

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

Sp. ATA No. 162 of 2018 abw

Conf. Case 06 of 2018

Nadeem Khan & Ors. vs. The State

HIGH COURT OF SINDH

Composition of Bench: ~~S.B.~~/D. B.

Mr. Justice Mohammad Karim Khan Agha,

Mr. Justice Khadim Hussain Tania

Date(s) of Hearing: 20-08-18 & 21-08-18

Decide on: 26-08-2019

(a) Judgment approved for reporting:

Yes



CERTIFICATE

Certified that the judgment*/order is based upon or enunciates a principle of law */ decides a question of law which is of first impression / distinguishes / overrules / reverses / explains a previous decision.

* Strike out whichever is not applicable.

-
- NOTE:
- (i) This slip is only to be used when some action is to be taken.
 - (ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
 - (iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
 - (iv) Those directions which are not to be used should be deleted.

IN THE HIGH COURT OF SINDH AT KARACHI**(Criminal Appellate Jurisdiction)**Special ATA Appeal No. 16 of 2018PRESENTED ON
28-05-2018
Deputy Registrar (Judl.)

1977

1 Nadeem Khan S/o Abdul Razzaque,

2 Abid Ali S/o Bawar Khan

3 Noor-ul Rasheed S/o Abdul Jabbar

presently confined at Central Prison,

KarachiAppellants/Accused

Versus

The State.....Respondent

FIR No.46/2014

U/S 303, 324, 427, 109/34 PPC

3/4 Explosive Substance Act,

R/w Section 7 ATA

P.S. PIB Colony, Karachi

**CRIMINAL APPEAL U/S SECTION 25(1) OF ANTI
TERRORISM ACT 1997 R/w SECTION 410 Cr.P.C.**

Being aggrieved and dissatisfied with the impugned Judgment dated 21.5.2018 passed by the Judge Anti Terrorism Court No.XIV Karachi in Special Case No.A-48/2015, FIR No.46/2014, U/S 303, 324, 427, 109/34 PPC, 3/4 Explosive Substance Act, R/w Section 7 ATA Karachi, P.S. PIB Colony, Karachi whereby the learned said Special Judge convicted and sentenced the appellants Nadeem Khan S o Abdul Razzaque, Abid Ali S/o Bawar Khan and Noor-ul-Rasheed S o Abdul Jabbar U/S 265-H(II) Cr.P.C. in following order:-

- 1 For offence U/s. 7 (i) (a) of Anti-Terrorism Act 1997, R/w Section 302 (b)/34 PPC to death on four (04) counts, each convict be hanged by the neck till he is dead subject to the confirmation by the Hon'ble High Court as provided U/s. 374 Cr.P.C. Convicts are also ordered to pay compensation of Rs.200000/- each (Two Lac) to the heirs of the deceased U/s. 544-A Cr.P.C. and in default of such payment they shall undergo SI for

JUDGE ANTI-TERRORISM COURT NO: XIV, INSIDE,
CENTRAL PRISON AT KARACHI.

No: ATC-XIV/K-Div/324 of 2018

Karachi dated: 22.05.2018

Spl Case No: A-48/2015

State

v/s

01 Nadeem Khan S/o Abdul Razzaque

02 Abid Ali S/o Bawar Khan

03 Noor-ul-Rasheed S/o Abdul JabbarConvicts

FIR No: 46/2014

U/S: 302,324,427,109/34 PPC, 3/4

Explosive Substance Act,

R/w Sec: 7 of ATA

P.S. PIB Colony, Karachi.

To,

INWARD TO 1076
 BRANCH C-8-1
 DATE 20/5/18
 HIGH COURT KARACHI

The Registrar,
 Hon'ble High Court of Sindh,
 Karachi.

SUBJECT: REFERENCE FOR CONFIRMATION OF DEATH
SENTENCE U/S: 374 CR.P.C.

I have the honor to submit that in the above captioned case this court vide judgment dated: 21.05.2018, has convicted and sentenced accused persons namely 01. Nadeem Khan S/o Abdul Razzaque 02 Abid Ali S/o Bawar Khan and 03. Noor-ul-Rasheed S/o Abdul Jabbar, for offence u/s: 7 (i) (a) of Anti-Terrorism Act 1997, R/w 302/34 PPC, and Section 3 Explosive Substance Act to death. The record and the proceedings (Page 01 to 1034) of the case are submitted for confirmation of sentence of death as required u/s: 374 Cr.P.C.



