

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Spl. Cr. A.T. Appeal No. 102 of 2023**

**Present Before:**

**Justice Zafar Ahmed Rajput**

**Justice Tasneem Sultana**

**Appellant** : Syed Jawad Ali Zaidi s/o Syed Anjum Hussain Zaidi, through Mr. Muhammad Farooq, advocate.

**Respondent** : The State, through Mr. Ali Hyder Saleem, Additional Prosecutor General, Sindh.

**Date of hearing** : **28.02.2025**

**Date of order** : **28.02.2025**

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

**TASNEEM SULTANA, J.** Through this appeal, appellant, namely, Syed Jawad Ali Zaidi s/o Syed Anjum Hussain Zaidi has assailed the judgment, dated 30.05.2023, passed by the learned Anti-Terrorism Court No. X, Karachi in New Special Case No. 01 of 2021, (*Old Special Case No. 43 of 2019*), arisen out of F.I.R. No. 214 of 2015 registered at P.S. Ferozabad, Karachi, *under sections 353, 302, 324/34, P.P.C. r/w Section 7 of Anti-Terrorism Act, 1997*, whereby he was convicted and sentenced, as under:-

- (i) *for offence under section 7(1) A.T.A, 1997, r/w section 302/34, P.P.C., appellant shall undergo for life imprisonment and pay a fine of Rs. 500,000/-, in default thereof, appellant to undergo R.I. for two years;*
- (ii) *for offence under section 7(1)(c) A.T.A, 1997, r/w section 324/34, P.P.C., appellant shall undergo R.I. for ten years and pay a fine of Rs. 200,000/-, in default thereof, appellant to undergo R.I. for one year;*
- (iii) *for offence under section 7(1)(h) A.T.A, 1997, r/w section 353/34, P.P.C., appellant shall undergo R.I. for six years and pay a fine of Rs. 100,000/-, in default thereof, appellant to undergo R.I. for six months.*

All the sentences were ordered to run concurrently and the benefit of section 382-B, Cr. P.C. was extended to appellant.

2. Brief facts of the prosecution case are that on 17.03.2015, complainant HC Javaid Aijaz of P.S Ferozabad, Karachi along with police party during patrolling, at 2055 hours, reached near Sughra Masjid, Khalid Bin Waleed Road, Block-III, PECHS, Karachi where he signaled two suspicious persons riding on a Motorcycle to stop, to which they opened straight firing on them with intention to kill them, and deterred them from discharging their duty. As a result of such firing, PC Maarfat Shah and PC Mehtab Ahmed received injuries and they fell down on the ground. In retaliation, one accused received bullet injuries, but they succeeded to make their escape good from the crime scene leaving behind their motorcycle, both the injured police constables were taken to Jinnah Hospital, Karachi for their treatment but, on the way to the Hospital, injured PC Maarfat Shah succumbed to the injuries. Hence registration of the FIR.

3. Initially, I.O. submitted charge-sheet against the appellant by showing him as absconder. The Trial Court after completing the formalities, vide order dated 27.07.2015, directed for keeping the case on dormant file. On 20.06.2017, the appellant was arrested in another crime No. 43 of 2017, registered at PS Sir Syed, Karachi, who during interrogation disclosed his involvement in present crime; he was identified through complainant HC Javaid Aijaz, while he was in police custody of PS Sir Syed. P.C. Mehtab identified the appellant during identification test conducted by Judicial Magistrate. After completion investigation, police submitted the supplementary charge-sheet against the appellant. After completing requisite formalities, the Trial Court framed the charge against the appellant, to which he pleaded not guilty and claimed to be tried.

4. To prove its case, prosecution examined **PW-1** complainant HC Javaid Aijaz, at Ex. 22, who produced Report No. 43, memo of inspection of dead

