

## IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

**Mr. Justice Mohammad Karim Khan Agha**  
**Mr. Justice Amjad Ali Bohio**

Special Cr. Anti-Terrorism Appeals Nos.132 and 133 of 2022

Appellant:- Imran Khan son of Jamal Nasir @ Jamal Khan  
through Mr. Mamoon A.K. Shirwany, Advocate.

Respondent:- The State through Mr. Saleem Akhtar Buriro,  
Additional Prosecutor General, Sindh.

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Special Cr. Anti-Terrorism Appeals Nos.138 and 139 of 2022

Appellant:- Kamran alias Bangali son of Asghar Khan  
through Mr. Qadir Hussain Khan, Advocate.

Respondent:- The State through Mr. Saleem Akhtar Buriro,  
Additional Prosecutor General, Sindh.

Date of hearing:- 24.08.2023

Date of judgment:- 07.09.2023

**J U D G M E N T**

**AMJAD ALI BOHIO, J:-** Appellants Imran Khan s/o Jamal Nasir alias Jamal Khan and Kamran alias Bangali s/o Asghar Khan have filed separate appeals against the impugned judgment dated 30-06-2022 passed by the Anti-Terrorism Court No.IV, Karachi, in new special case No.37(xiv) of 2017 (old Special Case No.1628 of 2016), arising out of FIR No.119 of 2016, under section 302, 324, 392, 397, 34 PPC read with Section 7 ATA, 1997, new Special Case No.38(xiv) of 2017 (old special case No.1629 of 2016), arising out of FIR No.120 of 2016, under section 23(1)(a) of Sindh Arms Act, 2013, both cases registered at P.S. Artillery Maidan, Karachi and new special case No.39(xiv) of 2017 (old Special Case No.1630 of 2016), arising out

of FIR No.214 of 2016, under section 23(1)(a) of Sindh Arms Act, 2013, registered at P.S. Frere, Karachi, whereby the appellants were convicted and sentenced as under:-

- a) *Accused Imran Khan s/o Jamal Nasir and Kamran @ Bangali s/o Asghar Khan found guilty for the charged offence u/s 302(b)/34-PPC, award imprisonment for life to each and to pay sum of Rs.100,000/- (Rupees one hundred thousand) each, as compensation u/s 544 Cr. P.C. to the legal heirs of the deceased soldier Amjad Ali, which shall be recovered by way of arrear of land revenue, and in default of payment/recovery, they shall further suffer imprisonment for six months.*
- b) *Accused Imran Khan s/o Jamal Nasir and Kamran @ Bangali s/o Asghar Khan found guilty of offence u/s 6(1)(b) of ATA 1997 and convicted u/s 7(1)(a) of ATA 1997, for life imprisonment, each, and fine of Rs.50,000/- (Rupees fifty Thousand) each, in case of default in payment of the fine, they shall further suffer for six month imprisonment.*
- c) *Accused Imran Khan s/o Jamal Nasir and Kamran @ Bangali s/o Asghar Khan found guilty of charged offence punishable u/s 324/34-PPC and hereby convicted and sentenced to suffer for five year imprisonment, each.*
- d) *Accused Imran Khan s/o Jamal Nasir and Kamran @ Bangali s/o Asghar Khan found guilty for the charged offence punishable u/s 392/397-PPC and hereby convicted and sentenced to suffer for seven year imprisonment, each.*
- e) *Accused Imran Khan s/o Jamal Nasir and Kamran @ Bangali s/o Asghar Khan found guilty of the charged offence punishable u/s 23(1)(a) of Sindh Arms Act 2013. They are convicted and sentenced to suffer for three year and fine of Rs.10,000/- (Rupees Ten Thousand) each, in case of default they shall further suffer imprisonment for three months, each.*

