

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No. S-64 of 2018.

Munir Ahmed Chandio

Vs.

The State

Appellant : Through Messrs Ashique Ali Jatoi and
Munir Ahmed : Naseer Ahmed Waggan, Advocates.

The State : Through Mr. Ali Anwar Kandhro, Addl.
Prosecutor General, Sindh.

Complainant : Through Mr. Sher Ali Chandio, Advocate.

Date of Hearing : 26.05.2022.

Date of Judgment : 26.05.2022.

JUDGMENT

MUHAMMAD SALEEM JESSAR, J: Appellant, Munir Ahmed Chandio, was tried for an offence under sections 302, 34, 392, PPC (Crime No.09 of 2002 of PS Khairpur Nathan Shah); he was found guilty and was accordingly convicted under section 265-H(2), Cr.P.C. and sentenced to suffer imprisonment for life vide impugned Judgment dated 14.07.2018, passed by 1st Additional Sessions Judge, Dadu in Sessions Case No.06-A of 2006, which is impugned by the appellant by filing instant criminal jail appeal.

2. Brief facts of the case, are that an FIR was lodged by complainant, Iqbal Ahmed Bughio, at PS K.N Shah (FIR No. 09/2002) alleging therein that on 09.01.2002 he left his village for Sita Village on his motorcycle of black colour with Registration No. KCT-7755, wherefrom one Ali Akbar Chandio accompanied him to K.N Shah town and while returning back, when they reached at Sim Shakh Mori(bridge), on Sita link road, at 1520 hours, two persons on another motorcycle coming from backside crossed and signaled the

complainant to stop, but he did not stop his motorcycle, on which the accused sitting on the rear seat of their motorcycle taking out pistol from the fold of his shalwar fired upon the complainant party and also pushed the complainant, who fell down along with PW Ali Akbar and received some wounds. It is alleged that both the robbers robbed cash of Rs:2000/- as well as motorcycle from complainant and proceeded towards K. N. Shah. It is alleged that within five minutes of the incident, Head Constable Bakht Hussain Chandio coming from Sita Road town emerged there and on being informed by the complainant about the robbery, the Head Constable and the complainant chased the robbers and spotted them at the distance of two furlongs at about 1530 hours and on being challenged the culprits became nervous and fell down from the motorcycle; HC Bakhat Hussain grappled with one of the culprits and during fighting HC Bakht Hussain gave brick blows to one of the robbers on his head and in the meantime another accused came down from his motorcycle and in order to save his companion from clutches of HC Bakhat Hussain put pistol on the forehead of HC Bakhat Hussain and fired with intention to kill him and the robber who was under the hold of HC Bakhat Hussain got himself released and he also fired upon HC Bakhat Hussain, whereafter, both the accused escaped leaving the motorcycle of complainant there. Injured HC Bakhat Hussain was taken to K.N. Shah Hospital, wherefrom he was referred to Larkana Hospital, but he died on the way at about 1700 hours. Thereafter, the complainant came back to Taluka Hospital and then went to Police Station K.N. Shah and lodged the above FIR.

3. During investigation police visited place of wardat, where the motorcycle was robbed from complainant and the place where the accused fired upon deceased HC Bakhat Hussain, and secured two empty bullets of pistol from other place. On 15.1.2002 SIP Ghulam Akber Chandio S.H.O, P.S K.N Shah arrested accused Rakhial Shah, Raja Khan Siyal and Munir Ahmed Chandio from the Otaq of accused Rakhial Shah. On the same day accused Rakhial Shah voluntarily produced 30-bore pistol with two magazines, one loaded with five and another with six live bullets, accused Munir Chandio produced big mouser of 30-bore with two magazines and 24 live bullets and accused Raja Siyal produced one 30-bore pistol with one magazine loaded with

eight rounds. All the three accused had no license for arms and ammunitions. On 16.1.2002 accused Raja Khan and Munir were identified by complainant Iqbal and PWs, namely, Ali Akbar, SIP Peer Mumtaz and PC Ghulam Mustafa Shah before Judicial Magistrate, K.N. Shah. On same day accused Rakhial Shah recorded Judicial Confessional statement before the same Magistrate.

4. After completing investigation police submitted challan on 23.1.2002 before the court of Special Judge Anti-Terrorism, Hyderabad.

