JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT
ISLAMABAD

CASE NO. : CRIMINAL APPEAL NO.122-2020

Syed Mohsin Ali
Vs.
The State and another

CASE NO. : CRIMINAL APPEAL NO.123-2020

Khalid Shamim
Vs.
The State and another

CASE NO. : CRIMINAL APPEAL NO.125-2020

Moazzam Ali
Vs.
The State and another

Appellant by	:	M/s. Mehr Muhammad Bukhsh, Arif Khan, Zeeshan Riaz Cheema, Advocates.
Respondents by	:	Kh. Imtiaz Ahmed, Deputy Attorney-General & Imran Farooq, Assistant Attorney-General.
Date of hearing	:	09.12.2021.

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INTRODUCTION

AAMER FAROOQ J. By this consolidated judgment we propose to decide the captioned appeals, as all three have arisen out of judgment dated 18.6.2020.

BACKGROUND OF THE CASE

2. Khalid Shamim, Syed Mohsin Ali and Moazam Ali (the Appellants) were indicted in Case No. 1/2015 dated 5.12.2025 under sections 302, 120B, 34 and 109 Pakistan Penal Code (PPC) read with section 7 Anti-Terrorism Act, 1997 (ATA). They were convicted of the offences charged; in this behalf Syed Mohsin Ali was convicted for offence under section 302(b) PPC and was awarded life sentence, he was also convicted under section 7 (ATA) and awarded life imprisonment and a fine of Rupees 200,000/-. He was ordered to pay compensation in the sum of Rupees One Million to the heirs of Imran Farooq (the deceased). Khalid Shamim and Moazam Ali were convicted and awarded life imprisonment for offences under section 302(b) read with section 109 PPC. They were also convicted and awarded life imprisonment along with fine for offence under section 7 ATA and compensation to the tune of Rupees One Million.

3. The case of prosecution against the appellants is that they along with others conspired and murdered Imran Farooq in England on 16.9.2010 at about 1730 (GMT). In this behalf allegation against Syed Mohsin Ali was that he with the help of his co-accused Syed Kashif Kamran Khan murdered the deceased whereas the other two appellants facilitated, aided, abetted and helped the principal offenders. It was also alleged that the appellants were/are members of All Pakistan Mohajir Students Organization and the assassination of the deceased was undertaken as he was a potential threat to AltafHussain, the Head of MuhajirQaumi Movement.

SUBMISSIONS BY COUNSEL FOR APPELLANTS

4. Mr. Mehar Muhammad Baksh, Advocate High Court, appearing for Syed Mohsin Ali in Criminal Appeal No. 122/20 inter alia argued that his client deserves acquittal as the case of prosecution is brimming with doubts, conjectures and lacunas. He submitted that the order for constitution of Joint Investigation Team and the order for detention of the appellants was not placed before the learned trial court; that there is considerable delay in registration of the FIR and that statements of Chairman and members of JIT were never recorded. Learned counsel made the court walk through the evidence tendered by prosecution to underpin his submission that the case against his client is not made out. It was contended that PW 2 admitted that he had not read the documents before handing them to the Investigating Officer; that it is clear that PW2 signed the documents under the directions of PW3/SHO being his subordinate. Learned counsel contended that PW10 who supposedly is running the business of visa consultancy has fabricated the documents and his testimony is unreliable, which fact is borne out from the answer to question no. 7 in statement under section 342 Cr.P.C. that PW7 was unable to substantiate the entries in the statement of accounts.

5. Learned counsel while continuing to attack the veracity of the prosecution witnesses argued that the evidence of PW7 and PW3 lacks credence because of inherent flaws. It was highlighted that PW22 refreshed his memory on the morning of 4.2.2020 before recording of the evidence, hence the same is not admissible; that the evidence is otherwise not believable and identification of the appellant was never made in accordance

with the law. Similar observations were made by learned counsel with respect to the evidence of PW21, PW 17 and PW18; that evidence of PW26 is false where he deposed that the attitude of the appellant was not serious toward the studies.

