

**IN THE SUPREME COURT OF PAKISTAN**  
**(Appellate Jurisdiction)**

**PRESENT:**

MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE MUNIB AKHTAR  
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL APPEAL NO.528 OF  
2019 IN JAIL PETITION NO. 327  
OF 2018

(Against the judgment of the Lahore High Court,  
Lahore dated 14.01.2015 passed in Capital  
Sentence Reference No. 10/2011, Criminal Appeal  
No.69-ATA/2011 and Criminal Appeal No.86-  
ATA/2011)

Muhammad Hanif

...

**Appellant(s)**

**Versus**

The State

...

**Respondent(s)**

For the Appellant(s) : Sardar Shahbaz Khosa, ASC  
Ch. Akhtar Ali, AOR

For the (State) : Ch. M. Sarwar Sidhu, Addl. PG

Date of Hearing : 29.09.2020

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J:-** Criminal appeal, by leave of the Court, is directed against the impugned judgment of learned Division Bench of Lahore High Court, Multan Bench, dated 14.01.2015 passed in Capital Sentence Reference No.10/2011, Criminal Appeal No.69-ATA/2011 and Criminal Appeal No.86-ATA/2011 whereby the conviction of the appellant under section 302(b), 324, 186, 353, PPC read with section 7 Anti-Terrorism Act, 1997 awarded by the Special Judge, Anti-Terrorism Court, Dera Ghazi Khan vide judgment dated 08.08.2011 was upheld but his sentence of death under section 302(b) PPC and under section 7 Anti-Terrorism Act, 1997 was converted into imprisonment for life. All sentences were ordered to run concurrently. The compensation awarded by the learned trial court and sentence in default thereof was

ordered to be maintained. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. As per prosecution story contained in the FIR No. 157/2009 dated 12.06.2009, offences under section 302, 324, 353, 186, 34 PPC read with section 7 Anti-Terrorism Act, 1997, registered with police station Civil Lines, D.G. Khan (Exh.PA) lodged at the instance of one Mushtaq Ahmad Shah (PW-5) is that on 12.06.2009 at about 9.30 a.m. the complainant came to visit his brother Iqbal Shah No. 916/HC at Sessions Court who was posted there, where he was assigned the duty of checking persons entering into the court premises. In the meantime, Rao Naveed alongwith Muhammad Hanif previously known to complainant came there on a motorcycle bearing registration 6938/DGK being driven by Rao Naveed Advocate while appellant was on back seat. Soon they tried to enter court premises without checking, Iqbal Shah 916/HC estopped them for personal search, in the meantime Muhammad Hanif after de-boarding from the motorcycle, picked out 30 bore pistol from right folder of his shalwar, fired upon Iqbal Shah (Head Constable) but it missed. The other police official Muhammad Mohsin 411/C who was sitting in a nearly rampart retaliated by fire shot towards the assailant which missed too. Rao Naveed decamped towards north whereas Muhammad Hanif (appellant) ran towards south while resorting to firing. Muhammad Akram SI, Muhammad Tariq HC, Zulqarnain Shah 840/C, Muhammad Mohsin 411/C and Iqbal Shah (HC) chased him. Iqbal Shah being ahead of others, was likely to apprehend Muhammad Hanif who took a turn and made a fire shot at Iqbal Shah which landed on left side of his chest who fell down on the ground. Muhammad Hanif ran towards Arts Council followed by other police officials. Iqbal Shah was taken to hospital in injured condition through ambulance and was medically examined by Dr.

Majeed Ullah Buzdar at 09:55 AM. but he succumbed to injuries in the hospital.

3. After registration of the aforesaid case, the investigation was conducted by Muhammad Zafar SI who after the conclusion of the investigation found them involved in the crime hence they were challaned while placing their names in column No.3 of the report under Section 173 Cr.P.C. On receipt of challan, the learned Judge, Anti-Terrorism Court, Dera Ghazi Khan formally charge sheeted the appellant and his co-accused vide order dated 06.01.2020 to which they pleaded not guilty and claimed trial. Prosecution in order to substantiate its case produced as many as 11 witnesses. The appellant was examined under Section 342, Cr.P.C, however, he opted not to appear in his defence, as his own witness in terms of Section 340(2), Cr.PC to disprove the allegations levelled against him, he even did not produce any defence evidence.