2. Facts of the case are that on August 25, 2016, at 0530 hours, Lance Naik Sajjad Hussain registered FIR stating that on August 24, 2016, he and Soldier Amjad Ali were on duty in plain clothes at Lucky Star, opposite Asgari Lane, Dr. Daud Pota Road. At about 2250 hours, they noticed one rickshaw with two passengers heading

towards Cantt. Station from Lucky Star. The rickshaw stopped about 6/7 meters away from Soldier Amjad Ali while complainant Lance Naik Sajjad Hussain was about 20/30 meters away. Suddenly he heard 2/3 gunshots and saw that Soldier Amjad Ali had fallen on the ground. The rickshaw then quickly moved away towards Cantt. Complainant Lance Naik Sajjad Hussain tried to apprehend one young person aged about 27/28 years old, of average build, black hair, and a white beard wearing a red T-shirt and black pants. He managed to hold him during which piece of the suspect's T-shirt was torn as such he had to fire a shot to detain him. Therefore suspect was injured and his companion the motorcycle driver, around 34 years old with a fair complexion and clean-shaved face fled with him on the motorcycle towards Empress Market Saddar. Complainant Lance Naik Sajjad Hussain then found that Soldier Amjad Ali had sustained gunshot injury at his left chest from where it was bleeding. Patrolling officers led by Subedar Zulfiqar arrived and they found that the rickshaw passengers had also been injured. They then shifted Soldier Amjad Ali to PNS Shifa for treatment. On enquiry the rickshaw passengers reported that the culprits had attempted to rob them at gunpoint and when they resisted, the culprits opened fire, injuring Soldier Amjad Ali and others. Unfortunately, Soldier Amjad Ali succumbed to his injuries during treatment. Consequently, the complainant lodged above FIR for attempt to commit robbery at gunpoint, injuring Soldier Amjad Ali and other passersby as well as the rickshaw passengers against the unknown culprits asserting that he can identify upon seeing them.

3. During investigation, Inspector Irshad Karim, who was the Investigating Officer (I.O) as well as Station Investigation Officer (SIO) of Police Station Frere gained information that one of the wanted culprits Imran Khan, had been apprehended at Police Station Artillery Maidan for his involvement in Crime No. 120/2016 under section 23(i)(a) of the Sindh Arms Act, 2013. Accused Imran Khan during his interrogation on August 31, 2016, confessed about his involvement. Other accused Kamran, also known as Bangali, was also apprehended and an unlicensed pistol of 30 bore along with bullets was seized from him. A separate FIR, No. 214 of 2016, was registered under section 23 (i) (a) of the Sindh Arms Act, 2013 at Police Station Frere.

4. During investigation, the I.O arrested both Imran Khan and Kamran on August 25, 2016. The weapons used in the commission

of the aforementioned crime were also recovered from them. Upon completing the investigation, the I.O submitted report under section 173 of the Criminal Procedure Code (Cr.P.C).

5. Before framing of the charges, application under section 21-M of the Anti-Terrorism Act, 1997 was submitted by the learned Prosecutor requesting for joint trial in these cases. This application was granted on May 3, 2017.

6. Formal charge was framed against accused Imran Khan and Kamran on January 31, 2018 to which they pleaded not guilty.

7. To prove charges, prosecution examined Mahesh Kumar (PW-1), Pawan Kumar (PW-2), ASI Nadeemuddin Shaikh (PW-3), ASI Muhammad Khalid (PW-4), HC Badsha Khan (PW-5), MLO / Doctor Aijaz Ahmed (PW-6), PC Nisar Ahmed (PW-7), Judicial Magistrate Kaleemullah Kalwar (PW-8), complainant Lance Naik Sajjad Hussain (PW-9), Subedar Zulfiqar Ali (PW-10) and Inspector / I.O Irshad Karim (PW-11). Thereafter Assistant Prosecutor General ATC-IV Karachi closed the side of prosecution vide statement Ex.24.

8. Both appellants denied the allegations of prosecution during their statements recorded under section 342 Cr.P.C. They neither chose to testify on oath nor desired to produce evidence in their defense.

9. After hearing the arguments of both sides, the Trial Court decided the cases through judgment on January 30, 2021 convicting the accused persons and sentenced them for the offense under section 302(b) / 34 PPC to life imprisonment each, along with a fine of Rs.100,000/- (Rupees One Hundred Thousand) each in default whereof to suffer six months imprisonment. Such fine was imposed as compensation to legal heirs of deceased under section 544A Cr.P.C. They were further convicted under section 6(1)(b) of the Anti-Terrorism Act (ATA) 1997 and sentenced to life imprisonment each and fine of Rs. 50,000/- (Rupees Fifty Thousand) each in default whereof to suffer six months imprisonment. Additionally they were found guilty of offenses under section 7(1) (a) of the ATA 1997 and sentenced to life imprisonment each, along with a fine. The specific amount of the fine was not mentioned. For offenses punishable under section 324/34 of the PPC, they were sentenced to five years imprisonment each and for offenses punishable under section 392/397 of the PPC, they were convicted and sentenced to seven years imprisonment each. Lastly for offenses under section 23(a)(i) of the Sindh Arms Act, 2013, they were convicted and sentenced to

three years imprisonment each, along with a fine of Rs.10,000/- (Rupees Ten Thousand) each in default whereof to three months imprisonment.

