IN THE HIGH COURT OF High AT KARACHI

Criminal Appeal No. 696 of 2024
Criminal Appeal No. 734 of 2024
Criminal Appeal No. 735 of 2024

Appellant	:	Sikander @ Babloo through Mr.Muhammad Farooq, Advocate.
Appellant	:	Waqar Ali @Bantoo through Mr.Maroof Hussain Hashmi, Advocates in Cr. Appeals Nos. 734 and 735 of 2025.
Complainant	:	Waqar ul Islam through Mr.Fazal Rahim Yousufzai, Advocate.
Respondent	:	The State, through Mr. Qamaruddin Nohri, D.P.G. Sindh.
Date of Hearing	:	12.12.2025.
Date of Judgment		_____

JUDGMENT

TASNEEM SULTANA, J.:- By this common judgment, I intend to dispose of Criminal Appeals No. 696 and 734 of 2024 filed by appellants Sikander alias Babloo and Waqar @ Bantoo as well as Cr. Appeal No. 435 of 2024 filed by appellant Waqar @ Bantoo, assailing judgment dated 24.09.2024 passed by the learned Additional District & Sessions Judge-1, Karachi East, in Sessions Cases No. 2327 and 2015 of 2020 arisen out of Crime No.275 of 2018 under Sections 302, 397, 34 PPC and Crime No. 54 of 2022 under Section 23(1(a) of Sindh Arms Act 2013 registered with Police Station Brigade respectively, whereby the appellants were convicted and sentenced as under:

i) In Sessions Case No. 2327 of 2020 Accused namely Waqar Ali @ Bantoo was convicted under Section 265-H(ii) Cr.P.C for offence under Section 302 (b) PPC and sentenced to suffer R .I for 20 years and accused Sikander was convicted under Section 265-H(ii) Cr.P.C and sentenced to suffer R.I for 15 years. Both accused must pay an amount of Rs.500,000/= (Rupees Five Hundreds) as compensation to the legal heirs of deceased in terms of Section 544-A Cr.P.C. If compensation is not paid, the convicts will undergo simple imprisonment for six months more. Benefit of section 382 (b) Cr.P.C was extended to both appellants.

ii) In Sessions case No. 2015 of 2020 the Accused/Appellant Waqar was convicted under Section 265-H(ii) Cr.P.C for offence under Section 23(1) of Sindh Arms Act, 2013 and sentenced to suffer R.I for ten years and to pay fine of Rs.50,000/- (Rupees Fifty Thousands). In default thereof he shall suffer S.I for six months. Benefit of section 382*b) Cr.P.C was also extended to the appellant.

2. Brief facts of the prosecution case are that on 28.12.2018 at about 1:00 a.m., the complainant's younger brother, Muhammad Imad ul Islam,

left their residence at Jacob Lines Housing Complex, Lines Area, Karachi by saying family that he is going to sit outside with his friends. Subsequently, at about 1:42 a.m., the complainant heard gunshots and, on looking outside through the window, allegedly he saw two young men wearing pant shirts were making firing with their firearms. The Complainant rushed to the scene and saw two youngsters, on a motorcycle without a registration number. The rider was wearing a helmet, while the pillion rider was bareheaded and allegedly identifiable. On seeing the complainant, the assailants fled away. The complainant found his brother injured at K.E. Chowk and, with the help of another brother Ansar ul Islam, took him towards Jinnah Hospital, but he succumbed to his injuries on the way.

3. The FIR was lodged against two unknown persons. Postmortem was conducted by MLO Dr. Shahzad Ali. As no clue to the identity of the culprits was found during the initial investigation, a summary report under "A" class was submitted and, by order dated 16.01.2019, the matter was consigned to the dormant file.