body of deceased police constable, inquest report, statement under Section 154 Cr. P.C., FIR No. 214 of 2015, memo of site inspection, visual sight sketch, memo of identification of deceased accused (involved in this case), memo of identification and nomination of the accused, memo of re-arrest of the accused and identification, memo of pointation of place of incident by the present accused, at Ex. 22-A to Ex. 22-K, respectively; **PW-02** Asif Ali Memon, (Judicial Magistrate) at Ex. 25, who produced applications of 1.0, memo of identification test, notices under Section 160 Cr. P.C. and list of dummies of identification test at Ex. 25-A to Ex. 25-E, respectively; **PW-3** ASI Ghaffar Shah, at Ex. 26, who produced receipt of handing over dead body of deceased at Ex. 26-A; **PW-4** PC Mehtab Ahmed at Ex. 28, who produced 03 sketches of the culprits at Ex. 28-A; **PW-5** HC Muhammad Naeem, at Ex. 29; **PW-6** Dr. Aijaz Ahmed (MLO, JPMC, Karachi) at Ex. 31, who produced police letters, post mortem report and Medico legal certificates at Ex. 31-A to Ex. 31-F, respectively; **PW-7** SIP Muhammad Sachal at Ex. 32, who produced Report No. 53, memo of seizure of motorcycle and crime empties with Report No. 57 at Ex. 32-A to Ex. 32-C, respectively; **PW-8** PC Abdul Wahab at Ex. 33; **PW-9** DSP Farhat Kamal at Ex. 36, who produced Report No. 09, order of SSP East, Karachi, Report No. 15, Report No. 17, Report No. 19, Report No. 13, letter addressed to I/C CRO, Karachi, letter addressed to I/C CRO/CIA, Karachi, CRO of the accused, request application for holding identification test of the accused, report regarding burning of case property of this case along with road certificate, FIR No. 123/2018, Report No. 06, Road Certificate dated 06.07.2017 at Ex. 36-A to Ex. 36-K, respectively, and **PW-10** PI Aurangzeb Khattak at Ex. 37, who produced letter addressed to I/C FSL, FSL Examination Report, online Verisys Verification System Report, letter addressed to I/C FSL Sindh, Karachi, FSL Examination Report, Letter

addressed to I/C Chemical Examiner, Sindh, Karachi and Chemical Examiner's Report at Ex. 37-A to Ex. 37-G, respectively.

5. After recording 342, Cr. P.C statement of accused (appellant) and hearing of the final arguments, the Trial Court convicted and sentenced the appellant, vide judgment dated 26.04.2021.

6. Being aggrieved, the appellant filed Special Criminal Anti-Terrorism Appeal No. 72 of 2021 and vide order dated 17.08.2021, this Court set aside the impugned judgment and remanded the case back to the Trial Court for the limited purposes of re-recording the evidence (including examination-in-chief, cross-examination and re-examination) of PW-1, Javed Aijaz in presence of counsel for the appellant and thereafter, learned Trial Court should re-record the statement of accused (appellant) under Section 342, Cr. P.C. and then re-write the judgment based on the evidence on record and after hearing submission of the parties. The Trial Court thereafter re-recorded the evidence of complainant and then recorded the statement of appellant under Section 342, Cr. P.C. at Ex. 47, wherein he denied the allegations against him and claimed to be innocent. He, however, neither examined himself on oath to disprove prosecution's allegations, nor even led any evidence in his defence. The Trial Court after hearing the learning counsel for the appellant as well as A.P.G. for the State, convicted the appellant and sentenced him as mentioned above, vide impugned judgment dated 30.05.2023.

7. We have heard the learned counsel for the appellant as well as Additional Prosecutor General, Sindh for the State and perused the material available on record with their assistance.

8. The learned counsel for the appellant *inter-alia* has contended that Trial Court failed to appreciate law and facts involved in this case and has not considered the material contradictions in the statements of the prosecution witnesses, which have created serious doubt in the prosecution case. He has added that impugned judgment is based on presumptions and assumptions. He has further contended that the appellant was not arrested from the spot and after lapse of considerable time identification test was held before Magistrate through PC Mehtab, who already seen photo of appellant obtained through NADRA record. Complainant had also seen the accused at police station, so merely on the basis of identification parade appellant could not be convicted. Finally, learned defence counsel has prayed for setting aside the impugned judgment.

9. Conversely, learned Additional Prosecutor General, Sindh for the State while supporting the impugned judgment, has maintained that the prosecution has proved its case through ocular and medical evidence. He has contended that appellant with the collusion of another culprit had acted like a hardened criminal and as a result of firing from the accused side PC Maarfat was killed, while PC Mehtab received firearm injury. Lastly, he prayed that the impugned judgment may be maintained.

