

IN THE COURT OF MUHAMMAD ASGHAR K HAN,
JUDGE ANTI TERRORISM COURT NO. I,
RAWALPINDI DIVISION, RAWALPINDI.

TRIAL CASE No. 774/JSC-I

DECIDED ON:

31.8.2017

The State.....

VS

1. **Rafaqat Hussain son of Sabir Hussain, Caste Awan, aged 35 years, resident of House No. A.D-90, Gali No.8/1, Ahmadabad, Quaid-e-Azam Colony, Rawalpindi.**
2. **Syed Pervaiz Musharaf son of Syed Musharaf-Ud-Din, Caste Syed, profession Former President of Pakistan, Government of Pakistan, resident of Chak Shahzad, Islamabad**
3. **Husnain Gul alais Ali son of Muhammad Riaz Caste Awan, aged 29 years,, resident of street No.7, Shah Jeevan Colony, Dhoke Sayyadan, Rawalpindi.**
4. **Sher Zaman son of Akbar Jan, Caste Mehsud, aged 42 years, resident of Ladha, South Waziristan Agency, presently residing at Tariq abad Khan, D.I. Khan.**
5. **Rasheed Ahmed Turabi alias Abdul Rahim Turabi, son of Qudrat Shah, Caste Mehmand, aged 28 years, resident of Shabqadar Sareekh Moroza, Police Station Batagram, District Charsada.**
6. **Syed Saood Aziz son of Syed Abdul Aziz , aged 60 years, Profession then the CPO, Rawalpindi, resident of House No. 116-Model Town, Lahore.**
7. **Khurram Shahzad Haider son of Muhammad Iqbal Warriach, aged 42 years, profession the then S.P Rawal, resident of Rana Ashraf Colony, City Block, Bhalwal, District Sargodha.**

Case FIR No. 471 dated 27.12.2007

u/s 302/324/435/436/120-
B/119/201/109/34 P.P.C, 4/5 ESA and 7
ATA, Police Station City Rawalpindi.

JUDGMENT :-

The above said accused persons namely Sher Zaman, Syed Saood Aziz, Rasheed Ahmed, Rafaqat Hussain, Khurram Shahzad and Husnain Gul were sent up in this court to fact trial in Case FIR No. 471 dated 27.12.2007 u/s 302/324/435/436/120-B/119/201/109/34 P.P.C, 4/5 ESA and 7 ATA, Police Station City Rawalpindi.

2. As per Exp.PA the brief facts of the case are that Mohtrama Benazir Bhutto a former prime minister of Pakistan was killed in an attack in result of firing followed by a bomb blast caused by some unknown suicide bomber on her way coming back after attending a political gathering held at Liaqat Bagh Rawalpindi. Other 18 people also died at the spot and 71 persons were seriously injured .

3. Initially the case was investigated by the police and reports u/s 173 Cr.P.C and following challan were submitted by the police as under below

1. Report u/s 173 Cr.P.C dated 26.1.2008.
2. Report u/s 173 Cr.P.C dated 29.2.2008.
3. Report u/s 173 Cr.P.C dated 17.4.2008
4. Report u/s 173 Cr.P.C dated 8.5.2008
5. Report u/s 173 Cr.P.C dated 25.5.2008
6. Report u/s 173 Cr.P.C dated 30.7.2008
(Being Juvenile)

4. Thereafter subsequently case was investigated by the FIA and 6 challan u/s 173 Cr.P.C were submitted against the accused persons as under below

1. Report u/s 173 Cr.P.C dated 11.6.2010
2. Report u/s 173 Cr.P.C dated 13.11.2010
3. Report u/s 173 Cr.P.C dated 22.12.2010
4. Report u/s 173 Cr.P.C dated 7.2.2011
5. Report u/s 173 Cr.P.C dated June 2012.
6. Report u/s 173 Cr.P.C dated 22.6.2013.

5. All the above mentioned accused were charge sheeted by this court on 20.8.2013 to which all of them pleaded not guilty and opted to face the trial.

6. From the list of 141 witnesses, the prosecution opted and produce 68 PWs and rest were given up. The gist of the prosecution evidence ocular as well as documentary are mentioned below:-

Pw-1 Kashif Bashir witness of personal search Memo.

1. FIR Exh. PA/1.
2. Complaint Exh. PA.

PW-2 Dr. Hina Witness of conducting post-mortem examination of deceased Ch. Touqueer Akram, Asif, Muhammad Bashir, Zulfiqar and issued MLR of injured Abdul Rehman.

1. Autopsy report Exh. PW.2/A.
 2. Application for external post mortem report Exh. PW-2/A-1
 3. Inquest report Exh. PW.2/A/2-5
 4. Autopsy report Exh. PW.2/B.
 5. Application for external post mortem report Exh. PW-2/B-1
 6. Inquest report Exh. PW.2/B/2-5
 7. Autopsy report Exh. PW.2/C.
 8. Application for external post mortem report Exh. PW-2/C-1
 9. Inquest report Exh. PW.2/C/2-5
 10. Autopsy report Exh. PW.2/D.
 11. Application for external post mortem report Exh. PW-2/D-1
 12. Inquest report Exh. PW.2/D/2-5
 13. MLR Exh. PW-2/P.1.
 14. MLR of injured person Exh. PW-2/E.
- PW-3 Dr. Rida Khan Witness of conducting postmortem Examination of deceased Sh. Javed Iqbal and issued MLR of injured persons Muhammad Amin, Muhammad Sharif, Abdul Jabbar, Muhammad Hanif, Faheem Ahmed, , Syed Munir Hussain, Ayyab Ahmed, Yasir Qureshi, Bashir Ahmed, Malik Asghar, Mumtaz Hussain and Fida Abbasi, Muhammad Asif.
1. MLR Exh. PW-3/P.1- Exh. PW.3/P.13
 2. MLR of injured person Exh. PW.3/A to Exh. PW.3/O
- PW-4 Dr. Ashraf Ali Witness of conducting postmortem Examination of Sajid Mehmood, Muhammad Munir, and issued MLRs of Muhammad Nawaz A.S.I, Umar Khatab, Ghulam Murtaza, Muhammad Akhtar, Haji Khalil, Mateeh ur Rehman, Muhammad Zameer, Mushtaq Ahmed.
1. *Application for external post mortem, inquest reports*
 2. *External postmortem report are Exh. PW.4/A to Exh. PW.4/O*
- PW-5 Dr. Hafiz Muhammad Qasim Khan witness who examined the injured persons Atif Javed, Rukhsar Iqbal, Muhammad Akram Tariq Saeed, Waheed Ahmed, Iftikhar Mehmood, Umar Iftikhar, Saraj Shaikh Ahsan, Raja Muhammad Riaz.
1. *Application of police for MLR Exh. PW.5/A to Exh. PW.5/J.*
 2. *MLR Exh. PW.5/A/1 to Exh. PW.5/J/1.*
 3. *MLR Exh. PW.5/K.*
- PW-6 Jamal Saleem Toru Assistant Manager, Public and Government Office Department Telenor Jinnah

Super Market Islamabad Witness of providing
data of mobile

numbers 03449666465, 03446654236, 03469442498.

*Mobiles data Exh. PW.6/A/1-6 to Exh.
PW.6/B/1-18*

PW-7 Mirza Sarfraz PTCL Revenue Rawalpindi Cantt
witness who provide data of PTCL No. 5575823.

1. *Report of Mobile Data Exh. PW.7/A.*
2. *Recovery memo of report of Mobile Data Exh.
PW.7/B.*

PW-8 Ghulam Abbas owner of the house where
Sabir Father of the accused Razaqat Hussain
was residing and stated about the installation
of land line number on his residence which
was in the use of accused Razaqat Hussain and
Husnain Gul.

PW-9 Muhammad Feroz Alam Senior Manager RNO
PTCL Satellite Town Rawalpindi witness who provided
data of telephone number 0928-230493.

PW-10 Ahmed Faisal Senior Manager Regulatory
Zong Near FIA Office, Islamabad witness of handing
over the calling record of mobile number 0304-
9645938.

Letter of Data of Mobile number Exh. PW.9/A.

PW-11 Asghar Ali SI.

(i) Witness who requested Medico Legal Officer for
medical reports regarding 26 injured
persons and Autopsy reports regarding killed
persons.

(ii) Witness of drafting F.I.R of this case.
Injury statement Exh. PW.11/1-26.

PW-12 Muhammad Saqlain Bomb Disposal
Expert Civil Defence Office, Rwp.

1. *Report from police control Exh. PW.12/A.*
2. *Signatures on report Exh. PW.12/A/1.*

PW-13 Asif Muzamil Manager Co-ordination U. Fone
Head Office Islamabad witness who provided record
of mobile numbers 0331-5013836 and 0332-
5609682.

1. *Letter for mobile record Exh. PW.13/A.*
Recovery memo of letter of mobile
data Exh. PW.13/B.

2. *Record of Mobile data Exh. PW.13/C and Exh.
PW.13/D.*

PW-14 Saleem Akhter ASI Moharrar Malkhana P.S City
Rawalpindi, who kept parcel of 30 bore pistol, 3
empties of 30 bore pistol, parcel of 9 MM pistol,
parcels of contain blood, parcel of skin tissue,
parcel of black material of explosive, parcel of
leather jacket, parcel of white tissues of skin

parcel of piece of bone alongwith necessary paper etc in the Malkhana.

PW-15 Ghulam Muhammad Naz Assistant Fire Officer Rawalpindi witness relating with the washing crime scene.

1. *Signatures and thumb impressions of Ghulam Muhammad Naz Exh. PW-15/A-D.*

2. *Statements of Ghulam Muhammad Naz Exh. PW- 15/E/1-4.*

PW-16 Dr. Abdul Rehman District Emergency officer Rescue 1122 Rwp.

