accused in the CCTV recording, the trial court has rightly concluded that when a confession is deemed true and voluntary, there is no necessity for further corroboration. However, in the present case, after the identification parade and the appellant's confession before the Magistrate, the production of modern technological evidence specifically the DVR recording from CCTV cameras collected by the Investigating Officer (I.O.) during the investigation, substantially reinforced the charge of murdering ASI Akram upon the appellant. The trial court properly appreciated and evaluated the production of a DVR recording from CCTV cameras, obtained by the I.O. in the presence of PW Noor Alam. Consequently, the point of delay in recording the confession in presence of all such evidence cannot undermine its evidentiary value, as sufficient corroboration was provided by other evidence. During cross-examination, the defense counsel suggested that the police had brought the accused and conducted a false rehearsal of the incident. However, PW Noor Alam rejected this suggestion, affirming that it was incorrect to imply the recorded occurrence as a rehearsal.

26. The entire sequence of events, including the description provided in the First Information Report (FIR), the identification parade before the Magistrate, and the confession recorded before the Magistrate, aligned seamlessly with the proof of the appellant's actions captured in the CCTV video recording cannot be simply brushed aside with defense

counsel's suggestion that it was recording of rehearsal of the incident. In this case, ASI Akram had tragically succumbed to his injuries, making it unreasonable to propose that he could have participated in a rehearsal after the incident. Even otherwise, such a defence plea is simply unbelievable.

27. The medical evidence available on the record corroborates the ocular account so far as the nature, time, locale and impact of the injuries on the person of the deceased are concerned. Even otherwise, it is settled law that where ocular evidence is found trustworthy and confidence inspiring then the same is given preference over the medical evidence and same alone is sufficient to sustain conviction of an accused. Reliance in this regard can be placed on the case reported as *Muhammad Iqbal v. The State* (1998 SCMR 908) and *Muhammad Ilyas v. The State* (2011 SCMR 460). Learned counsel for the appellant could not point out any major contradiction or discrepancy, which could shatter the case of the prosecution in its entirety.

28. After overall discussion, it is found that the trial court has properly concluded that the evidence, including the DVR recording, effectively corroborated the prosecution's case against the appellant. The defense counsel's suggestion of a rehearsal was found lacking in credibility, particularly when evaluated in light of the established facts of the case.

29. It may also be mentioned that reliability of evidence obtained from modern devices and techniques, underscoring its admissibility is provided under Article 164 of the Qanoon-e-Shahadat Order, 1984. In this case, the DVR recording presented during the trial was neither challenged nor disputed by the defense counsel, thus solidifying its admissibility as evidence. This legal stance is well-supported by the precedent set in the case titled "*Zaffar alias Mumtaz and another v. Mst. Sajjad Begum and others*," reported as (2014 SCR 1549). It clarifies that admitted facts need not be proved separately and when material facts remain unchallenged during cross-examination, they are treated as admissions.

30. The recovery of a pistol near the deceased co-accused Shaheen, along with the forensic reports confirming that the fired cartridge cases found at the crime scene matched this pistol, constitutes vital circumstantial evidence in this case. Circumstantial evidence refers to

indirect evidence that implies a fact through inference rather than direct observation. In this case, the fact that the cartridge cases found at the crime scene align with the pistol recovered near co-accused Shaheen's body creates a compelling inference that this particular pistol was indeed used in the commission of the crime. This aspect of the case serves as corroboration for the eyewitness accounts, supporting the prosecution's case by establishing a connection between the weapon, the crime scene, and potentially the appellant's admission of holding two pistols, as seen in the CCTV recording of the incident. In essence, the recovery of the pistol, the findings of the forensic reports, eyewitness testimonies, and the appellant's confession collectively contribute to a comprehensive narrative of the events that transpired proving the appellant's involvement. The fact that the fired cartridge cases were conclusively linked to the recovered, unlicensed pistol found next to the deceased co-accused Shaheen further strengthens the corroborative value of this circumstantial evidence, solidifying the prosecution's case. In addressing the defense counsel's contention that the pistol was neither recovered from the appellant nor, sealed in his presence, with the assertion that it belonged to the co-accused Shaheen, it is crucial to note that the prosecution has successfully established that the said pistol, recovered being found in possession of co-accused Shaheen's, was indeed used by the appellant during the commission of the aforementioned offense. As discussed earlier, this crucially validates the prosecution's claim of recovering the weapon associated with the offense. Moreover, the discrepancies highlighted by the defense counsel, while acknowledged, do not undermine the foundational aspects of the prosecution's narrative nor do they diminish the core elements of the prosecution's version of events. This assertion finds support in the precedent set by the case reported in 2023 SMCR 1375, where the report from the Punjab Forensic Laboratory yielded negative results regarding the recovered weapon. In that specific instance, it was firmly established that the recovery of the weapon of offense holds minimal consequence, especially in the presence of corroborative evidence against the appellant.

