THE HIGH COURT OF SINDH AT KARACHI

Cr. Jail Appeal No.300 of 2023 a/w
Cr. Jail Appeals No.365, 366, 421 & 452 of 2023 &
Confirmation Case No.03 of 2023

Present:
Justice Zafar Ahmed Rajput
Justice Tasneem Sultana

Appellant: (in Cr. Jail Appeal No.300/2023)	Shahrukh son of Akbar *(second father's name Kamran Iftikhar)*, through Mr. Raj Ali Wahid Kunwar, Advocate
Appellant: (in Cr. Jail Appeals No.365 & 366/2023)	Muhammad Umair son of Sher Muhammad, through Mr. Maaz Ali Gaddi, Advocate
Appellant: (in Cr. Jail Appeal No. 421/2023)	Zeeshan Raees son of Raees Khan, through Mr. Maaz Ali Gaddi, Advocate
Appellant: (in Cr. Jail Appeal No. 452/2023)	Adnan Shamsi son of Akram Pervaiz, through Dr. Shahrukh Shahnawaz, Advocate
Respondent: (in all Cr. Jail Appeals)	The State, through Mr. Abrar Ali Khichi, Addl. Prosecutor General Sindh
Dates of Hearing:	06.03.2025,12.03.2025,20.03.2025, 15.04.2025,29.04.2025,06.05.2025, 21.05.2025,22.05.2025 & 26.05.2025
Date of Judgment:	04.08.2025

JUDGMENT

TASNEEM SULTANA, J: By this common Judgment, we intend to dispose of aforementioned Criminal Jail Appeals and Confirmation Case/ *Death Reference*, sent by the learned Additional Sessions Judge-I / Model Criminal Trial Court (MCTC), Karachi-West ***(Trial Court)*** in terms of Section 374, Cr.P.C., as the same being arisen out of common and interconnected judgment, have been heard by us together.

2. Through the listed Criminal Jail Appeals No. 300, 365, 421 & 452 of 2023, Appellants-accused Shahrukh, Muhammad Umair, Zeeshan Raees and Adnan Shamsi, respectively, have assailed the Judgment dated 15.05.2023, passed by the Trial Court in Sessions Case No. 2323 of 2018, arising out of FIR No.499 of 2018, registered at P.S. Surjani Town, Karachi under Sections 395, 396, 397 and 302, P.P.C, while by means of Criminal Jail Appeal No. 366 of 2023, Appellant-accused Muhammad Umair has challenged the judgment of even date of the Trial Court passed in Sessions Case No.2322 of 2018, arising out of FIR No.500 of 2018, registered at the

said P.S. under Section 23 (1) (a) of the Sindh Arms Act, 2013 **(Act of 2013)**, whereby the Appellants-accused were convicted and sentenced as under:

In Sessions Case No. 2323 of 2018:

(i) *Accused persons, namely, Shahrukh, Adnan Shamsi and Zeeshan Raees found guilty of an offence punishable under section 302 (b), P.P.C for the murder of deceased Haji Bashir Ahmed. As such, they were convicted as tazir under section 265-H(ii), Cr.P.C and sentenced to death, hanging by neck until they are dead. Additionally, each convict must pay Rs. 500,000 (Five Lacs) as compensation in terms of section 544-A, Cr.P.C. for the murder. If the compensation is not paid, the convict(s) will undergo a simple imprisonment of 18 months. The recovered compensation will be given to the legal heirs of the deceased.*

(ii) *Accused persons, namely, Muhammad Umair, Shahrukh, Adnan Shamsi and Zeeshan Raees found guilty of an offence punishable under section 396, P.P.C for conjointly committing dacoity, wherein murder of Haji Bashir took place. As such, they were convicted under section 265-H(ii), Cr.P.C and sentenced to death, hanging by neck until they are dead. Additionally. each convict must pay fine of Rs. 200,000 (Two Lacs), in default thereof, they are liable to suffer simple imprisonment for six (06) months.*

(iii) *Accused persons, namely, Muhammad Umair, Shahrukh, Zeeshan Raees and Adnan Shamsi found guilty of an offence punishable under section 395, PPC. As a result, they were convicted under section 265-H (ii) Cr.P.C and sentenced to suffer life imprisonment with rigorous confinement having regards to section 397, PPC. Additionally, each convict must pay fine of Rs. 100,000 (One Lac), in default thereof, they are liable to suffer simple imprisonment for three (03) months.*

In Sessions Case No. 2322 of 2018:

Accused, Muhammad Umair found guilty of an offence punishable under section 24 of the Sindh Arms Act, 2013. As a result, he was convicted under section 265-H-(ii), Cr.P.C. and sentenced to suffer R.I for five (05) years and to pay a fine of Rs.50,000/- (Rupees Fifty Thousand). In default thereof, he shall suffer S.I for one (01) month.