(Arshad Murtaza)
 Judge

Anti-Terrorism Court No: XIV,
 Karachi.

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Cr. Anti-Terrorism Appeal No.162 of 2018
Confirmation Case No.06 of 2018

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellants: Nadeem Khan son of Abdul Razzaque,
Abid Ali son of Bawar Khan and Noor-ul-
Rasheed son of Abdul Jabbar, through Mr.
Muhammad Hanif Kashmiri, Advocate

Respondent: The State through Mr. Ali Haider Saleem,
Deputy Prosecutor General.

Dates of hearing: 20.08.2019 and 21.08.2019

Date of Announcement: 26.08.2019

J U D G M E N T

MOHAMMED KARIM KHAN AGHA, J.- The appellants namely Nadeem Khan, Abid Ali and Noor-ul-Rasheed have assailed the judgment dated 21.05.2018 (the impugned Judgment) passed by the learned Judge, Anti-Terrorism Court-XIV, Karachi for offences under Sections 302, 324, 427, 109/34 PPC, ¾ Explosive Substances Act, 1908 read with Section 7 of ATA in Special Cases Nos.A-48/2015 whereby the appellants were convicted under sections 265 H(II) Cr. P.C and sentenced as under:-

01. For offence u/s. 7(i) of Anti-Terrorism Act 1997, R/w. Section 302(b)/34 PPC, to death on four (04) counts subject to confirmation by the Hon'ble High Court as provided u/s.374 Cr.P.C. The Convicts are also ordered to pay compensation of Rs.200,000/- each (Two Lacs) to the heirs of the deceased U/s.544-A Cr.P.C. and in default of such payment they shall undergo S.I. for six months.
02. For offence u/s.3 Explosive Substance Act to death on four (04) counts, subject to the confirmation by the Hon'ble High Court as provided u/s.374 Cr.P.C. The properties of the convicts shall stand forfeited to the Government as provided by Section 5-A of Explosive Substance Act.

03. For offence u/s. 7(I) (C) AT Act R/w. 324/34 PPC to undergo R.I. for 10 (Ten) years and fine of Rs.10, 000/ (Ten Thousand) each in default of payment of fine the convicts shall further undergo S.I. for 6(six) months.

04. For offence u/s. 337 (f) (2), (h) PPC to undergo R.I. for 01 (One) year and pay of Rs.10, 000/- each as Daman to the injured.

05. For offence u/s. 427 PPC to undergo R.I. for 01 (One) year and to pay fine of Rs.5000/- each (Five thousand) in default of payment of such fine S.I. for 3(three) months.

2. All the sentences were to run concurrently and the appellants were extended the benefit of Section 382-B, Cr.PC.

3. The brief facts of the prosecution case are that on 24.04.2014 SIP Safdar of PS PIB Colony on information first went to the place of incident and thereafter visited Agha Khan Hospital and Jinnah Hospital Karachi (JPMC), where he had seen the dead bodies of Inspector Muhammad Shafique aged 40 years, Muhammad Jalal Qureshi aged 35 years, Muhammad Dawood aged 60 years, Aijaz Ahmed aged 40/45 years and of the unknown suicide bomber. SIP Muhammad Safdar had completed formalities U/s. 174 Cr.P.C. and obtained the death certificates from concerned MLO as well as the blood soaked cloths and body parts of the suicide bomber. It is also stated in the FIR that injured persons namely HC Saleem Khan, PC Ashiq Hussain and Abdul Qadir were not in condition to give statements therefore, SIP Muhammad Safdar went to the place of incident and gathered information, where the concerned SHO and DSP as well as officials of BDS were available, and it transpired that Inspector Shafique Tanoli during his posting at PS Maripur and PS Mochko had taken effective measures against the terrorists, therefore, he was on the hit list of same terrorists. It is further stated in same FIR that on 24.04.2014 at 0835 hours, Inspector Shafique Tanoli was sitting with his friends near his house at Aijaz Tailoring shop, Pakistan Chowk, Mano Goth old Sabzi Mandi Karachi, where unknown terrorists alongwith unknown suicide bomber who was armed with explosive materials had killed Inspector Muhammad Shafique, Muhammad Jalal, Muhammad Dawood and Aijaz Ahmed, while the gunman of Inspector Shafique Tanoli namely HC Saleem Khan and PC Ashiq Hussain of Security Zone-II, and one passerby Abdul Qadir were injured. It is also stated in same FIR that the dead bodies and the

injured were earlier shifted to the hospital, and efforts were made to get recorded the statement u/s 154 Cr. P.C. of the heirs of deceased but to no avail, therefore, FIR was lodged on 26.04.2014.