10. The case of prosecution was based on the ocular account of complainant HC Javed Aijaz, PC Mehtab and PC Muhammad Naeem as well as on the empties secured from the crime scene. The complainant and above named two eye-witnesses in their respective statements recorded before the Trial Court had re-iterated the version mentioned in the FIR. It is worth noting that complainant and same two eye-witnesses specifically stated in their evidence that only one culprit had opened fire on the police party as a result PC Maarfat was succumbed to injuries, while PC Mehtab had

sustained firearm injury. However, in the identification test proforma (Ex. 25/B), PW-2, Asif Ali, Judicial Magistrate (Ex. 25) specifically mentioned that witness PC Mehtab assigned role to present appellant as of driving the motorcycle. The same witness also clarified as mentioned in identification proforma that the other culprit fired on the police party. At this stage, we consider it appropriate to point out that the deceased culprit (Hafeezuddin) of Crime No. 279 of 2015 of same Police Station was identified by complainant HC Javed Aijaz, PC Mehtab and PC Muhammad Naeem, as one of the culprits of present crime. Another aspect of this case is recovery of eight empties of 9 MM pistol from the crime scene. Per evidence available on record shows that one 9 MM pistol was recovered from the body of deceased accused Hafeezuddin, who was killed in the Crime No. 279 of 2015. The I.O had sent the 9 MM pistol for FSL in order to ascertain that whether the empties secured on 17.03.2015 in present crime were fired from the said 9 MM pistol or not. The FSL report (Ex.37/B) confirms that the said weapon was used in the commission of present offence. Hence, even as per prosecution the appellant was riding the motorcycle from which other accused, namely, Hafeezuddin (pillion rider) had fired on the police party.

**11.** There is no denying section 34 PPC is in respect of joint liability of all accused persons. However, the prosecution has first to prove the very presence of appellant at the crime scene on 17.03.2015.

**12.** Admittedly, the three eye-witnesses did not know the appellant before the incident. In spite of that neither in FIR nor in their respective 161 Cr. P.C. statements, the said witnesses had disclosed the description of the culprits. However, quite surprisingly the same eye-witnesses identified the appellant from his photographs shown to them through NADRA record, more than a month after lodging of FIR. PWs-4 & 5, during their evidence

have also narrated that on 24.04.2015, I.O Aurangzeb shown sketches of suspect to them and complainant, to which above three witnesses informed the I.O that one sketch is matching with the suspect, who was ridding the motorcycle. Surprisingly, complainant and I.O did not disclose the above fact during their evidence except that complainant, PC Mehtab and PC Muhammad Naeem identified the appellant first time through Verisys (Ex.22/I).

**13.** The cross-examination of PW-4 PC Mehtab reflects that he refuted the claim of defence counsel, that he had not assisted I.O in drawing sketch of suspect, however, PW-4 admitted that above fact had not been narrated during his examination in chief, so also, he did not produce sketches of suspect. Thereafter, this PW produced Photostat copies of three sketches of suspect in re-examination (Ex.28/A). These sketches reveal that same were developed by Pakistan Data Management Service, printed on 17.03.20215. More so, I.O and complainant did not utter a single word in respect of drawing the sketches of suspect of the offence of present crime occurred on 17.03.2015. More importantly, during cross-examination complainant admitted that in his statements under Section 154 & 161, Cr. P.C he did not give description of suspects. This chain of preposterous coincidences did not end there, as one PW-4, Mehtab also correctly picked the present appellant in identification test held more than two years after the present incident. No plausible explanation is available on record about the absence of two remaining P.Ws in the said identification test. Record reveals that evidence of these three PWs had been recorded before the Trial Court more than three years after the incident.

**13.** Reverting back to identification test, it is re-iterated that the same was held more than two years after the incident and even then, concerned

Judicial Magistrate (PW-2 Asif Ali, at Ex.25) had not observed the required procedure and precautions as directed by the Hon'ble Apex Court in case of Kanwar Anwar Ali v. The State (PLD 2019 SC 488) wherein mandatory guidelines were laid down for conducting an identification parade, which flowed from and approved the earlier case of Muhammad Yaqoob & others v. The State (1989 P. Cr. L.J 2227).