1. *Signatures and thumb impressions Exh. PW.16/A to F.*

2. *Statements of Dr. Abdul Rehman Exh. PW-16/G/1-7.*

PW-17 Dr. Amjad Ali Shah witness of conducting post mortem examination of deceased Muhammad Shafique, Ch. Hakim Ali, Taj Muhammad, Muhammad Shafique, Mazhar Tasvir, Jamil Ahmed, Raja Muhammad Ameen, Bahir Ahmed, Raja Muhammad Ameen, Bashir Ahmed, Sajid Ali, Muhammad Aslam, Raja Habib Ahmed, Zaheer Ahmed Khan, and issued MLRs of the injured persons Syed Ishtiaq Hussain Shah, Muhammad Ehsan, Tariq Mehmood, Mehmood Akhtar, Malik Mazhar Hussain, Malik Zakir Hussain, Altaf Butt, Waseem Abbas, Abdul Hameed, Muhammad Shahzad, Muhammad Jamshaid, Nawaish Ali, Husnain Ashraf, Muhammad Ghous, Muhammad Saleem, Rashid Ahmed.

1. *Autopsy report Exh. PW-17/A/1 to Exh. PW-17/L/1.*

2. *Application for external postmortem examination Exh. PW-17/A to Exh. PW17/L.*

3. *Inquest reports Exh. PW-17/A/2-4 to Exh. PW-17/G/2-4.*

4. *Applications by the police for MLRs are Exh. PW-17/1 to Exh. PW-17/P.16.*

5. *MLRs of injured persons are Exh. PW-17/M to Exh. PW-17/BB.*

PW-18 Ch. Muhammad Tofique special Judicial Magistrate witness of recording confessional statement of accused Rafaqat, Husnain Gul and Etizaz Shah u/s 164 Cr.P.C.

1. *Application allowed by District & Sessions Judge for recording of confessional statement of Rafaqat Hussain Exh. PW-18/A.*

2. *Thumb impressions and signatures of accused Rafaqat Hussain are Exh. PW-18/B and Exh. PW-18/B/1.*

3. 4 questions put to accused Razaqat Hussain Exh. PW-18/B-2
 4. Signatures and thumb impressions in token of correctness are Exh. PW-18/C and Exh. PW-18/C/1.
 5. Confessional statement of Razaqat accused Exh. PW-18/D.
 6. Signatures and Thumb Impressions of Razaqat accused Exh. PW-18/E and Exh. PW-18/E/1.
 7. Certificate Exh. PW-18/F.
 8. Application allowed by District & Sessions Judge for recording of confessional statement of Husnain Gul Exh. PW-18/G.
 9. Thumb impressions and signatures of accused Husnain Gul are Exh. PW-18/H and Exh. PW-18/H/1.
 10. 4 questions put to accused Husnain Gul Exh. PW-18/H-2
 11. Signatures and thumb impressions in token of correctness are Exh. PW-18/I and Exh. PW-18/I/1.
 12. Confessional statement of Husnain Gul accused Exh. PW-18/J.
 13. Signatures and Thumb Impressions of Husnain Gul accused Exh. PW-18/K and Exh. PW-18/K/1.
 14. Certificate Exh. PW-18/L.
- PW-19 Ahmed Masood Janjua Special Judicial Magistrate.
witness of recording confessional statement of accused Rasheed Hussain u/s 164 Cr.P.C.
1. Application allowed by District & Sessions Judge for recording of confessional statements of Rasheed Ahmed Turabi Exh. PW-19/A.
 2. Signatures of Tahir Ayoub as identifier Exh. P-19/B.
 3. Signatures and thumb impressions on questions put to accused Rasheed Ahmed Turabi Exh. PW-19/C
 4. The questions and answer are Exh. P-19/D.
 5. Endorsement Exh. PW-19/E
 6. Confessional statement of Rasheed Ahmed Turabi accused Exh. PW-19/F.
 7. Signatures and Thumb Impressions of Rasheed Ahmed Turabi accused Exh. PW-19/G.
 8. Certificate Exh. PW-18/H.
- PW-20 Haider Ali witness of sending the parcels to different offices.
- PW-21 Muhammad Ilyas S.I witness of personal search of accused Razaqat Hussain and Husnain Gul.

1. Defused Hand grenade recovered from the personal search of accused Husnain Gul Exh. PW-21/P.1.
 2. Recovery memo of Hand grenade Exh. PW-21/A.
 3. Detonators recovered from the personal search of accused Razaqat Hussain consist upon three parts are Exh. PW-21/P.2, Exh. PW-21/P.3/1-24, Exh. PW-21/P.4.
 4. Taxi No. BK/1427 Exh. PW-21/P.5.
 5. Recovery memo of Taxi and Detonators Exh. PW-21/B.
 6. Rs. 200 recovered from accused Razaqat Hussain Exh. PW21/P.6/1-2.
 7. One Nokia Mobile Phone alongwith SIM Exh. PW-21/P.7,
 8. Three Photographs Exh. PW-21/P.8/1-3.
 9. Negative Photograph Exh. PW-21/P.9.
 10. Registration Book of Car Exh. PW-21/P.10.
 11. Route Permit Number Exh. PW-21/C.
 12. Rs. 19288 recovered from accused Husnain Gul in denomination of Rs. 3000/- Exh. PW-21/P.12/P.1-3, two currency note of Rs. 100 Exh. Pw-21/P.14/1-2, one currency note of Rs. 50/- Exh. PW-21/P.15, one currency note of Rs. 20 Exh. PW-21/P.16, one currency note of Rs. 10 Exh. PW 21/P.17
 13. Motorola set without SIM Exh. PW-21/P.18.
 14. One Video Game upon which word mercury is mentioned Exh. PW-21/P.19.
 15. One Large Telephone diary Exh. PW-21/P.20.
 16. ID card of Husnain Gul Exh. PW-21/P.21.
 17. 5 Visiting cards of different companies Exh. PW-21/P.22/1-5.
 18. 4 Chits Exh. PW-21/P.23/1-4.
 19. Key Rings with three rings Exh. PW-21/P.24.
 20. Small Telephone Diary Exh. PW-21/P.25.
 21. Mobile Phone Nokia 1112 Exh. PW-21/P.26.
 22. SIM of Warid Exh. PW-21/P.27.
 23. Recovery memo of personal search of accused Husnain Gul Exh. PW-21/D.
 24. Pointation Memo Exh. PW-21/E
- PW-22 Usman Maftoon Manager Govt, Relation & Regulatory Officer Warid Telecom Blue Area, Isb, witness who provided the particulars of Mobile numbers 0322- 5402148, 0322-5049781 and 03215540177.

1. Letter for obtaining Mobile Data of three phones number Exh. PW-22/A.
2. Recovery memo of above said letter Exh. PW-22/B.

PW-23 Arshad Kaleem S.I witness of Seizure Memo regarding pair of shoe and socks and amputated legs.

1. *Two sandals Exh. PW-23/P.1/1-2*
2. *Socks Exh. PW-23/P.2/1-2.*
3. Recovery memo of sandals and socks Exh. PW-23/A.

PW-24 Javed Iqbal Lodhi Brigadier Retired witness who handed over a CD containing conversation between two numbers 096-5238387 and 092-8230493 wrapped in two/ three paper envelopes to Tahir Ayoub SP.

1. *Recovery memo of CD Exh. PW-24/A.*
2. *Articles parcels related to conversation between two telephone numbers Exh. PW-24/P.1.*

PW-25 Mohsin Khan 6523/C witness of sending parcels to different offices.

PW-26 Rehan Yameen 6417/C Witness of depositing finger prints to Automated Fingure Print Office, National Police Bureau, Islamabad.

PW-27 Zameer Ahmed ASI witness of recovery memos.

1. *Pistol 9 MM Exh. PW-27/P.1.*
2. *Recovery memo of Pistol 9 MM Exh. PW-27/A.*
3. *Pistol 30 bore Exh. PW-27/P.2.*
4. *Three live bullets Exh. PW-27/P.3/1-2.*
5. *Recovery memo of Pistol 30 bore and three live bullets Exh. PW-27/B.*
6. *One double can silver color Hiace vehicle Exh. PW.27/P.4.*
7. *One police van pickup Exh. PW-27/P.5.*
8. *One Pickup Elite force Exh. PW-27/P.6.*
9. *Recovery memo of above said vehicles Exh. PW-27/C.*
10. *Broken leather Jacket Exh. PW-27/P.7.*
11. *Recovery memo of broken leather jacket Exh. PW-27/D.*
12. *Empty Pistol 30 bore Exh. PW-27/P.8.*
13. *Recovery memo of pistol 30 bore Exh. PW-27/E.*
14. *Seiko Wrist Watch Exh. PW-27/P.9.*
15. *One Mobile Exh. PW-27/P.10 alongwith SIM and battery Exh. PW-27/P.11.*
16. *Visiting cards and ID cards Exh. PW-27/P.12.*

17. One broken Number Plate of Vehicle Exh. PW-27/P.13.
18. Recovery memo of above said articles Exh. PW-27/F.
19. Recovery memo of blood stained earth Exh. PW-27/G.
20. One Circuit plate Exh. PW-27/P.14.
21. Recovery memo of Circuit plate Exh. PW-27/H.
22. One Damaged landcruiser Exh. PW-27/P.15.
23. Registration Book of landcruiser Exh. PW-27/16.
24. Recovery memo of Land cruiser and registration book Exh. PW-27/J.
25. Crime Empty Exh. PW-27/P.17, 2 palates Exh. PW-27/P.18/1-2.
26. Recovery memo of crime empty and 2 palates Exh. PW-27/K.
27. One Pair coat shoe Exh. PW-27/P.19/1-2.
28. Recovery memo of one Pair of coat shoe Exh. PW-27/L.

PW-28 Muhammad Anwar DSP witness of producing certified copies of security plan regarding possession of PPP Parliamentarian on 27.12.2007 at Liaqat Bagh Rawalpindi.

Certified copy of security plan regarding procession of PPP at Liaqat Bagh Exh. PW-28/P.1/1-16.

PW-29 Farooq Ghazan S.I Police Station Westridge witness of got attested copies from the court.

1. Attested copy relating to case FIR No. 76/08 Exh. PW-29/P.1/1-7.
2. Recovery memo of attested copies Exh. PW-29/A.

PW-30* Brigadier ® Javed Iqbal Cheema Director General NCMC Ministry of Interior Govt of Pakistan Islamabad.

1. Video footage of the incident Exh. PW-24/P.1.
2. Audio Cassette of intercepted conversation by the ISI between Baitullah Masood and One Molvi Exh. PW-30/P.1.
3. X-rays report of Mohtrama Benazir Bhutto Exh. PW-30/P.2.

