

30 days Delay in eye witness S.161 S84

## IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Arshad Hussain Khan,*

Spl. Criminal A.T Appeal No.27 of 2021.

Spl. Criminal A.T Appeal No.28 of 2021.

**Appellant:** Syed Muhammad Asif Raees S/o. Syed Muhammad Raees through Mr. Waqar Ahmed, Advocate.

**Respondents:** The State through Mr. Ali Haider Saleem, Additional Prosecutor General Sindh and  
Chaudhry Mehmood Anwar, Special Prosecutor Rangers.

**Date of hearing:** 23.11.2022.

**Date of Announcement:** 29.11.2022.

### JUDGMENT

**MOHAMMAD KARIM KHAN AGHA, J:-** The appellant Syed Muhammad Asif Raees S/o. Syed Muhammad Raees has filed these appeals against the judgment dated 25.01.2021 passed by Anti-Terrorism Court No.VIII Karachi/New Judicial Complex Central Prison, Karachi in Special Case No.92/2018 (New Special Case No.54/2020) U/s. 302/109/34 PPC R/w Section 7 of ATA, 1997 registered at P.S. Al-Falah, Karachi and Special Case No.92-B/2018 (New Special Case No.54-B/2020 U/s. 23(1)(A) of Sindh Arms Act registered at P.S. Shah Faisal Colony, Karachi whereby the appellant was convicted for the offence punishable u/s. 7(1)(a) of Anti-Terrorism Act, 1997 r/w section 302/34 PPC and sentenced to undergo life imprisonment and fine of Rs.500,000/-. In default in payment of fine the appellant was ordered to suffer imprisonment for three years more. The appellant was also convicted for the offence punishable u/s. 23(1)(A) of Sindh Arms Act, 2013 and sentenced to undergo R.I. for 05 years with fine of Rs.100,000/-. In default in payment of fine the appellant was ordered to suffer imprisonment for one year more. All the sentences were ordered to run concurrently. The benefit of section 382(b) Cr.P.C. was also extended to the appellant.

2. The facts of the prosecution case in nutshell as unfolded in FIR bearing No159/2017 of PS Al-Falah is that on 30.07.2017 complainant Jawed Iqbal got recorded his statement u/s. 154 Cr.P.C. wherein he stated that on 30.07.2017 the

complainant was available in the house of his friend, when he received telephonic call from another friend who informed him that his maternal uncle/father-in-law Muhammad Rashid S/o.Muhammad Wasil (Vice Chancellor of UC-13 Raza-e-Aam Society) sustained fire shot injuries at about 02:15 am (night) caused by unknown culprits for unknown reason, while he was playing Daboo at Raza-e-Aam Society, Malir Halt Bazar, Karachi and due to sustaining bullet shot his maternal uncle died en route to the hospital. On this information, he went to Jinnah Hospital and found the dead body of his maternal uncle/father-in-law, hence his FIR was lodged against unknown persons.

3. Brief facts of the prosecution case in a nutshell in respect of crime Nos.314, 315 and 316/2017 of PS Shah Faisal Colony, Karachi are that on 04.10.2017 complainant Ranger Inspector Muhammad Younus along with Sepoy Abid Ali Shah, Sepoy Muhammad Akram and other Ranger officials armed with official weapons and ammunition in Ranger official vehicle along with police officials of P.S. Shah Faisal Colony namely SIP Shabbir Ahmed, HC Shahbaz, PC Touseef Ahmed, PC Shah Faisal, armed with official weapons in official police van bearing No.SPM-527 proceeded to Shah Faisal Colony No.5, Malir Naddi Band, where they started joint snap checking. The complainant of Crime No.314, 315 and 316 of 2017 received information through spy informer that six target killers allied with MQM London, absconders in murder case of P.S. Al-Falah Colony are approaching from Landhi/Korangi side and all six accused persons are coming with intention to commit some crime. On such information he shared information with Rangers officials and police officials along with spy informer, thereafter they waited for those target killers. Shortly the spy informer pointed out six persons plying on two motorcycles who were heading towards them. Ranger Inspector Muhammad Younus along with Ranger and police officials spotted them and tried to stop them, thereafter 03 target killers who were on one motorcycle stopped and the complainant party apprehended them. Thereafter target killers on another 125-motorcycle succeeded to escape. The complainant inquired particulars of the target killers/accused persons, who disclosed their names to be Shahid Aziz son of Abdul Aziz, **Syed Muhammad Asif Raees** son of Syed Raees Uddin and Muhammad Danish Khan son of Mehboob Khan. The complainant took body search of the accused persons in presence of Ranger officials, Sepoy Abid Ali Shah and Sepoy Muhammad Ikram as at that time no public person was available so he associated both officials as witnesses. From body search of accused Shahid Aziz he recovered one 30 bore pistol loaded with



