

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No.S-176 of 2019

[Bashir @ Basho @ Basham vs. The State]

Appellant by : Ms. Urooj Aqeel advocate
Complainant : Nemo
State : Ms. Rameshan Oad D.P.G
Date of Hearing : 02.04.2026
Date of Decision : 04.2026

J U D G M E N T

SYED FIAZ-UL-HASAN SHAH, J:- This jail appeal is directed by the appellant against the Judgment dated 15.07.2019 (**Impugned Judgment**) passed by learned 1st Additional Sessions Judge/Model Criminal Trial Court Tando Allahyar (**Trial Court**) in Sessions Case No.32 of 2015 [*Re: The State vs. Bashir alias Basho @ Basham S/o Moula Bux Zardari and others*], outcome of Crime No.126 of 2014 registered at P.S A-Section Tando Allahyar for offences punishable under Section 302, 397, 109 and 34 Pakistan Penal Code, 1860 (**PPC**), whereby the Appellant was convicted and awarded sentence to suffer Life Imprisonment and further Sentence of **Seven (07) years R.I on account of committing robbery** while awarding him benefit of Section 382-B Cr. P.C and ordering that both the sentences shall run concurrently as well as the Appellant was directed to pay compensation of one million to the legal heirs of deceased and in case of failure in payment thereof he has to suffer six months further simple imprisonment.

2. Complainant Saqib Majeed son of Abdul Majeed Qaimkhani lodged the subject FIR at PS A-Section Tando Allahyar alleging that he along with his brother Muhammad Sabir (deceased) and a relative Mehmood Khan were together proceedings on their motorbike which was being driven by his brother Muhammad Sabir (deceased). They were approaching the lands from Talib Moula Colony towards Kolhi Goth via kuchi patri, when they had reached at the lands belonged to Akhtiar Khanzada at about 1530 hours, three unknown persons duly armed with pistols and identifiable open faces, had suddenly appeared and forcibly stopped the complainant party on gunpoint and robbed motorcycle and mobile phone from Muhammad Sabir. Complainant party resisted and tried to apprehend them but one of the culprits opened direct fire on the head of Muhammad Sabir who fell down on the ground in terminal illness and blood was oozing due to said injuries. Due to fear, complainant party did not resist anymore and the culprits left the crime scene freely while sitting on motorcycle heading towards Tando Adam road. Thereafter, the complainant had informed his relatives, police and had brought the injured Muhammad Sabir at the Civil Hospital Tando Allahyar for medical treatment where the Doctor informed that Muhammad Sabir had been expired. The dead body was brought at Civil Hospital Tando Allahyar where post mortem of deceased was conducted under police supervision. After burial of deceased Muhammad Sabir, the complainant went to PS and lodged FIR against three unknown accused persons while stating that he had visibly seen the Accused and he can identify these accused whenever they have shown to him.

3. Thereafter, the investigation was conducted by the police and on 09-11-2014 at about 1630 hours police arrested Bashir @ Basho alias

Basham (**present appellant**) from Tando Allahyar by-pass Naseer Wah Mori and recovered one 30-bore pistol along with magazine and five live bullets and some currency notes and mobile phones. On 10-11-2014 at 01-47 hours the Identification Parade was held before the Court of Judicial Magistrate-1 Tondo Allahyar wherein complainant Saqib Majeed and P.W Mehmood Khan both identified the accused Bashir Basho alias Basham to be the same who had fired upon deceased Muhammad Sabir. On dated 22.11.2014 further statement of complainant namely Saqib Majeed was recorded wherein the complainant specifically identified and nominated each of the accused with their specific respective roles.

4. After completion of investigation challan was submitted before the Court of learned Judicial Magistrate concerned, who took the cognizance and sent the police papers to learned trial Court. In compliance of Section 265-C, relevant case papers were supplied to the accused. Accused Habibullah Habu & Mashooque were shown as absconders in the charge sheet as such proceedings under section 87 & 88 Cr.P.C were completed against them. Then formal charge sheet was framed against accused Bashir Bashu alias Basham and Akhtar Ali at Ex-6, to which they pleaded not guilty and claimed trial vide their pleas recorded at Exh-6/A & Exh-6/B respectively. Accused Habibullah Habu was arrested during trial as such relevant case papers were supplied to him and on 13.11.2018 Amended Charge was framed against accused persons, to which they pleaded not guilty and claimed for trial vide their pleas recorded at Exht.17/A

5. In order to prove the case, prosecution examined 11 witnesses, who produced certain documents at Ex.07/A to 19/A. Then statements of accused persons under Section 342 Cr.P.C were recorded at Ex.26 to 28

wherein they pleaded innocence and denied the allegations leveled against them by the prosecution witnesses; however, neither they opted to examine themselves on Oath nor produced any witness in their defense. The learned trial Court finally after hearing the parties awarded the sentence to present appellant as mentioned above in introductory paragraph while acquitted the co-accused persons by extending them benefit of doubt while case of accused Mashooque was kept on dormant file.

