Death to life on Merits : Murder of Policeman by police guard

221

CERTIFICATE OF THE COURT IN REGULAR NO. ____

Sp. ATA 183 of 2016
ak CC 09/16
Nazakat Ali vs. The State

SINDH HIGH COURT

Composition of Bench. ~~Single~~/D.B.

Mr. Justice Muhammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Dates of hearing: 03-10-16

Decided on [:] 09-10-16

(a) Judgment approved for reporting. Yes / ~~No~~

CERTIFICATE

Certified that the judgment */Order is based upon or enunciates a princip-le of law */decides a question of law which is of first impression/distinguishes/ over-rules/ reverses/explains a previous decision.

*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Rerder must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

SGP., Kar.—L (iii) 1459—5,000—6-93—T.S.S.

222

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PRESENTED
01-07-2016

IN THE HIGH COURT OF SINDH AT KARACHI

Special ATA Appeal No. Of 2016

183

Nazakat Ali
Son of Maqsood Akhtar Rajpute,
Muslim, adult, resident of
House No. 432, Street No. 2,
Masoom Shah Colony, Chancer Goth,
Karachi.
Presently Confined in Judicial Custody,
at Central Prison, Karachi.....Appellant

Versus

The State.....Respondent

FIR No. 134 of 2013
U/s. 302 PPC R/W 7(i) (a) ATA, 1997.
PS. Preedy, Karachi.

APPEAL UNDER SECTION 25 OF ANTI-TERRORISM ACT, 1997, R/W SECTION 410 Cr.P.C

Being aggrieved and dis-satisfied with the Judgment and order dated 28.06.2016 passed by the learned Judge, Anti-Terrorism Court-III, Karachi in Special Case No.27 (III) of 2013 (The State v/s Nazakat Ali), convicting the appellant above named Under Section 7 (i) (a) ATA 1997, read with section 302 (b) PPC and sentencing him to death. The appellant above named begs to prefer this appeal amongst others, on the following facts and grounds and pray that this Hon'ble High Court may be pleased to admit this appeal and after calling for the record and proceedings of the above said Special Case from the learned Trial Court and hearing the parties, be further pleased to allow this appeal and set aside the Judgment and Order dated 28-06-2016 and acquit the appellant in the above said case and/ or pass any such other order as may be just and proper under the circumstances of the case.

(Certified True copy of the Judgment and Order dated 28-06-2016 is attached herewith and marked as Annexure "A")

...tion and c.	Date he... ad...

ANTI - TERRORISM COURT NO. III AT KARACHI
...T.C.III/ 777 /2016, KARACHI DATED 30.06.2016

568
CRL
12/7/16

The Registrar,
Hon'ble High Court of Sindh,
Karachi.

SUBJECT: REFERENCE U/S 374 CR.P.C. IN SPECIAL CASE NO. 27(III)/2013, FIR NO. 134/2013, U/S. 365-A/34 PPC, READ WITH SECTION 7(a) OF ATA 1997, P.S. PREEDY (THE STATE VERSUS NAZAKAT ALI SON OF MAQSOOD AKHTAR).

It is submitted that the aforesaid case has been ...ded on 28.06.2016 and accused Nazakat Ali son of ...qsood Akhtar has been found guilty u/s 265-H(ii) Cr.P.C ... offence punishable u/s 7(1)(a) ATA read with section ... PPC. He has been convicted and sentenced to death, ...ference u/s 374 Cr.P.C for confirmation of sentence is ...mitted accordingly.

The R&P of aforesaid case is submitted herewith ... compliance with provision of Section 25(2) of ATA 1997, ... for confirmation of death sentence of above accused.

Kindly acknowledge the receipt of the same.

...: As above(634 Sheets).