PW-31* Dr. Habib Ahmed Khan witness who prepared consolidated medical report dated 28.12.2007 of Mohtrama Benazir Bhutto.

1. Consolidated medical report prepared by Dr. Saeeda Yasmeen and Dr. Qudsia Anjum Qureshi Exh. PW-31/A.

PW-32*Dr. Samra Ayoub witness who examined the Mohtrama Benazir Bhutto in the RGH hospital after the occurrence.

Carbon Copy of original MLC of Mohtrama Benazir Bhutto Exh. PW-32/A

PW-33 *Dr. Nasir Khan witness who gave expert opinion on X-ray of Mohtrama Benazir Bhutto.

1. *Two Films of X-rays of BB Exh. PW-33/P.1/1-2.*
2. *Opinion of PW-33 Exh. PW-33/A.*

PW-34*Dr. Aurangzaib Khan witness who examined the Mohtrama Benazir Bhutto in the RGH hospital after the occurrence.

1. *Death Certificate of Mohtrama Benazir Bhutto Exh. PW-34/A.*

PW-35 Yasin Farooq Director FIA Islamabad witness who attended meeting on behalf of accused Saood Aziz (the then CPO, Rwp) regarding security arrangement at Liaquat Bagh.

Statement u/s 164 Cr. P.C of Yaseen Farooq recorded by Kamran Cheema Magistrate Exh. PW-35/A.

PW-36 Nouman Ashraf Deputy Director FIA Counter Terrorism Wing FIA witness who conducted forensic of two cell phones set No. SAINO E55 IMEI No. 359151010060497 and IMEI No. 359151010260493.

Forensic record/ Data of mobile phones as well as SIMs as Exh. PW-36/A to Exh. PW-36/H.

PW-37 Qamar Zaman Assistant Director/ analyst CTW FIA Head Quarter, Islamabad.

1. *Scientific detailed report Exh. PW-37/A.*
2. *Written request of Shoaib Ahmed inspector Member JIT Exh. PW-37/A/1.*

PW-38 Ashfaq Anwar SSP, supervisor of three Elite sections headed by inspector Azmat Gondal deputed for the personal security of Mohtrama Benazir Bhutto.

PW-39 Nisar Ahmed Jadoon witness of attesting the recovery memo of two mobile phones of Mohtrama Benazir Bhutto.

Recovery memo of two black berry Mobiles phone Exh. PW-39/A.

PW-40 Ejaz Hussain Shah I.O of case F.I.R No. 76/08 of PS Westridge.

Articles recovered from the personal search of accused Husnain Gul two coins of Rs. 2 each Exh. PW-40/P.1/1-2, four coins of Rs. 1 each Exh. PW-40/P.2/1-4.

PW-41* Dr. Muhammad Musadiq Khan Principal Rawalpindi Medical College and chief Executive of Technig Hospital of Rwp medical college Witness who treated Mohtrama Benazir Bhutto and declared her death.

1. Statement u/s 164 Cr. P.C of PW Dr. Musadiq Khan Exh. PW-41/A.

PW-42 Ashfaq Ahmed Khan S.I Member of JIT and witness of recovery memos.

1. Recovery memo of Jogars Chaddar, cap of Saeed alias Saeed Suicide Bomber Exh. PW-42/A.
2. One CPU Exh. PW-42/P.1.
3. Recovery memo of CPU Exh. PW-42/B.
4. Articles recovered from the personal search of accused Rasheed Ahmed Turabi as Exh. PW-42/P.2/1-5 to Exh. PW-42/P.14.
5. Recovery memo of Personal search of Rasheed Ahmed Turabi Exh. PW-42/C.
6. Data of Mobile number 0304-9684538 Exh. PW-42/P.15/1-24.
7. Recovery memo of Mobile Data Exh. PW-42/D.
8. Recovery memo of data of mobile numbers 0344-6654236, 0344-9666465 and 0346-9442498 Exh. PW-42/E.
9. Recovery memo of Data of land line number 0965-238387 and 0928-230493 Exh. PW-42/F.

PW-43 Dr. Zia ur Rehman witness who examined 23 injured persons and prepared their MLCs.

MLRs of the injured persons Exh. PW-43/A to Exh. PW-43/y.

PW-44 Muhammad Adnan S.I witness who attested the recovery memo of 8 pages of admission and Discharge / Madrasa leaving certificate register.

1. *8 pages of admission and discharge certificate of 7 students Exh. PW-44/A/1-8*
2. REcovery memo of Admission and discharge certificate Exh. PW-44/B/1-3.

PW-45 Naseer Ali Khan inspector witness who took into possession admission and Discharge / Madrasa leaving certificate register.

PW-46 Wasal Ahmed Nazim Taleemat Madrisa Haqania Akora Khatak.

Covering letter of record of different students of Jamia Darul Uloom Haqania Exh. PW-46/A.

PW-47 Sher Khan DSP ® / Manager Admin and Legal Affairs United Mobile Company, Karachi.

Letter dated 4.1.2011 addressed to Mr. G.A
Jatoi /AD/FIA Exh. PW-47/A.

PW-48 Mushtaq Hassan T/ASI witness who attested
the recovery memo of security plan No. 143821-
40/GBC Exh. PW-48/A.

Recovery memo of security plan No. 143821-
40/GBC Exh. PW-48/A

PW-49 Syed Kamal Shah Secretary Ministry of Interior
Islamabad who received
information from the DG ISI containing threats to
the life of Mohtrama Benazir Bhutto.

PW-50 Abdul Razzaq Merani Incharge Bilawal House
Cliftan Karachi witness who delivered two black
berries which were under the use of Mohtrama
Benazir Bhutto.

PW-51 Niyaz Khan inspector/ S.H.O P.S Cant DI
khan I.O of this case and witness of personal
search of accused Etizaz Shah and recovery
memos.

1. *Recovery memo of parcels of recovered
articles from Asmat Ullah and Etizaz
Shah Exh. PW-51/A.*

2. *Attested copy of complaint Exh. PW-51/B.*

3. *Signatures on the complaint Exh. PW-
51/B-1*

PW-52 Jameel Akthtar S.I Moharrar ASI P.S City
Rawalpindi.

*Roznamcha of PS City from 16.12.2007 to
4.1.2008 Exh. PW-52/P.1 -100.*

PW-53 Haji Khalid Mehmood injured PW.

PW-54 Riaz Ali Injured PW.

PW-55 Major ® Imtiaz Hussain eye witness.

PW-56 Behlol Khan Brother of one of the
accused Abdullah (since Murdered).

PW-57 Javid ur Rehman Driver of Mohtrama
Benazir Bhutto. PW-58 Kashif Riaz Khan
investigating officer inspector complainant of
this case.

Rough Site plan Exh. PW-58/A/1-4.

PW-59 Mark Alan Siegal Journalist United State of
America.

Notarised copy of Email which was sent by
Mohtrama Benazir Bhutto Exh. PW-59/P.1.

PW-60 Tariq Ilyas Kiani inspector Member of JIT.

PW-61 Tahir Ayoub investigating officer SSP
Member of JIT.

1. Photographs of the place of occurrence Exh.
PW-61/P.1-23.

2. The translation of conversation between
Molvi sab and Ameer sb from Pashto to urdu
ExhPW-61/A.

3. Technical report about the mobile data and mobile phones Exh. PW-61/B/1-2.
- PW-62 Waqar Ahmed Chohan investigating officer Member of JIT.
- PW-63 Shoaib Ahmed investigating officer DSP @ Member of JIT.
- PW-64 Azad Khan investigating officer DIG Member of JIT.
- PW-65 Khalid Rasool investigating officer AD @ FIA Member of JIT.
- PW-66 Wajid Zia investigating officer AD FIA Member of JIT.
- PW-67 Ghulam Asghar Jatui investigating officer Member of JIT.

Photocopy of notification issued by the FIA head quarter Islamabad Exh. PW- 67/A.

- PW-68 Muhammad Khalid Qureshi Head of JIT.

7. Documents tendered by the Prosecution

1. Bacteriologist report dated 14.1.2008 Exh. PB.
2. Report of Expert Doctor Touqeer about the skull bone Exh. PC.
3. Report of Chemical examiner about the blood stained Exh. PD.
4. Report of Serilogist Exh. PE.
5. Report of FSL Exh. PF.
6. Report of Chemical examiner Exh. PG.
7. Forensic examination report on cell phone and one SIM Exh. PH.
8. Molecular Biology (DNA) Test Report Exh. PJ.
9. Copy of letter of Al-Qaida threat from the directorate General ISI dated 10.12.2017 Exh. PK.
10. Copy of Report of United Nations Comission of Inquiry Exh. PL.
11. Copy of Letter of the Secretary General UNO dated 3.2.209 addressed to the president of Securty Council Exh. PM.
12. Copy of the letter of the President of Security Council of united nations Exh. PN.

8. Squat Land Yard in its report dated 8.2.2008 concluded as under:-

- a. Although not possible to "categorically... exclude" the possibility of a gunshot wound, the available evidence suggested there was no gunshotwound;
- b. Ms Bhutto died of a severe head injury caused by impact in the area of the escape hatch lip as a result of the blast; and
- c. The same individual both fired the shots and detonated the explosives.

9. Main findings of the United Commission of Inquiry into the facts of the assassination of Mohtrama Benazir Bhutto which is available on record as Exh. PL as under:-

- i. After nine years in exile, former Prime Minister Mohtarma Benazir Bhutto returned to Pakistan on 18 October 2007, during an exceptionally violent year, marked by sharp increases in violence carried out both by Islamist extremists and by the state. She returned in the context of a tenuous and inconclusive political agreement with General Pervez Musharraf, as part of a process encouraged and facilitated by the governments of the United Kingdom and the United States. While their discussions included the issue of an eventual power sharing arrangement, the final terms were never agreed. Indeed, the Commission received no compelling evidence that, by the time of her assassination, either Ms Bhutto or General Musharraf believed that she or he still needed the support of the other to achieve their ultimate political goals.
- ii. Ms Bhutto was murdered on 27 December 2007 when a 15 and a half year-old suicide bomber detonated his explosives near her vehicle as she was leaving the PPP event at Liaquat Bagh. No one believes that this boy acted alone. A range of government officials failed profoundly in their efforts first to protect Ms Bhutto and second to investigate with vigour all those responsible for her murder, not only in the execution of the attack, but also in its conception, planning and financing.
- iii. Responsibility for Ms Bhutto's security on the day of her assassination rested with the federal Government, the government of Punjab and the Rawalpindi District Police. None of these entities took necessary measures to respond to the extraordinary, fresh and urgent security risks that they knew she faced.
- iv. The federal Government under General Musharraf, although fully aware of, and tracking, the serious threats to Ms Bhutto's security, did little more than pass on those threats to her and provincial authorities and were not 61 proactive in neutralizing them or ensuring that the security provided was commensurate to the threats. The federal Government failed in its primary responsibility

to provide effective protection to Ms Bhutto on her return to Pakistan.