All the sentences in Sessions Case No. 2323 of 2018 were ordered to run concurrently, and the benefit of Section 382-B, Cr.P.C. was extended to the Appellants.

3. Brief facts of the prosecution case are that, on 20.08.2018, complainant Muhammad Abbas lodged FIR No. 499 of 2018, alleging therein that on the said date, at about 01:45 pm, he along with his brothers Muhammad Ismail, Muhammad Ishfaq and laborers Abid Hussain and Haji Muhammad was present at his scrap shop, situated in a house bearing No. 149, sector-4, Surjani Town, Karachi, when six dacoits arrived there on three motorcycles and started robbing them. Meanwhile, his father Haji Bashir Ahmed arrived there and raised cries. On that, the dacoits started

firing with their pistols. As a result, Haji Bashir Ahmed died at the spot, while Abid Hussain and Haji Muhammad sustained bullet injuries. The dacoits robbed from the complainant Rs.2100/-, copy of the registration documents of motorcycle and from Muhammad Ismail Rs.5000/- and documents. During resistance, one of the dacoits was caught hold, who was beaten by enraged members of the public gathered there; meanwhile, a police mobile of P.S Surjani Town arrived there and arrested him. On his personal search, police secured a 30-bore pistol loaded with a bullet and robbed documents. He disclosed his name as Muhammad Umair and name of his absconding companion standing outside shop as Haris Sirakiki. Three unknown accomplices, identifiable by faces, fled away on motorcycles making firing with firearms. The complainant having shifted his father's dead body and injured persons to Abbasi Shaheed Hospital reported the incident at the police station. SIP Zulfiquar, on behalf of the State, registered the FIR No.500 of 2018 at the said P.S. under Section 23 (1) (a) of the Act of 2013 against the Appellant Muhammad Umair.

4. After usual investigation, police submitted the charge-sheet under section 173, Cr.P.C. against the Appellants. Having been supplied requisite documents as provided under section 265-C, Cr.P.C., the Trial Court framed a formal charge against the Appellants, namely, Muhammad Umair, Shahrukh and Zeeshan Raees on 03.04.2019, to which they pleaded not guilty and claimed to be tried. Subsequently, Appellant Adnan Shamsi was arrested, hence, amended charge was framed against the Appellants on 07.11.2020, to which they pleaded not guilty and claimed trial.

5. To prove its case, prosecution examined twelve witnesses. **PW-1** complainant, Muhammad Abbas examined at Ex.8, who produced memo of arrest and recovery, FIR and memo of site inspection at Ex. 8/A to Ex. 8/C. **PW-2** Injured Abid Hussain examined at Ex.9, who produced notice for identification parade and memo of pointation of accused Adnan Shamsi at Ex.9/A and Ex. 9/B. **PW-3** Muhammad Ismail examined at Ex.14. **PW-4** SIP Zulfiqar examined at Ex.15, who produced copy of FIR No. 500/2018 and Entry No. 16 at Ex.15/A and Ex.15/B. **PW-5** Muhammad Mushtaq examined at Ex.16, who produced memo of inspection of the deceased's body, Inquest Report and receipt of handing over of the deceased's body at Ex.16/A to Ex.16/C. **PW-6** HC Sadaqat Hussain examined at Ex.17, who produced memo of arrest at Ex.17/A. **PW-7** ASI (Rtd.) Aijaz Ali examined at Ex.19, who produced letters to the MLO of Abbasi Shaheed Hospital at Ex.19/A to Ex.19/C. **PW-8** MLO/Dr. Muhammad Pervaiz Anwar examined at Ex.20, who produced postmortem report and death certificate of the