30/6/16

(Syed Shakeel Hyder)
JUDGE
ANTI TERRORISM COURT NO.III
KARACHI

IN THE HIGH COURT OF SINDH AT KARACHI

Special Cr. Anti-Terrorism Appeal No.183 of 2016
Confirmation Case No.09 of 2016

Present:

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

Appellant:	Nazakat Ali through Mr. Mahmood A. Qureshi Advocate.
Complainant:	Mr. Riaz Ahmed Phulpoto, Advocate.
For State:	Mr. Ali Haider Saleem, Deputy Prosecutor General.
Date of hearing:	03.10.2019
Date of announcement:	09.10.2019

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellant Nizakat Ali S/o. Maqsood Akhtar Rajput has preferred this appeal against the impugned judgment dated 28.06.2016 passed by the learned Judge Anti-Terrorism Court No.III, Karachi in Special Case No.27(III) of 2013, F.I.R. No.134/2013 u/s. 302 PPC r/w section 7(i)(a) of ATA, 1997, registered at Preedy police station, Karachi whereby the appellant has been convicted and sentenced to death under Section 7(1)(a) of Anti-Terrorism Act, 1997 r/w. 302 (b) PPC subject to confirmation by this court. The properties of the accused/appellant were also ordered to be confiscated to the Government U/S 7(2) of Anti-Terrorism Act, 1997.

2. The brief facts of the case as per FIR No.134/2013 registered at Preedy police station are that on 10.4.2013 at 12.30 a.m. (night), statement of the complainant Agha Mashooque Ali was recorded U/s. 154 Cr.P.C. wherein he stated that he was serving in Police Department as ASI in Investigation Branch at Police Station Preedy. On 09.4.2013 at about 9.35 p.m. his friend Muzammil enquired from him through a cell phone call that who owned Car No.KG-469, whereupon he replied that it was of his brother Agha Asadullah Khan, whereupon he disclosed that the police officer present in the car has been fired upon, whereupon the complainant asked him to let him to talk with the police official present there. P.W. Muzammil through his cell phone got the

complainant to talk with the constable Nizakat, who informed him that SHO sahib has sustained fire arm injury. He was further informed that the injured was being taken to the Civil Hospital Karachi through police mobile. Complainant came at the Civil Hospital, Karachi where he came to know that his brother had sustained fire arm injury over his head and during treatment his brother passed away. It is stated that complainant enquired from the PC Nizakat as to what happened and he felt that PC Nizakat was extremely confused and could not give rationale reply. He made enquiry from police mobile officer Sub-Inspector Saqlain and came to know that his brother Agha Asadullah Khan being SHO of P.S. Preedy with his Gunman PC Nizakat was patrolling in the area in his car No.KG-467 and at about 9.30 p.m. when they reached at Dawood-Pota Road at crossing of Shahrah-e-Iraq near Murshid Bazar, some unknown persons attacked his brother and his brother was injured and his car went out of control and collided with a traffic signal. He complained that some unknown persons for some unknown reasons have murdered his brother Agha Asadullah Khan in discharging his official duties. Statement U/s. 154 Cr.P.C. was transcribed in the FIR by SIP Ghulam Mustafa and investigations were started. The investigations connected the accused with the felony of murder of SHO Agha Asadullah Khan whereupon he was arrested and arraigned to face his trial for above said offence.

3. A formal charge was framed against the accused to which he pleaded not guilty and claimed his trial.

4. In order to prove its case the prosecution examined 13 PW's who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under S.342 Cr.PC and desired to examine himself on oath and to produce Dr. Ranjender Kumar in his defence. He was examined U/s. 340 (2) Cr.P.C. DW Dr. Ranjender Kumar was also examined as DW 2. The accused claimed his false implication in the case and claimed he had also received a firearm injury at the time of the incident and he called DW 2 who was an MLO in support of his defense.

5. Learned Judge, Anti-Terrorism Court-II, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the

impugned judgment dated 28.6.2016, convicted and sentenced the appellant as stated above, hence this appeal has been filed.

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

7. Learned counsel for the appellant mainly contended that the appellant was innocent and had been falsely implicated in this case; that although it was a admitted position that the accused was in the car with the deceased at the time he was killed the prosecution had not actually proved that the accused was the person who killed the deceased and that the deceased had been killed by some other person who had fired at him from **outside** the car which he was driving; that there was no eye witness to the murder; that any confession which had been made before the police had no value in the eyes of the law; that the medical evidence did not support the prosecution case and that the prosecution had not explained the bullet jacket found in the deceased's car and that for one or all the above reasons the accused was entitled to be acquitted from the charge based on the benefit of the doubt. In support of his contentions he placed reliance on "Firearms in Criminal Investigations and Trials" (3rd Ed.) by Dr.B.R.Sharma, and "A Text Book of medical Jurisprudence and Toxicology" (24th Ed) by Modi.