5. The case was tried before Anti-Terrorism, Court Hyderabad & Mirpurkhas Division at Hyderabad and accused Munir Chandio, Raja Siyal and Rakhail Shah were convicted vide judgment dated 13.09.2004.

6. Appellant Munir Ahmed along with co-accused Raja Khan and Rakhial Shah filed CrI. Jail Appeal No.D-163/2004 before the High Court of Sindh, Circuit Court, Hyderabad and vide judgment dated 6.12.2006 this Court set aside the judgment dated 13.09.2004, passed by Anti-Terrorism Court, Hyderabad and remanded the case to the Court of Sessions having jurisdiction for commencing *de novo* trial.

7. Appellant Munir Ahmed Chandio and co-accused Raja Khan and Rakhial Shah were charge-sheeted, they pleaded 'not guilty' and claimed trial. After framing of charge, the appellant Munir Chandio absconded and he was declared proclaimed offender vide order dated 01.06.2009 and proclamation u/s. 87, Cr.P.C was issued and its requirements were complied with as per statement of process server H.C Ahmed Khan of PS K.N. Shah.

8. It may be mentioned here that case against accused Rakhial Shah and Raja Khan was proceeded, prosecution examined it's witnesses and also recorded statements U/S.342, Cr.P.C. of both the accused. Subsequently, accused Raja Khan Siyal also absconded and his case was bifurcated vide order dated 22.06.2011. However, accused Rakhial Shah on completion of trial was convicted u/s.265-H(ii), Cr.P.C for committing offence punishable U/S.392, PPC vide judgment dated 12.07.2011, while case against co-accused Raja

Khan Siyal and appellant Munir Chandio was ordered to be kept on dormant file.

9. On 06.06.2012 complainant Iqbal Ahmed submitted an application that appellant Munir Ahmed Chandio was confined in Central Prison, Hyderabad in another case and prayed for issuance of his production order. Subsequently, on 16.06.2012 present accused Muneer Chandio was produced in compliance of directions issued in the production order. Since, the R&Ps of the main case were sent to this High Court of Sindh, Circuit Court, Larkana in criminal appeal filed by convicted accused Rakhial Shah, therefore, vide order dated 06.07.2013 the case of the appellant and case of co-accused Raja Khan were amalgamated.

10. After supplying case papers to present accused Munir Ahmed Chandio at Ex.79, a formal charge against him was framed at Ex.80 and his plea was recorded at Ex.81, wherein the pleaded 'not guilty' and claimed for trial.

11. In support of it's case, the prosecution examined P.W-1 complainant Iqbal Ahmed Bughio at Ex.82 who produced copy of FIR at Ex.82/A, P.W-2 Amjad Ali Soomro, the then Judicial Magistrate, K.N Shah, in whose presence identification parade of accused was held, at Ex.83, who produced memo of identification parade at Ex.83/A, P.W-3 SIP Umed Ali Shaikh at Ex.84, who produced receipt of handing over the corpse at Ex.84/A, P.W-4 Dr. Arbab Ali Shah at Ex.85, who produced attested copies of Provisional MLC of Bakht Hussain, Provisional MLC of complainant, final MLC of complainant, Danistnama of deceased Bakht Hussain and post-mortem report of deceased Bakht Hussain at Ex.85/A to Ex.85/E, P.W-5 mashir Sher Muhammad at Ex.86, who produced memo of injuries of deceased Bakht Hussain and complainant Iqbal Ahmed, memo of dead body, Danistnama, memos of place of incident, memo of recovery of motorcycle, memo of clothes of deceased, memo of recovery from accused Muneer Ahmed Chandio, memo of recovery from accused Raja Khan at Ex/86/A to Ex.86/I, PW-6 Inspector Pir Mumtaz Ahmed Siddiqui at Ex.87, who is author of FIR and conducted initial proceedings, who produced daily diary entries No.9 and 17 at Ex.87/A and Ex.87/B. Vide statement at Ex.88

learned DDPP for the State gave up P.W Ghulam Mustafa. Prosecution examined P.W-7 Investigation Officer DSP Ghulam Akbar Chandio at Ex.89 and P.W-8 witness Ali Akbar at Ex.90. Thereafter, learned DDPP for the State closed the side of prosecution at Ex.91.