deceased at Ex.20/A and Ex.20/B. **PW-9** Civil Judge and Judicial Magistrate Piyar Ali examined at Ex.21, who produced application of the I.O. for identification parade, identification parade of accused Shahrukh along with his CNIC, two applications from the I.O. for the identification parade of accused Zeeshan and order at Ex.21/A to Ex.21/F. **PW-10** MLO/ Dr. Abid Haroon examined at Ex.25, who produced MLC of the deceased, MLC and supplementary MLR of Haji Muhammad, the MLC and supplementary MLR of Abid Hussain, the MLC and supplementary MLR of Muhammad Umair at Ex.25/A to Ex.25/G. **PW-11** Injured/Haji Muhammad examined at Ex.29 and **PW-12** I.O/SIP Tariq Khalid examined at Ex.30, who produced entries No.17 & 21, entry No. 7, road certificate, FSL report, entries No. 49 & 52, application for identification of accused Shahrukh, CDR of accused Zeeshan, letter to SSP-West for constituting a police party, permission letters from SSP Investigation West-1 and the Home Department, entry No.1, permission letters of Home Department, Punjab and Capital City Police Officer, Lahore, entry kept at P.S Shadbagh Lahore, entry No. 30, transitory remand of arrested accused Zeeshan from the Court of Judicial Magistrate-1 Lahore, application for the identification parade of arrested accused Zeeshan, R.C No. 564/2018, chemical examiner's report, NOC of Court of District East, letter of Superintendent District Malir, arrival entry No. 26, departure entry No. 26, entry No. 31, CRO of all four accused, entries No. 93/18 & 96/18 of Register No. 19 at Ex.30/A to Ex.30/CC.

6. Statements of the Appellants under section 342, Cr.P.C. were recorded at Ex.32 to Ex.35, wherein they denied the allegations levelled against them and claimed to be innocent. They deposed that they had falsely been implicated in this case and nothing incriminating was recovered from their possession. They, however, neither examined themselves on oath to disprove the prosecution's allegations nor did they produce any witness in their defence. The Trial Court after hearing the learned counsel for the appellants as well as ADPP for the State convicted the appellants and sentenced them as mentioned above, vide impugned judgment.

7. Learned counsel for the Appellants, *inter alia*, have contended that there are glaring contradictions and improvements in the statement of eye witness which have escaped the notice of learned Trial Court; that the Trial Court failed to consider that the complainant malafidely implicated the Appellants in this blind murder case; that despite arrest of the Appellant Muhammad Umair from the spot he did not disclose the names of the co-accused/Appellants and police malafidely shown the arrest of Appellant,

namely, Shahrukh; that Trial Court failed to consider that identification test was conducted after the delay of 14 days of arrest of Appellant Shahrukh; that the Trial Court also failed to consider that the Judicial Magistrate did not conduct the identification test following the instructions/guidelines enunciated by the superior Courts; that PW Abid Hussain sustained bullet injury on his back side, his face was not towards the accused person, who fired on him, so his claim to identify the Appellants is invalid; that at the time of lodging FIR, complainant did not claim that he can identify the accused persons, who committed the alleged offence; that the Trial Court despite serious and material contradiction in the deposition of complainant and other PWs ignored the settled law that the benefit of doubt always goes in favour of the accused persons; therefore, the impugned judgment is liable to be set aside. In support of their contentions, learned counsel for the Appellants relied upon **(i).** *Sabir Ali alias Fauji vs. The State* **(2011 SCMR 563) (ii).** *Kanwar Anwaar Ali, Special Judicial Magistrate* **(PLD 2019 S.C. 488) (iii).** *Rehmatullah and others vs. The State* **(2024 SCMR 1782) (iv).** *Jafar and others vs. The State* **(2022 P. Cr. LJ. 891) (v).** *Muhammad Mansha vs. The State* **(2018 SCMR 772) (vi).** *Sardar Bibi and another vs. Munir Ahmed and others* **(2017 SCMR 344) (vii).** *Muhammad Pervez and others vs. The State and others* **(2007 SCMR 670) (viii).** *Munawar and another vs. the State* **(2022 YLR 198)** and **(ix).** *Subha Sadiq vs. The State* **(2025 SCMR 50).**