10. Above judgment was appealed before this court through Special Criminal ATA Nos. 24 and 25 of 2021 and Special Anti-Terrorism Jail Appeal No. 30 of 2021. After hearing these appeals, the said judgment was set aside and cases were remanded to trial court for recording evidence of PW-1 Mahesh Kumar, PW-2 Pawan Kumar, PW-3 Nadeemuddin Shaikh again and then to record the statements of the appellants under section 342 Cr.P.C so as to pass judgment afresh.

11. Following such remanding of case, the trial court proceeded the matter and the evidence of witnesses namely Badsha Khan (Ex.34, PW-12), SIP Nadeemuddin Shaikh (Ex.35, PW-13), Mahesh Kumar (Ex.36, PW-14), and Pawan Kumar (Ex.37, PW-15) have been recorded. The statements of the appellants under section 342 Cr.P.C were also recorded wherein they denied the allegations leveled against them by the prosecution. Neither, they examined themselves on oath under section 340(2) Cr.P.C nor desired to lead any evidence in their defense. Subsequently, after due consideration, the trial court handed down the impugned judgment on June 30, 2022 thereby convicting and sentencing appellants in terms as mentioned above which lead to filing of the instant appeals.

12. We have heard the learned counsel representing the appellants who has put forth several contentions. It is argued that the prosecution was unable to substantiate the charges against the appellants. The counsel highlighted contradictions in the evidence and urged that statements under section 161 Cr.P.C were recorded after a delay of approximately six days. Additionally, it is pointed out that the registration number of the rickshaw was not disclosed. It is argued that confessional statements of accused were not recorded and the prosecution failed to establish link between the bloodstained clothes and the blood groups. Moreover, the counsel argued that the testimonies of witnesses who identified the appellants were contradictory. Consequently, the counsel contends that the appellants are liable to be extended benefit of doubt, and the impugned judgment is liable to be set-aside. In essence, the counsel's argument focuses on the shortcomings and contradictions in the identification parade and contradiction in between ocular account and medical evidence brought on the record, aiming to

establish that the appellants are entitled for acquittal. In support of his contentions he has relied upon the case of Muhammad Asif v. The State (2017 SCMR 486), Asad Rehmat v. The State and others (2019 SCMR 1156), Mushtaq and three others v. The State (PLD 2008 SC 1), Nasir Javed v. The State (2016 SCMR 1144), (PLD 2019 SC 488), Mian Sohail Ahmed and others v. The State and others (2019 SCMR 956), Abdul Jabbar and another v. The State (2019 SCMR 129) and Tariq Pervaiz v. The State (1995 SCMR 1345).

13. On the contrary, the learned Additional Prosecutor General (APG) has argued that the prosecution evidence was credible and PWs provided consistent testimony on crucial points. The APG emphasized that the defense has failed to highlight any contradictions in their evidence. Furthermore, there is no evidence to suggest that the prosecution witnesses had any enmity, ill-will, or malice against the appellants, which could prompt them to falsely implicate the appellants in the cases. The injured prosecution witnesses (PWs) have identified the appellants and their descriptions are also mentioned in the First Information Report. The APG addressed the delay of seven hours in lodging the FIR by explaining that the complainant moved the injured Soldier Amjad Ali to PNS Shifa for treatment after the arrival of the patrolling vehicle. It was noted that there was no malicious intent on the part of the complainant, as the accused were arrested within 24 hours of the alleged incident and their arrests were documented. This suggests that there is substantial prima facie evidence available, which led to the appellants' conviction. They were identified by the complainant and both injured witnesses before the Magistrate. The APG argued that the Trial Court's decision to convict the appellants was correct and the appeals lack merit, thus warranting dismissal.