12. The statement of the appellant, as provided U/S.342 Cr.P.C, was recorded at Ex.92, wherein he denied the prosecution allegations leveled against him. He stated that alleged recovered motorcycle, big mouser, magazines and live rounds have been foisted upon him. He stated that private persons in collusion with police have deposed against him falsely. The appellant lastly stated that he is innocent, his name is not appearing in the FIR, but he has been victimized by fake identification, which was held at a belated stage. However, he declined to examine himself on oath or any witness in his defence, but claimed his innocence and prayed for justice.

13. The learned trial Court framed points for determination as under:-

1. *Whether deceased Bakht Hussain Chandio died due to un-natural death on 09.01.2002?*
2. *Whether on 09.01.2002 at 1520 hours towards the western side of Sim Shakh Mori situated on K.N Shah – Sita link road present accused along with co-accused Syed Rakhial Shah and absconding accused Raja Khan Siyal being armed with Pistols committed robbery of cash Rs.2000/- and motorcycle bearing registration No.KCT-7755 from complainant and at about 1530 hours in furtherance of common intention caused firearm injuries to HC Bakht Husain by means of fires who succumbed to his injuries on the way to Larkana Hospital at about 1700 hours?*
3. *What should the judgment be?*

14. After hearing learned DDPP for the State and learned counsel for the appellant as well as the complainant, the trial court answered the above point No. 1 and 2 as “Proved” and, accordingly, convicted and sentenced the appellant as stated above vide the impugned Judgment. Hence, the appellant has assailed the impugned Judgment, by filing the present criminal jail appeal.

15. Learned counsel for the appellant, at the very outset of his arguments, narrated a series of events relating to the conviction and

sentencing of the appellant and co-accused by the Anti-Terrorism Court, Hyderabad in Special Case No. 6/2002, vide Judgment dated 03.09.2004, however, per learned counsel, this Judgment was subsequently set aside in Criminal Jail Appeal No.D-163 of 2004 by a Division Bench of this Court vide Judgment dated 06.12.2005 and the case was remanded with direction to the Anti-Terrorism Court to remit the same to the Court of Sessions having jurisdiction for conducting *de novo* trial. Thereafter, the case of co-accused was also transferred to Federal Shariat Court, which was transmitted back to the High Court vide Order dated 09.05.2018. These facts have been mentioned as a matter of record, although they have no bearing on the merits of the case.

16. On the merits of the case, learned counsel for the appellant submitted that the name of the appellant does not appear in the F.I.R and that the only piece of evidence against him is that of an identification parade, which, in view of the available material, was defective. He referred to page 59 of the paper book, where Mr. Amjad Soomro, the then Civil Judge/Judicial Magistrate, who conducted the identification parade, had admitted in his cross-examination that P.Ws had not assigned any specific role to the appellant at the time of identification parade. He further argued that per Rule 26:32 (d) of Police Rules, 1934, it was mandatory for the police to arrange eight to nine dummies for each accused, instead they arranged only eight dummies and conducted joint parade, which too was illegal. He further submitted that one of the PWs, namely, Ghulam Mustafa, of Police Station K.N. who was witness of the identification parade, was also mashir of the recovery of offensive weapon as well as arrest of the appellant on 15.01.2002, a day prior to the identification parade. He further submitted that per F.I.R, complainant alleged that two bandits having open face had intercepted them on a motorcycle and at the time of their evidence before the trial Court all the P.Ws had improved their version by deposing that there were three accused. He further submitted that such identification parade being defective cannot be relied upon to maintain conviction. He further submitted that the prosecution has failed to establish its charge against the appellant, which created doubt in the prosecution case and benefit of doubt

always goes in favour the accused. As far as recovery of weapons is concerned, the counsel submitted that the same were foisted upon the appellant. He also pointed out that PW/second I.O had admitted in his cross-examination that during custody of the accused at Police Station, the complainant party had visited his office, hence possibility of their meeting before holding identification parade cannot be ruled out. The learned counsel, therefore, submitted that the appellant may be acquitted of the charge by extending benefit of doubt to him. In support of his submissions, he placed his reliance upon the cases of *Muhammad Akram v. The State* (2009 SCMR 230), *Gulfam and another v. The State* (2017 SCMR 1189), *Muhammad Ayaz and others v. The State* (2011 SCMR 769), *Sabir Ali alias Fauji v. The State* (2011 SCMR 563), *Javed Khan alias Bacha and others v. The State* (2017 SCMR 524) and *Muhammad Pervez and others v. The State and others* (2007 SCMR 670).

