

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

**PRESENT:**

Mr. Justice Mushir Alam  
Mr. Justice Yahya Afridi  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition Nos.371 to 373 & 680 of 2020**

*(Against the judgment dated 2.4.2020 passed by the High Court of Sindh at Karachi in Special Criminal Anti Terrorism Appeal Nos.66, 67 of 2002 and confirmation case No.12 of 2002)*

**AND**

**Crl. M.A. No.37-K & 38-K of 2020 in Crl.Ps. NIL/2020**

*(Permission to file and argue)*

***The State through P.G. Sindh***

*(in Crl. P. Nos.371 to 373/2020)*

***Ruth Pearl & another***

*(in Crl. M.A. Nos.37-K & 38-K/2020)*

***Ahmad Omer Shaikh***

*(in Crl. P. No.680/2020)*

...Petitioner(s)

**Versus**

***Ahmed Omer Shaikh***

*(in Crl. P. No.371/2020)*

***Fahad Nasim Ahmed & others***

*(in Crl. P. Nos.372 & 373/2020)*

***The State, etc.***

*(in Crl. M.A. Nos.37-K & 38-K/2020)*

***The State through P.G. Sindh***

*(in Crl. P. No.680/2020)*

....Respondent(s)

For the Petitioner(s):

Mr. Farooq H. Naek, Sr.ASC assisted by  
Dr. Faiz Rasool, Prosecutor General Sindh  
Usman Walid Sheikh, Advocate  
Mr. Hussain Bux Baloch, ADDL. P.G. Sindh  
Mr. Adnan Shuja Butt, ASC  
Mr. Muhammad Kassim Mirjat, AOR  
*(in Cr.P. Nos.371 to 373/2020)*

Mr. Faisal Siddiqui, ASC assisted by  
Sheza Ahmed, Advocate  
*(in Cr.M.A. Nos.37-K & 38-K/2020)*

Nemo.  
*(in Cr.P. No.680/2020)*

For the Respondent(s):

Nemo.  
*(in Cr.P. Nos.371 to 373/2020 & Cr.M.A. Nos.37-K & 38-K/2020)*

Date of hearing:

28.09.2020.

## **ORDER**

**Qazi Muhammad Amin Ahmed, J.-**

**Criminal Petition Nos.371 to 373 of 2020**

Daniel Pearl, Bureau Chief of the Walls Street Journal, a U.S. national, hereinafter referred to as the deceased, deputed on some assignment in Pakistan, went missing on the 23<sup>rd</sup> of January, 2002; disappearance was reported with Police Station Artillery Maidan South Karachi by his wife Ms. Mariane Pearl at 11:45 p.m. on 4.2.2002. According to the complainant, Nasir Abbas (PW-1), a cab driver, informed her to have last dropped the deceased in front of “*Village Restaurant*” Karachi Saddar; she received an email dated 27<sup>th</sup> of January, 2002, with the photographs of her husband, enchained by his captors; they laid the following demands:

- “(A) The provision of Lawyers to Pakistanis detained in US.*
- (B) The release of Pakistanis, jailed in CUBA to Pakistan.*
- (C) The return of former TALIBAN AMBASSADOR MULLA ZAEEF, to Pakistan, and*
- (D) The return of F-16 FIGHTER JETS to Pakistan or The repayment of money, allocated for those F-16 JETS, as well as 15% interest.”*

On 30<sup>th</sup> of January, 2002, the captors threatened to murder the hostage in case their demands were not met within next 24 hours. As the deadline expired without concession, the deceased was beheaded; to the horror of the viewers; graphic details of the episode, recorded by a video camera, were subsequently released to go viral.

2. As the investigation progressed, 11 suspects were arrayed as culprits for the crime; of them, Amjad Hussain Farooqi alias Haider Farooqi alias Hassan Mansoor, Asim alias Qasim, Hashim alias Arif, Hassan, Ahmad Bhai and Imtiaz Siddiqui along with an unknown companion, yet to be identified, stayed away from law whereas Ahmad Omar Sheikh, Sheikh Muhammad Adil, Syed Salman Saqib and Fahad Naseem respondents, were arrested and ultimately indicted before an Anti Terrorism Court at Karachi. The prosecution relied upon various pieces of circumstantial evidence that included confessional statements of the two accused as well to drive home the charge, on the basis whereof, the learned trial Judge vide judgment dated 15.7.2002 convicted the respondents under sections 120-A, 365-A, 302 of the Pakistan Penal Code, 1860 read with section 6(a) of the Anti Terrorism Act, 1997; under section 7 of the Act *ibid*, Ahmad Omar Sheikh, respondent, was sentenced to death whereas the remainders to imprisonment for life with fine

of Rs.500,000/- or five years imprisonment in default of payment thereof; they were jointly liable to pay Rs.20,00,000/- (equal share) to the widow of the deceased; the lifers were extended benefit of section 382-B of the Code of Criminal Procedure, 1898. However, a learned Division Bench of the High Court of Sindh, while altering conviction of Ahmad Omar Sheikh under section 362 of the Code *ibid* with sentence of 7-years rigorous acquitted the respondents from the remainder charges vide impugned judgment dated 02.04.2020, *vires* whereof, are being assailed by the State through Criminal Petition Nos.371, 372 & 373 of 2020; parents of the deceased also questioned the impugned acquittals through Criminal Misc. Application Nos.37-K & 38-K of 2020 whereas Ahmad Omar Sheikh, convict, filed Criminal Petition No.680 of 2020 to assail his conviction and sentence on the solitary charge.