- v. The federal Government lacked a comprehensive security plan for Ms Bhutto, relying instead on provincial authorities, but then failed to issue to them the necessary instructions. Particularly inexcusable was the Government's failure to direct provincial authorities to provide Ms Bhutto the same stringent and specific security measures it ordered on 22 October 2007 for two other former prime ministers who belonged to the main political party supporting General Musharraf. This discriminatory treatment is profoundly troubling given the devastating attempt on her life only three days earlier and the specific threats against her which were being tracked by the ISI.
- vi. Ms Bhutto's assassination on 27 December 2007 could have been prevented if the Rawalpindi District Police had taken adequate security measures. The security arrangements for Ms Bhutto by the Rawalpindi District Police were ineffective and insufficient. The police's security plan, as written, was flawed, containing insufficient focus on Ms Bhutto's protection and focusing instead on the deployment of police for crowd control purposes. In many respects, the security plan was not implemented. Although the plan called for deploying 1,371 police officers, the actual deployment did not approach that number. Among other failings: the police co-ordinated poorly with the PPP's own security; police escort units did not protect Ms Bhutto's vehicle as tasked; parked police vehicles blocked the emergency route; and, the police took grossly inadequate steps to clear the crowd so that Ms Bhutto's vehicle would have safe passage on leaving Liaquat Bagh. The performance of individual police officers and police leadership was poor in areas of forward planning, accountability and command and control.
- vii. The additional security arrangements of the PPP lacked leadership and were inadequate and poorly executed. The Commission recognizes the heroism of individual PPP supporters, many of whom sacrificed themselves to protect Ms Bhutto. However, Ms Bhutto was left vulnerable in a severely damaged vehicle that was unable to transport

her to the hospital by the irresponsible and hasty departure of the bullet-proof Mercedes-Benz which, as the back-up vehicle, was an essential part of her convoy.

- viii. The Rawalpindi District Police's actions and omissions in the immediate aftermath of the assassination of Ms Bhutto, including the hosing down of the crime scene and failure to collect and preserve evidence, inflicted irreparable damage to the investigation. The collection of 23 pieces of evidence was manifestly inadequate in a case that should have resulted in thousands. The one instance in which the authorities reviewed these actions, the Punjab committee of inquiry into the hosing down of the crime scene was a 62 whitewash. Hosing down the crime scene so soon after the blast goes beyond mere incompetence; it is up to the relevant authorities to determine whether this amounts to criminal responsibility. Furthermore, CPO Saud Aziz impeded some Joint Investigation Team investigators from conducting on-site investigations until two full days after the assassination. The failure of provincial authorities to otherwise review effectively the gross failures of the senior Rawalpindi police officials and deal with them appropriately constitutes a broader whitewash by Punjab officials.
- ix. The deliberate prevention by CPO Saud Aziz of a post mortem examination of Ms Bhutto hindered a definitive determination of the cause of her death. It was patently unrealistic for the CPO to expect that Mr Zardari would allow an autopsy on his arrival in Pakistan at Chaklala Airbase nearly seven hours after his wife's death and after her remains had been placed in a coffin and brought to the airport. The autopsy should have been carried out at Rawalpindi General Hospital long before Mr Zardari arrived.
- x. The Commission is persuaded that the Rawalpindi police chief, CPO Saud Aziz, did not act independently of higher authorities, either in the decision to hose down the crime scene or to impede the post-mortem examination.
- xi. The Government press conference conducted by Brigadier Cheema on 28 December 2007, the day after the assassination, was ordered by General Musharraf. The Government's

- assertion that Ms Bhutto's death was caused when she hit her head on the lever of her vehicle's escape hatch and that Baitullah Mehsud and Al-Qaida were responsible for the suicide bomber were made well before any proper investigation had been initiated. This action preempted, prejudiced and hindered the subsequent investigation.
- xii. An unequivocal determination as to the cause and means of Ms Bhutto's death would have required an autopsy. The Commission has uncovered no new evidence to suggest a gunshot injury to Ms Bhutto. Instead, a senior PPP official who publicly purported soon after the assassination to have seen indications of a bullet injury admitted to the Commission that she did not have direct knowledge of such an injury.
 - xiii. Ms Bhutto faced serious threats in Pakistan from a number of sources; these included Al-Qaida, the Taliban and local jihadi groups, and potentially from elements in the Pakistani Establishment. Notwithstanding these threats, the investigation into her assassination focused on pursuing lower level operatives allegedly linked to Baitullah Mehsud. The Commission finds it disturbing that little was done to investigate Baitullah Mehsud himself, Al-Qaida and any individuals or organizations that might have worked on, supported or otherwise been involved directly or indirectly in the planning or execution of the assassination. Investigators also dismissed the possibility of involvement by elements of the Establishment, including the three persons 63 identified by Ms Bhutto as threats to her in her 16 October 2007 letter to General Musharraf.
 - xiv. The Commission has identified other significant flaws in the Joint Investigation Team investigation led by the Punjab Additional Inspector General Abdul Majeed. It lacked direction, was ineffective and suffered from a lack of commitment to identify and bring all of the perpetrators to justice. This delay further hampered the gathering of evidence. Despite indications that there are links between the Karachi and Rawalpindi attacks, there has essentially been no communication between the investigators on those two cases.
 - xv. The investigation was severely hampered by intelligence agencies and other government

officials, which impeded an unfettered search for the truth. Despite their explanation to the Commission that they do not have a mandate to conduct criminal investigations, intelligence agencies including the Inter-Services Intelligence agency (ISI) were present during key points in the police investigation, including the gathering of evidence at the crime scene and the forensic examination of Ms Bhutto's vehicle, playing a role that the police were reluctant to reveal to the Commission.

- xvi. More significantly, the ISI conducted parallel investigations, gathering evidence and detaining suspects. Evidence gathered from such parallel investigations was selectively shared with the police. What little direction police investigators had was provided to them by the intelligence agencies. However, the bulk of the information was not shared with police investigators. In fact, investigators on both the Karachi and Rawalpindi cases were unaware of information the ISI possessed about terrorist cells targeting Ms Bhutto and were unaware that the ISI had detained four persons in late October 2007 for the Karachi attack.
- xvii. More broadly, no aspect of the Commission's inquiry was untouched by credible assertions of politicized and clandestine action by the intelligence services – the ISI, Military Intelligence, and the Intelligence Bureau. On virtually every issue the Commission addressed, intelligence agencies played a pervasive role, including a central involvement in the political negotiations regarding Ms Bhutto's return to Pakistan and the conduct of the elections.
- xviii. The Commission believes that the failures of the police and other officials to react effectively to Ms Bhutto's assassination were, in most cases, deliberate. In other cases, the failures were driven by uncertainty in the minds of many officials as to the extent of the involvement of intelligence agencies. These officials, in part fearing involvement by the intelligence agencies, were unsure of how vigorously they ought to pursue actions that they knew, as professionals, they should have taken.

10. While recording statement u/s 342 Cr. P.C, all the accused persons had not opted to produce their defence evidence neither they opted to appear on

oath as their own witness u/s 340(2) Cr. P.C, however, while answering to the question **“Why this case was registered against you and why the PWs have deposed against you”?** the accused Saood Aziz answered as under:-

“It is the result of over-anxiety ulterior motives and malafides of somebody who was interested in giving cover to the real facts and that is the reason, Rehman Malik was posted as Minister of Interior to safeguard the appointment of Khalid Qureshi as head of JIT FIA and investigation was illegally transferred to FIA from JIT Punjab. It reflects human greed to win laurels out of illegal investigations at the hands of ghosts. Somebody should be thankful to change circumstances and this is how a man goes to high position with the help of devils around. Had BB been alive, could somebody else had been on the throne of power. Such person should be thankful to Rehman Malik who did not bother to examine himself but remained on the back of bad elements and they could not move right or left other than desires of the high-ups”.

11. Accused Husnain Gul replied to the said question as under:-

“I was arrested on 5.1.2008 from Harly Street , Rawalpindi by the people of civil clothes, I was remained in the illegal custody till a false case FIR No. 76 /08 was registered against me. The local police just to show their efficiency and Karguzai falsely roped my in this case. Actually, the Ex- Prime Minister late Benazir Bhutto in her life time named some highups for her expected murder due to the high position of these people , JIT was not interrogated then instead of them being fellow falsely ropped me and my cousin. In such a way the highups were not interrogated and I am in the lockup for the last about 9 years without any mistake or fault. Prosecution did not provide any single evidence which connect me in the case”.

12. Rest of the remaining accused persons while giving answer to the above said question, denied all the allegations against them and claimed their innocence.