4. The learned trial court after conclusion of trial found that prosecution has succeeded to prove accusation against the appellant, hence convicted the appellant under section 302(b) PPC and sentenced to death with payment of compensation of Rs.1,00,000/- to the legal heirs of Muhammad Iqbal Shah deceased under section 544-A Cr.PC or in default whereof to further undergo S.I. for six months. The appellant was also convicted under section 324 PPC and sentenced to 10 years R.I. He was also convicted under section 186 PPC and sentenced to three months. He was convicted under section 353 PPC and sentenced to two years. The appellant was further convicted under section 7(a) of Anti-Terrorism Act, 1997 and sentenced to death with payment of compensation of Rs.2,00,000/- to the legal heirs of Muhammad Iqbal Shah u/s 544-A Cr.PC or in default whereof to further undergo S.I. for six months. Benefit of section 382-B Cr.P.C. was extended to the appellant. The co-accused of

the appellant was acquitted of the charge by extending him benefit of doubt.

5. The appellant being aggrieved by the judgment of the learned trial court dated 08.08.2011 filed Criminal Appeal No.69-ATA/2011 before the Lahore High Court, Multan Bench whereas the learned trial court forwarded Capital Sentence Reference No.10/2011 for confirmation of the sentences of death inflicted upon the appellant whereas the complainant filed Criminal Appeal No.86-ATA/2011 against the acquittal of co-accused Rao Naveed. The learned Division Bench of High Court vide judgment dated 14.01.2015 dismissed the Criminal Appeal No.69-ATA/2011 filed by the appellant and that of complainant, however, maintained convictions under section 302(b), 324, 186, 353, PPC read with section 7(a) of Anti-Terrorism Act, 1997 awarded by the learned trial court but converted the sentence of death to imprisonment for life u/s 302(b) PPC and section 7 of Anti-Terrorism Act. The compensation awarded by the learned trial court and sentence in default thereof was maintained. The benefit of section 382-B Cr.P.C. was also given to the appellant. The sentences were also ordered to run concurrently.

6. Leave to appeal was granted by this Court vide order dated 28.10.2019 mainly on the ground that according to the record, the inter-se distance between the assailant and the deceased was 35 feet whereas the postmortem report clearly reflects that there was blackening around the injuries which do not commensurate with distance mentioned in site plan as per allegation levelled against the petitioner in the crime report. Further that there is contradiction qua the number of injuries sustained by the deceased.

7. At the very outset, learned counsel for the appellant states that both the courts below have not taken into consideration the evidence

available on the record and the same has not been appreciated according to the established principles of “appreciation of evidence” enunciated by the superior courts from time to time. He argued that the presence of the prosecution witnesses of ocular account at the spot at the relevant time is doubtful, the complainant himself is a police officer, his presence at the spot do not inspire confidence. Contends that there are glaring discrepancies found in the statements of prosecution witnesses of the ocular account. Further contends that the inter-se distance disclosed in the site plan clearly contradict the ocular account. Contends that blackening is found around the injuries which suggests that the assailant has fired from a close range. Contends that though the petitioner was taken into custody soon after the occurrence but the fact remains that he was taken into custody from Arts Council which is at fairly long distance from the place of occurrence. Contends that the provision of section 7 of Anti-Terrorism Act, 1997 are not attracted in this case as occurrence has taken place outside the premises of the court and as such the trial in court established under Anti-Terrorism Act, 1997 was beyond its jurisdiction, hence, the conviction and sentence inflicted u/s 7 of the Anti-Terrorism Act, 1997 is not sustainable in the eye of law. The learned counsel further contends that co-accused of the appellant was acquitted of the charge and as such it has created a dent in the prosecution case, therefore, the petitioner is also entitled for the same relief while extending him benefit of doubt.

8. On the other hand, learned Law Officer appearing on behalf of the State vehemently opposed the contentions raised by the learned counsel for the appellant. It has been argued by learned Law Officer that in fact it is a case of highhandedness; the police official was done to death in a brutal manner while he was in uniform and performing his duties in

official capacity. Further contends that conduct of the appellant is reckless; he has acted in a brutal manner twice; in the earlier phase he fired at police official which missed but when he was given hot pursuit by the police officials and he was likely to be arrested by the deceased, he fired at him on the most vital part resulting into instantaneous death. Further contends that the appellant was apprehended at the spot; the recovery of pistol from his possession further lend support to the prosecution version. Contends that the report of Forensic Science Agency is positive. All these facts clearly reflect that the petitioner was sole perpetrator of the occurrence; he has taken law into his own hands while committing the murder of a police official in uniform within the court premises. Finally argued that Anti-Terrorism Court being a special court was fully justified to entertain and take cognizance of such like offences being scheduled offence. Finally argued that prosecution has proved its case to hilt.