8. Conversely, learned Addl. P.G has fully supported the impugned judgment and contended that the eyewitnesses have correctly identified the Appellants being the persons who committed the murder of deceased Haji Bashir and caused firearm injuries to two PWs; that Appellant Muhammad Umair was arrested on the spot and from his possession an unlicensed pistol was recovered which led to a positive FSL report when matched with the empties recovered from crime scene; that since there were no material contradictions in the prosecution evidence, the prosecution has proved its case against the Appellants beyond any reasonable doubt; that the death sentence should be upheld as it is a case of brutal murder during a robbery with no mitigating circumstances; that the ocular account is supported by the medical evidence, therefore, the Appellants do not deserve any leniency from this Court. In support of his contentions, learned Addl. P.G has relied upon the case of *Mushtaq and others vs. The State* **(PLD 2008 S.C. 1).**

9. We have heard the learned counsel for the Appellants as well as Addl. P.G. and scanned the material available on record.

10. On the reassessment of the prosecution evidence, it reflects that the FIR (Ex.08/B) was recorded within 45 minutes of the incident with extreme promptitude, leaving no time for the complainant to cook up a false story against the Appellants in league with police. Prompt recording of FIR particularly by describing the unknown accomplices of the arrested Appellant outrightly excludes all hypotheses about the absence of eye-witnesses from the spot. Appellant Muhammad Umair was apprehended on the spot just after the robbery and murder of the deceased Haji Bashir Ahmed alongwith crime weapon, whereas his accomplices after the incident made their escape good. The prosecution case is primly based on the ocular account of five witnesses to the robbery, murder of deceased Haji Bashir Ahmed and two injured labourers of the shop, namely, PW Abid Hussain and PW Haji Muhammad, medical evidence, identification parade and recovery of weapon of offence from Appellant Muhammad Umair.

11. According to the evidence of PW-1, complainant, Muhammad Abbas (Ex.8), on 20.08.2018 at about 01.45 pm he, along with Muhammad Ishaque, PW-3 Muhammad Ismail, PW-2 Muhammad Abid, PW-11 Haji Muhammad and other labourers, was present at his scrap shop when six persons arrived on three motorcycles. One of them remained outside to provide protection to his companions during the occurrence, while remaining persons took out pistols and started robbing them, meanwhile his father came from rear side, who raised cries, on that two of them ran to hold him and then they fired on him. He further deposed that accused persons kept on firing resultantly his two labourers sustained firearm injuries. He caught hold of Appellant Muhammad Umair along with pistol and later PW-4 SIP Zulfiqar arrested him under the memo of arrest and recovery (Ex. 8/A). PW-2, injured, Abid Hussain (Ex.9), PW-4 Muhammad Ismail (Ex.14), PW-5 Muhammad Mushtaq (Ex.16) and PW-11, injured, Haji Muhammad (Ex. 29) fully corroborated the ocular account of complainant and deposed that on raising cries by deceased Haji Bashir Ahmed, the accused directly made firing on them resultantly Haji Bashir Ahmed died at the spot and PW-2 and PW-11 injured seriously. The said eyewitnesses have specifically deposed that the Appellants robbed Rs. 2,100/-, CNIC and documents of motorcycle from complainant and Rs. 5000/- and documents from PW-3 Muhammad Ismail. The ocular account of these eyewitnesses remained consistent on each and every material point qua, the date, time, mode and manner of occurrence and the locale of the injuries on the person of deceased and injured PWs. Although they were subjected to cross-examination at length but the defence miserably failed to detect anything which can hamper the prosecution case on salient features.

12. The flawless ocular account of the incident has also been narrated by the natural eyewitnesses having no vengeance against the Appellants. However, as an abundant caution further record has been scrutinized. In this regard, the evidence of PW-4 SIP Zulfiqar (Ex.15) seems to be an independent corroborative piece of evidence who has deposed that, on 20.8.2018 at about 02.00 pm during patrolling duty, he received information through 15 Madadgar that one Abbas informed that during dacoity at his scrap shop an incident of firing had taken place. He reached the pointed place and shifted all three injured to hospital through private vehicles and arrested accused Muhammad Umair *(Appellant)*, who was in the custody of private persons. He recovered from him a pistol loaded with one round in chamber, cash of Rs. 2100/-, copy of CNIC of Muhammad Abbas *(complainant)* and documents of motorcycle. He also seized four empties of 9-mm and 2 empties of 30 bore pistols from the place of incident under the memo of arrest and recovery (Ex.8/A). He lodged FIR No. 500 of 2018 under Section 23(1) of the Act of 2013 (Ex.15/A). He has in fact endorsed the evidence of PW-1, complainant, Muhammad Abbas.