17. On the other hand, learned Addl. P. G appearing for the State opposed instant appeal, on the grounds that the accused had committed heinous offence; besides, he was correctly picked up by the P.Ws during identification parade and offensive weapon was also produced by him during investigation. Learned Addl. P.G. further submitted that merely he being not nominated in the F.I.R is no ground for his acquittal even defective identification parade is not helpful for the appellant, hence prayed for dismissal of the appeal. In support of his contentions, he placed reliance upon the cases of *Ghazanfar Ali @ Pappu and another v. The State* (2012 SCMR 215) and *Rafaqat Ali and others v. The State* (2016 SCMR 1766). He; however, could not controvert the fact that the appellant was arrested by the police on 15.01.2002 in presence of PW/mashir Ghulam Mustafa and on 16.01.2002 said PW Ghulam Mustafa was the witness in the identification parade, as is evident in memo of parade (page-61 of the paper book).

18. Mr. Sher Ali Chandio, learned counsel for the complainant, opposed the appeal and submitted that appellant after grant of bail by the trial Court had jumped over and it was sufficient ground to hold that he had no intention to surrender and as such his conduct shows that

he was criminal minded, therefore, minor discrepancies or defects effected in the investigation or during evidence cannot be considered; more particularly, when he was picked up by the P. Ws at the time of his identification test. Mr. Chandio was also not in a position to controvert the fact that per F.I.R, the complainant had shown two accused who were driving bike and subsequently pushed the complainant resulting their fallen down from the bike as they were robbed of cash amount of Rs.2000/-. As far as motorcycle owned by the complainant is concerned, it is said to have not been taken away by the accused. As far as the motorcycle owned by the accused was allegedly thrown by the accused which subsequently was recovered from the place of incident not from the possession of the accused.

19. I have heard the learned counsel for the parties as well as the learned Addl. P.G. for the State and have perused the record and the case law cited before me.

20. A perusal of the impugned Judgment shows that on Point No.1 prosecution examined Dr. Arbab Ali Shah at Ex.4, who conducted postmortem of the dead body of deceased HC Bakhat Hussain and was of the opinion that deceased Bakhat Hussain died due to heavy blood loss (external and internal) into the neck and chest due to the injuries caused by firearm, resulting in cardio-pulmonary failure i.e. heart and lungs failed. The injuries were held to be ante-mortem in nature. To this finding, there was no opposition from the defence counsel. Hence, there is no doubt that the deceased Bakht Hussain died of unnatural causes due to firearm injuries.

21. The most important aspect of the case is whether the firearm injuries sustained by the deceased Bakht Hussain were caused by the present appellant and co-accused. In order to prove this point, prosecution examined complainant Iqbal Ahmed Bughio as well as Amjad Ali Soomro, the then Civil Judge & J.M K.N Shah, in whose presence identification parade of accused was held; SIP Umed Ali Shaikh, mashir Sher Muhammad, author of FIR and first Investigating officer Inspector Pir Mumtaz Ahmed Siddiqui, Investigation Officer DSP Ghulam Akbar Chandio and witness Ali Akbar.

22. Complainant Iqbal Ahmed deposed in his testimony as under:-

“I am complainant of this case. That on 09.01.2002 I visited Sita Road on my motorcycle No.7755/KCT where I met with Ali Akbar Chandio thereafter we both together had gone to K.N Shah. After completion of work when we returned towards Village, three persons whose faces were opened were present at Sim Shakh Mori, one of the culprit who was armed with Pistol pushed the motorcycle we then slipped and fell down and in result my left arm was broken and I also sustained injuries on my teeth. In the meantime HC Bakht Hussain also arrived to whom I narrated the incident that accused persons after snatching the motorcycle from me ran away. When we chased the accused the accused were on calling distance and a fight had taken place and in result of firing HC Bakht Hussain received firearm injury on his neck and fell down and accused persons made their escaped good by leaving my motorcycle.