- 13.** Net shell of the arguments of the learned Special Public Prosecutors Muhammad Azhar Chaudhary and Kh. Imtiaz Ahmed are that prosecution has successfully proved its case against the accused persons beyond any shadow of doubt on the basis of call data intercepted by the ISI official between Baitullah Masood Ameer of Tehrek-e-Talban Pakistan and one Molvi, the confessional statements of the accused persons Razaqat Hussain, Husnain Gul, Rasheed Ahmed and Etizaz Shah, forensic analysis of cell phones of the accused persons alongwith oral evidence coupled with their statements u/s 164 Cr. P.C submitted that the murder of Mohtrama Benazir Bhutto was a result of a conspiracy in connivance of all the accused persons with each other and they deserve no leniency and lastly prayed for the conviction of the accused persons .
- 14.** Mr. Jawad Khalid advocate Learned defence counsel for the accused Razaqat Hussain, Husnain Gul and Sher Zaman and Mr. Rao Abdul Raheem advocate learned defence counsel for the accused Rasheed Ahmed Turabi argued that prosecution case was full of doubts and contradictions, so called confessional statements of the accused u/s 164 Cr. P.C were bogus and fabricated. That the cell phone call data as alleged by the prosecution was not proved and do not connect the accused persons with the offences in any manner. That the DNA reports were infact relating with the deceased Mohtrama Benazir Bhutto and even that was not produced before the court. That the call record/ data allegedly intercepted by the ISI officials was not proved as the ISI official who allegedly intercepted the said call Muhammad Ismail was not produced in the court and the alleged contents of the said call between Bait-ullah Masood and one Molvi does not disclose even the name of Mohtrama Benazir Bhutto or the name of the accused persons. That the prosecution itself was confused and was leading into three different divergons. That the poor persons had been made scapegoat to save the real culprits. That the prosecution has failed to prove any conspiracy regarding the murder of Mohtrama Benazir Bhutto by the accused. That as per

alleged motive in the confessional statements of the accused was that they wanted to get revenge of the killing of the Lal Masjid incident from the government officials was contrary to the prosecution story because Mohtrama Benazir Bhutto was not part of government at that time and lastly prayed for their acquittal

- 15.** Malik Rafique Khan advocate learned defence counsel for the accused Saood Aziz (the then CPO, Rawalpindi) and Khurram Shahzad (the then SP Rawal) argued that prosecution has miserably failed to prove any conspiracy for the murder of Mohtrama Benazir Bhutto. That both the police officers were upright having brilliant record of their service. That the observation made by his Lordships in bail order dated 5.4.2011 passed by the Hon'ble Lahore High Court must be considered in their favour as said order had attained the finality and it was never challenged by the prosecution. That although place of occurrence was washed but after collecting all the necessary evidence from the crime scene. That since the place of occurrence is very busy road and after the occurrence people had started rushing to the place of occurrence where Mohtrama Benazir Bhutto had died due to which decision of washing the place of occurrence was taken and same was correct. That unfortunately the man who was responsible for taking such kind of decision was DSP Ishtiaq who had received injuries and had been shifted to the hospital and in his absence, the concerned S.H.O of the P.S City Kashif Riaz inspector was responsible. That there was no malice or malafide behind the decision taken by the accused Khurram Shahzad regarding washing of crime scene because no evidence had last due to washing the crime scene. That the statements of the PWs Kashif Riaz Complainant, Dr. Abdul Rehman District Emergency officer Rescue, Khalid Qureshi DG FIA Head of JIT, Ghulam Muhammad Assistant Fire Officer Rawalpindi have supported the version of the accused Khurram Shahzad. That the prosecution has failed to prove any negligence on the part of the accused Saood Aziz and Khurram Shahzad. That the postmortem of Mohtrama Benazir Bhutto was not conducted only due to the reason that her husband Mr. Asif Ali Zardari

had not given permission to do so and even otherwise non conducting the postmortem of Mohtrama Benazir Bhutto was not fatal for the prosecution because required medical evidence including MLR and X-rays of Mohtrama Benazir Bhutto had already been obtained which were later on proved to be sufficient to give the cause of death of Mohtrama Benazir Bhutto mentioned in the consolidated report of doctors of RGH. That the role of Dr. Musadiq while dealing with the dead body of Mohtrama Benazir Bhutto was dubious, non professional and incompetent.

16. That the Rehman Malik was the Security Advisor and Incharge of the security of Mohtrama Benazir Bhutto as per internal decision of the official of Pakistan People Party and Major ® Imtiaz SSP was the officer Incharge officially deputed for her security. They both were inside the vehicle at the time of occurrence, who should have stopped Mohtrama Benazir Bhutto not to expose herself from the vehicle but they have not fulfilled their responsibility. That the main beneficiaries after the death of Mohtrama Benazir Bhutto were Mr. Asif Ali Zardari who had become President of Pakistan in the consequence of the occurrence and Rehman Malik who had become Interior Minister were to be interrogated as an accused but non of the investigating agency bother to join them in the investigation and lastly prayed for the acquittal of the accused persons.

17. Arguments heard record perused.

18. Perusal of record reveals that total 15 names of the accused persons were mentioned in the report u/s 173 Cr. P.C, amongst them accused Baitullah Masood, Ubaid Ur Rehman, Abdullah, Nasarullah, Nadir alias Qari Ismail were reported to be killed and the accused Faiz Muhammad and Ikram Ullah were mentioned as proclaimed offender. The remaining accused who had faced trial can be divided into three categories for the purpose of judicial scrutiny of evidence available on the record against them as mentioned below:-

First set of the accused persons namely:

1. Rifaqat Hussain
2. Husnain Gul
3. Etizaz Shah

4. Sher Zaman
5. Rasheed Ahmad

Second set of the accused persons namely:

1. Syed Saood Aziz the then CPO Rawalpindi.
2. Khurram Shahzad the then SP Rawal town Rawalpindi.

Third set of the accused namely:

General ® Syed Pervaiz Musharaf the then President of Pakistan.

19. The prosecution has leveled allegations of hatching a criminal conspiracy for the murder of Mohtrama Benazir Bhutto against all the accused persons with further specific allegation against the accused persons Rifaqat Hussain, Husnain Gul, Rasheed Ahmed and Etizaz Shah that they were handlers with logistic support by aiding, abetting, terrorism and murder of Mohtrama Benazir Bhutto and also that they had conceded the information about the commission of crime. The allegations against the two police officials Saood Aziz the then CPO and Khurram Shahzad the then SP that they had caused breach of security by deliberately withdrawing Ashfaq Anwar ASP who was deputed for the Mohtrama Benazir Bhutto's escort duty. Destruction of evidence by ordering the crime scene to be washed and avoided to get conduct postmortem of Mohtrama Benazir Bhutto.

20. The first point to be determine is whether the prosecution has succeeded in proving the alleged criminal conspiracy for the murder of Mohtrama Benazir Bhutto.

section 120-A PPC gives the defination of a criminal conspiracy as under:-"When two or more persons agree to do, or cause to be done, (1) an illegal act, or (2) an act which is not illegal by illegal means such an agreement is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

To establish the conspiracy, prosecution has to prove beyond all reasonable doubt agreement between the accused persons to kill the deceased.

21. In this regard prosecution produced PW-30 Bregadiar ® Jawed Iqbal Cheema who stated that on 28.12.2007 he was Director General NCMC Ministry of Interior Govt of Pakistan Islamabad and he was called to attend

a meeting at ISI head office Islamabad, the relevant portion of his statement is reproduced as under:-

"The meeting was attended by DG ISI, DG IB and DG MI, in the leading to the assassination of Mohtrama Benazir Bhutto. I and secretary Interior was further told that, it was decided in the meeting, Chaired by the President that all facts known to the intelligence agencies so far should be shared to the public through a press briefing by me as spokesman Ministry of Interior.

During the meeting, we were given a briefing by DG(C), Major General Nusrat Naeem in which the following material was handed over to me.

1. Video footage of the incident PW- 24/P1.
2. Audio cassette of intercepted conversation by the ISI between Baitullah Masood and one Molvi PW-30/P1.
3. X-Rays report (radiologist report) of Mohtarma Benazir Bhutto PW-30/P2."

22. The crux of his statement was that he disclosed an important fact about a conversation between Bait Ullah Masood and one Molvi which was intercepted by the ISI. The said conversation was translated into Urdu language by the PW Mr. Tahir Ayoub the then SP investigation Exh. PW-61/A. Before coming to the contents of the said conversation between Baitullah Maood and one Molvi, it is important to mention here that PW-30 Brigadier ® Javed Iqbal Cheema had nowhere in his statement mentioned the source as well as the manner of intercepting the alleged conversation between Baitullah Masood and one Molvi. He had only mentioned that he attended a meeting in the ISI head quarter where he was handed over the video footage of the incident, an audio cassette of the intercepted conversation and an X-ray report of Mohtrama Benazir Bhutto. He had not mentioned any where as to the person who had recorded the alleged conversation, however, on serial number 100, the name of Mr. Ismail operator ISI was mentioned in the report u/s 173 Cr. P.C. Surprisingly said witness was given up by the prosecution and was not produced in the witness box.

Article 129 of Qanun e Shahadat 1984, Court may presume existence of certain facts: The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human

conduct and public and private business, in their relation to the facts of the particular case.

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it ;

Thus it is presumed by this court that the giving up of the said witness by the prosecution goes against them.

23. Perusal of the statements of PW-61 Tahir Ayoub SP investigation/ member of JIT (1) reveals that on 4.1.2008 a CD Exh. PW-30/P.1 containing telephone intercept in Pashto language between Baitullah Masood and one Molvi was translated by him into Urdu language but the question still remains as to what was the source of knowledge and who had recorded the audio of the said conversation? The conclusion drawn by this court, to the extent of the conversation between Baitullah Masood and one Molvi was not proved by the prosecution as there was no direct evidence presented.

24. Before discussing and evaluating the legal authenticity of the confessional statements of the accused Rafaqat Hussain, Husnain Gul, Rasheed Ahmed and Etizaz Shah, the relevant provision of law articles 37 of Qanun e Shadat order 1984, section 164 Cr. P.C and section 364 Cr. P.C are mentioned below for the purpose of ready reference:-

Article 37 of Qanun-e-Sahadat order

1984.

“Confession caused by inducement, threat or promise, when irrelevant in criminal proceeding: A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him”.

Section 164 Cr. P.C .

Any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Provincial

Government may, if he is not a police-officer, record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial.

[(1A) Any such statement may be recorded by such Magistrate in the presence of the accused, and the accused given an opportunity of cross-examining the witness making the statement.]