5 live rounds and from his further search two mobiles, one CNIC, one KMC Card, one HBL ATM Card and cash amount of Rs.1500/- were recovered. From accused Syed Muhammad Asif, he recovered one 9 mm pistol, loaded magazine containing 10 live rounds. From his further personal search, one Mobile and cash amount of Rs.870/- were recovered. From accused Danish, he recovered one 30 bore pistol loaded magazine containing 5 live bullets and from his further search cash amount of Rs.700/- and one mobile phone were recovered. He checked the motorcycle CD-70 which was without number and found its engine number and chassis number punched. He also inquired about the particulars of absconder accused persons, the arrested accused persons disclosed names of their absconder companions to be Muhammad Chand S/o. Muhammad Saeed Khan, Muhammad Yameen S/o. Muhammad Yaqoob and Muhammad Zafar alias Phool Wala S/o. Ghulam Rasool. He inquired about licenses of the recovered case property, but they did not produce any such license, therefore, he arrested them and seized the motorcycle u/s. 550 Cr.PC and sealed the arms and ammunition separately and prepared memo of arrest and recovery on the spot. He interrogated the accused persons on the spot and during interrogation accused persons admitted their guilt and so also disclosed the particulars of their companions by admitting that on the instigation and direction of Kahkashan Baji and Qaid-e-Tahreek MQM Altaf Hussain committed murder in crime No.159/2017, thereafter, accused persons along with case property were brought to P.S, there the respective FIRs against the aforementioned accused persons were lodged.

4. After registration of the case, the investigation of the crime bearing No.159/2017 was entrusted to PI/SIO Muhammad Khalid Arain of PS Al-Falah. After receiving investigation, he on the pointation of ASI Mirza Nawaz and ASI Raja Jamshed inspected place of incident, prepared its memo and so also memo of site sketch. He recorded statements u/s. 161 Cr. PC of the witnesses. He sent parchajat of the deceased and the blood stained earth (secured from the place of incident) to chemical examiner Sindh Karachi and so also he sent crime empties which were secured from the place of incident to FSL and obtained their reports. **During investigation, I.O. could not find any clue about the accused person therefore, he submitted summary under "A" class.** Thereafter, the investigation of the instant crime was transferred and entrusted to PI/SIO Muhammad Khalid Arain of PS Shah Faisal Colony by the order dated 18.09.2017 of SSP Investigation-III, Korangi. During investigation, he further perused the instant

crime and he found that SIP Imran Ali of PS Alfah has not added section 7 ATA in the instant crime whereas deceased Muhammad Rashid S/o Muhammad Wasil belonged to political party MQM Pakistan of Farooq Sattar and incident took place in public place and due to murder of deceased, terror, fear and duress was spread amongst the general public, hence he added section 7 of ATA, 1997, in the instant crime. During investigation SIO Muhammad Khalid came to know that accused persons Shahid Aziz s/o Abdul Aziz, Syed Muhammad Asif Raees s/o Muhammad Raees and Muhammad Danish Khan s/o Mehbood Khan have been arrested in crime No.314, 315, 316/207 of PS Shah Faisal Colony, Karachi and they during their arrest before the officers of Rangers had disclosed their involvement along with their accomplices in the murder of Muhammed Rashid. Hence, SIO/Inspector Muhammad Khalid called the complainant Jawed Iqbal s/o Iqbal Ahmed Siddiqui and in his presence and in presence of police personnel, took out the custody of accused persons and interrogated them separately. During interrogation the accused persons disclosed that they are active and responsible members of MQM Altaf Hussain London Group and they and their other companions received instruction from responsible Kahkashan Baji of Rabta Committee Central that Quaid-e-Tahreek Altaf Hussain ordered to kill bara aadmi (personage) of MQM Pakistan (Farooq Sattar Group) on which they time and again conducted rekki (espionage/reconnaissance) of Vice Chairman Muhammad Rashid alais Maamu of UC-13 Farooq Sattar Group who had changed his party, and as such he was easy target for murdering.