23. In order to examine the veracity of the deposition of the Complainant Iqbal Ahmed, it would be in the fitness of things if his statement before the police in respect of the above incident i.e. FIR No.09/2002, is examined to see whether his testimony is consistent with his statement made before the police, relevant part whereof reads as under:

“After completion of work we were going towards Sita Road, when we reached near the Link Road, Sita Sim Shaakh Mori, it was around 1520 hours that a motor cycle of red colour with two persons whose faces were open crossing us stopped in front of us.... They alluded us to stop, when we did not stop vehicle, the person sitting behind the motor cycle taking out from his fold of shalwar and shot a straight fire at us, and he came near and pushed our motorcycle. Both of us and motorcycle fell down on the road. We sustained injuries on arm and knee; due to falling on ground head faced we got injuries on teeth as well. Both of the snatchers, forcibly took from us the key of motorcycle and took from my pocket Rupees 2000/-. Then one of the snatchers rode on my motorcycle, the other snatcher joined him and they went towards KN Shah. We remained in fear of weapons. In the meantime, after around five minutes, HC Bakht Hussain Chandio arrived to us from Sita city, stopped motorcycle. I narrated to him that accused persons after snatching the motorcycle and Rupees 2000/- are running away towards KN Shah. Leaving Akber there, I accompanied Bakht Hussain on his motorcycle. He chased the snatchers by speeding motorcycle and at a distance of two furlong, time around 1530 hours, we reached near the robbers...”

24. A perusal of the deposition of the complainant Iqbal Ahmed and his statement before the police i.e. the FIR of the case, when seen in juxtaposition, reveals that there are many glaring contradictions, for which there is no explanation whatsoever. Firstly, as pointed out by the learned counsel for the appellant during his arguments also, in his deposition the complainant has clearly stated that “three persons

whose faces were open were present at Sim Shakh Mori...” while in the FIR the complainant has reported that “*a motorcycle of red colour with **two persons** whose faces were open crossing stopped in front of us.*” In these two lines there are glaring contradictions, for which there can be no reconciliation at all. While in his deposition, the complainant stated that there were three persons, but in his FIR he stated that there were two persons. In his deposition, the complainant states that three persons were **present**, while in the FIR he stated that “**crossing stopped in front of us.**”

25. The deposition of PW-Iqbal Ahmed, the complainant of the FIR regarding number of accused, is also belied by PW Peer Mumtaz Ahmed, (Exh.87 at page 131 of the paper-book). Complainant Iqbal Ahmed has stated in his deposition that there were three culprits, however, PW Peer Mumtaz Ahmed in his deposition stated, “*On 09.01.2002 I was posted as Additional SHO at P.S K.N Shah. In those days, the Mela of Jurial Shah was going on and at about 1520 hours I heard voice of firing towards Sita link road. On hearing of fires I rushed towards the place of voice and on the way **I saw two persons on motorcycle rashly coming towards K.N Shah,** to them I can identify if seen again.*”

26. In the FIR, the complainant has further stated that “*one of the snatchers rode on my motorcycle, the other snatcher joined him and they went towards KN Shah*”; thus, he only speaks about two persons and there is no mention about the alleged third person. He only says “*one of the snatchers rode on my motorcycle*”, which means that the other did not sit with him, but rode on the other motorcycle. He again states (at page 53 of the paper book last lines) that “***you saw both of those snatchers going on motorcycle in front of you.***” Thus, it clearly depicts that there were only two persons. This again contradicts the deposition of the complainant, in which he has stated that there were three persons who snatched his motorcycle.

27. In view of the above detailed discussion, it is crystal clear that there is contradiction in the evidence of the prosecution witnesses with regard to the number of accused involved in this case, as in the FIR the complainant has stated that there were two accused, while in his

deposition he stated that there were three accused and PW Meer Mumtaz Ahmed stated that he saw two persons on motorcycle rashly coming towards K.N. Shah. There is no plausible explanation for such contradictions.

28. There is also contradiction regarding the fact whether the alleged accused were already present at the spot or they came behind the complainant as, in the deposition, the complainant stated that "*three persons were present at Sim Shakh Mori*" while in the FIR he has stated that "*a motorcycle with two persons whose faces were open crossing us stopped in front of us*". Now the question which arises is whether the said persons, whether two or three in number, were already present at Sim Shakh Mori or they came from behind the complainant, crossed them and stopped in front of them.

29. Another glaring omission is that while the complainant has twice stated in the FIR, once while narrating the incident and secondly when he informed HC Bakht Hussain about the incident, that a sum of Rs.2000/- was also taken from his pocket. However, this fact was never stated by him in his deposition. This is also a very crucial omission on the part of the prosecution.