4. Subsequently, on 26.02.2020 at about 12:30 a.m., during patrolling near Quaid-e-Azam Ground, ASI Sahib Khan of P.S. Brigade allegedly apprehended two persons, Asad @ Chota and Waqar Ali @ Bantoo (appellant), and recovered pistols from their possession. Separate FIRs under Section 23(1)(a) of the Sindh Arms Act, 2013 were registered against them as FIR Nos. 53 and 54 of 2020 at P.S. Brigade. During interrogation in FIR No. 54/2020, appellant Waqar Ali @ Bantoo allegedly made a disclosure to the effect that he along with Sikandar @ Babloo, had murdered Imad ul Islam at K.E. Chowk. On the basis of this alleged disclosure made while in police custody, FIR No. 275/2018 was re-opened and investigation was re-assigned. Upon completion of investigation, challan was submitted against appellant Waqar Ali @ Bantoo. Formal charge was framed against the appellant Waqar @Bantoo. In the meantime, Sikandar @ Babloo was arrested and sent up for trial whereafter amended charge was framed against both accused to which they pleaded not guilty and claimed the trial.

5. On conclusion of the trial, vide judgment dated 14.06.2021, appellant Waqar Ali @ Bantoo was convicted and sentenced in the main as well as the offshoot Arms cases, whereas co-accused Sikandar @ Babloo was acquitted of the charge. Criminal Appeals No. 334 and 335 of 2021 were filed by Waqar Ali @ Bantoo against his conviction, while a Criminal Acquittal Appeal was preferred against the acquittal of Sikandar @ Babloo. This Court, vide judgment dated 19.09.2022, set aside both the conviction and acquittal and remanded the case to the learned trial Court for a de novo

trial against both accused with a direction to frame a joint charge and decide the matter afresh in accordance with law.

6. Pursuant to remand, a joint charge was framed at Ex. 64, to which both accused pleaded not guilty vide their statements at Ex. 64/A and 64/B. During the trial, the prosecution examined Muhammad Muhammad Waqar (Ex. 65), Muhammad Irshad Abbasi (Ex. 66), Imran Sharif (Ex. 67), and Muhammad Absar ul Islam (Ex. 68). Thereafter, SIP Sahib Khan (Ex. 69), MLO Dr. Shahzad (Ex. 71), PC Arshad (Ex. 72), SIP Abdul Khaliq (Ex. 73), SIP Sarfraz Aliyana (Ex. 74), SIP Syed Muhammad Aslam (Ex. 76) and SIP Javed Ahmed Khan (Ex. 77) each verifying the documents earlier produced. Lastly, SIP Amanullah (Ex. 80) produced the roznamcha entries, copy of FIR No. 72/2021, the memos of arrest and recovery, and the memo of site inspection (Ex. 80/A to Ex. 80/F). The prosecution then closed its side vide statement at Ex. 81.

7. Statements of the accused under Section 342, Cr.P.C. were recorded at Ex. 82 and Ex. 83 wherein they denied the allegations, professed innocence and claimed false implication. They neither examined themselves on oath in terms of Section 340(2) Cr.P.C nor produced any defence evidence.

8. Upon conclusion of the re-trial, the learned trial Court, vide judgment dated 24.09.2024, convicted and sentenced both appellants, whereafter the present appeals have been preferred.

9. Learned counsel for the appellants contended that the appellants are innocent and have been falsely implicated with mala fides and ulterior motives; that the conviction rests upon an alleged extra-judicial confession/disclosure made before police officials, which is inadmissible under Article 39 of the Qanun-e-Shahadat Order, 1984 and Section 25 of the Evidence Act; that no judicial confession under Section 164, Cr.P.C. was recorded before a Magistrate; that there is no reliable ocular account linking the appellants to the murder; that the FIR was against unknown persons, no test identification parade (TIP) was conducted, and the purported identification in open court occurred after prolonged custody and exposure in police station, rendering it unsafe; that, excluding the inadmissible confession, the case rests on circumstantial evidence which does not form a complete, unbroken chain pointing exclusively to the appellants; that there is unexplained delay of more than fourteen months between the incident (December 2018) and the alleged disclosure (March 2020) during which the case stood closed/kept on dormant file as per orders passed on summary report filed under 'A' class; that no independent

witnesses were associated with the arms recovery; that the FSL/Chemical Examiner's report does not conclusively connect the recovered weapon with the homicide; that co-accused Sikandar @ Babloo was earlier acquitted on the same evidence and then the eye witnesses badly improved their statements during re-trial on which he alongwith appellant Waqar @Bantoo was convicted on same set of evidence, that the presence of PW Imran Sharif was not mentioned in the FIR, while the ocular testimonies are mutually inconsistent and suffer from dishonest improvements. On these submissions, acquittal is prayed.