14. After careful consideration of the arguments presented by both sides and a thorough examination of the evidence on record, it is important to note that the MLO (Medico-Legal Officer) Dr. Aijaz Ahmed conducted the post-mortem examination of the deceased Amjad Ali and recorded the injuries as follows:-

- “1. *Firearm wound of entry size 0.8 x 0.8 cm in diameter at anterior aspect of left side chest medial to nipple at cardiac area. Blackening negative margin inverted. Blood oozing from wound also clotted blood found around wound.*

2. *There is surgical incision at lateral aspect left side of chest in which it's at mid axillary lying. Chest tube is passed and suction bottle attached. Tube is removed and size of incision is approximately 3 x 02 c.m blood oozing."*

15. The medical officer's examination revealed that the cause of death of deceased Amjad Ali was because of a firearm projectile injury to the left side anterior chest, specifically in the cardiac area. This injury led to irreversible hypovolemic shock and subsequent cardiorespiratory failure as a result of the firearm projectile.

16. Additionally, the medical officer examined the injured Mahesh Kumar, and noted the following injuries:

- “1. *Firearm projectile wound size 1 x 01 cm inverted margins at anterior aspect lower chest.  
Exit wound measuring 01 x 01 cm at left anterior aspect of chest lower area. Inverted margins blood oozing.*
2. *Firearm projection wound size 0.5 x 0.5 at posterior aspect, mid forearm right. Inverted margins no blackening and charring seen.  
Exit wound size 1 x 1 cm at anterior aspect of right forearm at its mid. Averted margins blood oozing. Then I give the police entry No.02 at HC Raees."*

17. The medical officer also conducted examination of Pawan Kumar, who too was injured in the incident. The injuries found on Pawan Kumar were noted as follows:-

- “1. *Firearm projectile entry wound at lateral aspect of left hand wrist size 01 x 01 cm. No blackening charring seen inverted margins.  
Exit wound size 01 x 01 at dorsum of left hand at its proximal part averted margin blood oozing."*

18. During the cross-examination of witnesses, the defense counsel failed to dispute the fact that the death of Amjad Ali was caused by a firearm projectile injury so also the firearm injuries sustained by Mahesh Kumar and Pawan Kumar. The medical evidence available on record corroborates the ocular account so far as the nature, time, locale and impact of the injuries on the person of the deceased, as well as PWs Mahesh Kumar and Pawan Kumar.

Even otherwise it is settled that the ocular evidence if found trustworthy and confidence inspiring, then the same is given preference over the medical evidence and same alone is sufficient to prove the case. It has been held in the case of Muhammad Ilyas v. The State (2011 SCMR 460) as under:-

*“It is not medical evidence to determine question of guilt or innocence but is ocular version which require to be taken into consideration at first instance.”*

19. Consequently, the prosecution successfully established that Amjad Ali died unnatural death which was caused due to firearm injury and that both Mahesh Kumar and Pawan Kumar also suffered firearm injuries.

20. In order to prove the ocular evidence, the prosecution examined complainant Lance Naik Sajjad Hussain, injured PWs Pawan Kumar and Mahesh Kumar. Upon examination of their evidence, the complainant provided specific details about the physical characteristics, age and appearance of the culprits and deposed that accused was young person of 27/28 years of medium height, with a small size beard, black hair and wearing a red color shirt, black trouser/pant to whom, he tried to apprehend and in such attempt his shirt's sleeves was torn. Regarding the other culprit, the complainant testified that the accused was around 34 years old, clean-shaved and was the motorcycle rider who came from Cantt station. The person rode the motorcycle in the opposite direction and was hit by a gunshot in the leg. Despite this, they managed to escape towards the Empress Market side. The detailed descriptions provided by the complainant during both the FIR and his testimony suggest that he had clearly seen the culprits during the alleged incident especially as he struggled with one of them. These facts were corroborated by the statements of injured witnesses Mahesh Kumar (Ex.08) and Pawan Kumar (Ex.09) strengthening the case presented by the prosecution.

21. According to the testimony of PW Mahesh Kumar, when he and Pawan were in a rickshaw near Lucky Star on Daudpota Road, two individuals on a motorcycle suddenly stopped the rickshaw. They displayed a weapon and demanded that Mahesh Kumar and Pawan should hand over their belongings. Mahesh Kumar handed over four thousand rupees, while his brother Pawan Kumar gave them three thousand rupees and cell phone. Subsequently, a person



