

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ATHAR MINALLAH
MR. JUSTICE IRFAN SAADAT KHAN
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

Criminal Appeal Nos.343, 344 & 355 of 2023

(On appeal against the judgment dated 20.04.2020 passed by the High Court of Sindh, at Karachi in Special Criminal Anti-Terrorism Appeal Nos.261, 262, 311 of 2018 and Conf. Case (A.T.A) No.13 of 2018)

Sikandar Ali Lashari (Appellant in CrI.As-343 & 344/2023)
Muhammad Irfan Khan @ Faheem (Appellant in CrI.A-345/2023)

Versus

The State through P.G Sindh

...Respondent in all cases

For the Appellant(s): Sardar Muhammad Latif Khan Khosa Sr.ASC
Sed Iqbal Hussain Shah Gillani ASC
Ms. Suzzane Jehan, AHC
(In CrI.As-343 & 344/2023)

Mr. Mudassar Hussain Malik, ASC
(In CrI.A-345/2023)

For the State: Ms. Rahat Ahsan, Addl.P.G, Sindh

For the Complainant: Mr. Faisal Siddiqui, ASC
Peer Syed Asadullah Rashidi AHC
Baloch Khan AHC

Assisted by: Mr. Ghulam Muhammad Adnan, Law Clerk

Date of Hearing: 10.09.2025

JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J:-

CrI.Appeal Nos.343, 344 & 345 of 2023

Through the instant appeals, the appellants have sought leave against impugned judgment dated 20.04.2020 passed by the learned High Court of Sindh at Karachi, which was granted by this Court vide order dated 06.04.2023.

2. The appellants were tried by the learned Anti-Terrorism Court No.II, Karachi, in case FIR No.12/2014, dated 20.02.2014, under

sections 302/109/34 PPC, read with section 7-ATA, 1997, police station GOR Hyderabad and connected case FIR No.55/2014, dated 01.04.2014, under sections 23-A/24 & 25 of the Sindh Arms Act, 2013, police station Jamshoro, District Hyderabad. The learned trial Court vide judgment dated 29.09.2018, convicted the appellants u/s 302/109/34 PPC read with section 6 & 7 of the Anti-Terrorism Act, 1997, and sentenced each of them to death. The learned trial Court also convicted and sentenced the appellants to R.I for fourteen (14) years for the offences punishable under sections 23(i)A, 24 & 25 of the Sindh Arms Act, 2013. Sikandar Ali Lashari (appellant), was directed to pay compensation amounting to Rs.50,00,000/- to the legal heirs of the deceased, whereas Muhammad Irfan Khan @ Faheem (appellant), was directed to pay compensation amounting to Rs.15,00,000/- to the legal heirs of the deceased and in default whereof to further undergo two (02) years imprisonment each. In case their death sentence is commuted to imprisonment to life, the sentences of imprisonment under each head were ordered to run concurrently. In appeal, the learned High Court dismissed the appeals filed by the appellants vide impugned judgment dated 20.04.2020 and maintained the judgment of the learned trial Court.

3. Arguments heard. Record perused.

4. As per contents of the FIR, on 19.02.2014, at 10.25 p.m, Hunain Tariq complainant along with his cousin namely Aqib Hussain (deceased) and other family members (PWs) was coming in a car to visit Judge Aijaz Ali Khashkheli at judicial complex Hyderabad and when they crossed the road of Niaz Stadium, a silver colour, Toyota Corolla car crossed the car of the complainant party and forcibly stopped their car. Four (04) unknown accused who were armed with pistols,

deboarded from the car of the accused persons and they dragged Aqib Hussain (deceased), from the driving seat of the car, whereafter they inquired that as to whether he was son of Sessions Judge Khalid Hussain. In the meanwhile, the accused sitting on the driving seat of the abovementioned silver colour car asked his companions that he (deceased), was Aqib Hussain, who be killed, whereupon two (02) unknown accused caught hold Aqib Hussain (deceased), from his hands, whereas one (01) other unknown accused made 15/16 fire shots with his pistol, which landed on the body of Aqib Hussain (deceased), who succumbed to the injuries at the spot. The accused persons, thereafter fled away from the spot in their car, hence the FIR of this case.