6. Much emphasis was laid by the learned counsel with respect to the testimony of PW1 who recorded the confession of the appellant and it was argued that the law has not been followed in recording the confession of the appellant, hence the same carries no probative value. Lastly it was argued that section of the Anti-Terrorism Act, 1997 (the Act) is not attracted in the facts and circumstances. Reliance was placed on PLD 2009 SC11, PLD 1978 SC21 and PLD2020 SC 61.

7. Learned counsel for the other two appellants in Criminal Appeals No. 123 and 125 of 2020 primarily adopted the arguments addressed by learned counsel for the appellant in Criminal Appeal 122/20. They added that there is no evidence against them that they conspired with Mohsin Ali or any other person in committing the murder of Imran Farooq. They also highlighted the portions of the evidence tendered by the prosecution to state that the evidence does not meet the threshold required to secure conviction under the law.

SUBMISSIONS ON BEHALF OF THE STATE

8. Kh. Muhammad Imtiaz, learned Deputy Attorney General appearing for the state submitted that the prosecution has proved the case against the appellants beyond reasonable doubt. He submitted since the offence was

committed in England, the basic investigation of the offence was conducted there. He argued that there is ocular evidence available whereby it is established that Mohsin Ali was one of principal accused. He also highlighted that the police in London conducted a thorough investigation and in gathering evidence against the accused and all pieces gathered point towards the appellants. It was contended that the appellants confessed the commission of the offence and belatedly they cannot resile from the same. Kh. Imtiaz further argued that the prosecution's case is straightforward and confidence inspiring as the evidence was collected by two independent law enforcement agencies in Pakistan and United Kingdom; that none of the witnesses were inimical or interested in any manner towards the Appellants. He further submitted that the murder of Imran Farooq was the result of longstanding conspiracy hatched in Pakistan and United Kingdom; that the Appellants with the common intention remained part of joint enterprise and played their respective roles collectively and independently to achieve the sole object of murder on 16.9.2010 in London. It was vehemently argued that unbroken chain of events leading to the murder of Imran Farooq was established by the prosecution with independent and confidence inspiring evidence which remains unshattered despite cross examination.

9. Learned Deputy Attorney General also proffered that the Appellants are members of youth wing of MutahidaQaumi Movement having no financial background who went to United Kingdom on student visas and returned after the murder of Imran Farooq and never ever returned since then to complete their education; they committed murder of Imran Farooq and/or

aided and abetted the same. It was emphasized the entire process of obtaining visas and procuring admissions was facilitated by the referred Political party with the sole object to facilitate the travel of appellants so they could travel to UK only to commit murder of Imran Farooq. It was further stated that there is eye witness account of the murder as well as circumstantial evidence supporting the confessional statement establishing the guilt of the Appellants; that the CCTV footage affirms the case of the prosecution as well the testimony of fingerprint expert that on the knife recovered from a place near to the scene of the crime, bears the finger print of Syed Mohsin Ali; that autopsy report of deceased corroborates the set of injuries as testified by the eye witnesses and also the stated in the confessional statements. It was also contended that the evidence of landlord of Mohsin Ali is strong corroboratory evidence with confession. It was asserted that the confessional statements are inculpatory and were retracted only after framing of charge i.e. after about 28 months of recording of the same; that in those 28 months the Appellants had many opportunities to resile from the confession as they even filed petitions before the Supreme Court of Pakistan but never a word was mentioned regarding the confessions being not voluntary or having been extracted in violation of the law; that the prosecution's evidence remains unrebutted in as much as in defense the Appellants did not tender any evidence nor made a statement on oath under section 340(2) Pakistan Penal Code; that in reply to questions put to the Appellants under section 342 PPC no plausible justification was provided by the Appellants with respect to the evidence led by the prosecution. In support of his contentions, learned Deputy Attorney General depended on