13. The ocular account is amply supported from the medical evidence furnished by PW-8 MLO/Dr. Muhammad Pervaiz Anwar (Ex.20), who received corpse of Haji Bashir Ahmed and conducted autopsy. Inevitably, the postmortem examination was conducted without afflux of any uncalled-for delay. On one hand such prompt autopsy indicates and reflects positively upon the acclaimed presence of eyewitnesses and on the other hand supports the ocular account, as two firearm injuries were observed by the said MLO. Even the duration between death and postmortem is in consonance with the time of incident narrated by the eyewitnesses. The evidence of PW-10 MLO/Dr. Abid Haroon (Ex.25) is in line of ocular account of PW-2 Abid Hussain and PW-11 Haji Muhammad. He examined injured Abid Hussain and found lacerated firearm wound of entry at right lower back of the chest at lumbar region. As per radiological report, metallic density bullet debris was seen on soft tissues area at right iliac plate. He (PW-10) declared the injury of Abid Hussain as *Ghayr-Jaifah Mutalahimah* and produced such MLCs (Ex.25-D & 25-E). He also examined other injured Haji Muhammad and found fresh lacerated firearm wound of entry over his right hip, which injury he declared as *Ghayr-Jaifah Mutalahimah* vide MLCs (Ex.25-B & 25-C). The ocular account of both injured PWs is in consonance with the certification of the said MLOs, as much as PW-11 Haji Muhammad during his evidence has specifically described his miserable condition and asserted that his life has spoiled and his intestines are out of

his abdomen. This PW during cross-examination has further explained that he is in critical condition and is on bed for his whole life.

14. It is noteworthy that the alleged incident took place in the broad daylight inside the scrap shop of the complainant. The purity of the ocular account is also evident from the fact that the eyewitnesses were having no enmity with the Appellants, thus, there is not even a remote possibility of their false implication. Eyewitnesses have provided confidence inspiring details of the incident including time and manner of the incident, the description of snatched articles, arrest of Appellant Muhammad Umair at the spot, arrival of police at the place of incident and the mode of shifting the deceased and injured to hospital. Precisely, the presence of eye-witnesses at the place of incident is satisfactorily proved by the prosecution. In similar facts of the case, the Apex Court in the case of *Nasir Iqbal @ Nasra and another v. The State* ***(2016 SCMR 2152)*** has observed as under:

> *"The scrutiny of their evidence does not suggest any exaggeration rather not assigning any specific role to the accused persons reflects the truthfulness of their testimony when in hustle and bustle of the occurrence which has been committed within a few seconds or minutes it is humanly impossible to assign specific role and giving detailed description of the same would rather infer or input to have been made out to falsely rope the accused persons, rather the lodging of the FIR in straightforward manner in the fact and circumstances of the case rules out any possibility of falsely roping the accused persons rather the lodging of the FIR in a straightforward manner shows that it carries the true version."*

15. Some of the robbed articles were recovered from Appellant Muhammad Umair, who was arrested on the spot together with unlicensed pistol, hence, the question of misidentification does not arise. Further it does not appeal to logic that the said Appellant, who did not know the complainant, would be found with the copy of CNIC and other documents of the complainant unless he had robbed it. Needless to mention here that the recovery from Appellant Muhammad Umair of robbed articles reflects strongly upon his guilt, for that, he has miserably failed to put forth any acceptable explanation to refute it. The relevancy of the recovered unlicensed 30-bore pistol can well be gauged from the FSL report (Ex.30/E), which was found wedded with the two 30 bore empties secured from the crime scene. During examination under section 342, Cr.P.C., the said Appellant was specifically confronted with the aforesaid eventuality of prosecution case but he failed to dislodge it. We, therefore, find the evidence of PWs on the point of alleged recovery reliable, trustworthy and confidence inspiring.