30. Next, I will take up the ocular evidence and compare it with the medical evidence on record to examine whether both are in conformity and confidence-inspiring or the same contradict each other and create doubt in the prosecution case. As per the complainant, who is allegedly the eye-witness of the incident, when the deceased HC Bakht Hussain grappled with one of the alleged accused / snatchers, the other accused came to rescue of his co-accused and fired a shot at the deceased Bakht Hussain, which hit him at his throat, thereafter the other robber also fired on HC Bakht Hussain, which hit him on his head. Thus, as per the complainant, the deceased sustained two firearm injuries, one at his throat and the other on his head. However, a perusal of the deposition of the Sr. M.O., Dr. Arbab Ali Shah, Exh.85, reveals that the deceased had sustained the following injuries:

- i) *Firearm injury (entry wound) 1 c.m. in diameter about the left sterno-clavicular joint (medial side) in the neck of front and left side.*

- ii) *Fire arm injury (exit wound) 1.5 c.m. in diameter above the right scapular region on back of chest.*
- iii) ***Lacerated wound** 2 c.m. X 0.4 c.m. into skin deep on left parieto-temporal region of head.*

31. Thus, as per the Medico-legal Officer, the deceased sustained only one firearm injury i.e. the injury at his neck mentioned at Sr. No.(i) above, and the injury at Sr. No.(ii) is the exit wound of the injury mentioned at Sr. No.(i). However, the injury on the head of the deceased was not a firearm injury as it was termed "lacerated wound", which cannot be caused by a firearm. Therefore, there is clear contradiction in the ocular as well as medical evidence, as the complainant stated that the deceased sustained two firearm injuries, while the medical evidence shows that the deceased sustained only one firearm injury.

32. So far as the injuries sustained by the complaint are concerned, he has stated in his deposition that when he fell down, his left arm was broken. However, in the medico-legal report there is no such finding that his left hand was broken. So far as the injury to his teeth is concerned, the MLO deposed that the "*injured appeared on 11.12.2022 before the Police Surgeon and after receipt of dentist opinion regarding injuries No.1 and 2, this is the case almost one year old and at present it is very difficult to assess about the nature of tooth loss upper incisor (whether it was due to trauma or otherwise) as there is no sign of any injury or scar seen on the area in question.*" Thus, there is no positive finding about the injuries allegedly sustained by the complainant.

33. The complainant PW-Iqbal Ahmed, while lodging his FIR, has stated before the Duty Officer that the incident of snatching of the motorcycle took place at about 1520 hours and after around five minutes HC Bakht Hussain Chandio arrived at the place of incident. The complainant further stated that he narrated the incident to him and leaving Akber behind, the complainant accompanied HC Bakht Husain and chased the accused. So, if a very careful calculation is carried out, then HC Bakht Hussain came at the place of incident after five minutes of the escape of the accused on motorcycles and the complainant

could have taken about five minutes in narrating the incident to HC Bakht Hussain. PW-Peer Mumtaz Ahmed stated in his deposition that he saw two persons going rashly on motorcycle towards K.N. Shah. Therefore, it can be safely assumed that the complainant and HC Bakht Hussain started their chase of the accused after 10 minutes of the escape of the accused. Therefore, if the deposition of Peer Mumtaz Ahmed is taken into consideration that the accused were rashly going towards K.N. Shah on motorcycle; as such, if it is assumed that the accused were driving the motorcycle at a speed of about 60 Kms./hour, then in the intervening period they must have covered a distance of about 9 to 10 Kms. However, the complainant in the FIR has stated that at a distance of two furlongs they reached the accused. Similarly, in his deposition, he stated that "*When we chased the accused the accused were on calling distance.*" If the accused were driving rashly and were trying to run away from being apprehended, it is not believable that after about 10 minutes of the incident they would be at a calling distance or at a distance of two furlongs from the place of incident. This is also a glaring contradiction in the prosecution case.

34. It is an admitted fact that name of the appellant does not transpire in the FIR and the only piece of evidence against him is that he was picked correctly during identification parade. However, this aspect of the case is also not free from doubt.

