

# IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Jail Appeal No. 377 of 2019

Appellant: Sajid through Mr. Habib-ur-Rehman Jiskani,  
advocate

The State: Mr. Khadim Hussain Khuharo, Additional  
Prosecutor General Sindh

Date of hearing: 06.09.2023

Date of judgment: 06.09.2023

## J U D G M E N T

**IRSHAD ALI SHAH, J-** It is alleged that the appellant with rest of the culprits during course of robbery committed murder of Sher Khan by causing him fire shot injuries, for that he was booked and reported upon. On conclusion of trial, he was convicted under Section 302(b) PPC and sentenced to undergo rigorous imprisonment for life as *Tazir* and to pay compensation of Rs.2,50,000/- to the legal heirs of the deceased and in default whereof to undergo simple imprisonment for 06 months; he was further convicted under Section 392 PPC and sentenced to undergo rigorous imprisonment for 05 years and to pay fine of Rs.5000/- and in default whereof to undergo simple imprisonment for 01 month; both the sentences were directed to run concurrently, with benefit of section 382(b) Cr.P.C by learned IXth-Additional Sessions Judge, Karachi West vide judgment dated 10.04.2019, which he has impugned before this Court by preferring the instant Jail Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police; the FIR is blind one; the identification parade of the appellant was defective one and evidence of the PWs being doubtful in its character has been believed by the learned trial Court without assigning cogent reasons, therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt, which is opposed by the learned Addl. PG for the State by supporting the impugned judgment.

3. Heard arguments and perused the record.

4. It was stated by complainant Atlas Khan that the deceased was driver and he was cleaner on the trawler, on the date of incident when they were waiting for gate pass, he heard fire shot reports and found the deceased sustaining injuries, two persons came over to the deceased on motorbike and took away his cell phone and Rs.1300/-, he took the deceased to Civil Hospital and then lodged report of the incident. It is against the unknown culprits. On asking, the complainant was fair enough to admit that he did not see the appellant committing the murder of the deceased. If it is so, then his evidence hardly lends support to the case of prosecution. PWs Khandan Khan and Naimatullah Khan have been introduced in the investigation by the police on 11<sup>th</sup> day of the incident by recording their 161 Cr.PC statements, they allegedly identified the appellant during course of identification parade, which was conducted by Mr. Afzal Roshan, the Magistrate having jurisdiction; it was joint one; the joint identification parade could hardly fulfill the requirements of law. Be that as it may, on asking, complainant Atlas Khan was fair enough to admit that on 2<sup>nd</sup> or 3<sup>rd</sup> day of incident he was informed by the police that they have arrested one person involved in the incident, therefore, he and above named witnesses went at the police station, the appellant was shown to them there. If it was so, identification parade which was conducted by the Magistrate could fairly be said to be unfair. There is no postmortem report on the dead body of the deceased. It was stated by I.O/SIP Abdul Muhammad that during course of the investigation, the appellant admitted his guilt before him and then led to the recovery of cell phone. If for the sake of arguments, it is believed that such admission was actually made by the appellant before the said I.O/SIP even then same could not be used against him as evidence in terms of Article 39 of Qanun-e-Shahadat Order, 1984. The cell phone of the deceased allegedly recovered on pointation of the appellant has not been shown to the family members of the deceased to be identified by them. The pistol

allegedly secured from the appellant as per said I.O/SIP was not sent to the ballistic expert by him for matching purpose, such omission on his part could not be lost sight of. The appellant has pleaded innocence by denying to have committed the alleged incident. In these circumstances, it would be safe to conclude that the prosecution has not been able to prove the involvement of the appellant in commission of alleged incident beyond shadow of reasonable doubt and to such benefit he is found entitled.

5. In case of *Abdul Khaliq vs. the State* (1996 SCMR 1553), it was observed by Apex Court that;

*"---S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained."*

6. In case of *Naeem @ Titu and 04 others v. the State* (2020 YLR 74), it was held Division Bench of Lahore High Court that;

*"Perusal of proceedings of test identification parade available on record reflected that the same was conducted jointly---During the said proceedings only rows were changed---Witness had not put his hands over the head of the culprits during the proceedings---Such test identification parade was devoid of legal credence."*

7. In the case of *Muhammad Mansha vs. The State* (2018 SCMR 772), it has been held by the Apex court that;

*"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 the 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".*

8. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant under impugned judgment are set aside, consequently, he is acquitted of the offence for which he was charged, tried, convicted and sentenced by learned trial Court and shall be released forthwith, if not required to be detained in any other custody case.

9. The instant Criminal Jail Appeal is disposed of accordingly.

JUDGE