16. While considering the case of other Appellants, namely, Shahrukh, Zeeshan and Adnan Shamsi, we have scanned the evidence of PW-12, I.O./ SIP Tariq Khalid (Ex.30) who, on 27.08.2018, on the pointation of Appellant Muhammad Umair, arrested Appellant Shahrukh vide memo of arrest (Ex.17/A), thereafter, through CDR (Ex.30/I) Appellant Zeeshan was arrested from Lahore. In the same sequence the name of Appellant Adnan Shamsi surfaced through apprehended Appellants, who was arrested on 04.07.2020 and pointed out the place of incident vide memo (Ex.9-B). Appellants Shahrukh and Zeeshan were firstly identified during identification parade through PW-2; thereafter, by all the eyewitnesses before Trial Court with their specific role. The evidence of eyewitnesses remained consistent despite lengthy cross-examination, who in one voice narrated the mode and manner in which the Appellants committed robbery and made firing, which resulted in the death of complainant's father and causing firearm injuries to two labourers/PWs working in the shop.

17. Learned counsel for the Appellants have pointed out some contradictions in the evidence of PWs/eyewitnesses, which are minor and immaterial in nature so as to affect and shatter the prosecution case. It is now well-settled principle of appreciation of evidence that *only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur are to be overlooked* and that *the minor contradictions creeping in evidence with the passage of time can be safely ignored*. Reliance in this regard is placed on the cases of *Zakir Khan vs. The State* **(1995 SCMR 1793)** and *Khadim Hussain vs. The State* **(PLD 2010 S.C. 669)**. It may be added that the test is whether the evidence of a witness inspires confidence. If an omission or discrepancy is minor in nature and does not go to the root of the prosecution story shaking the salient feature of the prosecution version, the same is not to be given much importance.

18. So far, the arguments advanced by the learned counsel for the Appellants on the point of "test identification parade" are concerned, we have also scrutinized the evidence of identification test proceedings. According to record, on 27.08.2018, Shahrukh *(Appellant in Cr. Appeal No. 300 of 2023)* was arrested on the pointation of Muhammad Umair (Appellant in Cr. Appeal No. 365 of 2023), while Zeeshan (Appellant in Cr. Appeal No. 421 of 2023) was arrested on 10.10.2018. As per record, the identification test of Appellant Shahrukh was held on 03.09.2018 (Ex. 21-B & 21-C), whereas identification test of Appellant Zeeshan was held on 15.10.2018 (Ex. 21-D & 21-E) under the supervision of PW-9, Judicial Magistrate, Piyar Ali. During

these proceedings PW-2, injured, Abid Hussain identified Appellants Shahrukh and Zeeshan and that too in reference to their specific roles. PW-2 Abid Hussain in clear terms mentioned that Appellant Shahrukh fired on him and Appellant Zeeshan made straight fire on deceased Haji Bashir Ahmed. As per record, identification tests were held without any significant delay. Appellants Shahrukh and Zeeshan were burdened by the afore-mentioned eyewitness with the allegation of inflicting fatal shot upon him and deceased Haji Bashir Ahmed. We feel a pressing need to mention that said PW-2 and PW-9, Judicial Magistrate, Piyar Ali were cross-examined at length by the defence but nothing could be extracted which may cast doubt about the legal worth and credibility of the identification tests. The defence raised objection that identification test was not conducted as per guidelines enunciated by the Apex Court in the case of Kanwar Anwar Ali *(supra)*. In this regard, we consider it appropriate to mention here that the Apex Court in supra case dilated on the test identification parade, joint identification parade and observed *If there are more accused than one who have to be subjected to test identification, then the rule of prudence laid down by the superior Courts is that separate identification parades should ordinarily be held in respect of each accused person.*

19. In our humble view, if identification test proceedings is otherwise impeccable in nature, the same cannot be discarded solely on account of fact that the *Hulia/*description was not given in the FIR. In the case in hand, the ocular account of five prosecution witnesses corroborates each and every event of the occurrence and they specifically asserted role of each Appellant. Moreover, during alleged incident Appellant Muhammad Umair was caught hold/arrested on the spot. PW-2, injured, Abid Hussain identified the Appellants Shahrukh and Zeeshan during the identification test correctly by describing their specific roles in commission of offence.

20. The judgment of Kanwar Anwar Ali *(supra)* was authored by the two-member Bench of the Apex Court and the guideline so given came under discussion of three-member Bench of the Apex Court in the case of *Muhammad Siddique and others v. The State* ***(2020 SCMR 342)***, that has expounded upon through the following observations: -

> ***5.*** *"Castigating severely the evidence of test identification parade, the learned counsel relied upon the guidelines laid down in the case of Kanwar Anwaar Ali (PLD 2019 Supreme Court 488) to urge exclusion thereof. The supra case, indeed a fine piece of juridical literature, nonetheless, does not extend much help to the convicts; it mainly addressed laconic approach adopted by a Magistrate in holding the test*

identification parade in the said case while highlighting general principles of law on the subject.