8. On the other hand, learned DPG and learned counsel for the complainant have fully supported the impugned judgment. In particular, they contended that the eye witnesses had confirmed the incident; that the medical evidence supported the prosecution case; that the murder weapon and bullets were issued to the accused being a police constable; that the empties were recovered from the scene of the incident; that the FSL reports and chemical reports are positive; the CCTV footage fully supports the prosecution case and so does the fact that the vehicle only received one bullet in the window screen. Since this was a very brutal murder they prayed that the death sentence handed down to the accused be maintained and the appeal be dismissed.

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant, the impugned judgment with their able assistance and have considered the relevant law.

10. From the evidence in our view it seems to be an undisputed position and indeed admitted position by both parties, as supported by both ocular and medical evidence, that the deceased was shot by fire arm and died on account of the firearm injury which he received at around 2100 hours on 09-04-2013 whilst he was driving his private car dressed in police uniform while on official duty on patrol at Dawoodpota Road crossing Shahrah-e-Iran near Murshad Bazar whilst the accused was seated in the back of the car.

11. The issue before us therefore based on the evidence on record is who shot and murdered the deceased?

12. In our view the prosecution has proved its case against the appellant beyond a reasonable doubt and as such the conviction in the impugned judgment is upheld for the following reasons;

(a) It is an admitted position that the appellant who was the gun man of the deceased who was SHO Preedy was sitting in the back of the car when the deceased was shot. His presence at the scene at the time of the shooting has therefore not been disputed.

(b) That the FIR was registered by the complainant without delay and quite fairly did not nominate the accused as at that time it would have been unclear to the complainant who was the brother of the deceased and was not present at the time of the incident what had actually happened in connection with the deceased receiving a firearm injury. Thus, there was no time to concoct or cook up a story against the accused.

(c) That three witnesses (PW 8 Muzamal Khan, PW 10 Ghanni-ur-Rehman and PW 12 Khurshed Ahmed) all gave evidence that they heard one shot and then within a minute 4 other shots which ties in with the prosecution story. That these three witnesses were not chance witnesses and had no enmity or relationship with the accused as to make them interested witnesses and thus there was no reason for them to not tell the truth. There story is also admitted by the accused and is corroborated by the recovered CCTV footage. PW 10 Ghanni-ur-Rehman in his evidence and S.164 statement also states that he is sure that the accused fired on the deceased from within the car.

(d) That the accused was issued with an official police SMG and bullets (PW 4 Muhammed Amjad) which were both recovered from him shortly after the incident which has also not been disputed by the accused.

(e) That one SMG empty was found **in the rear of the car** (see evidence of PW 3 Muhammed Saqlian, PW 7 Sir Sahib and PW 13 Muhammed Fayyaz) and 4 outside the car which ties in with the prosecution case of the deceased being shot from **within** the car and the gunman then leaving the car and firing 4 further shots from his SMG. This also ties in with the evidence of the witnesses who heard the shots and the CCTV footage

(f) That the FSL report was positive in respect of the recovered weapon and empties and bullets which again has not been disputed by the accused.

(g) That the chemical report in respect of human blood was also positive and which again has not been disputed by the accused.

(h) That as per the CCTV footage as per the evidence of PW 2 Agha Masooq Ali the accused came out of the car 50 seconds after the incident from the rear seat and came to the deceased very calmly and glanced at the body of the deceased and remained there without any action and after a few seconds conducted aerial firing. Such conduct of the accused does not tally with his account of the events whereby he immediately got down from the car and started aerial firing and tends to indicate that the accused was involved in the murder as his actions do not equate to the conduct of a person who wanted to save the deceased life and thought that he was under attack by some unknown persons especially as at that time the deceased was still alive according to evidence of other PW's who reached the scene and at the hospital where he was operated on before he died. It also does not appeal to reason that if the car had been shot at, his boss seriously injured, and there was eminent danger why the accused did not radio for assistance.