4. After the usual investigation of the case conducted by Investigating Officer challan was submitted against all three accused under the above referred sections of law.

5. Trial court framed charge against the accused persons. In order to prove its case at trial the prosecution examined 15 PWs and exhibited numerous documents and other items. Thereafter, the prosecution closed its side. Statements of the accused were recorded u/s 342 Cr.PC whereby they denied the allegations against them and claimed that they had been falsely implicated in this case. None of the accused gave evidence on oath or called any witness in support of their defense case.

6. Learned Judge, Anti-Terrorism Court-X, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 21.05.2018, convicted and sentenced the appellants as mentioned earlier in this judgment and hence all three appellants have filed appeals against their conviction.

7. Learned advocate for appellants contended that the eye witnesses were false and were not present at the scene of the incident which was bolstered by the fact that the eye witnesses did not register the FIR and left it to the SI; that the two day delay in lodging the FIR meant that it had been concocted by the police in order to falsely implicate the appellants in the case; that there were major contradictions in the evidence of PW's 5 and 6 who were both allegedly eye witnesses to the incident and as such their evidence could not be relied upon; that the appellants had been arrested before the incident and had been falsely implicated in the case by the police; that the appellant's confessions before the police were inadmissible; that the identity parade was defective and could not be safely relied upon and that for all or any of the above reasons the appellants be acquitted based on the benefit of the doubt. In support of his

contentions he placed reliance on **Ghulam Qadir v. The State** (2002 P Cr.L.J 2007), **Shafqat Mehmood and others v. The State** (2011 SCMR 537), **Raja alias Dad Muhammad alias Dado v. The State** (2013 MLD 1225), **Abdul Salam and others v. The State** (PLD 2005 Quetta 86), **Muhammad Yameen alias Raja v. The State** (2009 SCMR 84), **Muhammad Shoukat v. The State** (2012 YLR 1841), **Nigah Ali Shah and another v. The State** (1975 P. Cr.L.J 38), **Asghar Ali alias Sabah and others v. The State** (1992 SCMR 2088), **Nasir Mehmood and others v. The State** (2008 YLR 1755), **Muzammal Hussain v. The State** (2007 YLR 1627) and one unreported judgment passed by the Hon'ble Supreme Court of Pakistan in Cr. Misc. Application No.183 of 2019 in Cr. Appeal No.259 of 2018..

8. On the other hand Mr. Ali Haider Saleem, Deputy Prosecutor General supported the impugned judgment and contended that the eye witnesses are reliable and trust worthy and rightly identified the appellants and that we can uphold the convictions based on their evidence alone; that there were no defects in the identification parade which was conducted in accordance with the law; that the appellants had been identified in the court ; that the appellants had confessed to the crime before the police and lead the police to the place of the incident; that there were no major contradictions in the evidence of any PW such as to render them unreliable and all the PW's fully supported the prosecution case against the appellants and thus for all the above reasons the appeals should be dismissed and the death penalty upheld as it was fully justified by the nature of the crime i.e. a suicide bombing in a public place which killed four innocent people including a police officer and injured at least two others. In support of his contentions he placed reliance on **Dadullah and another v. The State** (2015 SCMR 856), **Zakir Khan and others v. The State** (1995 SCMR 1793), **Bashirullah and another v. The State** (2002 P Cr. L J 1183), **Muhammad Sadiq v. The State** (2017 SCMR 144), **Khan alias Khani and another v. The State** (2006 SCMR 1744), **Muhammad Ehsan v. The State** (2006 SCMR 1857) and **Nazir Shehzad and another v. The State** (2009 SCMR 1440).

9. The detailed facts of the case as well as evidence produced in support of the appellants are elaborately mentioned in the impugned

judgment dated 21.05.2018 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

10. We have heard the arguments of the learned counsel for the appellants and DPG, gone through the entire evidence which has been read out by the appellant's counsel, the impugned judgment with their able assistance and have considered the relevant law including the cases cited at the bar.