9. We have heard the learned counsel for the appellant, learned Additional Prosecutor General and perused the record with their able assistance.

A close scrutiny of the record made it abundantly clear that the instant occurrence has taken place in the broad daylight whereas both the accused nominated in the crime report were previously known to the prosecution witnesses. The inter-se distance between the place of occurrence and police station is hardly 1 ½ miles. Undeniably, the incident has taken place in two phases, first in the court premises and the other when the police officials retaliated in the same coin, as a consequent both the accused tried to make their escape but in different directions. The police officials gave a chase to the accused persons and finally when Iqbal Shah 916/HC was likely to apprehend the appellant, he took a turn and fire upon him which pierced through the left side of his chest, resultantly

he expired in hospital, however, the other police officials continued their chase and finally the appellant was taken into custody from the Arts Council where he had taken rescue. The pivotal questions which require determination by this Court are **(i)** jurisdiction assumed by court constituted under Anti-Terrorism Act **(ii)** the series of incident qua the occurrence relates to one and the same transaction **(iii)** contradiction in the inter-se distance between appellant and deceased and if any its legal consequences **(iv)** conviction and sentence under Anti-Terrorism Act.

10. For the determination of the aforesaid questions raised, it seems imperative to capsule brief history of law emerged relating to terrorism. Our homeland is perhaps one of the country most affected by terrorism in the world. It began experiencing terrorism on a sustained basis in 1990 primarily in the form of sectarian killings. Thereafter the wave of terrorist activities further intensified upon a larger canvas. Now the target of terrorism was State functionaries, holding key positions, and every notable entity from every walk of life including law enforcing agencies. Use of explosive, sophisticated weapons, bomb blasting, target killing, abduction for ransom, extortion to generate funds for terrorist activities were very common features of crime oriented outlaws to disrupt the peace of society and create a sense of insecurity in public at large. Due to rise in terrorist activities, national economy had incurred huge loss estimated to be in billions of dollars. This situation forced the State functionaries to adopt extraordinary measure to preserve the authority of the State. The consensus has prevailed amongst the Government functionaries to deal with the law breakers with iron hands. Consequently, the Suppression of Terrorist Activities (Special Courts) Act of 1975 was promulgated with special emphasis qua:-

- (i). No adjournment in the court proceedings.

- (ii) Continuation of court proceedings even if the accused absconds, and
- (iii) Salutary principle burdened to prove guilt upon prosecution was reversed and accused was to prove his innocence.

The courts established under the law of Suppression of Terrorist Activities remained in field for a considerable time but it could not deliver according to the expectations, as during proceedings before the courts of law many flaws surfaced before the superior courts, therefore, Suppression of Terrorist Activities (Special Courts) Act of 1975 was substituted by “Special Courts for Speedy Trial Ordinance 1987” The said legislation was introduced with different approach in which right of one appeal was withdrawn while the only appeal arising out of the judgment of trial court was to be heard by a Bench comprising of two Judges of respective High Courts whereas it was to presided over by a Judge of the Supreme Court. The courts established under the legislation could not continue for long hence, the framer of law introduced another act “Anti-Terrorism Act, 1997”. The preamble of the said legislation was more exhaustive, cyclopaedic and potent while the other provisions of the act, were framed to provide legal cover to all judicial norms relating to administration of criminal justice. The said legislation had already undergone judicial review since its inception by this Court in two cases reported as (**PLD 1998 SC 1445**) Mehram Ali and others vs Federation of Pakistan and others” and (**PLD 2001 SC 607**) “Khan Asfandiyar Wali and others Vs Federation of Pakistan through Cabinet Division, Islamabad and others”. In the aforesaid judgments all those provisions which were found inconsistent to any provision of the “constitution” and established principle of “due process” were struck down, hence, the said legislation is in field to deal with such like cases in more judicious form. The paramount object of said legislation is spelled out from bare reading of “preamble” of the act which is reproduced as under:-.



Anti-Terrorism Act, 1997  
(Act No.XXVII of 1997)

*An Act to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences;*

It was duly published in Gazette of Pakistan, Extraordinary Part I, August 20, 1997 in the following terms: -

**No.F.9(39)/97-Legis.**—The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on 16<sup>th</sup> August, 1997, is hereby published for general information: -

WHEREAS it is expedient to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto;

The preamble of The Anti-Terrorism Act has broadly classified jurisdiction to entertain cases relating to (i) terrorism, (ii) sectarian violence and for speedy trial of (iii) heinous offences and for matters connected therewith and incidental thereto. Section 6 of the Anti-Terrorism Act, 1997 has defined and categorized cases falling within the definition of terrorism. For the purpose of the case in hand, the provision of sections **6(1)(2)(a)(m)(n)(3)** are relevant to the facts and circumstance.