(2) Such statement shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and statements of confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, questioning the person making, it, he has reasons to believe that it was made voluntarily; and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect: 'I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and, I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

364 Cr. P.C.

(1) Whenever the accused is examined by any Magistrate or by any Court other than a High Court the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English; and such record shall be shown or read to him or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he

- understands, and he shall be at liberty to explain or add to his answers.
- (2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused.
- (3) In a case in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound as the examination proceeds, to make memorandum thereof in the language of the Court or in English, if he is sufficiently acquainted with latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.
- (4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

25. So far as the confessional statements of the accused Rafaqat Hussain, Husnain Gul, Rasheed Ahmed and Etizaz Shah are concerned, all of them have disowned their confessional statements in their statements before this court u/s 342 Cr. P.C. Prosecution has brought confessional statement of these accused persons on record as Exh. PW-18/D, Exh. PW-18/J and Exh. PW-11/B (Juvenile trial) recorded by Ch. Muhammad Toufique Magistrate who appeared as PW-18 and PW-11 (in Juvenile trial) and confessional statement Exh. PW-19/E of the accused Rasheed Ahmed which was recorded by the PW-19 Mr. Ahmed Masood Janjua Special Judicial Magistrate. Perusal of record reveals that accused Rafaqat Hussain and Husnain Gul were arrested on 7.2.2008 and their confessional statements were recorded on 13.2.2008 with the delay of 6 days. Accused Etizaz Shah was arrested on 21.1.2008 and his confessional statement was recorded on 16.2.2008 with the delay of 27 days and the accused Rasheed Ahmed was

arrested on 14.2.2008 and his confessional statement was recorded on 15.2.2008 with the delay of one day, the captivity of these accused persons has created doubts into the credibility of their confessional statements. As per principle laid down by the Superior courts while recording the confessional statements that too in crimes entailing the capital punishment, certain precautions were to be observed by the Magistrate.

- (i) All the signs of fear inculcate by the investigating agency in the mind of the accused were to be shed out with the assurance that the accused would not be handed over back to the police.
- (ii) Accused must be given surety that he was in safe hands.
- (iii) That all the police officials whether in uniform or otherwise including Naib courts of the court must be kept out side the court room beyond the view of the accused.
- (iv) Volunteer nature of the confession must be assured and confessional statement should be read over to the accused in his own language and if the accused is juvenile then he must be provided access to consultation by his blood relatives that the pre requisite for accepting the confessional statement was its volunteer nature and that too was based on true facts leading to the crime which should be proved in the trial. While keeping in view the above said principles, the confessional statements of the accused persons have been scrutinized as mentioned below:-

26. The accused Etizaz Shah was minor and was separately tried under the Juvenile justice System Ordinance 2000 who remained in the custody of the police for 27 days and was produced by Tahir Ayoub SP before the Magistrate alongwith other police officials who were standing out side the court room. The Magistrate had not asked the accused even date of his arrest in the case. Accused was not asked whether he wanted to consult any of his blood relatives. The age of the accused was mentioned as 19 years old which was factually incorrect as later on he was found juvenile at the time of occurrence. The accused was handed over to the Naib court by the Magistrate after recording his confessional statement to send him to judicial lockup. PW Tahir Ayoub admitted in his cross examination that he did not state before the Chairman JIT Khalid Qureshi about recording the confessional statement of the accused Etizaz Shah which created further doubts in the veracity of the confessional statement of the accused. Therefore, in light of the above, the said confessional statement of the accused Etizaz Shah is hereby disbelieved under the law.

27. On the other hand, PW Waqar Ahmed Chohan member of JIT had stated that on 21.1.2008 he alongwith DSP Saddar and DSP CTD went to DI Khan Where Bashir Hussain A.S.I had already arrested the accused Etizaz Shah and Sher Zaman in case FIR No. 23/08 u/s 7 of Anti Terrorism Act P.S Cantt Dera Ghazi Khan. Perusal of the contents of said FIR No. 23/08 u/s 7 ATA PS Cantto reveals that accused Etizaz Shah alongwith one Asmat Ali were intercepted by the DI Khan police when they were coming in a un registered car and FIR u/s 7 ATA was got registered against them. Hence, the question arises as to how the police registered an FIR under ATA when there were no allegations regarding their involvement in any kind of terrorism as is evident from perusal of the contents of the FIR No. 23/08. This fact alone was sufficient to create doubt in the prosecution story. The prosecution also remains silent and ignorant about the co accused Asmat Ali, who was also arrested by the DI Khan police alongwith the accused Etizaz Shah.

28. So far the confessional statement of the accused Rasheed Ahmed is concerned, his arrest was shown on 14.2.2008 and he was produced for recording his confessional statement by Tahir Ayoub SP, however, Tahir Ayoub SP has nowhere mentioned in his statement that it was he who had produced Rasheed Ahmed before the Magistrate for recording his confessional statement and he remained silent to this extent. Even otherwise contents of his alleged confessional statement reveals that he had nowhere admitted to his participation in the alleged conspiracy or commission of occurrence in any manner whatsoever, rather he stated that he was involved in the incident of Missile Attack on Airnotical base and a separate case FIR No. 14/08 was registered against him, but in the said case accused Rasheed Ahmed had already been acquitted vide judgment dated 29.4.2010 in case FIR No. 14/08 P.S Saddar Attock by the then Judge Anti Terrorism Court No.I, Rawalpindi.

29. To the extent of confessional statements of accused persons Husnain Gul and Rifaqat Hussain as per record their arrest was shown on 7.2.2008 when they were intercepted by the PS Westridge Rawalpindi police and recovery of one detonator, 30 live bullets of 30 bore pistol, one missed bullet and hand grenade were allegedly recovered and case FIR No. 76/08 PS Westridge was got registered against them. Recovery of above said explosive was not shown in the present case. Later on both the accused persons were produced before the Magistrate for recording their confessional statement by the Tahir Ayoub SP PW-61 on 13.2.2008. Perusal of record reveals that the arrest of both these accused Husnain Gul and Rifaqat Hussain were shown in almost all the reports submitted by the FIA including final report u/s 173 Cr. P.C as "5.1.2008" and their alleged confessional statement was recorded on 13.2.2008 with almost delay of 1 month and 8 days. During this period they remained in custody with the police which has created doubts as to the voluntary status of their alleged confessional statements. It is also important to mention here that PW-62 Waqar Ahmed Chohan AIG who was member of JIT / I.O had clearly stated that

***"I interrogated the accused persons
Rafaqat Hussain and Husnain Gul on
the first day when I obtained their physical
remand i.e 8.2.2008 and 20.2.2008"***

It shows that both the accused persons Rafaqat Hussain and Husnain Gul remained in police custody on 20.2.2008 after the recording of their alleged confessional statements which was recorded on 13.2.2008 instead of being sent to judicial lockup, both the accused persons remained in police custody. This was contrary to the basic principle laid down by the Superior courts and has made out the alleged confessional statements of these accused's as an inadmissible piece of evidence. In view of the above said discussion, the confessional statements of the accused persons which were brought on the record by the prosecution are inadmissible piece of evidence and are not sufficient for the purpose of conviction in this case. Since this court has disbelieved the confessional statements of the accused Etizaz Shah wherein he had allegedly mentioned the name of co accused Sher Zaman only to the extent that he was coming to meet him. No other relevancies or involvement of the accused Sher Zaman regarding hatching in criminal conspiracy for the murder of Mohtrama Benazir Bhutto were attributed.

30. Now coming to the extent of alleged recoveries of one pair of Jogars, Chaddar and a cap of the suicide Bomber allegedly effected from the accused Husnain Gul. It is also important to mention here that non of these articles were produced during the trial in the court as it was stated by the PW-42 Ishfaq Ahmed SI that said articles were sent for DNA test but again surprisingly no DNA report regarding the matching of these articles was ever produced before the court, it indicates that on each and every step prosecution had failed to continue the chain of facts to connect the accused persons in criminal conspiracy for the murder of Mohtrama Benazir Bhutto and their involvement in the occurrence.

31. Another aspect of the prosecution evidence was based upon was call record data of all the phone numbers allegedly attributed to the accused persons and 2 diaries containing telephone numbers allegedly

recovered from the accused Husnain Gul, to prove the link between all the accused persons. In this regard statement of PW-37 Qamar Zaman Assistant Director / analyst CTW FIA is very much relevant wherein he stated that Shoaib Ahmed inspector handed over to him the call record data of mobile number of Nasarullah, Rifaqat Hussain accused, Qari Ismail, Abdul Rehman, Mazhar ud Deen, Husnain Gul accused and Shah Wali Khan for analysis of the connection between the accused and their location who prepared detail report Exh. PW-37/A. During cross examination only one question was put to this witness and in reply he admitted that he had not verified ownership of the cell phone numbers provided to him by the I.O for call record analysis. Therefore, in absence of evidence to the extent of ownership of these cell numbers, there was no question to believe the report Exh. PW.37/A and the statement of PW-37 Qamar Zaman, thus he was of no use to establish the link between accused persons regarding their location.

32. Another witness which is relevant to be discussed was PW-13 Asif Manager co-ordination of ufone head office Islamabad who stated in his statement that the number 0332-5609682 as per his record was in the name of Muhammad Sultan resident of Aibtabad and other Ufone number 0331-5013836 was in the name of some unknown person. Said Muhammad Sultan was never interrogated and joined into the investigation by any of the agency during investigation of this case regarding the unknown number.

One of the number was a land line number 051-5575823 as per statement of PW-7 Mirza Sarfraz employee of PTCL, the said number was found in the name of one Ghulam Abbas PW-8 who appeared in the witness box and stated that the said number was got installed by him in July 2000 on his residence and in the year 2003 a portion of his house was rented out to one Sabir Hussain who was father of the accused Rifaqat Hussain and father in law of accused Husnain Gul. Prosecution had not established that the portion of the house of Ghulam Abbas was rented to Sabir Hussain. Neither any rent agreement nor any independent witness from

the locality was produced to establish this fact and it was also not established through evidence that the accused Razaqat Hussain and Husnain Gul were residing in the said house. Said telephone number continued in the name of Ghulam Abbas up till February 2009, even after 3 years of the occurrence.

Therefore, prosecution has failed to establish any link between these numbers as allegedly related with the accused.