cases reported as ‘Shahid Azeem Vs. The State’ (2018 PCr.LJ 1653 Islamabad), ‘Tariq Hussain Shah Vs. The State’ (2003 SCMR 938), ‘Majeed Vs. The State’ (2010 SCMR 55), ‘JOYGUN Bibi Vs. The State’ [PLD 1960 Supreme Court (Pak) 313], ‘Manjeet Singh Vs. The State’ (PLD 2006 SC 30), ‘Muhammad Amin Vs. The State’ (PLD 2006 SC 219), ‘Ghulam Nabi Vs. The State’ (2007 SCMR 808), ‘Dadulla Vs. The Sate’ (2015 SCMR 856), ‘Alamgir Khalid Chughtai Vs. The State (PLD 2009 Lah. 254), ‘Umair Ashraf Vs. The Sate’ (2008 MLD 1442), ‘Saifal Vs. The State’ (2013 PCr.LJ 1082), ‘Abdul Hameed Vs. Boo Ali Shah Zaidi’ (1999 MLD 2989), ‘Arif Hashwani Vs. Sadruddin Hashwani’ (PLD 2007 Kar. 448), ‘Asfand Yar Vs. Kamran (2016 SCMR 2084), ‘Muhammad Latif Vs. The State’ (PLD 2008 SC 503), ‘Scheraz Tufail Vs. The State’ (2007 SCMR 518), ‘Mst. Farida Bano Vs. Karachi Electric Supply Corporation’ (2008 MLD 62), ‘Haji Muhammad Ameen Vs. Messrs Frontier Ceramics Ltd. Peshawar’ [PLD 2005 (Pesh.) 69], ‘Abu Bakar Vs. The State’ (1989 PCrLJ 369), ‘Abdul Qadir Shah Vs. Muhammad Qasim (PLD 2014 Baluchistan 28), ‘Muhammad Majid Vs. Gul Muhammad’ (2012 PCrLJ 1572), ‘Abdul Rauf Butt Vs. The State through SHO P.S. Margallah Islamabad’ (PLJ 2005 Lahore 1220) & ‘Shahbaz-ud-Din Chaudhry Vs. SHO Police Station Garden Town, Lahore’ (PLJ 1999 Lahore 801).

OPINIION OF THE COURT

9. Arguments addressed by learned counsel for the parties have been listened with utmost care and the evidence on record appraised with their able assistance.

Jurisdiction of Courts in Pakistan to prosecute Pakistani citizens with respect to offences committed outside Pakistan.

10 Murder of Imran Farooq (the deceased) was committed in London (United Kingdom) on 16.9.2010. The offence took place outside Pakistan and all the accused persons are citizens of Pakistan, where such is the case Section 188 of Code of Criminal Procedure, 1898 provides that the courts in Pakistan have the jurisdiction to try the accused for offence and punish accordingly with the proviso that such accused person shall have the protection of double jeopardy and permission of the Federal Government shall be obtained before proceeding with the inquiry. For ease of convenience the relevant provision is reproduced below:

> *"When a citizen of Pakistan commits an offence at any place without and beyond the limits of Pakistan or when a servant of the State whether a citizen of Pakistan or not, commits an offence in the tribal area, or when any person commits an offence on any ship or aircraft registered in Pakistan wherever it may be; he may be dealt with in respect of such offence as if it has been committed at any place with Pakistan at which he may be found:*
>
> ***1st proviso***
>
> *Provided that notwithstanding anything in any of the preceding sections of this Chapter, no charge as to any such offence shall be inquired into in Pakistan unless the political agent, if there is one, for the territory in which the offence is alleged to have been committed , certifies that in his opinion, the charge ought to be inquired into in Pakistan; and where there is no political*

agent, the sanction of the Federal Government shall be required:

2nd proviso

Provided also, that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had committed in Pakistan shall be a bar to further proceedings against him under the Extradition Act, 1972 in respect of the same offence in any territory beyond the limits of Pakistan."