**6. Terrorism.-(1)** In this Act, “terrorism” means the use or threat of action where:-

**(2)** An “action” shall fall within the meaning of sub-section (1), if it:-

**(a)** involves the doing of anything that causes death;

**(m)** involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;

**(n)** involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant;

**(3)** The use or threat of use of any action falling within sub-section (2), which involves the use of firearms, explosive or any other weapon is terrorism, whether or not sub-section 1(c) is satisfied.

The punishment of the aforesaid provisions is provided u/s 7 of Anti-Terrorism Act. Similarly, the 3<sup>rd</sup> Schedule relating to cognizable offences

under the act are also notified, classifying the nature of offences attracting the provision of section 6 punishable u/s 7 of the Anti-Terrorism Act, the same is mentioned below: -

**THE THIRD SCHEDULE**  
**(Scheduled Offences)**  
**[See section 2(t)]**

1. Any act of terrorism within the meaning of this Act including those offences which may be added or amended in accordance with the provisions of section 34 of this Act.
2. ....
3. ....
4. ....

(i) ....

(ii) ....

(iii) firing or use of explosive by any device, including bomb blast in the court premises.]

[(iv) ....

(v) ....

Provision of Section 34 of the act authorized to amend, modify, add or omit any part of the schedule notified by the Government, as a consequent the schedule was reframed vide Notification No.SO(Judl-I)10(I-36(I)/2010 dated 5<sup>th</sup> September, 2012.

While scanning the aforesaid provisions of Anti-Terrorism Act and the schedule appended, the offence committed by the petitioner, it is abundantly clear that a court established under the Anti-Terrorism Act was fully competent to entertain and take cognizance of the offence, therefore, the court constituted under the act was fully competent to proceed with the matter in view of the facts of the instant case narrated above.

11.

There is no denial that the occurrence has taken place in two phases. During the course of investigation, it was found correct, hence, the same was incorporated in report u/s 173 Cr.P.C. The learned trial court while framing the charge against the appellant has also proceeded in the same manner. Firstly, he charged u/s 324/353/186 PPC read with

section 7 of Anti-Terrorism Act, 1997 while the second limb the charge relates to offence u/s 302/34 PPC read with section 7 of Anti-Terrorism Act, 1997. The charge sheet framed by the learned trial court fully endorsed the investigation carried out by the investigating officer of the local police. Although the petitioner has committed the crime at two different places commencing from the court premises and finally when he reached in front of Rana Abdul Sittar Tea-stall which is at distance of 1 ½ kilometers it would be presumed one and the same transaction as per the spirit of law. As the act of the petitioner was in continuation till its conclusion and this aspect is fully covered by provision of section 235 Cr.P.C. which is reproduced as under: -

***“235. Trial for more than one offence.***

- (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.
- (2) Offence falling within two definitions. If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.
- (3) Acts constituting one offence, but constituting when combined a different offence. If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by anyone, or more, of such acts.
- (4) Nothing contained in this section shall affect the Pakistan Penal Code, Section 71”.

Therefore, the contention of the learned counsel that the occurrence has taken place away from the court premises has no force, the same is repelled.

12. Leave to appeal was granted by this Court vide order dated 28.10.2019 mainly on two grounds:-

(a) Inter-se distance between assailant and deceased.

(b) Variation in number of injuries sustained by the deceased.

Bare reading of the FIR reflects the entire situation qua the act of the appellant.

جب رانا عبدالستار ٹی سٹال کے سامنے پہنچے تو محمد اقبال شاہ برادرم آگے تھا اور محمد حنیف کو پکڑنے والا ہی تھا کہ محمد حنیف نے پیچھے مڑ کر پستل سے سیدھا فائر کیا جو اقبال شاہ برادرم کو سامنے بائیں چھاتی پر لگا۔