10. Conversely, the learned Additional Prosecutor General assisted by learned counsel for the complainant opposed the appeals and contended that both eye witnesses have fully implicated the appellants in the commission of offence; that the prosecution case stands corroborated by the admission of appellant Waqar Ali @Bantoo, the forensic evidence, and ocular account; that the evidence produced by the prosecution, when read collectively, is sufficient to sustain the conviction; that the trial Court has properly appreciated the evidence while recording the impugned judgment.

11. Heard. Record perused.

12. The prosecution case, so far as the ocular account is concerned, rests upon the testimony of PW-1 Muhammad Waqar, brother of the deceased, and PW-2 Imran Sharif, who has been examined as an eye-witness of the occurrence**.** PW-1 Muhammad Waqar, while appearing in the witness box, stated that at about 1:42 a.m., upon hearing gunshots, he looked through the window of his house and observed two persons quarreling with his brother, one wearing a helmet and the other without helmet. According to him, his brother was holding the hand of the helmeted person, while the barefaced person was firing upon the deceased. He further stated that when he rushed downstairs towards the place of occurrence, he saw the barefaced accused continuing to fire at his brother, after which both accused fled away on a motorcycle. He also deposed that at some stage the helmet of one accused had fallen down at the spot, enabling him to see his face.

When his testimony is examined in the light of the statement recorded under Section 154, Cr.P.C., certain aspects assume significance. In cross-examination he admitted that the FIR does not mention continuous firing by the bare-faced accused; nor does it mention that the helmet had fallen down. He further conceded that the presence of street lights or any specific source of illumination at the place of occurrence was not recorded in the FIR. The relative position of the accused and the deceased, the detailed

sequence of firing, and the manner in which the occurrence progressed, as narrated before the Court, also do not find reflection in the earliest version.

13. PW-2 Imran Sharif, who was examined by the prosecution as an eye-witness of the occurrence, stated that at the relevant time he had parked his vehicle near the place of incident and witnessed the accused and the deceased were quarrelling. According to him, the helmeted accused first fired at the deceased and, when he did not fire further shots, the barefaced accused urged him to do so and, upon his refusal, snatched the pistol from him and himself made further firing upon the deceased. He further stated that at the time of occurrence no one else was present at the spot, and that after the deceased fell down the accused fled away on a motorcycle.

In cross-examination, he admitted that certain particulars now stated by him in Court were not mentioned in his statement recorded under Section 161, Cr.P.C. He conceded that the sequence in which the pistol was allegedly snatched, the duration of firing, the distance between the accused and the deceased, and the presence of street lights at the place of occurrence were not recorded in his earlier statement. He further admitted that no Test Identification Parade was conducted at any stage and that the accused had been shown to him at the police station prior to recording of his statement under Section 164, Cr.P.C. It also transpired from the record that his presence at the place of occurrence was not mentioned in the FIR and statement recorded under Section 164, Cr.P.C.

14. The above evidence shows that, although both the witnesses have claimed to have seen the occurrence, the manner in which the incident is described by them, the sequence in which the firing is alleged to have taken place, do not appear in the same form in their respective statements. Certain particulars now appearing in their depositions do not find mention either in the earliest version recorded in the FIR or in the statements recorded during investigation under Section 161, Cr.P.C. The occurrence admittedly took place during late hours of night and the FIR was lodged against unknown persons without description of facial features or other identifying particulars. Record further reflects that no Test Identification Parade was conducted before a Judicial Magistrate; and the witnesses acknowledged that the accused had been shown to them at the police station prior to their identification in Court. In these circumstances, where the assails were initially unknown and the identification is made for the first time before the Court after such exposure, the evidentiary value of such identification requires cautious appraisal while assessing the reliability of ocular account. Reliance is placed upon the case of

Muhammad Riaz versus Khurram Shehzad and another (2024 SCLR 9), wherein Hon'ble Supreme Court further held:

> "Regardless, no identification parade was conducted for determining the involvement of the accused persons and the evidentiary value of identification at a belated stage has little value in the eyes of the law, more particularly when the lineaments and physiognomy of the accused are not mentioned anywhere by the complainant or the eye witnesses."