(i) If the accused story of the shot which killed the deceased coming from outside the car was true then there would have been glass from the window screen which had a hole in it from the bullet inside the car **but the police did not find any glass inside the car**. Thus, both logically and as a matter of commonsense the bullet had to have come from within the car as this would have meant that the broken glass fell outside the car and hence no broken glass was found inside the car.

(j) The oral testimony of the PW's which we find to be reliable, trustworthy and confidence inspiring who saw body of the deceased in their evidence in our view have confirmed the fact that the deceased was shot from the behind in the back of the head. For instance **PW 3 Muhammed Saqlain** who reached the scene of the incident saw the deceased in the driving seat and later found, "some part of brain and other fiscal material lying **in front of the driving seat**". Logically and from a common sense point of view if the deceased had been shot from the front of his head this brain and other material would have been found in the back of the car. The fact that this brain and other material was found at the front of the car is a clear indication that the deceased was shot in the back of his head and thus the brain and other material went forward to the front of the car and not backwards. According to **PW 5 Shah Akhtar** who saw the deceased in the vehicle at the scene, "one eye had come out of his socket" which again is consistent with the deceased being hit from the back and not the front of the head. **PW 7 Sir Sahib** who went into the operating theatre when the deceased was there stated that., "**he was having a bullet injury at his head with entrance wound at the backside of the head and exit wound from the front side of the head** and he was bleeding". **This is clear eye witness evidence that the deceased's entry wound was at the back of his head and not the front.** When this PW later returned to the scene of wardat he stated in his evidence ,"**at front seat** piece of brain and skull bone was lying at foot rest in front of the driving

seat" which as mentioned above corroborates what he saw in the hospital operating theatre that the shot hit the deceased from the back of the head.**PW 13 Muhammed Fayyaz** who was the IO of the case whilst inspecting the wardat states in his evidence that, "**During inspection of the car I found blood of the deceased at the driving seat one piece of broken skull was lying at the foot rest of the driving seat along with piece of human brain lying on the dashboard.**" Again, if part of the brain was lying on the dashboard which is in the front of the driver it is extremely unlikely, almost impossible for the bullet to have hit the front of the head of the deceased as opposed to it hitting him on the back of the head. In our view this above ocular evidence conclusively proves that the deceased was shot from the back of his head.

(k) **Significantly** the medical evidence of PW 11 Qamar Ahmed who was the MLO who examined the deceased states in his evidence that the deceased received one firearm injury in the head and whilst clarifying certain queries about the wounds received by the deceased gave evidence as under;

1. *On going through the medical examination and review of the findings in view of reports from Department of Neuro Surgery Civil Hospital, Karachi.* ***I am of the opinion that the fire appeared to be from back to the front of skull at same level.***

2. ***The range was close shot hence the difference between entry and exit wounds is very narrow.***

3. *The condition of the wounds of splashing of the brain matter outside of wounds indicating that* ***the wounds appeared to be due to high velocity bullet.***

4. ***As the direction of bullet from backward to forward at same level*** *hence there is no evidence to suggest for accidental injury".*(bold added)

In our view this medical evidence corroborates the ocular account that the deceased was hit by a bullet in the back of the head and not in the front.The fact that the shot was fired from close range also fits in with the prosecution case that the accused fired the bullet at the back of the deceased's head whilst sitting in the rear of the car where the SMG empty was also recovered from. The fact that the medical report has concluded that the wound appeared to be caused by a high velocity bullet also fits in with the prosecution evidence that the deceased was killed by a bullet from an SMG which was the weapon which had been issued to the accused.

The direction of the bullet, "being at the same level" indicates that it was fired straight at the deceased (not from either an upward, downward or sideways trajectory) and indicates that the shot was fired by the accused who was sitting directly behind the deceased. For this shot to have been fired by any other person outside the car that person would have had to have been straight in front of the car and in a squatting position close to the moving car (as the bullet hit the accused from close range according to the medical evidence)

which seems extremely unlikely if not impossible especially as no one was seen making such fire. It does not appeal to reason that in making such fire by way of an alleged target killing that the person firing the bullet would only take one shot from a SMG as opposed to a sniper rifle. Even then only probably a trained marksman could have made such a shot as only the head and shoulders of the driver would have been visible in a moving vehicle at night time when there was no source of light and if any light only being the cars headlights moving towards him and shining in his face which is not conducive to an accurate shot. Furthermore, in such type of cases of target killing usually it is performed by a number of persons on motor bikes who fire numerous bullets at the target before escaping from the scene.