11. After carefully reviewing the prosecution evidence including those of the eye witnesses, the MLO's and the post mortems of the deceased, the bomb disposal expert and the suicide blast report and other PW's who arrived at the scene shortly after the bomb blast we are satisfied that the prosecution has proved beyond a reasonable doubt that on 24-04-2014 at about 8.30 am in the morning a suicide bomber blew up Aijaz Tailor shop near Pakhtoon Chowk Manoo Goth old Sabzi Mandi Karachi which lead to the death of Inspector Muhammad Shafique, Muhammad Jalal Qureshi, Muhammad Dawood, Aijaz Ahmed and injuries to PC Ashiq Hussain and Abdul Qadir which position is admitted by the appellants.

12. With regard to the delay in filing the FIR we are of the view that the delay in filing the FIR two days after the incident has been adequately explained in the FIR in that it was expected that the family members of the deceased would file the FIR after the funeral of the deceased and when they failed to do so it was registered by PW one SI Safdar. Further explanation for delay in filing the FIR has been given by PW 15 Rao Zaheer Ahmed in his evidence as the police were awaiting reports from the DBS. Thus, we are not of the view that the delay in filing the FIR is fatal to the prosecution case based on the particular facts and circumstances of this case and that the delay did not lead to a concoction of a false case against the appellants. There is an abundance of evidence on record to show that the explosion at Aijaz's Tailor shop which took the lives of four and injured two others as well as causing a huge amount of damage on account of a suicide bomber who was seen with three others prior to entering Aijaz's Tailors and detonating his suicide bomb and if the police wanted to

falsely implicate the accused in this case they could have done so by naming them in the FIR straight away or within this two day period of delay. Instead the FIR states unknown persons.

13. We have found that at least PW 5 Ashiq Hussain and PW 6 Mohammed Saleem were present at the time of the incident and were eye witnesses to the same. They both served as gunman to Inspector Shafique who was the target of the attack on account of his hunting down of terrorists and who was killed in the incident and as such they were natural as opposed to chance witnesses. They had no enmity with any of the accused and no reason to falsely implicate them. Furthermore, eye witness PW 5 Ashiq Hussain also sustained injuries on account of the blast which injuries have been corroborated by PW 11 Jagdish Kumar who was the MLO who examined PW 5 Ashiq Hussain at JPMC shortly after the incident and found his injuries to be consistent with being caused by a kind of weapon of explosive ballistic material. We do not find any contradictions between PW's 5 and 6 to be so major as to rule out their evidence and consider any such contradictions to be of a minor nature. PW 7 Rashid Khan was the brother of the deceased and also seems to be a chance witness and as such we have placed little if any reliance on his identification of the appellants. PW 8 Mohammed Ashraf is local business man and is also a potential chance witness so we have also given his evidence with respect to identification of the appellant's very little weight and considered it with due care and caution as indeed we have with all the eye witnesses in terms of the identification of the appellants.

14. We do not consider the confessions before the police by any of the appellants to be of any relevance as such confessions before the police are inadmissible under the law. The fact that the appellants lead the police to the scene of incident is also in our view irrelevant as the police already knew the scene of the incident.

15. In our view the primary issue before us is whether the identification of the appellants as the persons who were seen with the suicide bomber just before he entered Aijaz's Tailors shop and blew himself up and therefore can be deemed as his accomplices can be safely relied on to maintain a conviction in a capital case.

16. Thus, we have carefully considered the identification evidence which we set out below keeping in view the fact that in a capital case in court identification is regarded as being unsafe and could not be approved. In this case the appellants were identified by a number of eye witnesses in court but only one through an identification parade. In this respect reliance is placed on **Azhar Mehmood V State** (2017 SCMR 135) and **Gulfam V State** (2017 SCMR 1189);

17. **The FIR:** This was registered after a delay of about 2 days and gives no description of the appellants. It simply registers the FIR against unknown persons/terrorists.