in civilian clothing, who was armed, apprehended one of the culprits. The other culprit fired with his pistol, resulting in injuries to Mahesh Kumar, Panwan Kumar and the person who caught hold of the culprit. Following this, they were transported to the hospital in the rickshaw. PW Pawan Kumar corroborated these events in his testimony. Both witnesses stated that they had identified both culprits during identification parade held on September 3, 2016, and they also confirmed the appellants' identities during their court testimonies. PW Mahesh Kumar also provided description of the accused who snatched their money and fired upon them. He mentioned that one of the culprits was around 27 years old, wearing a red shirt and black pants. In addition, complainant/PW Sajjad Hussain, during his testimony, provided detailed descriptions of both culprits. He described one as a young person, around 27 or 28 years old, of medium height, with a small beard, black hair, and wearing a red shirt and black pants to whom, Sajjad Hussain attempted to apprehend, leading to his sleeve getting torn. He also described the other culprit, who was the motorcycle rider, as being around 34 years old, clean-shaved. Furthermore, PW Sajjad Hussain confirmed their identities during his testimony. The consistent identification and descriptions of the culprits provided by multiple witnesses, including the victims themselves, strengthen the prosecution's case against the appellants.

22. There is no denial to the fact that the unfortunate incident in question involves a situation where the names appellants were not initially mentioned in the FIR however, this was because the complainant at that time did not know the identity of the appellants who had escaped. It is important to note however that both the complainant and two eyewitnesses have positively identified the appellants as being present at the scene of the incident. The witnesses in question, namely PWs Pawan Kumar and Mahesh Kumar received injuries giving a reasonable explanation for their presence at the location where the incident took place. To elaborate, both Pawan Kumar and Mahesh Kumar have provided detailed accounts of why they were at the site of the incident. They had gone to Empress Market to purchase items for a religious ceremony. Subsequently, while they were on their way home in a rickshaw and had reached the vicinity of Lucky Star near Askari Lawn, their rickshaw was abruptly halted by two individuals riding a motorcycle. These individuals demanded that Pawan Kumar and Mahesh Kumar

hand over their belongings. It was during this moment that the deceased soldier, Amjad Ali, who was in civilian attire and armed, intervened to assist them. He managed to apprehend one of the culprits. However, the other culprit's accomplice opened fire, resulting in injuries to the soldier and both witnesses. In a bid to defend themselves, the complainant, Sajjad Hussain, discharged his official 9mm pistol, striking one of the accused in the leg. Despite this, the accused managed to escape. The medical evidence available further supports the narrative provided by the witnesses. The injuries sustained by the deceased soldier and the two witnesses, Pawan Kumar and Mahesh Kumar, are consistent with their account of the incident. Dr. Aijaz Ahmed, who testified as PW-6, confirmed the nature of the injuries through medical evidence.

23. Considering the above, it is evident that the testimonies of both the complainant and the injured eyewitnesses, namely Pawan Kumar and Mahesh Kumar, are consistent in terms of the details of the incident, including the date, time, and location. It is worth noting that both of these witnesses were injured during the incident and their injuries are supported by medical evidence provided by Dr. Aijaz Ahmed, therefore, the facts of case law 2017 SCMR 586 are quite distinguishable from the above case in hand. Consequently, the evidence presented by PWs Pawan Kumar and Mahesh Kumar convincingly establishes their presence at the scene of the occurrence. Their testimonies are consistent with the events that transpired and qualify them as natural witnesses to the incident. Reliance in this regard is placed upon the case of *Aqil v. The State* (2023 SCMR 831).

24. The appellants have not been able to provide any plausible reason as to why the complainant and the two injured witnesses would falsely implicate them in this case involving the murder of a soldier who lost his life while trying to protect two innocent citizens from being robbed by the appellants. Notably, during the identification parade held on September 3, 2016, after the appellants' arrest on August 25, 2016, both the complainant and the injured witnesses positively identified the appellants. This identification took place before Mr. Kaleemullah Kalwar, the Judicial Magistrate, who was examined as PW-8. According to the testimony of Mr. Kaleemullah Kalwar, the identification parade was conducted with meticulous care. The witnesses and the accused were kept separate, and a lineup consisting of 13 individuals, including the