It is true that there is a slight contradiction in the medical evidence in that medical legal certificate did not find that the entry wound of the bullet was at the back of the head and no burning, tattooing for blackening was observed on the wound which would have been expected from a close range shot. In any event it is well settled by now that ocular evidence will prevail over medical evidence when there is some conflict between the two. Thus, we are of the view that this discrepancy is not in and of itself sufficient to extend the benefit of the doubt to the accused as **in such cases ocular evidence provided it is trust worthy, reliable and confidence inspiring shall take precedence over corroborative and support evidence such as medical evidence** as in this case if the two are to a certain extent contradictory. In this respect reliance is placed on the case of **Muhammed Riaz V Muhammed Zaman** (PLD 2005 SC 484) where it was held that even if the eye witness evidence slightly differed from the medical evidence this was no ground to disbelieve the eye witness evidence in the following terms at P.491

"We having examined the evidence in detail find that the reasons given by the High Court for disbelieving the presence of witnesses at the spot were highly speculative, flimsy and artificial. The conclusion that the injuries on the person of deceased were the result of one shot which was probably not fired from front and medical evidence was inconsistent to the ocular account of eye-witnesses was also not based on sound reasons. The statement of doctor to the effect that the injuries were the result of single shot, being only an opinion which may or may not be correct and would not be sufficient to discard the direct evidence and suggest the non presence of eye-witnesses at the spot. ***The conflict of medical evidence with ocular account in respect of number and nature of injuries may be relevant to ascertain the role of an individual accused in the occurrence but this is not a valid ground to disbelieve the eye-witnesses and exclude their evidence from consideration. We may observe that even if it would be assumed that injuries were result of single shot, still in the facts of the present case, it would be difficult to suggest that witnesses were not truthful or the respondents were not responsible for the crime."*** (bold added)

Like wise in the case of **Muhammed Hanif v. The State** (PLD 1993 SC 895) it was held as under at P.899;

*"**The expert's evidence may it be, medical or that of Ballistic Expert**, is entirely in the nature of confirmatory or explanatory of direct or other circumstantial evidence, **but if there is direct evidence as in the instant case, which is definite, trustworthy, the confirmatory evidence is not of much significance. In any case, it cannot outweigh the direct evidence."*** (bold added)

Again in the case of **Amir Khan v. The State** (2000 SCMR 1885), in terms of ocular evidence outweighing corroborative/supportive evidence such as medical evidence it was held as under at P.1888;

"It has time and again been held by the superior courts that if a bald statement of a medical expert is opposed to the proved and admitted confidence inspiring and reliable account of the eye-witnesses or other material and trustworthy evidence on record, then the latter are to be preferred against the former."

An identical view was also taken in the recent Indian supreme court case of **Balvir V State of Madhya Pradesh** dated 19-02-2019 when there was a slight difference between the ocular evidence and the medical evidence at Para's 26 and 27 in the following terms;

"26. ***It is well settled that the oral evidence has to get primacy since medical evidence is basically opinionative.*** *In **Ramnand Yadav v. Prabhu Nath Jha and others** (2003) 12 SCC 606, the Supreme Court held as under:-*

> *"**17. So far as the alleged variance between medical evidence and ocular evidence is concerned, it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative.** It is only when the medical evidence specifically rules out the injury as is claimed to have been inflicted as per the oral testimony, then only in a given case the court has to draw adverse inference".*(bold added)

*The same principle was reiterated in **State of U.P. v. Krishna Gopal and another** (1988) 4 SCC 302, where the Supreme Court held "that eyewitnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility".*

27. *The inconsistencies pointed out in the evidence of eye-witnesses inter se and the alleged inconsistencies between the evidence of eye-witnesses and that of the medical evidence are minor contradictions and they do not shake the prosecution case. **The evidence of eye witnesses are the eyes and ears of justice. The consistent version of PWs***

2, 3 and 13 cannot be decided on the touchstone of medical evidence". (bold added)

In any event the medical evidence mainly corroborates and supports the prosecution case apart from a slight inconsistency.