18. In our view the most reliable eye witness is **PW 5 Ashiq Hussain** who states in effect that he was standing in front of Aijaz Tailors shop when 4 persons having beard crossed in front of him and went to Masha Allah General Store and Bakers and were talking outside when one of them went with a shopper in to Aijaz Tailors shop when a blast occurred. In cross examination he states that he has not mentioned the smaller or taller height of any of the accused in his S.161 statement which was taken two days after the incident although this delay is to some extent explainable as he was injured in the blast. He was the only eye witness who attended the identification parade.

19. **PW 6 Muhammed Saleem** who was on duty with **PW 5 Ashiq Hussain** essentially states the same as **PW 5 Ashiq Hussain** in his evidence regarding the identification of the appellants.

20. **PW 7 Rasheed Khan** whose evidence we have already largely discounted as being a chance witness in terms of identification only says the accused had beards. He made no mention of their features, height and description before the court.

21. **PW 8 Muhammed Ashraf** another eye witness whose evidence we have given very little weight to in terms of identification simply states that the accused had beards and admits not disclosing in his S.161 statement the description, height and features of the accused.

22. **PW 15 Rao Zaheer Ahmed** who was an earlier IO of the case during cross examination states as under:

"In statement recorded under S.161 Cr.PC of PC Ashiq and PC Saleem (the two police eye witnesses mentioned above as PW's 5 and 6) the description of the culprits were not mentioned. It is correct to suggest that the above mentioned witnesses had not disclosed the description of the accused persons" (bold added)

23. Thus, having considered the identification evidence prior to the identification parade it appears that none of the eye witnesses knew or had seen the appellants before the incident; that no hulia or description of any kind was given about the appearance of any of the appellants except to say that they all had beards. There is no mention of height, size or any other distinguishing feature of any of the appellants. It appears that the eye witnesses only observed the appellants fleetingly when they crossed them in the street. There is no reliable evidence as to how far away the Masha Allah General Store and Bakers was from Aijaz's Tailors where the appellants apparently waited with the suicide bomber, for how long they stayed there, whether there was sufficient light to see them clearly and make out their features even if an eye witness had been watching them and whether the appellants were visible at the front of Masha Allah General Store and Bakers especially as they all had beards and may have had their heads turned or been obscured by other objects.

24. In essence the later identification of each of the appellants by PW 5 Ashiq Hussain through the identification parade held by PW 4 Abdul Razaq senior civil judge turns on the fact that all three accused had beards.

25. Out of the alleged 4 PW's who saw the appellants at the scene of the incident only one PW 5 Ashiq Hussain appeared before the identification parade. No cogent explanation has been given as to why none of the other 3 PW eye witnesses were not asked to attend the identification parade which raises suspicions.

26. With regard to the conduct of the identification parade we are not persuaded that this was carried out in accordance with the mandatory guidelines as laid down in the case of **Kanwar Anwaar Ali** (PLD 2019 SC 488) when all the following factors are considered as a whole.

- (a) The identification parade took place 9 months after the incident.
- (b) The appellants were all in police custody when they were arrested and could have been shown to PW 5 Ashiq Hussain prior to the identification parade who was also a police officer. In fact the magistrate has noted that the appellants had remained in police custody before the identification parade for at least two months and could have been seen by a number of people especially as they took the police to the scene of the incident.
- (c) The appellants were arrested on 01-05-2015 yet the identification parade did not take place for an unexplained delay of 16 days
- (d) The CNIC No.s, addresses and professions of the dummies were not recorded in the magistrates report
- (e) At least 6 out of the 10 dummies were used in at least two out of the three separate identification parades which in effect means that by the last identification parade the identifier was already familiar with 6 out of the 10 dummies who he had seen before in the earlier two identification parades carried out on the same day.

27. **Most importantly** as mentioned above the fact that the appellants were only initially described by having beards in our view makes it extremely unlikely for a safe and reliable identification parade to be carried out. Such a general description gives the identifier the license to pick out anyone especially as in this case it can be assumed that if the identification parade was carried out fairly all the dummies had beards. Thus, it cannot be ruled out, under these circumstances, that particular people whom the police suspected as terrorists were not deliberately and falsely implicated in the incident through the identification parade simply because they had beards.