In view of the above provision of law the learned trial court had the jurisdiction to deal with the matter and decide the same provided there was sanction of the Federal Government. The interpretation rendered to section 188 ibid in respect of obtaining sanction of Federal Government has been held to be a mere procedural requirement and violation thereof to be of no consequence ***(Shahbaz-Ud-Din Chaudary versus SHO Police Station Garden Town,*****(PLJ 1999 Lah. 801) and *Abdul Rauf Butt versus The State*****(PLJ 2005 Lahore 1220)**. Thus the fact that there was no sanction of the Federal Government in the instant matter did not make the proceedings against the Appellants to be without lawful authority or defective in any manner due to non-compliance of section 188 supra in letter and spirit.

Extra judicial confession by Khalid Shamim and Mohsin Ali and the effect of its retraction.

11. Khalid Shamim and Mohsin Ali recorded extra judicial confession (Exh. PW1/2 and Exh. PW1/4); the referred statements were made on

7.1.2016 before Mr. Muhammad Shoaib, Judicial Magistrate, Islamabad. The referred Magistrate also entered the witness box as PW 10 and deposed categorically that all formalities in recording the confessions of the two accused were met with. The referred accused persons (appellants now) subsequently retracted from the confessions during the course of trial after lapse of considerable period. However, in the confessional statements both gave meticulous accounts of the facts. Khalid Shamim who has been convicted of aiding and abetting the principal offenders narrated in great detail how he arranged departure of Kashif and Mohsin Ali to United Kingdom to fulfill the design of murder of the deceased. Likewise Mohsin Ali also stated in elaborate length the details of the fact that him and Kashif carried out the murder of the deceased and the facts prior and subsequent thereto.

12. Since Khalid Shamim and Mohsin Ali retracted from confessional statements and it was argued from the Appellants side that they carry no probative value, while the prosecution submitted that it still holds weight; this court needs to examine that whether Exh. PW1/2 and Exh. PW1/4 can still be relied in making the said persons accountable for murder of the deceased. There is plethora of case law on the subject of retracted statement under section 164 Cr. P.C. and its evidentiary value. There is one set of judgments which hold that despite retraction conviction can be recorded upon basis thereof ***Tariq Hussain versus The State*** **(2003 SCMR 938),** ***JoygunBiBi versus The State*** **(PLD 1960 SC 313),** ***Manjeet Singh versus The State*** **(PLD 2006 SC 30),** ***Muhammad Amin versus The State*** **(PLD**

2006 SC 219) &*Dadullah versus The State* (2015 SCMR 856), while the recent and dominant trend is that along with the retracted confessional statement there should be corroborative evidence to substantiate the facts admitted or confessed by the accused ***ShahidAzeem versus The State*** **(2018 PCr. LJ 1653),** ***Majeed versus The State*** **(2010 SCMR 55),** ***Muhammad Ismail versus The State*** **(2017 SCMR 898),** ***NasirJaved versus The State*** **(2016 SCMR 1144) and** ***Mir Zaman versus The State*** **(2012 SCMR 580)**). In light of the above judgments the confessional statements made by Khalid Shamim and Mohsin Ali cannot be discarded completely and do still carry evidentiary value. According to latter set of judgments cited above all the court has to see was whether the details mentioned in confession stand corroborated.

Corroboration of facts stated in confessional statements

13. In addition to the confession of Khalid Shamim and Mohsin Ali, prosecution led independent evidence to prove its case. The 'motive', set by the prosecution, is that there was, within the party, a sentiment that the deceased is a threat to the top leadership, hence ought to be eliminated. In this behalf, the notes from the diary of the deceased were produced and its translation was tendered in evidence. The statement of the concerned officer in United Kingdom Police Force namely Gerard Cummins, who appeared as PW-29, was recorded and he affirmed that he was given the role of searching of the residence of the deceased i.e. 8-A Green Court, Green Lane, London HA8 and seized number of items including Exh.PW14/484-488 in