31. The chain of ocular and circumstantial evidence is firm and continuous. We find that based on the discussion that the prosecution has proved its case against the appellant beyond reasonable doubt.

The case laws relied upon by the defence counsel are distinguishable to the facts of this case as such are not applicable.

32. The trial court in this case has further observed that the case fell within the purview of the Anti-Terrorism Act, 1997 (ATA). It is crucial to understand that the application of the Anti-Terrorism Act hinges on whether an act is committed with the intention to create terror, as defined by the law. We have observed that the appellant's actions did not meet the criteria for being categorized as acts of terrorism under the ATA. No clear intention, purpose, or design to instill terror in this case was proved during evidence. In reaching this conclusion, reliance is placed on case reported as *Amjad Ali and others v. The State* (PLD 2017 Supreme Court 661). This legal reference reinforces the court's determination that the actions in question did not qualify as acts of terrorism as defined by the ATA which is reproduced as under:

*“6. The last aspect of this case highlighted in the leave granting order is as to whether the courts below were justified in convicting and sentencing the appellants for an offence under section 7(a) of the Anti-Terrorism Act, 1997 or not. We note in that context that a mere firing at one's personal enemy in the backdrop of a private vendetta or design does not ipso facto bring the case within the purview of section 6 of the Anti-Terrorism Act, 1997 so as to brand the action as terrorism. There was no 'design' or 'object' contemplated by section 6 of the Anti-Terrorism Act, 1997 involved in the case in hand. We further note that by virtue of item No. 4(ii) of the Third Schedule to the Anti-Terrorism Act, 1997 a case becomes triable by an Anti-Terrorism Court if use of firearms or explosives, etc. in a mosque, imambarqah, church, temple or any other place of worship is involved in the case. That entry in the Third Schedule only makes such a case triable by an Anti-Terrorism Court but such a case does not ipso facto become a case of terrorism for the purposes of recording convictions and sentences under section 6 read with section 7 of the Anti-Terrorism Act, 1997. The case in hand had, thus, rightly been tried by an Anti-Terrorism Court but the said Court could not have convicted and sentenced the appellants for an offence under section 7(a) of the Anti-Terrorism Act, 1997 as it had separately convicted and sentenced the appellants for the offences of murder, etc. committed as ordinary crimes.”*

33. Based on the discussion above, it is evident that this case though does not fall within the purview of the Anti-Terrorism Act (ATA), as established in the case of PLD 2017 Supreme Court 661. The court found no intent, purpose, or design to create terror, and instead, the motive appeared to be seeking revenge due to the confinement of



co-accused Shaheen by deceased ASI Akram. Consequently, the appellant is acquitted of the offenses under the ATA.

34. In the light of the above discussion this appeal is partly allowed and the appellant's convictions and sentences recorded for the offence under section 7(1)(a)(h) and (2) of Anti-Terrorism Act, 1997 are set aside but as regards the remaining convictions and sentences of the appellant the same are upheld and maintained and this appeal is dismissed to such extent. Since the murder was committed in brutal manner against a police officer in a public place and there are no mitigating circumstances, the Confirmation Reference is answered in the affirmative in respect of the appellant's conviction under 302 r/w 34 P.P.C.

JUDGE

JUDGE

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