5. After completion of investigation I.O. submitted charge sheet against the appellant to which he pleaded not guilty and claimed trial.

6. The prosecution in order to prove its case examined 13 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him and claimed false implication at the hands of the police and the rangers. The appellant however did not give evidence on oath or call any witness in support of his defence case.

7. After hearing the parties and appreciating the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment, hence, the appellant has filed these appeals against his conviction.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 25.01.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for the appellant has contended that the appellant is completely innocent and has been falsely implicated in this case by the police and the rangers and the appellant had produced evidence in his defence to support this contention in the shape of copies of petitions which had been filed before this court stating that he had been illegally picked up and detained prior to this incident by the police and the rangers; that the eye witnesses are planted witnesses and their evidence cannot be safely relied upon and even otherwise there is no evidence that the identification parade was conducted in accordance with the law; that there was no independent mashir; that the allegedly recovered pistol was foisted on the appellant; that the empties recovered from the crime scene were managed with the allegedly recovered pistol to produce a positive FSL report and that for any or all of the above reasons the accused should be acquitted of the charge by being extended the benefit of the doubt.

10. On the other hand learned APG appearing on behalf of the State assisted by special prosecutor rangers has fully supported the impugned judgment and in particular has contended that the eye witnesses have correctly identified the appellant as being one of the persons who murdered the deceased by firearm and had even picked him out from an identification parade; that the pistol recovered from the accused at the time of his arrest matched the empties which had been recovered from the crime scene; that the medical evidence supported the case of the prosecution and as such the appeal was without merit and should be dismissed. In support of his contentions he placed reliance on the cases of **Sajid Mehmood v The State** (2022 SCMR 1882), **Muhammad Saleem v. The State** (2005 P Cr. L J 644), **Muhammad Mansha v. The State** (2001 SCMR 199), **Bashirullah and another v. The State** (2002 P Cr. LJ 1183), **Mubasher and another v. The State** (PLD 2015 Lahore 426), **Dadullah and another v. The State** (2015 SCMR 856), **Ijaz Ahmad v. The State** (2009 SCMR 99) and **Niaz-ud-Din and another v. The State** (2011 SCMR 725).

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant's counsel,



and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

12. At the outset based on the prosecution evidence, especially recovery of empties and blood at the crime scene and medical evidence we find that the prosecution has proved beyond a reasonable doubt that on 30.07.2017 at about 02.15am at Dabu club, opposite Street Raza-e-Aam Society, main Bazar Malir Halt Karachi Muhammed Rashid (the deceased) was shot and murdered by firearm whilst playing Dabu at the club.

13. The only question left before us therefore is whether the appellant was one of the persons who shot and murdered the deceased at the said time, date and location?

14. After our reassessment of the evidence we find that the prosecution has NOT proved beyond a reasonable doubt the charge against the appellant for which he was convicted keeping in view that each criminal case is based on its own particular facts, circumstances and evidence.

(a) Although there was no delay in lodging the FIR for murder this FIR was lodged by Jawaid Iqbal who was the nephew of the deceased who was not an eye witness to the incident and against unknown persons. It in essence simply states the time, date and location of the murder of the deceased. What is significant however is that the complainant did not give evidence at trial which has been deprecated by the Supreme Court in the case of **State V Ahmed Omar Sheikh (2021 SCMR 873)**. Since however the FIR was so flimsy and against unknown persons we find this to be only of minor significance

(b) In our view the prosecution's case rests almost exclusively on the evidence of the eye witnesses to the incident and their ability to correctly identify the appellant who allegedly came on a motor bike along with others and fired on the deceased whose evidence we shall consider in detail below;