33. For placing reliance on circumstantial evidence, in cases involving capital punishment, such evidence must be of nature, where, all circumstances must be so inter-linked, making out a single unbroken chain, where one end of same touches dead body and other the neck of accused--Any missing link in chain would destroy whole and would render same unreliable for recording a conviction on a capital charge--In cases of circumstantial evidence, there were chances of procuring and fabricating evidence, therefore, Courts are required to take extra care and caution to narrowly examine such evidence with pure judicial approach to satisfy itself, about its intrinsic worth and reliability, also ensuring that no dishonesty was committed during course of collecting such evidence by investigators--Where there were apparent indications of designs on part of investigating agency in preparation of a case resting on circumstantial evidence, Court must be on its guard against trap of being deliberately misled into a false inference--Court's failure to observe such care and caution would be a failure of justice. No one could be convicted on the basis of presumption, however strong it may be, as same cannot be substituted for real evidence/proof.

34. Therefore, it is concluded to the extent of criminal conspiracy that prosecution has miserably failed to prove any of the ingredients and links between all the accused persons namely Razaqat Hussain, Husnain Gul, Sher Zaman, Rasheed Ahmed and Etizaz Shah to constitute offence u/s 120-B/302/34 PPC. As far as the accused General @ Pervaiz Musharaf is concerned his trial has already been separated and would be decided at the time of commencement of his trial.

35. The second set of accused persons were Saood Aziz the then CPO , Rwp and Khurram Shahzad the then SP Rawal town, Rawalpindi. The prosecution mainly leveled 3 allegations against them. That they had caused a breach of security by deliberately withdrawing Ashfaq Anwar the then ASP who was deputed with a specific task of Mohtrama Benazir Bhutto's escort duty. That they disclosed the destruction of evidence by ordering the washing of crime scene and that they avoided to get conduct postmortem of Mohtrama Benazir Bhutto and in this regard relied upon the following evidence:-

PW-15 Ghulam Muhammad Naz Assistant Fire officer Rwp, the relevant portion of his statement is re produced as under:-

" At about 6.20 PM, one A.S.I who was in uniform but his name was not written on his badge, therefore, I do not know his name and he said that the SP is saying that they have collected the evidence and that we should wash the blood from the crime scene. I then met a Dr. Abdul Rehman PW and told him what the A.S.I was telling us, but he told me that we should not do so until we are not informed to do it. Dr. Abdul Rehman went to the police officer who was standing at some distance near Liaquat Memorial. After 10 minutes, Dr. Abdul Rehman came back and said that the name of police officer was Khurram Shahzad and he was SP Rawal Town and he told me that according to the SP they have collected all the incriminating evidence and that we should wash the blood from the spot. Dr. Abdul Rehman further told me that he had asked the SP to further confirmed the washing of spot upon which the SP talked to someone on his mobile phone and he told Dr. Abdul Rehman that the place be washed."

PW-16 Dr. Abdul Rehman District Emergency, Punjab Emergency Service Rescue 1122, the relevant portion of his statement is re produced as under:-

"After some time, I saw Mr. Ghulam Muhammad Naz Assistant Fire officer City District Government opening up the hose of fire vehicle and started washing of incident site. I went to him and stopped him. I said what are you doing, he replied that police was asking him to hose down the crime scene. I said please wait and let me asked from some senior officers in this regard. I was accompanied with Mr. Walayat Satti who was one volunteer of civil defence office, Rwp.I went to SP Khurram Shahzad present in the court, who was standing at the incident side. I said what is the next order for us. He said OK, scene is clear and you can wash it, before saying that he also called someone from his mobile phone"

PW-35 Yaseen Farooq who attended the security arrangement meeting, the relevant portion of his statement is re produced as under:-

"It is correct that I had mentioned in my statement u/s 164 Cr. P.C at page No. 11 Exh. PW-36/A that the motorcade comprising upon 3 vehicle a head of Mohtrama Benazir Bhutto quickly went towards Islamabad and two other vehicles were behind her Jeep, we were not informed that her vehicle would stop there. I noticed that Ishfaq Anwar ASP was not there and the vehicle of Elite force was also not visible, which was alarming"

PW-38 Ishfaq Anwar the then ASP Supervisor of 3 elite sections and deputed Incharge for the security of Mohtrama Benazir Bhutto, the relevant portion of his statement is re produced as under:-

"I received call on my cell phone of Saood Aziz the then CPO (accused present in the court) who ordered me to reach Koral Chowk alongwith two stand by reserves of police, because of an incident of firing took place on Islamabad express way"

PW-41 Dr. Musadiq principal Rawalpindi Medical college and chief executive of teaching Hospital Rawalpindi, the relevant portion of his statement is re produced as under:-

"Autopsy was required to determine what was the exact cause was this wound and what was the extent of injuries to the brain and if there was any other injury that was missed. Those things would have established the exact cause of death. Post mortem examination would have included detailed forensic examination of the would alongwith necessary examination,including examination of brain. That was to be conducted by a team specified for such purpose i.e forensic team. All the dead bodies requiring autopsy in RGH hospital were done at Dist Headquarter Hospital , Rwp and the dead bodies are to be shifted there for autopsy.

In criminal cases, the police request for post mortem examination and the body is shifted to DHQ , Rwp under their supervision for the post mortem. There was a lot of crowd present out side the operating room and they were continually trying to enter in the room and most of the efforts by the hospital administration were being directed towards controlling this crowd, as police was not present in the operating room. There was pressure because other causalities were being brought in, so much so that , an injured person was brought in the operating room by the family members, where body of Mohtarma Benazir Bhutto was lying. That person was shifted to the next operating room and his operation was carried out there.

Later, After Mohtarma Benazir Bhutto was declared dead, discussion was held with then CPO Saood Aziz accused present in court, about post mortem of Mohtarma Benazir Bhutto . His response was that F.I.R is prerequisite for an autopsy and he asked me , "Has F.I.R been lodged?". I asked him how would I know. The UN commission in its report has described this (conduct of CPO) is as, a sarcastic response of the CPO. (under objection) I however, would only confined to the facts and not draw any inferences as per as the thinking of CPO was concerned. The UN commission had attributed this interaction to the time , the request was made a second time. I however, recollected vividly that this interaction took place while request was made for the first time.

Discussion was held amongst the medical personnel, present there and a clear need for autopsy was felt. 2 portable X-rays of her head had been taken. The then CPO (Saood Aziz accused present in court) was again approached and it was suggested to him that the detailed forensic examination of the wound be carried out so that the exact cause of wound could be determined. His response was, that Mr. Ameen Fahim has directed that MR. Asif Ali Zardari would make a decision about the post mortem. At later stage, at third time discussion about the autopsy by held Mr. Saood and his response was that the decision of the holding of autopsy was not the domain of the treating doctors. We did not discuss this issue with then CPO(accused) after that. During all my discussion there were other doctor present. I recalled that Mr. Irfan Elahi then DCO , Rwp was also present in the hospital during that time but I am not certain whether he was present near by when those discussion was taking place. We did not however, discuss this issue specifically with him, as it was not his domain. I did not discuss the issue of PM with any leader of PPP who were present there. I was not privy to the discussion that the then CPO Saood Aziz (accused) aalluded to with Ameen Fahim.

PW-53 Haji Khalid Mehmood injured witness, the relevant portion of his statement is re produced as under:-

" There was no security at all around the vehicle of Mohtrama Benazir Bhutto at that time"

PW-54 Riaz Ali injured witness the relevant portion of his statement is re produced as under:-

" There was no security at all around the vehicle of Mohtrama Benazir Bhutto at that time"

PW-57 Javed ur Rehman driver of Mohtrama Benazir Bhutto, the relevant portion of his statement is re produced as under:-

" At about 5.00 PM it was about to be dark when we left for Islamabad for Liaqat Bagh as soon as I started moving the vehicle towards Islamabad, there was no police/ security guard and no police officials deployed around our vehicles"

PW-61 Tahir Ayoub SSP the then SP investigation/ investigating officer/ Member of JIT, the relevant portion of his statement is reproduced as under:-

"Then CPO Rawalpindi ordered to Mr. Ishfaq Anwar then ASP Civil Lines who was deputed for the security of Mohtrama Benazir Bhutto and I heard the call of CPO, who ordered the Ishfaq Anwar to reach at Koral Chowk, then I informed the then CPO through telephonic call, that the incident fall within the limits of Islamabad territory and where Islamabad Police officers were already present there. Then I was ordered to come back to place of my duty. The same order was passed by the then CPO to Ishfaq Anwar and ordered Ishfaq Anwar ASP to report before me alongwith the police officials"

36. The relevant law in this regard is also mentioned below:-

174 Cr. P.C . Police to inquire on suicide, etc.

(1) The officer Incharge of a police-station or some other police officer specially empowered by the Provincial Government in that behalf, on receiving information that a person:

- (a) has committed suicide, or
- (b) has been killed by another.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police officer considers it expedient so to do, he shall, subject to such rules as the Provincial Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Provincial Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

37. Relevant provision of law relating with the accused police officers are also reproduced for the ready reference:-

Section 201 PPC.

Causing disappearance of evidence of offence, or giving false information to screen offender: "Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

If a capital offence: shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine"

Section 119 PPC

"Public servant concealing design to commit offence which it is his duty to prevent: Whoever, being a public servant intending to facilitate or knowing it to be likely that he will thereby facilitate the commission of an offence which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, if offence be committed: shall, if the offence be committed, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; if offence be punishable with death, etc: or if the offence be punishable with death or imprisonment for life with imprisonment of either description for a term which may extend to ten years"

- 38.** Arguments of learned defence counsel for the accused Saood Aziz and Khurram Shahzad is that their bail granting order passed by the Hon'ble Lahore High court dated 5.4.2011 may be considered in the favour of the accused because it had attained the finality as it was never challenged, has no force because it is settled law that bail orders are based upon tentative assessment of evidence and has no impact whatsoever on the final judgment after the trial.
- 39.** The conclusion drawn by this court is that the Elite police unit who was supposed to provide the box security for Mohtrama Benazir Bhutto vehicle was not available and was removed by the accused Saood Aziz the then CPO. There was no emergency plan in case of any undue incident. Vehicle of Mohtrama Benazir Bhutto after the occurrence was left alone because of the absence of police escort which could have escorted her vehicle to quickly reach the hospital. Decision to use fire hose on the crime scene within 1 hour and 40 minutes of the occurrence was unjustified and had resulted in destroying the crime scene, this destruction made it extremely difficult to collect more evidence for DNA tests. The act of both the police

officers constituted as criminal negligence which had caused irreparable damage to the crime scene. The non conducting of postmortem on the dead body of Mohtrama Benazir Bhutto also damaged investigation due to which clear cause of death of Mohtrama Benazir Bhutto was not established. Non conducting of postmortem on the dead body of Mohtrama Benazir Bhutto and washing of crime scene within an hour were also admitted facts in this case and removal of the Incharge Ishfaq Anwar ASP from the duty was successfully proved by the prosecution.