15. Perusal of identification test proforma (Ex.25/B) shows that CNIC numbers of the dummies are not mentioned. Here it may be added that PW PC Mehtab had already seen the photograph of present appellant before the identification test. *Common sense dictates that mere fleeting glimpse of culprits at night time and that too during the exchange of fires cannot leave such long lasting memories.* It is observed that concerned police and prosecution had put much emphasis on recovery of motorcycle in Crime No. 279 of 2015, which as per Excise and Taxation was found registered in the name of appellant. It is astonishing to note that said record of Excise and Taxation Department had not been produced before the Trial Court.

16. Though prosecution case is based on ocular account of three eye witnesses but appraisal of their evidence shows that the same is replete with discrepancies, contradictions and improvements. On one hand, complainant HC Javed Aijaz (Ex.22) initially identified the appellant through photos in NADRA record and even memo of identification and nomination of accused (Ex.22/I) suggest that the complainant and two eye-witnesses, namely, PC Mehtab and PC Muhammad Naeem also identified the appellant through photos in NADRA record before the I.O. However, the said two witnesses in their evidence had narrated that they informed the I.O that one sketch is matching with the suspect, who was riding motorcycle (Ex.28/A). It may be further added that after transfer of PI Aurangzeb, the I.O of the



case, investigation was assigned to DSP Farhat Kamal by the SSP, District East Karachi. The said I.O DSP Farhat Kamal arrested the appellant on 28.06.2017, while appellant was already arrested in FIR No. 43 of 2017, at Police Station Sir Syed (Ex.22/J), he prepared memo of inspection of place of incident on the pointation of appellant, I.O DSP Farhat Kamal got identification test done through Judicial Magistrate. He submitted supplementary charge sheet against the appellant, but he did not identify the appellant during the evidence in Trial Court. The trial Court had not properly appreciated the same. More astonishing to note is that silence of first I.O. PI Aurangzeb on preparation of sketches and subsequent assertion of witnesses that same sketches had resemblance with culprit. It goes without saying that sketches of suspects can only be prepared from the description pointed by the witnesses while in present case I.O. and witnesses have not stated a word about such process.

17. It may be observed that it is the governing principle of criminal law that the onus lies upon the prosecution in a criminal trial to prove all the elements of the offence with which the accused persons are charged with. It may further be observed that since in a criminal case liberty of an accused is at stake, or strict standard of proof is required to establish his guilt, which cannot be based on preponderance of probabilities but it must be proved beyond reasonable doubt. The words "beyond reasonable doubts" mean that the prosecution must convince the Court that there is no other reasonable outcome of the evidence produced in trial except the conviction.

18. Notwithstanding the gravity of offence, the prosecution remains bound to its foremost duty to prove the case beyond reasonable doubt. In this case very presence of appellant at crime scene through reliable and trustworthy evidence has not been proved. Trial Court by convicting the

appellant on such contradictory and improved versions of witnesses ignored the basic principle of criminal law about innocence of accused till proven guilty. So, conviction based on assumption, presumption and evidence emanating from selection memory is not sustainable.

19. It is now well settled principle that there is no need to be multiple circumstances creating doubt. If a single circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then accused will be entitled to such benefit not as a matter of grace and concession, but as a matter of right. In case of *Muhammad Ijaz alias Billa and another v. The State (2024 SCMR 1507)*, the Apex Court has held;

*“It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to procure conviction then the Court can come forward for the rescue of the accused persons as held by this Court in Daniel Boyd (Muslim Name Saifullah) and another v. The State (1992 SCMR 196); Gul Dast Khan v. The State (2009 SCMR 431); Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652); Abdul Jabbar and another v. The State (2019 SCMR 129); Mst. Asia Bibi v. The State and others (PLD 2019 SC 64) and Muhammad Imran v. The State (2020 SCMR 857)”.*

20. For the foregoing facts and circumstances, we are of the considered view that the prosecution has failed to prove its case against the appellant beyond a reasonable doubt by producing reliable, trustworthy and confidence inspiring evidence, therefore, we allow the appeal. Resultantly, the conviction and sentence awarded to appellant vide impugned Judgment dated 30.05.2023 is set-aside and he is acquitted of the charge.

21. Above are the reasons of our short order dated 28.02.2025, whereby the instant appeal was allowed.

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