6. Learned counsel for the appellant states that there is contradiction in entry No.19 Ex.12/G and oral testimony of the PW-6 ASI Nasrullah, as per entry one Saqib, who is brother of deceased, had informed the PW-6 ASI /Duty Officer while in evidence the said ASI disclosed that he received the information from some other person, moreover, in the said entry names of eye witnesses were not mentioned. She next contended that PW-6 ASI Nasrullah had confirmed in his evidence that FIR was lodged against unknown persons, however, neither any hulia was disclosed in the FIR nor given in statements of eye-witnesses recorded under section 161 Cr.P.C. so also the Inquest report Ex-9/B did not mention the names of eyewitnesses. She next contended that appellant and other co-accused were arrested after more than a month of the incident and the identification parade was conducted on the next date of their arrest, however, the Judicial Magistrate, who conducted such identification parade produced at Ex.7/B, was not examined and the Appellant during Identification Parade raised objections that Judicial Magistrate recorded note that suspects claimed that he was shown to the witness/complainant while in police lockup and no opportunity was given to on this point. She lastly argued that ocular crime scene produced

by the PW-8 Tapedar Muneer Hussain is varied with the medical report and has no reference to the presence of the appellant at the crime scene. She has relied upon (i) 2017 SCMR 596, (ii) 2018 SCMR 772, (iii) 2020 SCMR 1185, 2 (iv) 2020 SCMR 687, (v) 2024 P. Cr.L.J 284 Sindh and 2025 SCMR 1633.

7. On the other hand, inspite service of notice no one effected appearance on behalf of the complainant. The DPG argued that identification parade is a public and good document to be considered despite the non-examination of the Magistrate and the appellant had every opportunity to inspect and question about credibility of identification parade upon the PW-1 and PW-2 that was not done by him. She further argued that the delay of one day in registration of FIR was well explained and there was no possibility of consultation and false implication as the FIR was lodged against unknown persons, which shows fairness of complainant instead of any malafide as alleged by the appellant. She confirmed that crime empties were procured vide Ex.9/D, from the crime scene, however, neither pistol recovered from the possession of appellant was sent to Forensic Science Laboratory (FSL) nor the crime empties. She relied upon the case reported as 2023 SCMR 929 and states that in identical case and in the light of principle laid in down in the case supra the sentence awarded to the appellant is liable to be maintained.

8. Arguments heard and record perused with the assistance of Counsel for appellant and the DPG.

9. It is an admitted position that FIR was registered against unknown persons alleging direct firing upon the victim Muhammad Sabir on his

vital part head, who after sustaining injury was taken to hospital where he could not survive. Simultaneously, the record confirmed that the police was timely informed about the incident under Exh.12/G. Therefore, one day's delay in lodgment of FIR is well explained. Further, the possibility of consultation or fabrication cannot be considered as the FIR was registered against the unknown persons and this show the fairness on the part of complainant. The concept of consultation or fabrication consider by Courts more seriously where delay does not explain and the names of accused party given in the FIR after consultation. In the present case, there remains no element of consultation and false implication. Accordingly, the case law 2025 SCMR 1633 relied upon by the appellant's counsel in this regard is distinguishable.

10. The identification parade Ex.7/B is the foundation document to connect the Appellant with the commission of crime. Notwithstanding, the non-examination of the Judicial Magistrate who had conducted such identification parade, the Defence failed to create reasonable doubt or dent in the said document while examining the PW-1 and PW-2 who had identified the Appellant during identification parade. While the Defence has not disputed the proceedings of identification parade that such proceeding was not conducted in accordance with the principles settled down by the apex Court or that any legal step was violated during such proceedings by Magistrate that may warrant certain inquisitive for which it was essential to examine such Magistgrate. Besides, no objection was recorded by the defence side at the time of exhibit of identification parade produced by other than Magistrate.

11. A Test Identification Parade (**TIP**) under Section 22 of the Qanun-e-Shahadat Order, 1984 (**QSO**) is only a corroborative method of proof and not a mandatory requirement. Its evidentiary value depends on strict compliance with judicially prescribed safeguards and timely conduct, alongside an independent assessment of eyewitness credibility through estimator variables. Where TIP proceedings suffer from serious infirmities—such as failure to record features of accused and dummies, lack of specific role attribution, possible prior exposure of suspects to witnesses, or non-adherence to established guidelines—their probity becomes questionable. In such circumstances, TIP can be discarded or conviction cannot safely rest upon TIP evidence, and the accused must be extended the benefit of doubt. Conversely, on re-appraisal of evidence, the testimony of PW-1 and PW-2 who were natural and eyewitnesses could not be shaken by the defence and their evidence remained uncontroverted, confident inspiring and trustworthy. No grudge, malice or enmity confirmed between the parties to rebut probity of the PW-1 and PW-2 though Appellant in his Statement under section 342 Cr.P.C. took this plea but such plea is indiscernible for the reason that in case there was some enmity between the parties, the complainant ought to have nominate the Appellant in the FIR rather to lodge FIR against the unknown person which show all fairness and Bonafide on his part and therefore such plea of defence is repelled out. Even otherwise, the appellant failed to point out any infirmity in the said TIP which was timely conducted within one month from the date of incident and on next day after arrest of Appellant in preceded evening.