(i) **Eye witness PW 3 Khalid Mehmood.** According to his evidence on 30.07.2017 at 0215am he was playing Dabo at the Dabo shop and was with his friend eye witness PW 4 Muhammed Zubair. The deceased was also present playing Dabo. He saw two persons arrive who started indiscriminate firing at the deceased who received bullet injuries. He also saw a third person who was standing 5 to 6 feet away from the other two who also had a pistol. The two persons who were firing escaped with the third person on his motor bike after the incident. He saw mohalla people take the deceased, who was alive at that time, to hospital and then went home. After he came to know from a news flash on TV that three accused in the murder of the deceased had been arrested he went to the PS on 07.10.2017 and informed the IO that he had seen the

incident. On 09.10.17 he attended an identification parade where he picked out the appellant as one of the persons who had fired at the deceased.

The question arises whether we believe that this witness was actually present or was a planted witness as contended by learned counsel for the appellant and if he was present whether we could safely rely on his correct identification of the appellant as being one of the persons who had fired at the deceased.

If the eye witness was present since the deceased was playing Dabo in a Dabo club there must have been light to see which position has not been challenged and he might have been in a position to identify the appellant.

We note however that the eye witness was not from the area and might be regarded as a chance witness although his reason for being there might be because he came to play Dabo although this begs the question whether there were any Dabo clubs in his own area and why he needed to travel out of his way to this Dabo club. This aspect of the case casts some doubt on his presence at the time of the incident.

A number of other aspects however also go against believing this witness was present at the time of the incident and even if he was present his ability to correctly identify the appellant as one of the persons who made firing on the deceased. The first is that the eye witness came to the PS to introduce himself as an eye witness **three months after** the incident without giving any reason at all as to why he did not come forward on day one. In this respect it was held and reiterated by the Supreme Court in the case of **Muhammed Asif V State (2017 SCMR 486)** as under;

*“There is a long line of authorities/precedents of this court and the High Courts that even one or two days unexplained delay in recording the statement of eye-witnesses would be fatal and testimony of such witnesses cannot be safely relied upon”.*(bold added)

As such we find that this unexplained delay of 3 months in recording the eye witness' statement to be fatal to the prosecution case. This is more so since despite keeping quiet as an eye witness immediately after the incident the eye witness miraculously decides to come forward three months after the arrest of the accused. Up to this time there was no evidence of the accused being involved in the murder of the deceased and the case had even been disposed of in "A" class with no eye witness named. This eye witness showing up out of the blue three months after the arrest of the accused is not believable.

The cross examination of the first IO PW 11 Ghulam Rasool also suggests that this eye witness was not present at the time of the murder which reads as under in material part whereby 4 independent witnesses in their S.161 Cr.PC statements who were actually playing Dabo with the deceased at the time of the incident have stated that only they were present at the time of the incident

and they could **not** recognize the faces of the culprits.;

*"It is correct to suggest that on 30.08.2017, I have recorded 161 Cr.P.C. statements of witnesses, Syed Talha, Abdul Sattar @ Pappu, Mirza Farhan Baig @ Guddu and Syed Imtiaz Ahmed. It is correct to suggest that at the time of incident as per 161 Cr.P.C. statements of all four witnesses Syed Talha, Abdul Sattar @ Pappu, Mirza Farhan Baig @ Guddu and Syed Imtiaz Ahmed, they were playing dabbu with the deceased except all four witnesses, no one was available at the scene of offence. It is correct to suggest that all four witnesses Syed Talha, Abdul Sattar @ Pappu, Mirza Farhan Baig @ Guddu and Syed Imtiaz Ahmed, have stated in their 161 Cr.P.C statements that they have not seen the faces of the accused persons. (bold added)*

Another aspect of the eye witnesses evidence is that despite a three month delay in coming forward as an eye witness there is no evidence that he gave any hulia/description or drew any sketch of any of the culprits and it has not even come in evidence that he had claimed in his S.161 Cr.PC statement that he could recognize the culprits if he saw them again. In this respect reliance is placed on the case of **Javed Khan V State** (2017 SCMR 524) concerning the necessity for an early hulia/description of an accused by an eye witness in his S.161 Cr.PC statement before an identification parade and the need to strictly follow the rules governing identification parades where it was held as under at P.528 to 530:

*"7. We have heard the learned counsel and gone through the record. The prosecution case rests on the positive identification proceedings and the Forensic Science Laboratory report which states that the bullet casing sent to it (which was stated to have been picked up from the crime scene) was fired from the same pistol (which was recovered from Raees Khan in another case). We therefore proceed to consider both these aspects of the case. As regards the identification proceedings and their context there is a long line of precedents stating that identification proceedings must be carefully conducted. In Ramzan v Emperor (AIR 1929 Sid 149) Perceval, JC, writing for the Judicial Commissioner's Court (the precursor of the High Court of Sindh) held that, "The recognition of a dacoit or other offender by a person who has not previously seen him is, I think, a form of evidence, which has always to be taken with a considerable amount of caution, because mistakes are always possible in such cases" (page 149, column 2). In Alim v. State (PLD 1967 SC 307) Cornelius CJ, who had delivered the judgment of this Court, with regard to the matter of identification parades held, that, "Their [witnesses] opportunities for observation of the culprit were extremely limited. They had never seen him before. They had picked out the assailant at the identification parades, but there is a clear possibility arising out of their statements that they were assisted to do so by being shown the accused person earlier" (page 313E). In Lal Pasand v. State (PLD 1981 SC 142) Dorab Patel J, who had delivered the judgment of this Court, held that, if a witness had*



not given a description of the assailant in his statement to the Police and identification took place four or five months after the murder it would, "react against the entire prosecution case" (page 145C). In a more recent judgment of this Court, *Imran Ashraf v. State* (2001 SCMR 424), which was authored by Iftikhar Muhammad Chaudhry J, this Court held that, it must be ensured that the identifying witnesses must "not see the accused after the commission of the crime till the identification parade is held immediately after the arrest of the accused persons as early as possible" (page 485P).

8. The Complainant (PW-5) had not mentioned any features of the assailants either in the FIR or in his statement recorded under section 161, Cr.P.C. therefore there was no benchmark against which to test whether the appellants, who he had identified after over a year of the crime, and who he had fleetingly seen, were in fact the actual culprits. Neither of the two Magistrates had certified that in the identification proceedings the other persons, amongst whom the appellants were placed, were of similar age, height, built and colouring. The main object of identification proceedings is to enable a witness to properly identify a person involved in a crime and to exclude the possibility of a witness simply confirming a faint recollection or impression, that is, of an old, young, tall, short, fat, thin, dark or fair suspect....

9. As regards the identification of the appellants before the trial court by Nasir Mehboob (PW-5), Subedar Mehmood Ahmed Khan (PW-6) and Idress Muhammad (PW-7) that too will not assist the Prosecution because these witnesses had a number of opportunities to see them before their statements were recorded. In *State v. Farman* (PLD 1985 SC 1), the majority judgment of which was authored by Ajmal Mian J, the learned judge had held that an identification parade was necessary when the witness only had a fleeting glimpse of an accused who was a stranger as compared to an accused who the witness had previously met a number of times (page 25V). The same principle was followed in the unanimous judgment of this Court, delivered by Nasir Aslam Zahid J, in the case of *Muneer Ahmad v State* (1998 SCMR 752), in which case the abductee had remained with the abductors for some time and on several occasions had seen their faces. In the present type of case the culprits were required to be identified through proper identification proceedings, however, the manner in which the identification proceedings were conducted raise serious doubts (as noted above) on the credibility of the process. The identification of the appellants in court by eye-witnesses who had seen the culprits fleetingly once would be inconsequential." (bold added)

So on this count as well any identification made of the appellant by the eye witness at the identification parade cannot be safely relied upon on account of a lack of hulia prior to the identification parade especially as the accused has claimed that he was shown to the eye witnesses at the PS whilst in police custody prior to the identification parade. Even otherwise, the magistrate who carried out the identification parade did not give evidence and as such the

appellant was denied his right to cross examine him and thus it has not been proven that all the legally required procedural safeguards/protections which the accused was entitled to before the identification parade were in place which renders such identification parade of no evidentiary value.