Test identification parade is a method of proof contemplated by Article 22 of the Qanun-e-Shahadat Order, 1984, reproduced below for the convenience of reference: -

> "Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose."

The above framework provides enough space to admit evidence in prosecution of offenders previously unacquainted with the victims or the witness; appraisal of such evidence is subject to same principles as are universally applicable in a criminal trial; there are no additional barricades as evident from the plain reading of Article ibid; without prejudice to the safeguards available to an accused at each stage of trial; essentially fair as guaranteed under the constitution, nonetheless, it does not cast an artificially heavier onus on the prosecution to meet standards of proof human capacity. Each criminal case is to be decided having regard to its own particular facts and circumstances. As test to be essentially applied in one case may absolutely be irrelevant in another, as the crimes are seldom committed in identical situations, there may be cases wherein prosecution must assign distinct roles played during the occurrence by the culprits for determination of their guilt as well as consequences thereof, however, there are cases in which totality of transaction may not warrant separability for such determination, like the one in hand. Cases involving abduction, dacoities and sudden assaults, more often than not, constitute episodes wherein different roles played by the culprits merge into integral totality of the crime, thus, it would be too harsh as well as unrealistic to demand exact re-enactment of roles by the witnesses. Capacities even intellectually most sharp dwindle drastically in calamitous situations, therefore, the administration of criminal justice in such peculiar situations has to be dynamically balanced upon fair trial without prejudice to the accused as well as due weightage to the prosecution evidence without being swayed by illusory notions subjectively structured upon hypothetical beliefs."

21. By relying on the observations of the Apex Court in case of *Muhammad Siddique* (supra), we are of the view that in the case in hand, the evidence of the identification test proceedings cannot be discarded as the ocular account of five witnesses seem to be natural, firm and flawless. Suffice it is to state that the process of identification parade has to be carried out having regard to 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. Even otherwise, it is settled law that holding of identification parade is merely a corroborative piece of evidence, and if 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 non-holding of identification parade would not be fatal for the prosecution case. Reliance in this regard is placed on the case of *Ghazanfar Ali @ Pappu and another v. The State* **(2012 SCMR 215)** Hence, we do not find any weight in the objection/ arguments of learned counsel for the Appellants on alleged identification test proceedings.

22. The instant matter pertains to an occurrence in which five dacoits trespassed into the shop of the complainant while one of their companions remained outside to provide protection to his other companions. During dacoity, they started firing, resultantly, father of the complainant done to death whereas two labourers sustained serious firearm injuries. To evaluate the strength of participation and criminal liability, it would be advantageous to reproduce the relevant provisions of P.P.C., which reads as under:

> **"391. Dacoity.-** When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding is said to commit "dacoity".
>
> **396. Dacoity with murder.-** If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which shall not be less than four years nor more than ten years, and shall also be liable to fine."

On bare reading of the aforementioned provisions of law, it is manifestly clear that the *"dacoity"* can be said to be an exaggerated version of robbery. If five or more persons conjointly commit or attempt to commit robbery it can be said to be committing the "dacoity". However, in the case of *"dacoity with murder"*, the punishment of death has also been provided in the statute. An immediate feature of Section 391 and Section 396, P.P.C., which strikes at first reading is that the word "conjointly" has been used in