35. As per learned counsel for the appellant, only eight dummies were arranged by the police for conducting identification parade of three accused. Reference in this regard may be made to clause (d) of Rule 26:32 of the Police Rules, 1934, which reads as under:

"The suspects shall be placed among other persons similarly dressed and of the same religion and social status, in the proportion of 8 or 9 such persons to one suspect. Each witness shall then be brought up separately to attempt his identification. Care shall be taken that the remaining witnesses are still kept out of sight and hearing and that no opportunity is permitted for communications to pass between witnesses who have been called up and those who have not. It is desired, through fear of revenge or for other adequate reasons, that witnesses shall not be seen by the suspects, arrangements shall be made for the former, when called up to stand behind a screen or be otherwise placed so that they can see clearly without being seen."

36. The above-quoted clause(d) of Rule 26:32 of Police Rules, 1934, clearly lays down the guideline for conducting identification parade, which stipulates that “***suspects shall be placed among other persons similarly dressed and of the same religion and social status, in the proportion of 8 or 9 such persons to one suspect.***” However, it is an admitted position that only eight dummies were arranged for identification of the three alleged accused persons, which was in clear violation of the above provision of Police Rules, 1934. Apart from this, the Memo of Identification Parade is also silent about the features of the dummies.

37. A perusal of the Memo of Identification (page 61 of the paper-book) reveals that the witnesses have simply identified the accused during identification parade without assigning them any role. Even PW Amjad Soomro, the Additional District Judge, Pano Aqil, who conducted the identification parade, in cross-examination, admitted that “*role of accused persons which assigned in the commission of offence is not pointed out by the witnesses.*” This is also a serious lapse which creates a dent in the prosecution case, as held by the superior courts. In the case of *Muhammad Pervez and others (supra)*, relied upon by the learned counsel for the appellant, it was held as under:

“It is also an admitted fact that role of accused not described by witnesses at the identification parade. Such type of identification lost its value and not relied upon as law laid down by this Court in Ghulam Rasool's case 1988 SCMR 557 and Mehmood Ahmad's case 1995 SCMR 127.”

38. In the case of *Sabir Ali (supra)* also, similar observation was made in the following words by the Hon'ble Supreme Court:

“It is also settled principle of law that role of the accused was not described by the witnesses at the time of identification parade which is always considered inherent defect, therefore, such identification parade lost its value and cannot be relied upon. See Ghulam Rasul's case (1988 SCMR 557), Mahmood Ahmed's case (1995 SCMR 127) and Khadim Hussain's case (1985 SCMR 721).”

39. A perusal of the Memo of Identification Parade (page 61 of paper-book) further reveals that joint identification parade was conducted, as both the accused persons were standing together with

eight dummies, one at Sr. No.4 and the other at Sr. No.7. The superior courts have also deprecated such exercise of conducting joint identification parade. In the case of *Gulfam and another* (supra), although the witnesses correctly identified the accused persons, however, the apex Court did not approve the practice of joint identification. The relevant portion of the cited judgment reads as under:

“5. The prosecution had maintained that the present appellants had correctly been identified by the above mentioned eye-witnesses during a test identification parade conducted and supervised by a Magistrate but we note that the parade so conducted and held was a joint parade in which both the present appellants had been made to stand along with many other dummies. Holding of a joint identification parade of multiple accused persons in one go has been disapproved by this Court in many a judgment and a reference in this respect may be made to the cases of Lal Pasand v. The State (PLD 1981 SC 142), Ziaullah alias Jaji v. The State (2008 SCMR 1210), Bacha Zeb v. The State (2010 SCMR 1189) and Shafqat Mehmood and others v. The State (2011 SCMR 537).”

40. The only piece of evidence produced by the prosecution, which connects the appellant with the alleged offence, i.e. the identification parade, further loses its efficacy when a perusal of the FIR shows that the complainant has not given any description of the accused therein. From the contents of the FIR and the deposition of the witnesses in this case, it appears that the accused were complete strangers to the witnesses, therefore, in the absence of description of the accused in the FIR, the court has to give the benefit of doubt to the accused. In this regard, the deposition of PW-Peer Mumtaz Ahmed is of particular importance, as he stated that he saw two persons rashly coming towards K.N. Shah. It is a mystery as to how the said PW during a passing glimpse of the accused was able to identify them during the identification parade. Reliance in this regard may also be placed on the case of *Sabir Ali* (supra).