5. Insofar as Sikandar Ali Lashari (appellant in Crl.A.Nos.343 & 344 of 2023), is concerned, admittedly the said appellant was District & Sessions Judge, Mithi, at the time of occurrence. The father of Aqib Hussain deceased namely Khalid Hussain was also a District & Sessions Judge, Jacobabad at the relevant time. No motive of the occurrence was mentioned in the FIR, however, later on Sikandar Ali Lashari (appellant), was implicated in this case with the allegation that Aqib Hussain (deceased), had developed relationship with the daughter of the said appellant and cook of the appellant namely Malook had seen them together, who told Sikandar Ali Lashari (appellant) about the relationship of his daughter with Aqib Hussain (deceased). According to the prosecution case, after receiving the abovementioned information, Sikandar Ali Lashari (appellant) took the services of hired assassins, who committed the murder of Aqib Hussain (deceased). In support of the abovementioned allegation against Sikandar Ali Lashari (appellant), the prosecution has produced the CDR of the SIM number used by the

said appellant and SIM number of the co-accused/hired assassins, however, the CDR of the SIMs produced in this case were admittedly not in the name of the said appellant rather the same were in the name of Abdul Saleem (PW-6). The said Abdul Saleem (PW-6), was clerk of the Court in the Court of IInd Addl. Sessions Judge, Hyderabad. He stated that he was asked by Sikandar Ali Lashari (appellant), to purchase a SIM in his (PW-6's) name and after purchasing the said SIM, he handed over the same to the said appellant, which was used by him (Sikandar Ali Lashari appellant). He (PW-6) admitted that he never worked with Sikandar Ali Lashari (appellant). As mentioned earlier, the father of Aqib Hussain (deceased), namely Khalid Hussain, as well as, Sikandar Ali Lashari (appellant), both were serving as District & Sessions Judges at the relevant time. It was mentioned in the FIR that on the night of occurrence, the complainant party was going to visit Judge Aijaz Ali Khashkheli, at the judicial complex Hyderabad, which shows that the complainant party had close relationship with the above-mentioned Judge Aijaz Ali Khashkheli who was posted at Hyderabad, where Abdul Saleem (PW-6) was also posted as clerk. Abdul Saleem (PW-6), also admitted that he knew Khalid Hussain who remained posted as a Judge at Hyderabad, therefore, there is every possibility that Abdul Saleem (PW-6) had made the abovementioned statement against Sikandar Ali Lashari (appellant), under the influence of the complainant party.

We have further noted that only a photocopy of the CDR of mobile phones SIM numbers has been produced in the prosecution evidence. Neither any employee/officer of the concerned telephone company nor any CDR duly attested by the concerned company has been produced in the prosecution evidence. Admittedly no permission was sought from the concerned Court to produce the secondary evidence (photocopy of

the CDR). Even no proof of the ownership of the SIM in question in the name of Abdul Saleem (PW-6), was brought on the record. It is also an admitted fact that no CDR of the SIM of Sikandar Ali Lashari (appellant) himself has been produced in the prosecution evidence to establish that the appellant ever made any contact with the co-accused/hired assassins, who allegedly committed the occurrence of this case. Furthermore, no transcript/phone recording of the conversation of Sikandar Ali Lashari (appellant) with the alleged hired assassins has been brought on the record. Under the circumstances, we are of the view that the prosecution evidence qua CDR of the mobile phones allegedly used by Sikandar Ali Lashari (appellant) and the hired assassins is inconsequential. Reference in this context may be made to the judgments reported as "Azeem Khan Vs. Mujahid Khan" (2016 SCMR 274), "Rehmatullah Vs. The State" (2024 SCMR 1782) and "Khalid Perviz Vs. The State" (2021 SCMR 522).

Although learned Additional Prosecutor General assisted by learned counsel for the complainant has argued that the messages of the daughter of the appellant with Aqib Hussain (deceased), have also been brought on the record which have proved the motive against Sikandar Ali Lashari (appellant) but the phones through which the abovementioned messages were exchanged were not taken into possession by the Investigating Officer and produced in the prosecution evidence. No employee of the telephone company has appeared in the witness box to establish the authenticity of the messages alleged exchanged between the daughter of the appellant and Aqib Hussain (deceased) and to prove that the abovementioned messages produced by the prosecution were correct and genuine in the record of the company.

6. Although the prosecution has also produced in evidence the alleged extra-judicial confession of Sikandar Ali Lashari (appellant) before the police but the same has no evidentiary value, because the appellant was in police custody at the time of making of his alleged extra-judicial confession. It is by now well settled that the confession of an accused before the police while in custody is inadmissible in evidence.