appellants, was formed in the courtroom. The complainant and the injured witnesses were then called into the courtroom separately for identification. The complainant correctly identified both appellant Imran and Muhammad Kamran alias Bangali by placing their hands on them. The complainant's testimony established that appellants were standing approximately 10 to 12 meters away when the sound of gunfire was heard, and they were observed by the complainant as he rushed to the scene and found soldier Amjad Ali lying on the road. The complainant immediately attempted to apprehend appellant Imran, who managed to escape after pushing him. The complainant, however, fired a shot that hit appellant Imran's leg. Importantly, appellant Imran was arrested on the day following the incident, August 25, 2016, and the arrest memo (Exhibit 11/B) clearly documented the fact that he had a firearm injury on his left leg. This fact was not disputed by the defense counsel during the evidence presented by ASI Muhammad Khalid, who provided the arrest memo and the recovery of appellant Imran. Coming back to evidence of Mr. Kaleemullah Kalwar, he further testified that during the identification process, appellant Imran stood at the 11th position (from right to left), and appellant Kamran Bangali stood at the 6th position (from right to left) as per their own choice. Witness Pawan Kumar identified both appellants by placing his hand on them, providing details about their actions during the incident. The positions of the accused were later changed before their identification by PW Mahesh Kumar. Despite this change, PW Mahesh Kumar was able to recognize them by placing his hand on the correct individuals within the lineup. The consistency and corroboration among the testimony of the Magistrate, the complainant, and the injured witnesses further strengthen the identification process and we find that the eyewitnesses have correctly identified the person who shot the deceased and injured 2 of them.

25. Addressing the contention raised by the counsel for the appellants that there are material contradictions in the prosecution witnesses' testimonies and that the identification parade did not adhere to established guidelines, it is crucial to note that the appellants were identified during the parade separately by the complainant and both injured witnesses, even though the appellants' positions were changed as indicated above. In the case

of Ansar and others v. The State and others (2023 SMCR 929), being relevant to the present case, it was held as under:-

*“8. The identification parade of the petitioners was held on 23.11.2011 and 06.03.2012 in District Jail Sialkot. The same was conducted by Muhammad Rashid Phularwan, Magistrate Section 30, Lahore, who appeared as PW-18. The said Judicial Magistrate categorically stated that the proceedings of the identification of each of the petitioner were conducted separately and the complainant and other PWs Zahid and Mazahar were separately summoned and they separately identified the petitioners. The petitioners were lined up with ten dummies of same stature and every time the witnesses were separately called for identification, the place of accused was changed. The said Judicial Magistrate further stated that the witnesses identified the accused in unambiguous terms and after completion of identification parade, he prepared the report and signed the same. The above-said witnesses and Muhammad Rashid Phularwan, Judicial Magistrate (PW-18) were subjected to lengthy cross-examination by the defence but they remained consistent on all material particulars of the prosecution case and their testimony could not be shattered. Nothing was suggested to PWs in their cross-examination that they deposed falsely on account of some enmity with the petitioners. The petitioners remained in the house of the complainant for a considerable length of time to complete their nefarious designs and the complainant had close proximity to remember them which enabled him to identify them later. So far as the argument of the learned counsel for the petitioners that the identification parade was conducted without observing the guidelines enunciated by the superior courts is concerned, suffice it is to state that the process of identification parade has to be carried out having regard to the exigencies of each case in a fair and non-collusive manner and such exercise is not an unchangeable ritual, inconsequential non-performance whereof, may result into failure of prosecution case, which otherwise is structured upon clean and probable evidence. Reliance is placed on *Tasar Mehmood v. The State (2020 SCMR 1013)*. Even otherwise, it is settled law that holding of identification parade is merely a corroborative piece of evidence. If a witness identifies the accused in court and his statement inspires confidence; he remains consistent on all material particulars and there is nothing in evidence to suggest that he is deposing falsely, then even the non-holding of identification parade would not be fatal for the prosecution case. Reliance is placed on *Ghazanfar Ali v. The State (2012 SCMR 215)* and *Muhammad Ali v. The State (2022 SCMR 2024)*. The medical evidence available on the record further corroborates the ocular account so far as the nature, time, locale and impact of the injuries on the person of the deceased and injured is concerned. Although, it is the case of the prosecution that after their arrest, the petitioners led to the recoveries of some of the looted articles but the sole witness of the recovery proceedings i.e. Muhammad Nadeem (PW-17) has stated that his signatures were obtained on blank papers and articles were shown to him in the police station. The petitioners also got recovered the weapons, which they were carrying while committing the crime, but as no empty was sent to the office of Forensic Science Laboratory, therefore, all these recoveries are inconsequential. However, this does not mean that the petitioners are absolved of their criminal liability. There is*