(l) That none of the PW's have any enmity with the accused and therefore would have no reason to falsely implicate him.

(m) That none of the PW's are interested witnesses and as such have no reason to falsely implicate the accused.

(n) That the evidence of the PW's is consistent and confidence inspiring in all material respects and none of them were damaged let alone shattered during cross examination.

(o) That there are no major contradictions in the evidence of the PW's and we have no reason to disbelieve their evidence especially as in such type cases the police very often would look to protect their own colleague and place the blame on some other person between them.

(p) The prosecution evidence provides a consistent and believable unbroken chain of events which fully fit into its case against the accused

(q) Although it is for the prosecution to prove its case beyond a reasonable doubt against the accused and the accused does not have to prove his innocence in our view the answers to the questions in the accused S.342 Cr.PC statement and evidence under oath of the accused did not appear to ring true or inspire confidence when faced with the over whelming evidence which the prosecution has produced. For example, the accused in his evidence stated that at the time of the incident he had also received a fire arm injury but his own witness DW 2 Rajendar Kumar who was an MLO denied this as being the case. Thus, it appears that the accused was untruthful in his evidence. His story about the shot coming from outside the car in our view also does not appeal to reason. For example, he does not say that he saw anyone make any fire from outside the car from a motor bike or otherwise which appears to be a highly unlikely scenario keeping in view that the shot was fired from close range if the accused was telling the truth. It is also quite telling that only one shot was fired at the car which only hit the window screen and no other part of the car. Usually in such cases a number of shots are fired by a number of different people.

13. Thus, having found that the prosecution has proved its case beyond a reasonable doubt and having up held the conviction of the accused for the reasons mentioned above the next issue is concerns the appropriate sentence.

14. Both the DPG and the complainant have contended that this is a case which warrants the death penalty.

15. We are of the view however that the prosecution has neither alleged any motive against the accused nor has it proven any motive against the accused for his murdering the deceased. Generally it has been accepted by the superior courts that if the prosecution fails to prove the motive for the murder the courts are justified in imposing the alternate sentence of life imprisonment as opposed to the death penalty. Reliance in this respect is placed on the case of **Amjad Shah V State** (PLD SC 2017 P.152) where it was held as under at P.156 Para 9;

> *"Notwithstanding that the participation of the appellant in the commission of offence is duly established, his intention, guilty mind or motive to commit the same remains shrouded in mystery and is therefore, unproven.* ***In such like cases where the motive is not proved or is not alleged by the prosecution, the Court for the sake of safe administration of justice, adopts caution and treats the lack of motive as a mitigating circumstance for reducing the quantum of sentence awarded to a convict.*** *Reference is made to* ***Zeeshan Afzal v. The State (2013 SCMR 1602).***" (bold added)

16. In our view taking into account the fact that no motive has been proved against the appellant and that there may be some doubts in the prosecution case albeit insufficient to lead to an acquittal such as the slightly conflicting medical evidence whilst exercising judicial caution by taking guidance from the supreme court authority of **Ghulam Mohyuddin** (supra) where it was stressed as under whilst dealing with sentencing in a murder case in the following terms;

> "A single mitigating circumstance, available in a particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment. No clear guideline, in this regard can be laid down because facts and circumstances of one case differ from the other, however, it becomes the essential obligation of the Judge in awarding one or the other sentence to apply his judicial mind with a deep thought to the facts of a particular case. **If the Judge/Judges entertain some doubt, albeit not sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows. So it is better to respect the human life, as far as possible, rather to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed.** (Bold added)

17. We hereby uphold the conviction in the impugned judgment against the appellant but reduce his sentence to that of imprisonment for life with the confirmation reference being answered in the negative. Apart from the above

variation in sentence all other fines, penalties etc imposed upon the appellant in the impugned judgment shall remain in tact. The appellant shall have the benefit of S.382 (B) Cr.PC.

18. The appeal stands disposed of in the above terms.

Arif