12. The various case laws 2024 P Cr.L.J 284 and 2017 SCMR 596 relied upon by the learned Counsel is distinguishable. In those cases, the eye-

witnesses were come into picture after two months from the commission of offence and even he had not given any hulia, features or description or drawn any sketch of the culprits and foremostly there was absence of claim that such eye-witness can identify the culprits if they had brought before them. In contrast, in the present case, the name of eye-witnesses is clearly mentioned in the FIR so also, they have supported the case of prosecution that they can identify the culprits. Therefore, no reason exits to believe that the appellant is not involved in the commission of offence if the TIP does not read over or considered in view of the confident-inspiring testimonies of two eye-witnesses.

13. The case law relied upon by the appellant's counsel titled as Haji Nawaz vs. The State 2020 SCMR 1185 which is based on appraisal of evidence that an accused may give benefit of doubt for which many circumstances are not required rather a glimpse of the same is always deem sufficient on the analogy that first plea of accused is admissible in evidence under Article 27 of Qanun-e-Shahadat Order 1984. Based on this finding the case law relied upon by the appellant's counsel supra is distinguishable, as it was not the case of first plea attracting Article 27 QSO rather the case of prosecution was that appellant had come for robbery and on resistance, he had committed murder of the victim Muhammad Sabir by straight firing on the head i.e vital part of the body. This event of occurrence testified by two PWs (eye-witnesses), who had categorically identified the appellant before the trial Court by assigning him specific role that it was the appellant, who fired upon the victim deceased Muhammad Sabir. Such piece of evidence is a fact, which is mentioned in initial police report Ex.-12/G, FIR as well as in statements of witnesses recorded under Section 161 Cr.P.C, which does not show any

malice and there is no legal impediment to hold that the deceased victim was died due to straight firing caused and committed by the Appellant. Where due to negligence or flaws at the hand of prosecution, any impropriety or lacuna was created, the appellant cannot be given benefit of doubt when otherwise sufficient evidence is available on record against him.

14. As far as recovery of pistol from the exclusive possession of the appellant under Ex-10-A on 09.11.2014 is concerned, since learned DPG candidly admitted that neither recovered pistol nor empties were sent to FSL by the prosecution, it is well settled law that in case any piece of evidence or circumstance is not put to an accused, that cannot be considered as corroborative piece of evidence unless it is supported by the positive report of FSL. Mere simple recovery of weapon or collection of empties from the crime scene cannot be considered as corroborative piece of evidence in the absence of immediately dispatchment of crime empties cartridges collected from the crime scene for its analysis and matching with weapon to FSL or absence of FSL report for the recovered weapon. I am of the firmed view that simple recovery of weapon ought to be discarded in view of the principle settled in the case of *Muhammad Mansha vs. The State (2018 SCMR 772)*. Additionally, I have noted that no separate FIR was registered for the alleged recovery of pistol, be it may be under a valid license or otherwise.

15. In view of the ocular evidence of PWs No.1 and 2, which is trustworthy, confident-inspiring and re-confirming the contents of FIR as well as earlier recorded statements under Section 161 Cr.P.C and corroborative medical evidence Ex.9/A memo of dead body, Ex.9/B Inquest report and Ex.9/C memo of deceased's cloths further

corroborated by the evidence of PW-7 MLO Dr. Ghulam Muhammad, who confirmed that Injury No.1 was sufficient to cause death of victim Muhammad Sabir, it has been proved that appellant had fired at the head of victim Muhammad Sabir which caused death of deceased Muhammad Sabir. The grounds of non-examination of Judicial Magistrate, who had conducted identification parade, or non-examination of FSL of weapon or empties or presence of Appellant did not shown in sketch of crime scene prepared by Tepedar PW-8 cannot disprove the fact of commission of offence, however, these can possibly the mitigating circumstances that may warrant modification in the impugned judgment.

16. Accordingly, the Appeal is dismissed while impugned Judgment is maintained with modification that the Sentence awarded under Section 302(b) PPC is converted to one under section 302(c) PPC for imprisonment for a period 22 years imprisonment and with the same compensation amount of Rs.10,00,000/- (One Million) imposed by trial Court to be paid to the legal heirs of deceased. In the event of default in payment of compensation, the Appellant would suffer 01 year imprisonment more as well as sentence of seven years R.I on account of committing robbery is also maintained while extending benefit of Section 382-B Cr.P.C as already given by the trial Court.

17. Criminal Appeal stands disposed of.

JUDGE