28. In our view without sufficient hulia/description of the features and overall bearing of the accused being set out in an FIR or by an eye witness in his statement recorded under S.161 Cr.PC **very shortly** after the incident to a large extent makes the identification parade of very limited evidentiary value even if it is carried out strictly in accordance with the law as there is no yardstick by which it can be determined whether the identifier is actually picking out the correct accused who he actually did see at the time of the incident especially when he only had a fleeting view of an unknown person. In this case there were three accused but for each it was simply stated that they all had beards. No distinction was made between any of them. Are we to

assume that all three all had beards, were of the same height, weight, build and all looked identical?

29. In the case of **Javed Khan V State** (2017 SCMR 524) concerning the necessity for an early hulia/description of an accused by an eye witness before an identification parade and the need to strictly follow the rules governing identification parades it was held as under at 528 to 530:

*"7. We have heard the learned counsel and gone through the record. The prosecution case rests on the positive identification proceedings and the Forensic Science Laboratory report which states that the bullet casing sent to it (which was stated to have been picked up from the crime scene) was fired from the same pistol (which was recovered from Raees Khan in another case). We therefore proceed to consider both these aspects of the case. As regards the identification proceedings and their context there is a long line of precedents stating that identification proceedings must be carefully conducted. In *Ramzan v Emperor* (AIR 1929 Sid 149) Perceval, JC, writing for the Judicial Commissioner's Court (the precursor of the High Court of Sindh) held that, "The recognition of a dacoit or other offender by a person who has not previously seen him is, I think, a form of evidence, which has always to be taken with a considerable amount of caution, because mistakes are always possible in such cases" (page 149, column 2). In *Alim v. State* (PLD 1967 SC 307) Cornelius CJ, who had delivered the judgment of this Court, with regard to the matter of identification parades held, that, "Their [witnesses] opportunities for observation of the culprit were extremely limited. They had never seen him before. They had picked out the assailant at the identification parades, but there is a clear possibility arising out of their statements that they were assisted to do so by being shown the accused person earlier" (page 313E). In *Lal Pasand v. State* (PLD 1981 SC 142) Dorab Patel J, who had delivered the judgment of this Court, held that, if a witness had not given a description of the assailant in his statement to the Police and identification took place four or five months after the murder it would, "react against the entire prosecution case" (page 145C). In a more recent judgment of this Court, *Imran Ashraf v. State* (2001 SCMR 424), which was authored by Iftikhar Muhammad Chaudhry J, this Court held that, it must be ensured that the identifying witnesses must "not see the accused after the commission of the crime till the identification parade is held immediately after the arrest of the accused persons as early as possible" (page 485P).*

8. The Complainant (PW-5) had not mentioned any features of the assailants either in the FIR or in his statement recorded under section 161, Cr.P.C. therefore

the appellants, who he had identified after over a year of the crime, and who he had fleetingly seen, were in fact the actual culprits. Neither of the two Magistrates had certified that in the identification proceedings the other persons, amongst whom the appellants were placed, were of similar age, height, built and colouring. The main object of identification proceedings is to enable a witness to properly identify a person involved in a crime and to exclude the possibility of a witness simply confirming a faint recollection or impression, that is, of an old, young, tall, short, fat, thin, dark or fair suspect. There is yet another aspect to the matter of identification of the culprits of this case. The Complainant had named three other persons who could recognize the assailants, but he did not mention Subedar Mehmood Ahmad Khan (PW-6) as one of them. Nonetheless Subedar Mehmood Ahmad Khan came forward to identify the appellants. Significantly, none of the three persons mentioned by the Complainant participated in the identification proceedings and two were not even produced as witnesses by the Prosecution. During the identification proceedings both the appellants had informed the Magistrates who were conducting the identification proceedings, and before the identification proceedings commenced, that they had earlier been shown to the witnesses. The Magistrates recorded this objection of the appellants in their reports but surprisingly did not attend to it, which can only be categorized as a serious lapse on their part. Therefore, for all these reasons reliance cannot be placed upon the report of the identification proceedings in which the appellants were identified.