these provisions of law which is not used anywhere in P.P.C. except in the aforementioned provisions, which are based upon entirely different footings as compared to an ordinary case of murder, where a conviction can be recorded on the basis of role ascribed coupled with the fact of having a common object or common intention. The law has been developed on these lines since long but as far as these two provisions i.e. Sections 391 & 396, P.P.C. are concerned, there is absolutely no chance to distinguish the criminal liability on the basis of act or role ascribed to each accused rather each one of them becomes equally responsible soon after they make preparation for the commission of the offence. No one can be distinguished on the basis of role or criminal liability with reference to such like offences as these offences are squarely against the fabric of society and heinous in nature by all means. Section 396. P.P.C. declares in specific terms that the liability of other persons is coextensive with that of the actual murderer. All that requires to be proved is that they have been conjointly committing dacoity and during the course thereof, death caused by a dacoit would be murder and would be attributed to all of them. The fact that Section 396, P.P.C. is a self-contained provision stands outright away upon its first reading. The section is unique, in that, it imposes vicarious liability upon all members of the gang without there being any distinction and that extent is sui generis in nature. The three essential ingredients for invoking Section 396, P.P.C. are that (i) one of the persons must commit murder, i.e. his act must amount to "murder" within the meaning of Section 300, P.P.C., (ii) the said person must be one of the five or more persons who have joined together to commit dacoity, and (iii) the murder must be committed in the course of commission of such dacoity. If these conditions are fulfilled, Section 396, P.P.C. would set in and bring all the persons involved in the act of dacoity in the same category even if they did not commit the murder. As a consequence, all persons must, therefore, possess the mens rea. Reliance is in this regard is placed on case of Ansar and others vs. The State and others **(2023 SCMR 929)** and *Muhammad Ali v. The state* **(2022 SCMR 2024).**

23. On perusal of the impugned judgment, it appears that the Trial Court has convicted the Appellants Shahrukh, Adnan Shamsi and Zeeshan Raees for the offences punishable under Section 302 (b), P.P.C. Simultaneously, the Trial Court awarded sentence to the said Appellants and to Appellant Muhammad Umair for the offences punishable under Sections 396 and 397, P.P.C.

24. The offences punishable under Sections 302, 396/397, P.P.C. are altogether different and cannot be tried in conjunction with each other when dacoity with murder was committed by a gang comprising five or more persons. In contrast Section 396, P.P.C. addresses the scenario where murder is committed during dacoity with specific punishment and additional fines, highlighting the collective liability of the offenders. In present case, the Appellants trespassed into the shop of the complainant with common intention of dacoity, and during dacoity, they made straight firing towards deceased Haji Bashir and caused injuries to two PWs, therefore, the present case falls within the purview of Sections 396 and 397, P.P.C. There are mitigating circumstances for reduction of sentence of death to the imprisonment for life, intention of the Appellants was of robbery, they took belongings of complainant and PW-3 on the show of weapons but suddenly when deceased Haji Bashir raised cries then two of them came forward and fired from their pistols resultantly deceased sustained two injuries at his chest and abdomen, the action of the Appellants seems sudden and spur of the moment. It is settled proposition that a single mitigating circumstance, available in particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment as observed in the cases of *Ghulam Mohy-ud-Din alias Haji Babu and others vs The State* **(2014 SCMR 1034)** and *Imtiaz alias Taji and another vs. The State and others* **(2020 SCMR 287)**. Therefore, conviction and sentence awarded to the Appellants, namely, Muhammad Umair, Shahrukh, Zeeshan and Adnan for the offence punishable under Sections 302 and 396, P.P.C. is calling for modification and conversion from death sentence to R.I. for life.

25. Accordingly, for the foregoing facts, reasons and discussion, we partly allow Criminal Jail Appeals No. 300, 365, 421 & 452 of 2023, while maintaining the conviction of Appellants Shahrukh, Muhammad Umair, Zeeshan Raees and Adnan Shamsi under Sections 302(b) and 396, P.P.C. however, their sentences of death are reduced to life imprisonment. The sentences of compensation i.e. Rs. 500,000 (Five Lacs) in terms of section 544-A, Cr.P.C. and fine of Rs. 200,000 (Two Lacs), so also, their sentences for the offence under section 397, P.P.C. as awarded by the Trial Court shall remain intact. They shall be entitled to the benefit of Section 382-B, Cr.P.C. Death Reference is answered in negative.

26. So far, the Criminal Jail Appeal No.366 of 2023 filed by Appellant Muhammad Umair challenging the judgment, dated 15.05.2023, passed in Sessions Case No.2322 of 2018 is concerned, the prosecution has established its case of recovering unlicensed pistol with live bullet from the

crime scene as discussed in paragraphs 10 to 12, 14 and 15 supra; hence, the said judgment requires no interference by this Court under its appellate jurisdiction.

27. The instant Criminal Jail Appeals stand disposed of in above terms.

JUDGE

JUDGE 04/08/25

Announced by us.

4/8/2025

JUSTICE MIRAN MUHAMMAD SHAH

04/08/25 Justice Zafar Ahmad K.