It is settled law that where eye-witnesses differ on material aspects relating to the manner of occurrence or introduce improvements touching the identity and participation of the accused, the evidentiary value of such testimony is required to be examined with caution. In this regard, reliance is also placed upon the case of **Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639)**, wherein Hon'ble Supreme Court has observed as under:

> "Conviction upon the statements of the witnesses who made dishonest improvements and their divergent stances in the FIR and the private complaint made them doubtful."

Similarly, in case of **Muhammad Riaz (Supra)** the Honourable Supreme Court has observed as under:

> "10. The aforesaid set of circumstances creates misgivings and suspicions regarding the presence of the prosecution witnesses at the scene of the crime, and the discrepancies and defects in the investigation and the prosecution case pointed out by the learned High Court in the impugned judgment also colors the case in doubt and improbability. Therefore, the learned High Court rightly held that the prosecution badly failed to substantiate the case against the respondent No. 1, and the learned Trial Court was not justified in convicting him on the strength of untrustworthy or uncorroborated evidence which was full of material contradictions, especially contradictions in the ocular and medical evidence."

It was further observed in **Muhammad Riaz (Supra)** as under:

> "It is a settled exposition of law that when the presence of eye witnesses on the spot is doubtful then, in such situations, the ocular testimony should be excluded from consideration.

15. It further emerges from the record that the arrest of the appellants did not take place during the initial investigation of the occurrence dated 28-12-2018, but at a much later stage, and their connection with the present case surfaced only after their involvement was alleged during investigation of another case. Appellant Waqar @ Bantoo was arrested on 27-02-2020 in a separate case registered under the Sindh Arms Act, whereas appellant Sikandar @ Babloo was arrested thereafter on 13-02-2021, i.e., after a lapse of more than two years from the date of

occurrence. It is also borne out from the memo of inspection of the place of occurrence prepared at the time of initial investigation that nine empties of 9-mm bore were secured from the spot and taken into possession. The said empties were sent to the Forensic Science Laboratory and the report dated 01-01-2019 confirmed that the empties marked C-1 to C-9 had been fired from a 9-mm bore firearm, while the crime bullet marked "B" was also of the same bore. However, at that stage no weapon had been connected with the occurrence and the report did not establish any linkage of the secured empties with a particular firearm. The record further reflects that a 9-mm pistol was allegedly recovered from appellant Waqar @ Bantoo on 27-02-2020 in the said arms case. However the investigation of the present case does not demonstrate that recovered weapon was ever subjected to any forensic examination during the present investigation so as to establish a ballistic linkage between the recovered pistol and empties secured from the place of occurrence on 28-12-2018.

16. So far as the case against appellant Sikandar @ Babloo is concerned, the record reflects that during the first round of trial no specific overt act of firing was attributed to him and his alleged role was confined to presence at the spot along with co-accused Waqar Ali @ Bantoo, coupled with an assertion that he had grappled with the deceased. In the subsequent retrial, however, PW-2 Imran Sharif introduced altogether new allegation asserting that after accused Waqar @ Bantoo fired at the deceased, appellant Sikandar @Babloo asked him to make further firing and, upon his refusal, snatched the pistol from him and himself fired additional shots at the deceased. This version does not find place in the earlier prosecution narrative and surfaced for the first time at a later stage of the proceedings. Such an improvement on a material aspect relating to the role of appellants substantially alters the complexion of the prosecution case. The introduction of an entirely expanded role during re-trial which had never been attributed to the appellant Sikander @Babloo in earlier proceedings, reflects a clear improvement in the prosecution evidence. It is settled that where a witness introduces a materially improved version at a later stage the same can not safely be relied upon for sustaining conviction.