Thus, for the reasons mentioned above, we find it extremely unlikely that this eye witness was present at the time of the incident and even if he was present in a chaotic and traumatic situation of a cold blooded murder where many shots were fired and every sane person present would have been seeking cover and where he only got a fleeting glimpse of the culprits who he had never seen before he would **not** have been able to correctly identify them and even otherwise the identification parade is of no evidentiary value and as such we **disregard his evidence and do not place any reliance on the same in terms of correctly identifying the accused as one of the persons who fired on the deceased.**

(ii) **Eye witness PW 4 Muhammed Zubair.** This eye witness evidence is on the same lines as eye witness PW 3 Khalid Mehmood and indeed corroborates/supports it. However the same considerations apply to this eye witness as to eye witness PW 3 Khalid Mehmood as discussed above and as such we place no reliance on the evidence of this eye witness in terms of correctly identifying the accused as one of the persons who fired on the deceased.

**Thus, having found that the eye witnesses either were not present at the time of the incident or would not have been able to correctly, safely and reliably identify the appellant what other evidence is there against the appellant to connect him to the murder of the deceased.**

(c) With no eye witness evidence to the identity who carried out the attack the medical evidence becomes inconsequential as it can only reveal what kind of weapon/device was used and the seat of the injuries of the dead and injured. It cannot identify the person who inflicted the injuries.

(d) According to the evidence of PW 12 Abid Ali Shah when the three accused were arrested in an illegal arms case, about three months after the murder of the deceased, one of the accused confessed (no particular accused is named) to the murder of the deceased at the time of his arrest in the arms case at the time when the memo of arrest and recovery was being prepared in that unlicensed arms case **before** he was even taken to the police station and formal FIR lodged in the arms case. It does not appeal to logic, reason or commonsense that the appellant would confess to such a serious crime as the present one which carried the death penalty **on the spot** whilst being arrested in an arms case without even waiting to be interrogated when he reached the police station. Why was he in such a hurry to confess to a capital offence when he was only being booked in an arms case which carried a much lesser sentence when at that time there was no evidence against him in the murder case (not even the eye witnesses who miraculously appeared out of the blue a few days after his arrest). This is simply **not believable** especially when there was no evidence against him at the time of his arrest in the arms case in respect of the murder case. In any event a confession before a police officer or a ranger's official is inadmissible in evidence and is of no legal value. 5

(e) The prosecution claims that the pistol recovered from the appellant at the time of his arrest in the arms case mentioned above matched the empties found at the crime scene and thus links the appellant to the murder of the deceased. The appellant's case is that the pistol was foisted on him. Considering the fact that we have already found that the appellants confession to the murder case whilst he was being arrested in the arms case to be unbelievable also leads us to the conclusion that the pistol recovered from him was most likely foisted on him. This is because one day after the pistol was allegedly recovered from him it was sent to FSL along with the empties in the murder case which produced a positive FSL report which linked the appellant to the crime. Once we have found that the accused never made such a confession before the rangers at the time of his arrest (which we have done) it becomes apparent that the police had no reason to send the murder case empties along with the allegedly recovered pistol in the arms case to the FSL as at that time there was no reason to link the recovered pistol to the empties. As such it cannot be ruled out that the recovered pistol was foisted on the accused which was already a match for the recovered empties.

(f) It does not appear that the appellant took the police to the place of wardat but even if he did this is of no relevance as the police already knew where the place of wardat was.

(g) We have also examined the defence case which is one of false implication for which the appellant produced copies of the petitions which had been filed on his behalf in connection with his prior illegal arrest and detention **before** the commission of the crime which when placed in juxtaposition with the prosecution evidence discussed above cannot be completely ignored out of hand.

(h) That the prosecution must prove its case against the accused beyond a reasonable doubt and that the benefit of doubt must go to the accused by way of right as opposed to concession. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), wherein the Supreme Court has observed as follows:-

*"It is settled law that it is not necessary that there should be many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."*

15. For the reasons discussed above by extending the benefit of the doubt to the appellant he is acquitted of the charge, the impugned judgment is set aside, his appeal is allowed and the appellant shall be released unless wanted in any other custody case.

16. The appeal is disposed of in the above terms.