During the trial proceedings, the prosecution witnesses of the ocular account **PW-2** Muhammad Akram SI and **PW-5** Mushtaq Ahmad Shah (complainant) had reiterated the contents mentioned in the crime report. Both of the witnesses of the ocular account are unanimous on the salient features of the prosecution version qua the time, mode and manner of the occurrence. Both witnesses were found trustworthy, reliable, independent and straightforward by the two courts below. The evidence of prosecution witnesses of the ocular account if found reliable, the same is sufficient to record conviction without any other corroborative piece of evidence. The contention raised by learned counsel that the ocular account is contradicted by the site plan qua the inter-se distance between the appellant and the victim, the law established by the superior courts is unanimous on this point. It is established that the statement of prosecution witnesses of the ocular account if contradictory to site plan it would have precedent over the distance mentioned in the site plan. Even otherwise, site plan is not a substantive piece of evidence having no legal sanctity. The purpose behind the preparation of site plan is to explain or give a glimpse of the occurrence in black and white enabling the concerned to appreciate the facts of the case in a more rational way. During the course of proceedings before the learned trial court, Dr. Majeed Ullah Buzdar appeared as PW.3. He has concurred the statement of prosecution

witnesses as he observed blackening over the injuries which can be caused only from close contact, hence, the contents of FIR, statement of prosecution witnesses of ocular account corroborated by the medical evidence leaves nothing, contrary to challenge the intrinsic value of the prosecution version, hence, it has established the prosecution case beyond reasonable doubt. Reliance is placed upon **PLD 1976 SC 234** (Taj Muhammad Vs, Muhammad Yusuf and 2 others) and **1998 SCMR 1823** (Sardar Khan and 03 others Vs, The State). The observation made in 1998 SCMR 1823 is as under: -

*“The site plans are, however, prepared only to explain or to appreciate the evidence on record in the case. Site plan by itself is not a substantive piece of evidence so that it could contradict the ocular account in the case.”*

13. We have noticed that contradiction in number of injuries observed by doctor is mainstay of criticism by the learned counsel for the appellant. This aspect was also noted by this Court while granting leave in this case. This Court has already resolved this issue while delivering exhaustive judgments on the subject. Primarily the ocular account is always considered as principle evidence. The litmus test to evaluate the veracity of the prosecution witnesses of ocular account depends being independent, reliable, trustworthy and confidence inspiring. The evidence of the expert is only confirmative in nature. If there is contradiction in between the ocular account and medical evidence qua the number of injuries, the rule of thumb is that the preference would be given to the ocular account as the statement of prosecution witnesses of ocular account is always placed at a higher pedestal as compare to the medical evidence. The rationale behind such strict construction of the rule of thumb is that firstly, expert evidence is confirmatory in nature based upon opinion of an expert which can be influenced by so many factors **(i)** lack of expertise **(ii)** lack of knowledge **(iii)** defective technique **(iv)** variation in

observation (v) lack of coordination with subordinate staff and possibility of obliging concession extended in favour of either of the party due to extraneous consideration. Reliance is placed upon **2002 SCMR 1568** (Amrood Khan Vs, The State), **1992 SCMR 2037** (Manzoor and others Vs, The State), **1990 SCMR 1272** (Muhammad Younas and another Vs, The State), **NLR 2005 (Criminal) SC 501** (Shafqat Ali etc vs, The Stae), **PLD 1976 SC 53** (Yaqoob Shah Vs, The State) and **PLD 1993 SC 895** (Muhammad Hanif Vs, The State). The observation made in 1990 SCMR 1272 is as under: -

*“--- Doctor’s evidence --- There is no principle of law that in each and every case doctor’s evidence must have preference over direct evidence – If witnesses have seen the incident and have implicated the accused and their statements have been accepted by Court, then any conflict with the evidence of Expert does not detract the evidentiary value of the eye-witnesses – [Evidence].[p.1274]-D ”*

14. Another unrebutted aspect in this case is that the appellant was apprehended at the spot by the police officials soon after the occurrence leaving no ambiguity qua the involvement of the petitioner in the aforesaid crime. The weapon of offence recovered from the petitioner was transmitted to the office of Forensic Science Laboratory without any delay in its dispatch. The report of Forensic Science Laboratory further confirmed that the empties recovered from the spot are matched with the weapon recovered from the appellant which is positive in nature. All these aspects further strengthen the prosecution case in its totality. Another aspect of this case which is being observed by this Court that the crime rate has at the verge of rise on day-to-day basis. The law breakers are adamant to take the law into their own hands such element, destroying the very fabric of the society must be dealt with iron hand. The instant occurrence is glaring example of the same and as such, no leniency can be extended to such like criminals.

15. In view of the above facts and circumstances, we do not find any merit in this appeal, hence, **dismissed** accordingly.

Judge

Judge

Judge

Islamabad  
Announced on **05.09.2023**

Judge

Approved for reporting.  
“Athar”