9. As regards the identification of the appellants before the trial court by Nasir Mehboob (PW-5), Subedar Mehmood Ahmed Khan (PW-6) AND Idress Muhammad (PW-7) that too will not assist the Prosecution because these witnesses had a number of opportunities to see them before their statements were recorded. In State v. Farman (PLD 1985 SC 1), the majority judgment of which was authored by Ajmal Mian J, the learned judge had held that an identification parade was necessary when the witness only had a fleeting glimpse of an accused who was a stranger as compared to an accused who the witness had previously met a number of times (page 25V). The same principle was followed in the unanimous judgment of this Court, delivered by Nasir Aslam Zahid J, in the case of Muneer Ahmad v State (1998 SCMR 752), in which case the abductee had remained with the abductors for some time and on several occasions had seen their faces. In the present type of case the culprits were required to be identified through proper identification proceedings, however, the manner in which the identification proceedings were conducted raise serious doubts (as noted above) on the credibility of the process. The identification of the appellants in court by eye-witnesses who had seen the culprits fleetingly once would be inconsequential." (bold added)

30. The recent supreme court case of **Mian Sohail Ahmed V State** (2019 SCMR 956) has also emphasized the care and caution which must be taken by the courts in ensuring that an unknown accused is correctly identified. In fact such extra care and caution in relying on identification parades is an accepted global phenomena in most criminal jurisdictions as the possibility of deliberately or mistakenly picking out a wrong person from an identification parade and sending an innocent man to jail is very much recognized and thus most jurisdictions (including Pakistan as noted above) have put in place special guidelines to greatly limit the chances of such incorrect identification.

31. For example, to avoid cases of mistaken identity where the cases of the prosecution mainly rests on the identification of the accused the **Turnbull guidelines** exist in the UK

“The Court of Appeal in *Turnbull* [1977] QB 224

In response to widespread concern over the problems posed by cases of mistaken identification, the Court of Appeal in *Turnbull* [1977] QB 224 laid down important guidelines for judges in trials that involve disputed identification evidence.

The guidelines

Where the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused – which the defence alleges to be mistaken – the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification(s). The judge should tell the jury that:

- caution is required to avoid the risk of injustice;
- a witness who is honest may be wrong even if they are convinced they are right;
- a witness who is convincing may still be wrong;
- more than one witness may be wrong;
- a witness who recognizes the defendant, even when the witness knows the defendant very well, may be wrong.

The judge should direct the jury to examine the circumstances in which the identification by each witness can be made. Some of these circumstances may include:

- the length of time the accused was observed by the witness;
- the distance the witness was from the accused;
- the state of the light;
- the length of time elapsed between the original observation and the subsequent identification to the police.

Recognition

It is commonly accepted that recognition is more reliable than identification of a stranger; however, even when the witness appears to recognize someone he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made.

Quality of evidence

If the quality is good and remains good at the close of the accuser's case, the danger of a mistaken identification is lessened; but the poorer the quality, the greater the danger. **When, in the judgment of the trial judge, the quality of the identifying evidence is poor, the judge should withdraw the case from the jury and direct an acquittal, unless there is other evidence which supports the correctness of the identification. The trial judge needs to tell the jury which evidence they believe is capable of supporting the evidence of identification.** (bold added)

If there is any evidence or circumstances which the jury might think was supporting when it did not actually have this quality, the judge should say so" (<https://www.inbrief.co.uk/court-proceedings/turnbull-guidelines/>).

32. It may be that the country is passing through a difficult phase in terms of law and order and terrorism but it is still remains the duty of the court to be watchful to ensure that an innocent person's liberty is not sacrificed on the alter and mantra of the war against terrorism and ensure that only those against whom there is reliable, credible and trustworthy and cogent evidence of their guilt in respect of a particular offense are convicted of the same. It is the duty of the prosecution to prove its case beyond a reasonable doubt through such kinds of aforementioned evidence and a cardinal principle of criminal jurisprudence that a person is innocent until proven guilty and it is on such principles that the edifice of the criminal justice system rests and it is the duty of the courts to sacredly and jealously ensure that such principles are followed without fear or favour whatever the outcome of the case may be. Such conduct of the courts will go along way in ensuring that the rule of law is maintained and the public have faith and confidence in the criminal justice system whatever their station in life may be.

33. Thus, in conclusion we are of the view that the identification evidence in respect of all three appellants **cannot** be safely relied upon to maintain their convictions and as such by extending to them the benefit of the doubt their appeals are allowed and they are acquitted of

the charges against them. Resultantly the convictions and sentences in the impugned judgment handed down to each of the appellants are set aside and the confirmation reference is answered in the negative. All three appellants shall be released unless they are required in any other custody case.

34. The appeals of the appellants are disposed of in the above terms.

MAK/PS**