order to implement the motive; the conspiracy was hatched to murder the deceased and departure of Syed Mohsin Ali and Khalid Shamim was arranged. A number of people facilitated the travel of said persons to United Kingdom, which included Khalid Shamim and Moazzam Ali. In this behalf, admissions of the principal perpetrators in the educational institutions were procured as well as experience certificates and tickets were arranged. The requisite documents were tendered in evidence. In this behalf, tickets were purchased from PW-9, who affirmed the position that same was done by Moazzam Ali. The testimony of PW-9 clearly shows that Moazzam Ali came to the Office to purchase the ticket for Mohsin Ali and tickets were exhibited as Exh.PW2/57 and were in response to payment of Rs.79,500/-. The bank statement of MPL travel company owned by PW-9 shows receipts of Rs.89,500/- as Exh.P2/58. Likewise, Moazzam Ali also procured ticket for Muhammad Kashif Kamran; accounts were also opened in the name of Kashif and Mohsin Ali, wherein Moazzam Ali introduced the persons to the bank authorities and the job letters were also signed by Moazzam Ali. The bank statements were duly tendered in evidence and bears transfer of money. The college record of Kashif and Mohsin Ali was also tendered in evidence by PW-14 i.e. Detective Chief Inspector Stuart Greenaway; he is the senior Investigating Officer and was in charge at time of the operation code name ‘Operation Hastor’; he tendered in evidence as Exh.PW14/1-18 the original documents submitted by Syed Mohsin Ali to get admission in London Academy of Management Sciences; he also produced attendance sheet of Mohsin Ali exhibited as Exh.PW-33-35 including the documents pertaining to Muhammad Kashif Kamran; he produced the Landing Card of Syed

Mohsin Ali in U.K. and tendered in evidence as Exh.PW14/107 plus mobile record; the bank, with which, the account was opened by Mohsin Ali. The said witnesses also produced compact disc containing CCTV compilation of crime scene Exh.PW14/181; he also produced statement of one Paul Hallman pertaining to four kitchen knives which are exhibited as Ex.PW14/197-199; he tendered in evidence black handle of kitchen knife as Exh.PW14/236; the brick, with which, the deceased was initially struck, was exhibited as Exh.PW14/237. The knife, in totality, was exhibited as PW14/238; the site plan or sketches of crime scene were tendered in evidence as Exh.PW14/239-240; the finger print identification/notification pertaining to Syed Mohsin Ali was tendered in evidence as Exh.PW14/368-369 and the samples as Exh.PW14/373-375. The autopsy report of Dr. Imran Farooq prepared by Kings College Hospital was exhibited as PW14/445-447 as well as microscopy report which is exhibited as Exh.PW14/448-451. The statement of Dr. Robert Chapman, who conducted postmortem of Dr. Imran Farooq, was exhibited as PW14/432-444; the travel record of Syed Mohsin Ali to Sri Lanka was tendered in evidence as Exh.PW14/461-462 as well as Exh.PW14/463-464 and Exh.PW14/465-466. The record of travel of Moazzam Ali Khan to Sri Lanka is exhibited as Exh.PW14/467-470 as well as his viz inquiry report and Sri Lanka border control system passenger inquiry report as Exh.PW14/471-472 and Exh.PW14/473-474; the translation of notes/diary of Dr. Imran Farooq was produced as Exh.PW14/489-494. PW-17 (Ann-Cumminghan) entered the witness box as finger print expert; she confirmed her statement made to the police area as correct and affirmed that the finger print on the knife matches with the finger

print of Syed Mohsin Ali. David Frisby, who from the crime scene, recovered crime half brick, black handled knife and crow bar, gave evidence as PW-18. In addition, three eye witnesses were also called to give evidence i.e. Laura Hakkak, Alison Kosiner Claire and Max Millian Davis as PW-20 to PW-22. Mrs. Laura Hakkak, appearing as PW-20, stated that on 16.09.2010 at 5:25 p.m., she saw the occurrence from her front door, whereupon made a call to the police authorities; she described the assailant as Asian with thick black hair and stated that occurrence took place from one to two minutes. PW-21 stated that she went to kitchen to give dinner to her children, when she saw her neighbor bringing his bin bag and then heard him shouting 'Oy'; she claims that she heard noises outside the door and saw her neighbor lying with blood outside her house and brick was lying next to him; she also described the incident. Pw-22 stated that he saw one man hitting the deceased with brick and saw the incident from distance of 20-30 meters. DC Paul Hallman appeared as PW-24 and is one of the police officers who conducted investigation in the matter and submitted that he visited various stores nearby the murder scene and found identical knives in 99-P stores and purchased the similar one as was recovered from near the scene of crime as Exh.PW14/193-196. PW-25 disclosed that there was a message from Moazzam from his No.923009252044 confirming the time and date. PW-26, who is the taxi driver, confirmed that he picked up Khalid Shamim and Moshin and arranged an accommodation on the request of Moazzam. PW-27 (Moin Ud Din Sheikh) was the landlord of Mohsin and confirmed his staying with him. PW-28 Dr. Robert Charles appeared and