*sufficient evidence in the shape of ocular account, identification parade and medical evidence to sustain the conviction of the petitioners. During Police investigation, the accusation levelled against the petitioners was also found to be true.”*

26. It is also evident that there was no significant delay in reporting the crime and naturally names of the accused could not be mentioned in FIR but their descriptions were mentioned so as to identify them on their arrest. Despite undergoing thorough cross-examination, the testimony of both injured witnesses (PWs) remained consistent to support the prosecution's case, with no beneficial information for the appellants being elicited. In response to the contention raised by the appellant's counsel regarding the discrepancy between the medical officer's statement and the PWs' accounts regarding the absence of blackening marks around the wound, it should be noted that during the actual incident, when live gunfire is taking place, witnesses may only have a limited and tentative view of the events. It is quite unlikely for them to provide an accurate assessment of the exact distance from which the shots were fired. This discrepancy in the accounts of the PWs and the medical officer does not necessarily discredit the overall credibility of the witnesses. Accordingly, in these circumstances, the facts of above quoted authorities relied upon by the counsel for the appellant are quite distinguishable from the facts of above case in hand. It is important to emphasize that in cases where ocular (eyewitness) evidence is found to be trustworthy, reliable and confidence-inspiring, it holds precedence over medical evidence. A case cited to support this principle is *Muhammad Basheer and another v. The State and another* (2023 SCMR 190), wherein it was held as under:-

*“Even otherwise, it is settled law that where ocular evidence is found trustworthy and confidence inspiring the same is given preference over medical evidence. Casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence when live shots are being fired, witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where such fire shots appeared to have landed and it become highly improbable to mention the distance correctly and the location of the fire shots with exactitude.”*

27. To address the argument put forth by the appellants' concerning the six-days' delay in recording the statements under

Section 161 Cr.P.C. of the Prosecution Witnesses, it is important to note that PWs Pawan Kumar and Mahesh Kumar sustained injuries due to a reckless shooting incident. They stand as natural witnesses to the incident and were also examined by a medical officer. Therefore such delay alone in recording their statements under Section 161 Cr.P.C. by the Investigating Officer (I.O.) cannot be a sufficient ground to discard the evidence provided by these injured witnesses. This aligns with the legal standpoint established in the case of Fateh Khan and others v. The State and others (2021 P.Cr.L.J 969).

28. During the course of cross-examining the complainant and the two injured witnesses, the defense counsel failed to pinpoint any substantial contradictions within their testimonies. This is particularly relevant to their consistency in identifying the perpetrators both before the Magistrate and during their testimonies in court. The defense could not highlight any significant inconsistencies that could raise doubts about the veracity of their accounts. Notably, the absence of substantial contradictions is especially significant in relation to the identification of the accused individuals. The witnesses consistently reaffirmed the identification of the culprits during the identification parade conducted before the Magistrate as well as in the courtroom while providing their testimony. This unwavering consistency in identification reinforces the credibility of their testimonies and bolsters the prosecution's case.

29. It is also to be noted that at the time of the arrest of both accused, 30 bore pistols were also found in their possession. These pistols were seized and sealed in the presence of witnesses, known as Mashirs, who confirmed the recovery. Additionally, the firearms were sent to the Ballistic Expert and report was produced as evidence. Importantly, this report was not unchallenged by the defense during cross-examination of Inspector Irshad Kareem, therefore, facts reported in 2019 SCMR 1156 and PLD 2008 SC 1 are not relevant particularly when ocular evidence brought on record is trustworthy and confidence inspiring. The reliance is placed on the case of Muhammad Bashir and another v. The State and others (2023 SCMR 190). Consequently, the prosecution effectively established the charge of recovering unlicensed weapons from the appellants beyond any reasonable doubt.

30. Considering the circumstances outlined above, no substantial discrepancies or contradictions were identified in the statements provided by eyewitnesses. The defense was unable to highlight any significant inconsistencies, omissions, or discrepancies that could undermine the prosecution's case. Therefore, after careful examination of the evidence presented by the prosecution, including reliable and credible oral testimony, supported by medical and documentary evidence, we have reached the conclusion that the prosecution has successfully proved charges against the appellants beyond reasonable doubt. As a result, we uphold the conviction and sentences awarded for each offense in the judgment. In light of the discussions, considerations and the comprehensive evaluation of the evidence, the instant appeals are hereby dismissed.

JUDGE

JUDGE

*imran*