41. Apart from above, the second I.O. of the case, PW-7, Ghulam Akber Chandio, Exh.90, has admitted in his cross-examination that the complainant party used to visit his office in order to follow their case. Although the said PW has maintained that the complainant party never saw the accused at the police station; however, such possibility cannot

be ruled out altogether. It might be true that the I.O. did not allow them to see the accused, but they may have seen the accused through other sources or means, without involvement of the I.O., as in the police stations there is only one lock-up, where all the accused of different cases are lodged. PW-8, Ali Akber, in his deposition stated that "*The accused was already sitting in the side room of the court room when we arrived in the court for identification purposes.*" He further states that "*about 20 persons were standing at the time of identification parade*".

42. PC-Ghulam Mustafa was shown as a witness of the identification parade, as his name appeared at Sr. No.4 of Column-2 of the Memo of Identification Parade (Page 61 of the paper-book). However, as per Mashirnama of Recovery dated 09.01.2002 (page 119 of the paper-book), PC Ghulam Mustafa accompanied the party, which went for recovery of weapons from near graveyard in the east of K.N. Shah. Therefore, possibility cannot be ruled out that the complainant party had seen the accused persons before the identification parade. This also diminishes the value of the identification parade in the instant case. In this regard, reliance may be placed on the case of *Muhammad Pervez & others* (supra).

43. The above narrated lacuna in the identification parade, which is the only piece of evidence available with the prosecution to connect the present appellant with the alleged crime, becomes completely unreliable and loses its evidentiary value in order to use the same for conviction of the appellant. No reliance can be placed on such piece of evidence, which is full of illegalities and infirmities.

44. The prosecution has also shown recovery of unlicensed weapons from the alleged accused and recovery of two empties from the place of incident. However, the recovery of two empties and the weapon, which were very important pieces of evidence in order to connect the accused with the crime alleged against them, has become meaningless due to the fact that there is no report of the ballistic expert to prove that the weapons recovered from the accused were in working condition and that the bullets fired at the deceased HC Bakht Hussain were fired from the weapons recovered from the accused. In the

absence of such report from a ballistic expert, such recovery of weapon from the appellant and the recovery of empties from the place of incident, become inconsequential as the same do not connect the appellant with the crime in any manner.

45. The above-noted facts make it clear that the P.Ws. in this case have made divergent and contradictory statements before the learned trial Court about the number of accused, as in the FIR the complainant has stated that there were two accused persons, while in his deposition before the Court he improved his statement by stating that there were three accused persons. The PW also stated that the deceased HC Bakht Hussain received two firearm injuries, one to his neck and the other on his head, however, the medical evidence completely belied this statement, as the MLO stated that only one firearm injury was sustained by the deceased at his neck, while the injury on the head of the deceased was declared as lacerated wound. There is also no report from the ballistic expert to show that the empties recovered from the place of incident were fired from the weapons allegedly recovered from the accused. In a criminal case, it is the bounden duty of the prosecution to connect the accused with the crime in such manner that there is no doubt at all about the involvement of the accused in the crime, which is completely lacking in the present case.

46. So far as the case law relied by the learned APG for the State is concerned, the same does not support the case of the prosecution, as in those cases it has been held that identification parade is a corroborative piece of evidence and that holding of identification parade is not mandatory. In the present case, if the identification parade is ignored, then there is no evidence to connect the appellant with the alleged offence, as his name does not appear in the FIR nor he was known to the complainant earlier.

47. The outcome of the whole discussion is that the prosecution case is not free from doubt. It is settled principle of law that in case of doubt, the benefit thereof must go in favour of the accused as a matter of right and not of grace. The Hon'ble apex Court observed in the case of *Tariq Pervez v. The State (1995 SCMR 1345)* that for giving the benefit of doubt, 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 would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.

48. The instant criminal jail appeal was heard on 26.05.2022, when the following short order was passed after hearing the learned counsel for the parties as well as the learned APG for the State.

“For the detailed reasons recorded later on, instant appeal 1S hereby allowed. Consequently, the conviction and sentences awarded to the appellant vide impugned judgment dated 14.07.2018 penned down by the Court of Ist Additional Sessions Judge, Dadu, vide Sessions Case No.06-A of 2006 re: State v. Munir Ahmed being outcome of Crime No.09 of 2002 under section 302, 34, 392, PPC, registered at Police Station K.N. Shah are hereby set aside. The appellant is in custody, therefore, he shall be released forthwith, if not required in any other custody case.”

49. Above the reasons for my short order dated 26.05.2022.

Judge

Larkana, the 8th June, 2022.