40. As a sequel of whole of the above discussion, the prosecution is found to have miserably failed to prove its case against accused Rafaqat Hussain, Husnain Gul, Rasheed Ahmed and Sher Zaman beyond any shadow of doubt, hence, they are acquitted by giving benefit of doubt.

41. However, the prosecution has successfully proved its case against the accused Saood Aziz CPO and Khurram Shahzad SP, to the extent of their criminal negligence in performing their duty, therefore, they are convicted and sentenced as under:-

1. U/S 119 PPC Imprisonment for 10 Years R.I each with fine of Rs.5 , 00,000/- (five lacs) each in case of default of fine, they shall suffer further imprisonment for the period of 6 months S.I each.

2. U/S 201 PPC Imprisonment for 7 Years R.I with fine of Rs.5 , 00,000/- (five lacs) each in case of default of fine, they shall suffer further imprisonment for the period of 6 months S.I each.

42. The convicted accused would be entitled to the benefit of Sec. 382-B Cr.P.C and both the sentences shall run concurrently.

43. Both convicts on bail, be taken into custody and sent to jail lockup to serve out sentences awarded to them. Copy of the

judgment is delivered to the convicts free of cost forthwith. Case property if any is confiscated in the favour of the state, however, the same shall remain intact till the final disposal of appeal or revision if any.

44. Third set of the accused was comprising upon accused General ® Pervaiz Musharaf the then president of Pakistan. During trial his application for exemption of his personal attendance was accepted by the then Judge ATC-I, Rwp vide order dated 20.8.2013. Till the conclusion of prosecution evidence and at the time of recording of his statement u/s 342 Cr. P.C he was repeatedly summoned by this court and his nonailable warrant of arrest was also issued on 17.4.2017. On 29.4.2017, statement of Shahab Azeem Deputy Director FIA recorded regarding non execution of warrants of arrest. However before initiating proceeding u/s 87/88 Cr. P.C against the accused Pervaiz Musharaf, an option was given to him to record his statement through video link or Skype but even then he did not show any response to record his statement through video link or skype. Resultantly, there was no other option left with the court except to separate the trial proceeding of the accused General ® Pervaiz Musharaf u/s 540-A Cr. P.C, therefore, to the extent of his trial, proceedings were separated vide order 8.5.2017. While relying on his deliberate absence from the court, statement of process server recorded on 29.4.2017 is sufficient to declare him Proclaimed offender in this case. Proceedings u/s 88 Cr. P.C shall be initiated and his perpetual nonailable warrant of arrest be issued. Almad of this court is directed to prepare a separate file regarding the proceedings u/s 88 Cr. P.C against the accused Pervaiz Musharaf. File be consigned to the record room.

Announced:
31.8.2017

Muhammad Asghar Khan,
Judge, Anti Terrorism, Court NO.I,
Rawalpindi.

It is certified that this judgment consists of (34) pages and each page has been dictated, read ,corrected and signed by me.
31.8.2017

Muhammad Asghar Khan,

Judge, Anti Terrorism Court No. I,
Rawalpindi.

For placing reliance on circumstantial evidence, in cases involving capital punishment, such evidence must be of nature, where, all circumstances must be so inter-linked, making out a single unbroken chain, where one end of same touches dead body and other neck of accused--Any missing link in chain would destroy whole and would render same unreliable for recording a conviction on a capital charge--In cases of circumstantial evidence, there were chances of procuring and fabricating evidence, therefore, Courts were required to take extra care and caution to narrowly examine such evidence with pure judicial approach to satisfy itself, about its intrinsic worth and reliability, also ensuring that no dishonesty was committed during course of collecting such evidence by investigators--Where there were apparent indications of designs on part of investigating agency in preparation of a case resting on circumstantial evidence, Court must be on its guard against trap of being deliberately misled into a false inference--Court's failure to observe such care and caution would be a failure of justice.

Arguments of learned defence counsel for the accused Saood Aziz and Khurram Shahzad is that their bail granting order passed by the Hon'ble Lahore High court dated 5.4.2011 may be considered in the favour of the accused because it had attained the finality as it was never challenged, has no force because it is settle law that bail orders are based upon tentative assessment of

evidence and has no impact what so ever on the final judgment after the trial.

Judgments referred by the prosecution:-

1. 1996 SCMR 908.
2. PSC 1989 533.
3. 2004 PCr.L.J 132b.
4. 2009 PCr.L.J 91 (Peshawar).
5. PLD 1996 Federal Shariat Court
6. 1976 PCr. L.J 301.
7. 1986 PCr. L.J 2233.
8. 1998 PCr. L.J 2022.
9. 1985 PCr. L.J 463.
10. 1998 SCMR 1778.
11. 1998 PLC (C.S) 1430
12. A.I.R (35) 1948 ALLAHABAD 168 (C.N.73).
13. A.I.R 1935 Oudh 468
14. 2013 P Cr. L.J 1254 (Islamabad).
15. PLD 2007 Supreme Court 202.
16. 2013 MLD 632 (Peshawar).
17. 2013 P Cr. L.J 229.
18. 2007 P Cr. L.J 517 (Federal Shariat Court).
19. 2006 SCMR 366 (Supreme Court of Pakistan).

Judgments referred by the learned defence counsel Malik Rafique Khan advocate for the accused Saood Aziz and Khurram Shahzad.

1. 1994 P Cr. L.J 20 (Supreme Appellate Court).
2. 2012 YLR 1502 (Lahore).
3. 1969 SCMR 467.
4. A.I.R 1925 Allahabad 230.
5. A.I.R (38) 1951 Calcutta 531
6. A.I.R 1933 Calcutta 36.
7. NLR 1991 criminal 163.
8. NLR 1991 Criminal.
9. 2012 P Cr. L.J 1691(Balochistan).
10. 1986 PCr. L.J 2243 (Karachi).
11. 1998 P Cr. L.J 1486 (Karachi).
12. 1992 P Cr. L.J 58 (Karachi).
13. PLJ 2006 Cr. C (Pesh) 804 DB.
14. NLR 1991 Criminal 163.
15. 1994 Perl. J 20.
16. 1995 PerL.J 1424.
17. PLD 1986 Quetta 26.
18. PLD 1970 (Karachi) 15.
19. 1989 Pcr. LJ 380
20. P.S.C 1989 533.

Judgments referred by the learned defence counsel Malik Malik Jawad Khalid advocate for the accused Rafaqat Hussain and Husnain Gul.

1. 1996 P Cr. L.J 358 (Peshawar).
2. 1996 P Cr. L.J 546 (Peshawar).
3. 1996 P Cr. L.J 771 (Karachi).
4. 2003 P Cr. L.J 1071 (Peshawar).
5. 1997 SCMR 1180.
6. 2002 P Cr. L.J 1670.
7. 2005 SCMR 383.
8. 2009 P Cr. L.J 573.
9. 2005 P Cr. L.J 1294.
10. 2005 SCMR 277
11. 2005 YLR 1297.
12. 2010 SCMR 55.
13. PLD 2006 Supreme Court 219.
14. PLD 2006 Supreme Court 354.
15. 2005 SCMR 523.
16. PLJ 2002 (Lahore) 533.
17. 2012 SCMR 109
18. 2017 SCMR 986.
19. 2001 P Cr. L.J 86
20. 2005 P Cr. L.J 1198.
21. 2001 P Cr. L.J 578.
22. PLD 1096 (W.P) Karachi page 697 .
23. PLD 1960 (W.P) Karachi 712.
24. P Cr. L.J 130
25. P Cr. L.J 1996 136.
26. A.I.R 1927 Sind 241.
27. A.I.R 1927 Sindh 245.
28. SCMR 1998 570.
29. PLD 1968 Lahore 49.
30. PLJ 1997 Cr. C (Quetta) 801 DB.
31. P Cr. L.J 391.
32. P Cr. L.J 1974 Karachi 400.
33. PLD 1965 (W.P) Karachi Karachi
- 76.
34. SCMR 1996 1553
35. SCMR 1996 1559
36. P Cr. L.J 1976 Lahore 249.
37. SCMR 1996 908
38. SCMR 1996 920
39. SCMR 1993 550.

Judgments referred by the learned defence counsel Rao Abdul Raheem advocate for the accused Rasheed Ahmed.

1. 2017 SCMR 986(C).
2. 2017 SCMR 898 (b & C).
3. 2016 SCMR 274 (C & D).
4. 2016 P Cr. L.J 1608 (a & b).
5. 2006 P Cr. L.J 364.

6. 2012 MLD 1358 ©.
7. 2003 P Cr. L.J 1608 (a).
8. 1984 P Cr. L.J Karachi 2663.
9. PLD 1981 Karachi 1000 (a).
10. PLD 1981 Karachi 314 (a).
11. 1998 P Cr. L.J 1274(b).
12. 2001 SCMR 424 (x).
13. 2012 YLR 1502 (B & c).
14. 1998 P Cr. L.J 1486 (b).
15. 1985 P Cr. L.J 1486 (b).
16. 1985 P Cr. L.J 1486 (b)
17. 1985 P Cr. L.J 2638 (b& d).
18. 2017 SCMR 486 (d)
19. 1996 SCMR (D).
20. 2005 P Cr. L.J 53 ©.
21. 2013 SCMR 274 (i).
22. 2007 P Cr. L.J 416 (b).
23. 2006 P Cr. L.J 364.

Judgments referred by the learned defence counsel Rao Naseer Ahmed Tanooli advocate for the accused Etizaz Shah.

1. 2008 P Cr. L.J 87 (Karachi).
2. PLJ 2002 Cr. C (Peshawar) 1403 (DB).
3. PLJ 2005 SC 159.
4. 2017 SCMR 898