3. Mr. Farooq H. Naek, Sr.ASC, designated by the Government of Sindh to argue the case, contends that with a web of circumstances, inescapably implicating the respondents with the commission of a crime, most shocking, there was hardly an occasion to acquit them from the charge, particularly when the High Court itself maintained conviction and sentence on the charge of abduction qua Ahmad Omar Sheikh, recorded by the learned trial Court alongside coordinate charges. It is next argued that various incriminating pieces of evidence established, both through physical as well as scientific means, constituted uninterrupted/continuous chain that inexorably linked the deceased with the respondents and their absconding colleagues; according to him, forensic evidence, generated without any possibility of human interference, conclusively proved the homicidal death subsequent to deceased's abduction, a charge upheld by the High Court itself, for purposes having strong nexus with terrorism and, thus, acquittal from the coordinate charges was not a possible option through any mode of appraisal of evidence.

According to the learned counsel, the prosecution successfully proved the conspiracy hatched at Rawalpindi on 11.01.2002, whereby the deceased was induced to have his desired meeting with one Syed Mubarak Ali Shah Jeelani and it was in this backdrop that he was subsequently ensnared fatally at Karachi on a point of time, confirmed by one of the prosecution witnesses. He further contends that in the contextual backgrounds, relevant witnesses identified Ahmad Omar Sheikh respondent whereas the source generating the emails was reached out through forensic means, additionally associating internet service providers

who appeared before the Court to successfully face the test of cross-examination. The learned counsel has referred to the testimonies of Ronal Joseph, technical expert, joined John Mulligan (PW-12), both F.B.I. agents to bring on record the details of forensic proofs. Recovery of digital apparatus i.e. laptop, scanner, polaroid as well as zoom cameras, used by the accused to communicate with the deceased's family, established a continuous chain of circumstances unmistakably pointed upon the culpability of the accused, additionally reinforced by the confessional statements of the two accused, leaving no space for the High Court to entertain any hypothesis other than respondents' guilt, concluded the learned counsel.

Mr. Faisal Siddiqi, ASC, while appearing on behalf of deceased's parents, reiterated most of the submissions earlier addressed; he additionally argued that sentence awarded to Ahmad Omar Sheikh under a penal provision though cited erroneously as section 362 of the Code *ibid*, nonetheless, irresistibly suggested that the High Court, being convinced about the abduction of the deceased, had convicted and sentenced the respondent on the said charge, driven home through various pieces of evidence that equally encompassed the concomitant conclusion of the crime and as such the impugned view was not only self-destructive but impossible as well and, thus, warrants interference to avoid miscarriage of justice.

4. Leave to appeal is granted, *inter alia*, to re-appraise the evidence so as to consider the above contentions.

**Cr.M.A. No.481 & 483 of 2020 in  
Cr.P. Nos.371, and 372 of 2020**

5. Through the captioned criminal miscellaneous applications, the State has prayed for suspension of the impugned judgment so as to hold in abeyance respondents' release during the pendency of the appeal. Notice shall issue to the respondents. Till the next date of hearing, the respondents shall not be released from the prison.

**Criminal Petition No. 680 of 2020**

6. Ahmad Omar Sheikh, convict, has assailed his conviction and sentence under section 362 of the Pakistan Penal Code, 1860 through the captioned petition; his learned counsel Mr. Mahmood A. Sheikh, Sr.ASC, reportedly indisposed, is not in attendance, however, in order to ensure safe administration of criminal justice, we are inclined to grant leave in the

titled petition with a view to consider as to whether after en bloc acquittal of the co-accused and rejection of bulk of prosecution's evidence, the High Court was still justified to convict and sentence the petitioner in isolation to the totality of charge.

**Crl. M.A. No.37-K & 38-K of 2020 in Crl.Ps. NIL/2020**

7. Deceased's parents have filed separate petitions to question respondents' acquittal, though maintainable in view of section 25 (4A) of the Anti Terrorism Act, 1997, nonetheless, since leave has already been granted to the State to examine the same questions, the criminal miscellaneous applications are allowed; office is directed to number these petitions and club the same with Cr. Petition Nos.371 to 373 of 2020 with opportunity to the learned counsel to canvass his point of view as well.

8. Re-list on **7.10.2020**.

**Judge**

**Judge**

**Judge**

Islamabad, the  
28<sup>th</sup> September, 2020  
Not approved for reporting  
Azmat/-