7. The prosecution has also produced another piece of evidence against Sikandar Ali Lashari (appellant) i.e., recovery of five (05) pistols, which were used by the co-accused to commit the occurrence and positive report of Fire Arms Examiner, Forensic Division, Sindh Karachi. Admittedly Sikandar Ali Lashari (appellant), was not present at the spot at the time of occurrence and he had not used any pistol and made any fire shots at Aqib Hussain (deceased). Moreover, the abovementioned pistols were not recovered from the place, which was in exclusive possession or ownership of Sikandar Ali Lashari (appellant) rather the same were recovered from the house of an absconding co-accused. Under the circumstances, the prosecution has failed to prove its case beyond the shadow of doubt qua the alleged recovery of pistols from Sikandar Ali Lashari (appellant), hence, positive report of Fire Arms Examiner, Forensic Division, Sindh Karachi is of no avail to the prosecution, therefore, the conviction and sentence of Sikandar Ali Lashar (appellant), under sections 23(i)A, 24 & 25 of the Sindh Arms Act, 2013, is not sustainable in the eye of law.

8. According to the prosecution case, it was Malook, who was a cook of Sikandar Ali Lashari (appellant) and who had seen the daughter of the appellant with Aqib Hussain (deceased) but the said Malook cook was never summoned by the prosecution to give evidence in this respect

before the learned trial Court. It is true that the said Malook was cook of Sikandar Ali Lashari (appellant) but he could have been summoned as a Court witness by the prosecution but no application in this respect was ever moved by the prosecution. Moreover, the abovementioned motive was not mentioned in the FIR and the same was subsequently introduced in this case, however, the same could not be proved through any cogent evidence.

9. Keeping in view all the abovementioned facts, we have come to this irresistible conclusion that the prosecution has neither proved the alleged motive nor alleged conspiracy/abetment of Sikandar Ali Lashari (appellant) with his co-accused. The allegation of abetment was levelled against Sikandar Ali Lashari (appellant) but neither there was any witness of the alleged conspiracy/abetment nor the same has been proved through any other circumstantial/reliable evidence.

10. Now coming to the case of Muhammad Irfan Khan @ Faheem (appellant in Crl.A.No.345/2023), we have noted that according to the prosecution case, the said appellant has been implicated in this case being one of the five (05) unknown accused mentioned in the FIR. The allegation against the said appellant was that he along with four (04) other unknown accused intercepted the car of the complainant party on the night of occurrence, forcibly dragged Aqib Hussain (deceased) out of his car and caught hold the deceased from his arms, whereupon Ghulam Abbas (co-accused since P.O), made 15/16 fire shots, on the body of the deceased. No description like colour, height or age etc of the unknown accused were mentioned in the contents of the FIR, therefore, identification of Muhammad Irfan Khan @ Faheem (appellant) in the identification parade carries no value in the eyes of law as observed in the cases reported as "State/Government of Sindh through Advocate-

General Sindh, Karachi Vs. Sobharo” (1993 SCMR 585) and “Sabir Ali alias Fauji vs. The State” (2011 SCMR 563).

11. It is further noteworthy that identification parade of Muhammad Irfan Khan @ Faheem (appellant), was conducted in the Court premises, which is a public place and it has not been brought on the record that as to whether the face of Muhammad Irfan Khan @ Faheem (appellant), was covered with a muffler, when he was brought to the Court for identification parade, therefore, there was every possibility that the prosecution witnesses had seen the said appellant before holding of his identification parade, hence, his identification during the identification parade is not free from doubt.

12. Muhammad Irfan Khan @ Faheem (appellant), had no personal grudge or motive to commit the occurrence, whereas the prosecution evidence qua the motive, as well as, conspiracy/abetment of Sikandar Ali Lashari (appellant in Crl.A.No.343/2023) with his co-accused, has already been disbelieved by us on account of reasons mentioned in preceding paragraphs of this judgment.

13. Although it was mentioned in the FIR that the unknown accused, who committed the occurrence were armed with pistols at the time of occurrence but no pistol had been recovered from the possession of the Muhammad Irfan Khan @ Faheem (appellant), during the course of investigation of this case.

14. Keeping in view all the aforementioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the appellants beyond the shadow of doubt. It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances,

which have created serious doubts in the prosecution story. Reference in this context may be made to the judgments reported as "Tariq Pervez Vs The State" (1995 SCMR 1345) and "Muhammad Akram Vs The State" (2009 SCMR 230). Consequently, these appeals are allowed. The judgments dated 20.04.2020 and 29.09.2018, of the learned High Court and the learned trial Court, respectively are set aside. The appellants are acquitted of the charges while giving them the benefit of doubt. They shall be released from the jail forthwith unless required to be detained in any other case.

JUDGE

JUDGE

JUDGE

Islamabad, the
10th of September, 2025
Not Approved For Reporting
Aitaz