conducted autopsy report and confirmed the types of injury and cause of death; as totally out of 25 injures, 18 were blunt and 7 were sharp.

14. The whole nine yards of the above evidence confirms the confessional statements made by Khalid Shamim and Syed Mohsin Ali; eye-witnesses confirmed that two Asian men killed the deceased and presence of finger print of Mohsin Ali also affirms that at the relevant time, he was in London/England and departed immediately on the same day from London to Sri Lanka and eventually to Pakistan.

15. Learned counsel for the appellants though asserted vehemently that there are lacunas and loopholes in the case of prosecution and witnesses are not coherent, however, all the witnesses have been consistent and even though confessional statements clearly establish that Mohsin Ali and Khalid Shamim carried out the murder of Dr. Imran Farooq and Moazzam Ali and Khalid Shamim facilitated in hatching the conspiracy and carrying it out hence aided and abetted the killing of deceased, the other evidence adduced by prosecution also establishes the fact. Even, without confessions, the prosecution has been able to prove its case beyond reasonable doubt. Appellants failed to cross examine some of key witnesses of the prosecution.

16. One of the legal arguments, that was agitated by the appellants, was delay in lodging of FIR in Pakistan. Undoubtedly, FIR was lodged at a belated stage in Pakistan, as the murder took place on 16.09.2010. Under section 188 ibid, as noted above, the courts in Pakistan had the jurisdiction to try the offence; as killing of Pakistani citizen took place in United Kingdom, the matter was promptly registered there and police authorities, in

the said country, carried out total investigation in the matter and according to them as well, Khalid Shamim and Syed Mohsin Ali are the culprits along with others. It is trite law that law of limitation has no applicability in criminal cases as such, even belated FIR can form basis for conviction; it is only that same is treated with care as there might be element of concoction but in the instant case, even that suspicion was not required, as already noted above, the matter was promptly intimated to the police authorities in London who reached the site and did the needful as per their practice and procedure as well as the law. The registration of FIR in Pakistan, at a belated stage, was inconsequential.

CONCLUSION

17. In view of above discussion of law and facts, the judgment of learned trial court, impugned before this Court, does not suffer from any error in findings of facts or law warranting interference. It is reiterated that the prosecution proved its case beyond reasonable doubt by way of oral, documentary and electronic evidence (the last part of evidence being admissible in evidence and carrying cogent evidentiary value in light of case law reported as 'Alamgir Khalid Chughtai Vs. The State (PLD 2009 Lah. 254), (PLD 2009 Lah. 254) 'Umair Ashraf Vs. The State' (2008MLD1442),'Saifal Vs. The State' (2013 P.Cr.LJ 1082) and 'Asfand Yar Vs. Kamran' (2016 SCMR 2084). The prosecution duly led evidence highlighting the role of each accused independently. The confessions recorded by Syed Mohsin Ali and Khalid Shamim support the evidence led by prosecution. In case of Moazzam Ali, though he did not confess the offence, but confessional statements by co-accused could be used against

him in light of case law reported as ‘Joygun Bibi Vs. The State’ (PLD 1960 SC 313).

18. For the above reasons, above mentioned appeals are without merit and are accordingly dismissed.

(CHIEF JUSTICE) **(AAMER FAROOQ)**
JUDGE

Announced in Open Court on the 9th day of March 2022.

(CHIEF JUSTICE) **JUDGE**

Approved for reporting

M.NAVEED