17. In so far as appellant Waqar @ Bantoo is concerned, the prosecution has primarily relied upon the alleged recovery of a 9-mm pistol in another case and subsequent forensic opinion. Even if the recovery is assumed to have been effected, the circumstances in which it surfaced and the absence of a consistent forensic nexus during the present investigation substantially diminish its evidentiary value. A recovery made after lapse of time in

another case cannot by itself sustain conviction unless supported by unimpeachable corroborative evidence directly connecting the accused with the occurrence, which is lacking here.

18. When the entire prosecution case is examined in its totality, the ocular account, the identification of the appellants, and the recovery relied upon by the prosecution fail to form a coherent and confidence-inspiring chain of evidence. The testimony of the eye-witnesses is affected by material omissions and subsequent improvements; the identification of the appellants lacks the safeguard of an independent and reliable process; and the alleged recovery does not establish an unimpeachable forensic nexus with the occurrence. These deficiencies are not minor irregularities but go to the root of the prosecution case. In a charge carrying the gravest penal consequences, conviction cannot rest upon evidence which leaves room for reasonable doubt. The cumulative effect of the infirmities noticed above creates serious doubts regarding the identity and participation of the appellants in the occurrence. In these circumstances, the prosecution evidence falls short of the standard required in criminal cases and resulting doubt must necessarily be resolved in favour of the accused.

19. The rule of benefit of doubt is rule of prudence deeply embedded in our criminal jurisprudence. Conviction must rest on unimpeachable evidence and certainty of guilt; any doubt must be resolved in favour of the accused. This rule drawn from the maxim that " It is better that ten guilty persons be acquitted rather than one innocent be convicted," a principle which finds prominent place in Islamic law and has been consistently enforced by the superior Courts. The prosecution bears the burden to prove its case beyond reasonable doubt; the accused is not required to prove innocence. Reliance in this regard is placed upon the case of **Wazir Mohammad v. The State (1992 SCMR 1134**), wherein Hon'ble Supreme Court has held as under:

> "In the criminal trial it is the duty of prosecution to prove its case against the accused to the hilt, but no such duty is casted upon the accused, he has only to create doubt in the case of prosecution.

In another case of **Shamoon alias Shamma v. The State** reported as **(1995 SCMR 1377),** the Hon'ble Supreme Court observed as under:

> "The prosecution must prove its case against the accused beyond reasonable doubts irrespective of any plea raised by the accused in his defence. Failure of prosecution to prove the case against accused. entitles him to an acquittal. The prosecution cannot fall back on the plea of an accused to prove its case. Before, the case is established against the accused by prosecution, the question of burden of proof on the accused to establish his plea in defence does not arise"

A similar view was taken in the case of **Naveed Asghar and 2 others v. The State (PLD 2021 SC 600).**

20. The principle is equally well settled that even a single circumstance creating reasonable doubt in the mind of a prudent person is sufficient for acquittal, as a matter of right, not concession. In **Muhammad Mansha v. The State (2018) SCMR 772)**, the Honourable Supreme Court of Pakistan observed:

> 4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim, 'it is better that ten guilty persons be acquitted rather than one innocent person be convicted'. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."

21. For the foregoing reasons, the prosecution has failed to prove its case beyond reasonable doubt. Consequently, Criminal Appeals No. 696, 734 and 735 of 2024 are allowed. The impugned judgment dated 24.09.2024 passed by the learned Additional Sessions Judge-I, Karachi East, in Sessions Case No. 2327 of 2020 and Sessions Case No. 2015 of 2020 arising out of FIR No. 275/2018 under Sections 302(b), 397, 34, P.P.C. and FIR No. 54/2020 under Section 23(1)(a) of the Sindh Arms Act, 2013, both registered at P.S. Brigade, Karachi, is hereby set aside. Appellants Waqar Ali @ Bantoo and Sikandar @ Babloo are acquitted of the charges. They shall be released forthwith if not required in any other case.

JUDGE